



**Upper Tribunal  
(Immigration and Asylum Chamber)**

SM (lone women – ostracism) Pakistan [2016] UKUT 00067 (IAC)

**THE IMMIGRATION ACTS**

**Heard at : Field House  
On : 21 May 2015**

**Sent to parties on:**

.....

**Before**

**UPPER TRIBUNAL JUDGE GLEESON  
UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**S M  
(ANONYMITY ORDER MADE)**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

Respondent

**Representation:**

For the Appellant: Mr C McCarthy, instructed by Paragon Law  
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

(1) *Save as herein set out, the existing country guidance in SN and HM (Divorced women – risk on return) Pakistan CG [2004] UKIAT 00283 and in KA and Others (domestic violence – risk on return) Pakistan CG [2010] UKUT 216 (IAC) remains valid.*

- (2) *Where a risk of persecution or serious harm exists in her home area for a single woman or a female head of household, there may be an internal relocation option to one of Pakistan's larger cities, depending on the family, social and educational situation of the woman in question.*
- (3) *It will not be normally be unduly harsh to expect a single woman or female head of household to relocate internally within Pakistan if she can access support from family members or a male guardian in the place of relocation.*
- (4) *It will not normally be unduly harsh for educated, better off, or older women to seek internal relocation to a city. It helps if a woman has qualifications enabling her to get well-paid employment and pay for accommodation and childcare if required.*
- (5) *Where a single woman, with or without children, is ostracised by family members and other sources of possible social support because she is in an irregular situation, internal relocation will be more difficult and whether it is unduly harsh will be a question of fact in each case.*
- (6) *A single woman or female head of household who has no male protector or social network may be able to use the state domestic violence shelters for a short time, but the focus of such shelters is on reconciling people with their family networks, and places are in short supply and time limited. Privately run shelters may be more flexible, providing longer term support while the woman regularises her social situation, but again, places are limited.*
- (7) *Domestic violence shelters are available for women at risk but where they are used by women with children, such shelters do not always allow older children to enter and stay with their mothers. The risk of temporary separation, and the proportionality of such separation, is likely to differ depending on the age and sex of a woman's children: male children may be removed from their mothers at the age of 5 and placed in an orphanage or a madrasa until the family situation has been regularised (see KA and Others (domestic violence risk on return) Pakistan CG [2010] UKUT 216 (IAC)). Such temporary separation will not always be disproportionate or unduly harsh: that is a question of fact in each case.*
- (8) *Women in Pakistan are legally permitted to divorce their husbands and may institute divorce proceedings from the country of refuge, via a third party and with the help of lawyers in Pakistan, reducing the risk of family reprisals. A woman who does so and returns with a new partner or husband will have access to male protection and is unlikely, outside her home area, to be at risk of ostracism, still less of persecution or serious harm.*

## **DECISION AND REASONS**

1. The appellant is a citizen of Pakistan from the Lahore area, born on 12 January 1983. She first entered the United Kingdom on a visit visa in September 2004, returning to Pakistan in October 2004. She then returned to the United Kingdom on a further visit visa on 11 April 2006, but did not embark for Pakistan when it expired in October 2006. The appellant remained in the United Kingdom as an overstayer.

2. In April 2010, after living in the United Kingdom unlawfully for 3½ years, the appellant claimed asylum. The basis of the appellant's asylum claim was that she had a

child (now three children) by a man other than her estranged husband, whom she had met in the United Kingdom, and that if she returned to Pakistan, she feared that her husband would kill her. She asserted that because her estranged husband's family was rich and powerful, she could not relocate safely to another part of the country. The appellant stated that she had tried contacting two women's organisations to see whether she could seek shelter in her home area of Lahore, but they advised her that they had no space available and could not help her.

3. The respondent refused the appellant's asylum claim on 10 May 2010 and on 12 May 2010 decided to remove her from the United Kingdom as an overstayer.

### **Procedural history**

4. The appellant and her partner appealed the respondent's May 2010 decision to refuse them leave to remain: their appeal was heard in the First-tier Tribunal on 30 June 2010 and dismissed on 2 July 2010. Although the First-tier Tribunal accepted the core account as it then stood as credible, the First-tier Tribunal Judge considered that an internal relocation option was available to the appellants, away from Lahore, and dismissed the asylum and humanitarian protection appeals on that basis.

5. Counsel for the appellants accepted that arguments under Articles 2 and 3 ECHR must stand or fall with the asylum claim. As regards Article 8 ECHR, the appellants' Counsel conceded that as they would be removed together, he could not realistically argue that the decision under appeal represented a disproportionate breach of their Article 8 ECHR family and private life rights. No paragraph 395C factors were identified which could lead to a different outcome and that argument also was not pressed before the First-tier Tribunal. The appellant's partner did not challenge the dismissal of his appeal and accordingly that element of the First-tier Tribunal decision stands unchallenged.

6. The Upper Tribunal granted permission to appeal on 21 December 2010 after an out of time application made by the appellant alone, in September 2010. The appellant contended that she had been ill-served by her former solicitors. The basis of the grounds of appeal was that the illegitimacy of her son put both the appellant and the child at risk on return. The appellant relied on *KA and others (domestic violence – risk on return) Pakistan CG* [2010] UKUT 216 (IAC) which had been published on 14 July 2010. On 30 March 2011 Deputy Upper Tribunal Judge Alis dismissed the appeal, finding there to be no material error of law in the First-tier Tribunal's decision.

7. The Court of Appeal granted the appellant permission to appeal on 4 August 2011 and the appeal was remitted to the Upper Tribunal, by consent, for a fresh hearing on the basis that the question of ostracism of the appellant as a lone mother with an illegitimate child had not been properly considered. On 11 June 2013, Upper Tribunal Judge Gleeson formally held that there was an error of law in the previous Upper Tribunal decision and gave directions for the decision to be remade in the Upper Tribunal.

8. At a case management hearing on 26 September 2013, the respondent purported to withdraw the underlying decision from May 2010, since the appellant was then pregnant with her second child. The appellant's Counsel relied on paragraph 17(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (S.I. 2008/2698) and argued that the Upper Tribunal should not accept the withdrawal of the respondent's case in this appeal,

particularly in the light of the identification of this appeal as a potential country guidance decision. On 30 January 2014, a panel of the Upper Tribunal refused to accept the respondent's withdrawal, as no new decision was available. The Upper Tribunal directed that the appeal be listed for a further Case Management Review after 3 months, and that if by that date, no fresh decision was available, the appeal should proceed. No new decision was made on the appellant's changed circumstances (she is now the mother of 3 children by her partner, all born in the United Kingdom, after many miscarriages).

9. The Upper Tribunal gave directions for hearing on 3 October 2014 and the appeal was heard on 21 May 2015. In the intervening period, any doubt as to the appellant's partner being the parent of all her children had been resolved and the respondent no longer disputes either the relationship between them or his status as the children's father.

10. We therefore proceed to remake the decision afresh. This is the decision of the Tribunal, to which we have both contributed.

### **The country guidance issue**

11. When remitting this appeal, the Court of Appeal indicated that it might be desirable for there to be country guidance on this fact set, that is to say, the risk of ostracism of a mother with an illegitimate child in Pakistan. The Court directed the Upper Tribunal to have regard to the case of *SN (Pakistan) v Secretary of State for the Home Department* [2009] EWCA Civ 181.

12. In *SN (Pakistan)* the Court of Appeal set aside and remitted a decision by the Upper Tribunal which it considered insufficiently reasoned on the ostracism point. In his judgment at paragraphs 31 and 32, Lord Justice Scott-Baker said this:

"31. We were referred to a number of documents, in particular a Home Office operational guidance note and a US State Department report relating to Pakistan, both of which documents were very recent in relation to the date of the original hearing before Immigration Judge Walters. Miss Chan, for the Secretary of State, submits that, on careful reading, these documents take matters no further. She also observes that there is no country guidance dealing with the general question of single women with children being returned to Pakistan. It is true that there is no country guidance. Perhaps it would be helpful if there was a country guidance case dealing with issues that arise in such circumstances.

32. For my part I am satisfied that the first Immigration Judge's decision was inadequately reasoned and the matter was not rectified by the second and Senior Immigration Judge. For my part I am left in a considerable state of doubt as to what the realistic risks, if any, are to this appellant on her return to Pakistan, in particular because of the fact that she is a single mother with a child which may or may not be perceived to be illegitimate. It was certainly so perceived by the first Immigration Judge. ..."

13. The outcome of the rehearing of *SN (Pakistan)* did not result in country guidance. The Court in *SN (Pakistan)* does not appear to have been referred to the country guidance given by the Immigration Appeal Tribunal in *SN and HM (Divorced women – risk on return) Pakistan* CG [2004] UKIAT 00283 at paragraphs 46-48:

"46. As was stated as long ago as 1999 in *Shah and Islam* [1999] Imm AR 283, the position of women in Pakistan is unsatisfactory, with widespread discrimination and insufficient State

protection. There has been some progress in the last five years, and particularly in urban centres, crisis support may now be available. ...

48. The same CIPU Country Report accepts that internal flight options are limited for women, but it does not state that there are no internal flight possibilities and each case will depend on its own particular factual matrix. We find that some support is available in the cities, and we also consider the geographical scale of Pakistan (covering an area of about 307,374 square miles, with a population of 140,470,000); the question of internal flight will require careful consideration in each case. The general questions which Adjudicators should ask themselves in cases of this kind are as follows –

(a) Has the claimant shown a real risk or reasonable likelihood of continuing hostility from her husband (or former husband) or his family members, such as to raise a real risk of serious harm in her former home area?

(b) If yes, has she shown that she would have no effective protection in her home area against such a risk, including protection available from the Pakistani state, from her own family members, or from a current partner or his family?

(c) If yes, would such a risk and lack of protection extend to any other part of Pakistan to which she could reasonably be expected to go (*Robinson* [1997] EWCA Civ 2089, *AE and FE* [2002] UKIAT 036361), having regard to the available state support, shelters, crisis centres, and family members or friends in other parts of Pakistan?"

14. The Asylum and Immigration Tribunal considered the question again in 2006 in *FS (domestic violence–SN and HM–OGN) Pakistan CG* [2006] UKAIT 00023, in which it concluded that:

*"(1) Operational Guidance Notes (OGNs) provided by the Secretary of State for the Home Department for the guidance of his caseworkers are a statement of the position taken by him at the date they were issued but must be considered in the context of subsequent evidence about the situation in the country of origin, including the information summarised in subsequent COI Reports; and*

*(2) The background evidence on the position of women at risk of domestic violence in Pakistan and the availability to them of State protection remains as set out in SN & HM (Divorced women– risk on return) Pakistan CG [2004] UKIAT 00283. It appears that the current intention of the authorities is to improve State protection for such women, although progress is slow. Every case will still turn on its particular facts and should be analysed according to the step by step approach set out at paragraph 48 of*

15. The appellant also relies on guidance given by the Upper Tribunal in *KA and Others (domestic violence – risk on return) Pakistan CG* [2010] UKUT 216 (IAC):

*"...iii. The Protection of Women (Criminal Laws Amendment) Act 2006 ("PWA"), one of a number of legislative measures undertaken to improve the situation of women in Pakistan in the past decade, has had a significant effect on the operation of the Pakistan criminal law as it affects women accused of adultery. It led to the release of 2,500 imprisoned women. Most sexual offences now have to be dealt with under the Pakistan Penal Code (PPC) rather than under the more punitive Offence of Zina (Enforcement of Hudood) Ordinance 1979. Husbands no longer have power to register a First Information Report (FIR) with the police alleging adultery; since 1 December 2006 any such complaint must be presented to a court which will require sufficient grounds to be shown for any charges to proceed. A senior police officer has to conduct the investigation. Offences of adultery (both zina liable to hadd and zina liable to tazir) have been made bailable. However, Pakistan remains a heavily patriarchal society and levels of domestic violence continue to be high.*

iv. *Whether a woman on return faces a real risk of an honour killing will depend on the particular circumstances; however, in general such a risk is likely to be confined to tribal areas such as the North West Frontier Province (NWFP) and is unlikely to impact on married women.*

v. *Pakistan law still favours the father in disputes over custody but there are signs that the courts are taking a more pragmatic approach based on the best interests of the child.*

vi. *The guidance given in SN and HM (Divorced women – risk on return) Pakistan CG [2004] UKIAT 00283 and FS (Domestic violence – SN and HM – OGN) Pakistan CG [2006] UKIAT 00023 remains valid. The network of women’s shelters (comprising government-run shelters (Dar ul-Amans) and private and Islamic women’s crisis centres) in general affords effective protection for women victims of domestic violence, although there are significant shortcomings in the level of services and treatment of inmates in some such centres. Women with boys over 5 face separation from their sons.*

vii. *In assessing whether women victims of domestic violence have a viable internal relocation alternative, regard must be had not only to the availability of such shelters/centres but also to the situation women will face after they leave such centres.”*

16. We are satisfied that it is right to consider the ostracism question in the present appeal and we proceed to do so.

### **The appellant’s account**

17. The appellant’s account, which the First-tier Tribunal in July 2010 found largely credible, was that she entered into a love marriage in Pakistan on 24 May 2003; that both families were against the marriage and that she was disowned by her family, although she later resumed contact with her mother in January 2006, such contact remaining a secret from the remaining family members. The appellant continued to use her parents’ address in Lahore as her address for correspondence, for example for visa applications.

18. The couple lived together at first in a village outside Lahore, for four to five months, but her husband decided to leave Pakistan and live in Oman due to family disputes over property. The appellant joined him there in November 2003 (there is a problem here with the chronology, but nothing really turns on it). They remained in Oman for a few months, but then the husband came to the United Kingdom. The appellant visited him for a month in September/October 2004 but returned to Pakistan to see her mother. While in Pakistan, she lived in a rented property in a suburb of Lahore, in the same area as her husband’s family.

19. In January 2006, her husband asked her to go and live with his parents. Living with her parents-in-law was not successful: the appellant was treated badly by her husband’s family. When she told her husband of her ill treatment, he arranged for her to join him in the United Kingdom, at his address in Nottingham. The appellant entered the United Kingdom in April 2006, as a visitor, but this time with the clear intention of staying permanently. The appellant’s account is that she gave her husband her papers and passport to sort out her status and has not received them back from him.

20. Shortly after her arrival, the appellant realised that her husband was drinking alcohol and seeing other women. They were trying to have a baby but during the marriage, the

appellant was unsuccessful in so doing, although she did have several miscarriages. Her husband became abusive and eventually violent towards the appellant: he accused her of having illicit relationships with other men. In March 2007, her husband ordered her to leave the matrimonial home, after he saw her talking to a male neighbour. The appellant's estranged husband has not contacted her since then. The appellant's understanding now is that soon after rejecting her, he returned to Pakistan: she says her mother told her he was back in Pakistan in November or December 2007. He was running the appellant down, saying she was a woman of low moral character.

21. The appellant had nowhere to go after her ejection from the marital home, so she approached their landlady (referred to by the appellant under the courtesy title of 'auntie'). The landlady gave the appellant a room in another property that she owned, also in Nottingham, and treated her like a daughter, reassuring the appellant that her estranged husband was bound to return to her.

22. There were other lodgers in that property, one of whom is the appellant's current partner, a Pakistani man with no legal right to be in the United Kingdom. In May 2008, the appellant and her current partner began a relationship. It is accepted that, after further miscarriages, she became pregnant by him and gave birth to a son on 17 January 2010. The appellant's relationship with her current partner was 'on and off' both before and after the birth: sometimes he was supportive and sometimes he rejected her. He initially saw his son only intermittently.

23. The appellant learned from her mother that her estranged husband and her family were aware that she had had a child out of wedlock. When he became aware of the pregnancy, her husband went to the appellant's family home to express his anger. He beat up her brother. Since then, her husband is said to have been verbally abusive to the appellant's family members whenever he saw them, telling people that she was a woman of immoral character and had been 'having illicit relations with other men'. In particular, he was hostile towards her mother whenever he saw her, repeating his allegations that the appellant was a woman of low character who had illicit relations with other men. He made similar remarks to any member of her family whom he met in a hospital, market or similar.

24. The appellant's evidence to the First-tier Tribunal was that she spoke to her mother about once or twice a month, and was always told of further such incidents. Having become aware of this situation in Pakistan, the appellant claimed asylum. She did not do so until April 2010, three months after her eldest son's birth.

25. That was the situation at the date of hearing in June 2010. Evidence for the present hearing indicates that the relationship between the appellant and her partner has solidified since then and that the appellant has two further children by him, after a number of further miscarriages and significant medical intervention: the youngest is a daughter born in January 2015. The appellant's account now is that her partner lives in Nottingham, at an address unknown to her, but that he is very fond of his three children and sees them every day. All the children, as well as the appellant and her partner, are Pakistani citizens only and no member of the family has any form of leave to remain in the United Kingdom.

26. The appellant's partner has also claimed asylum unsuccessfully in 2010. The respondent's decision to refuse asylum then was unchallenged and no fresh claim has been made. He has no lawful status in the United Kingdom and is also a Pakistani citizen.

### **The respondent's refusal letters**

#### **(1) May 2010 refusal letter**

27. In May 2010, the respondent rejected the appellant's account of having suffered domestic violence from her husband and considered in any event that he would have no further interest in her, having thrown her out of the house in Nottingham and then returned to Pakistan. She considered that the appellant could access effective protection in Pakistan and that, even if there was a real risk of serious harm or a reasonable degree of likelihood of persecution in Lahore, the appellant could also relocate to another part of the country where there would not be such a risk. The respondent considered that it was open to the appellant to divorce her husband and regulate her position if she wished.

28. On 26 September 2013, the respondent withdrew her May 2010 decision on the basis that it did not deal adequately with the best interests of the children pursuant to section 55 of the Borders, Citizenship and Immigration Act 2009 (as amended).

#### **(2) March 2014 refusal letter**

29. On 31 March 2014, after the birth of the appellant's two sons, but before her third pregnancy was known, the respondent issued a further refusal letter, in which she stated that she maintained her position that the appellant would not be at risk on return to Pakistan. The appellant's partner having no legal right to be in the United Kingdom, the respondent considered that he could return to Pakistan with the appellant and their children, which would provide her with the protection of a male adult in Pakistan.

30. The respondent considered that in a different area of Pakistan their status as an unmarried couple would not be known, and that, even if it became known, any societal ostracism that they may encounter would fall below the Refugee Convention standard and that the appellant would have the benefit of her partner's social and physical support and protection. Internal relocation to a different part of Pakistan was considered to be a viable option.

31. The respondent also gave consideration to the best interests of the appellant's children and concluded that since they were Pakistani citizens and still of an age where their strongest links were to their parents, in particular their mother, it would be in their best interests to remain with their parents and that the family could return to Pakistan as a unit. Removal would not, therefore, be in breach of the appellant's human rights or the best interests of her children.

### **Country evidence**

32. The country evidence in this appeal is briefly summarised in Appendix C below. We set out here in more detail the elements most relevant to the ostracism question and to the status of women exercising an internal relocation option within Pakistan.



## **Evidence of Dr Roger Ballard**

33. Dr Roger Ballard MA PhD FRAI is a Consultant Anthropologist and Director of the Centre for Applied South Asian Studies. His report is entitled "Risk on return to Pakistan in the case of a single mother and her illegitimate children". For the purposes of country guidance, the relevant parts of Dr Ballard's report are sections 5, 7, 8, 9.3 and 10. Sections 14.2 and 14.3 deal with ostracism and reconstruction of a family life, and kinlessness, respectively, and section 15 contains his conclusions.

34. Dr Ballard considered that on return to Pakistan, a person in what he perceived to be the appellant's position, that is to say, a female head of household with no husband or family backing, would be treated as kinless and a demi-mondaine, because of her inability to explain her circumstances truthfully to new friends and neighbours. His opinion was that such a person would have little difficulty in finding a room in a five star hotel but that without a respectable male guardian, she would be unable to find cheaper accommodation, and thus would be at risk of accepting an accommodation offer which she realised too late came with sexual strings attached.

35. Dr Ballard accepted that women's shelters are available but stated that they were frequently over-subscribed and entry was not guaranteed. Only short term accommodation is available in state run shelters, which try to reconcile people with their families, and if that is not possible, move them on to make room for new users. Children over 5 years old would not be accepted because the perception was that they should be with their fathers. Women who were not accepted back by their families were at risk of being further ostracised on the basis that their sin must be exceptionally serious.

36. There was hostility to the shelters from Muslim families, who perceived them as Euro-American supported bodies seeking to undermine family integrity by encouraging women to leave their husbands. An income support initiative set up by the previous government, the Benazir Income Support Program, appeared to be withering on the vine under the new PML(N) government.

37. Dr Ballard noted that in the latest Human Rights Commission for Pakistan report (he did not specify the date or title) concern was expressed as to the low levels in Pakistan of female education and participation in the work force. He stated that the report recorded that in 2013, women continued to suffer violence, discrimination, inequality, denial of economic rights and lack of control over their bodies and lives.

38. The Council of Islamic Ideology had rejected the Women's Protection Act of 2006 as 'not in line with Islamic injunctions' and stated that *hudoon* laws dealt with all offences against women, making a separate law unnecessary. Many civil society activists and law makers were calling for the dissolution of the CII because of its 'regressive decrees'. A number of specific incidents relating principally to the treatment of young women and of wives by husbands were cited.

## **Christine Brown's evidence**

39. Ms Brown is a qualified social worker with almost 30 years' experience, and has worked in Trafford, Tameside and Manchester, mainly with children. She has worked with troubled children at risk of sexual abuse, and with children requiring Statements of

Educational Need, fostering and adoption. She has a degree in sociology and has contributed to publications on social work, asylum and immigration. Ms Brown confirms that she is aware of her responsibility as an expert and of the *Ikarian Reefer* test.

40. Ms Brown has worked on a number of asylum appeals. Her report deals both with the specific family situation between the appellant, her partner, and their children, but also, based on the evidence in Dr Ballard's report, Ms Brown purports to deal with country conditions in Pakistan. It does not appear to us that this is within her area of expertise and we do not consider that we can place weight on that aspect of her report.

41. After setting out the history of the family, Ms Brown gave an insight into the motivation of the appellant's partner, drawn from his witness statement and conversations with him. He came from a very poor background and as the eldest of seven siblings, he had been in the United Kingdom since 2001, sending money back to support his family, working cash in hand as he had no legal status here. He had not had a relationship before meeting the appellant. Ms Brown's understanding was that he had not exercised his right to claim asylum in the United Kingdom, but that appears to be incorrect.

42. Ms Brown noted the partner's evidence that it was harder for him to obtain 'cash in hand' work after 2009, when the United Kingdom tightened its regulatory regime and employers began to ask for proof of immigration status. He had been finding it increasingly difficult to get regular work and sometimes went two weeks without work, unable to pay rent or buy food. He wanted to enjoy life with his little family and provide for them.

43. In Pakistan, the appellant's partner considered he would not be able to earn enough money to keep the family safe. He feared reprisals from the appellant's family, putting the whole family at risk. In Pakistan, if one had money, one could arrange anything, and it would be easy for those who wished to harm the partner, the appellant, or his children to arrange to do so.

44. The report describes the mutual dependency which has grown up between the appellant and her partner, in which they both care for the children, particularly if they are ill. The appellant often feels unwell, perhaps because she is tired. Her partner takes responsibility for washing and dressing the children, feeding them and getting them to school. He spends the day with the appellant, returning to his own accommodation in the evenings. They need to be together: even in the United Kingdom, the appellant's partner felt their circumstances were severely constrained and that he could not provide for his children as he would wish.

45. The children were thriving and the eldest was beginning to make friends at his pre-school. Their mother had made poor decisions as an adult due to being over-protected in Pakistan, Ms Brown thought, and if isolated there again, might continue to do so. She might not cope alone with the children, despite her love for them.

46. If returned without their father, she was concerned by the risk, identified in Dr Ballard's report, that the eldest child would be removed from his mother's care and placed in an orphanage or madrasa as too old for maternal care. The rest of the report deals with separation anxiety in children and with the evidence of Dr Ballard, which we have already summarised.

## Country background reports and evidence

### 1. Respondent's country of origin information

47. The respondent's position on the situation of women in Pakistan is set out in a report entitled "Country Information and Guidance Pakistan: Women" published on 16 July 2014 and updated in December 2015 as 'Country Information and Guidance: Women fearing gender-based violence, Pakistan, December 2015'. To a large extent, the July 2014 and December 2015 reports replicate the guidance given by the Upper Tribunal in *SN and HM* and other country guidance decisions. In relation to internal relocation, after referring to *SN and HM*, the July 2014 guidance assesses the risk as follows:

"1.3.14 However, taking into account the general position of women in Pakistani society where they:

- face patriarchal attitudes and deep-rooted stereotypes;
- may not be educated or even literate;
- may have to depend on relatives for economic support; and
- face safety issues and social constraints in living alone,

then internal relocation is likely to be unduly harsh for many women.

1.3.15 Factors such as the social positioning in terms of class, religion, education, economic independence, region and location (urban or rural), cultural and traditional values, caste, educational profile, marital status, number of children of the person should be considered when determining whether relocation is an option. Educated and professional women may find it possible to support themselves in alternative locations.

1.3.16 In assessing whether women who are fleeing a risk of serious domestic violence have a viable internal relocation alternative, decision makers must not only have regard to the availability of shelters/centres but also to the situation women will face after they leave such centres."

48. At paragraph 2.4, the report deals with whether a single woman can live alone in Pakistan:

#### "2.4. Single women

2.4.1 According to a representative from the Human Rights Commission of Pakistan (HRCP) '... it is "next to impossible" for a single woman to live alone in Pakistan due to prejudices against women and economic dependence'. According to a Metropolitan State College of Denver Assistant Professor, most women in rural areas lived with their families and it was generally not socially acceptable for women to live alone. In urban areas, especially larger cities such as Karachi, Lahore or Islamabad, educated, higher class, working women found it easier to live alone, although this was still quite a rare occurrence. The sources consulted by the Immigration and Refugee Board of Canada describe difficulties for single women renting property in urban areas, security concerns and social constraints. Divorcees face specific stigmatization and social rejection."

49. The December 2015 version of the report noted the gradual introduction of women's police stations in many areas of Pakistan, albeit understaffed and sometimes difficult to reach. Some cities had a 24-hour helpline for women in distress to call and lodge complaints with women police officers.

50. As regards the availability of domestic violence shelters, the December 2015 report says this:

### **"10.2 Women's shelters**

10.2.1 The Aurat Foundation in its annual report for 2013 noted that 'There are very few shelter homes against the number of women seeking refuge. Going to a shelter home is still considered taboo and perceived as the last resort of women who have been turned away by respectable society'.

10.2.2 The USSD Human Rights report for 2014 stated:

'The government operated the Crisis Center for Women in Distress, which referred abused women to NGOs for assistance. A total of 26 government funded Shaheed Benazir Bhutto centers for women across the country provided women with legal aid, medical treatment, and psychosocial counseling. These centers served women who were victims of exploitation and violence. Victims later were referred to a "*dar ul-aman*," or shelter house, and approximately 200 such homes for abused women and children had been established with funds from the Provincial Women Development Department. These shelter homes provided shelter and access to medical treatment. According to NGOs the shelters did not offer other types of assistance to women, such as legal aid or counseling, and primarily served as half-way homes for women awaiting trial for zina (i.e., adultery), even though they were the victims of rape and domestic abuse. Government centers lacked sufficient space, staff, and resources. In some cases women were reportedly abused at the government-run shelters and found their movements severely restricted, or they were pressured to return to their abusers.'

10.2.3 The Aurat Foundation reported in 2012 that these same Shaheed Benazir Bhutto Crisis Centres 'can only provide shelter to women for a period of 24-72 hours. For longer-term accommodation, they are either sent to the Islamabad Women's Crisis Centre, or to the provincial governments operated *Dar ul-Aman* shelter homes, or encouraged to negotiate an agreement. They may also be transferred to other shelters depending upon the nature of the case.' The report identified a number of challenges facing these shelters as with all other institutions including a shortage of staff, particularly of properly trained staff, an increase in the demand for services but not enough resources are available, and the centres are open only for certain hours of the day, which meant that they are not available for emergency situations, or for women seeking shelter after closing hours.

10.2.4 In a 2014 report, the Aurat Foundation listed the number of functional and on record shelter homes for women in the districts selected. Seven shelters were functioning in Karachi district; one in Hyderabad; four in Peshawar; one in Islamabad; and one in Mardan district. No shelters were cited for Swat. Shelter services in Peshawar and Mardan were considered "highly insufficient and unreliable". Dawn reported in September 2014 that, according to a consultative meeting '*Dar ul-Amans* in Sindh were plagued by lack of skilled staff, poor infrastructure and security issues.' Reporting on the passing of the Domestic Violence (Prevention and Protection) Bill,

2014, in Balochistan, Dawn stated 'in Balochistan there is only one functioning women's shelter in Quetta which, in the words of a provincial legislator, "is more of a criminal concern rather than any shelter. We wouldn't want any woman to go there; she'll come out with her reputation in tatters". The condition of most women's shelters, if not all, in the country is reportedly not much better.' According to a South Asia Partnership Pakistan report cited in the Express Tribune, 'many shelter homes lacked basic health facilities. "Offices of physiologists and doctors at many of the shelter homes are vacant".'

10.2.5 According to representatives of the NGO Shirkat Gah and HCRP, privately run shelters (by NGOs) were said to be better than government-run shelters with reports stating that government-run shelters were too few, should hold women for longer durations, and that they were overcrowded with poor facilities and inadequately trained staff. There were also reports of abuse taking place at shelters. Some shelters, both state and NGO-run, tried to reconcile women with their families, due to the difficulties of single women living alone in Pakistan society. Sources provided information on two NGO-run shelters, one in Lahore; Dastak, and one in Karachi; Panah. According to 'Cause of Death: Woman, an investigative project of the Swedish Association of Women's Shelters and Young Women's Empowerment Centres', which examined the situation of violence against women in 10 countries between 2010 and 2012, Dastak accommodates 25 women and 45 children, but at times has housed 70 women and their children, as "no one is turned away". The same source also reported that most women stay at Dastak for at least three months, although some have stayed for several years. The organisation Shirkat Gah reported that Panah houses 40-45 women and children.

10.2.6 A September 2014 World Bank report on violence against women in South Asia reports that: 'Women 'rescued' from honor crimes also suffer abuse when remanded to safe houses where conditions are abysmal and akin to a prison. Moreover, reintegration into family and society of women who have been in custody is made even harder if women are sexually abused, as they are then regarded as 'dishonored' or 'spoiled,' bringing shame to their families'."

## **2. US State Department Report for Pakistan [2014]**

51. The US State Department Report for 2014 painted the same picture, with women often being treated as chattels and subject to discrimination, and failure to pursue perpetrators of offences against them:

### **"Women**

...As in previous years, the government did not effectively enforce the Women's Protection Act of 2006. ...In 2010 the FSC [Federal Shariat Court] declared several clauses of the Women's Protection Act un-Islamic and unconstitutional. The verdict sought to reinstate certain provisions of the 1979 Hudood Ordinance and expand the FSC's jurisdiction in cases of adultery and false accusations of adultery. A reinstatement of these provisions could permit the use of adultery charges against women in cases of rape, as occurred in the past. In 2011 the federal government appealed the FSC's decision to the Supreme Court, which had not set a hearing date by year's end. In September 2013 the nongovernmental Council of Islamic Ideology, which advises parliament and the prime minister, rejected the Women's Protection Act, saying it was contrary to the spirit of the Quran and sharia. ...

On May 27, Farzana Iqbal's male family members killed her outside the Lahore High Court for choosing a "love marriage" without her parents' consent. According to media reports,

Farzana's family shot her and then used bricks from a nearby construction site to kill her. The medical examination confirmed that she died from severe head wounds. The attack on Farzana sparked domestic and international outrage. On November 19, a court delivered a death sentence to four men involved in the attack.

Police in Sindh established karo-kari [honour killing] cells with a toll-free telephone number in the districts of Sukkur, Ghotki, Khairpur, and Nausharo Feroze for persons to report karo-kari incidents. Because honor crimes generally occurred within families, many went unreported. Police and NGOs reported increased media coverage enabled law enforcement officials to take some action against a limited number of perpetrators. ...

The 2011 Prevention of Anti-Women Practices Amendment Act criminalizes punishing giving a woman in marriage to settle a civil or criminal dispute; depriving a woman of her rights to inherit movable or immovable property by deceitful or illegal means; coercing or in any manner compelling a woman to enter into marriage; and compelling, arranging, or facilitating the marriage of a woman with the Quran, including forcing her oath on the Quran to remain unmarried or not to claim her share of an inheritance. ...

The 2012 National Commission on the Status of Women Bill provides for the commission's financial and administrative autonomy to investigate violations of women's rights. According to women's rights activists, however, the commission lacked resources and remained powerless. ...

Discrimination: Women faced legal and economic discrimination. The law prohibits discrimination on the basis of sex, but authorities did not enforce it. Women faced discrimination in family law, property law, and the judicial system. Family law provides protection for women in cases of divorce, including requirements for maintenance, and sets clear guidelines for custody of minor children and their maintenance. Many women were unaware of these legal protections or unable to obtain legal counsel to enforce them. Divorced women often were left with no means of support, as their families ostracized them. Women are legally free to marry without family consent, but women who did so frequently were ostracized or faced becoming victims of honor crimes.

The 2011 Prevention of Anti-Women Practices Act makes it illegal to deny women inheritance of property by deceitful means. Female children are entitled to one-half the inheritance of male children. Wives inherit one-eighth of their husband's estate. Women often received far less than their legal entitlement. Women faced significant discrimination in employment and frequently were paid less than men for similar work."

52. Divorced women risked being ostracised by their families, leaving them with no means of support: the same was the case for those who married without family approval and consent. Women worked, but were paid less than men, in urban areas: in rural areas, they often did not work at all.

### **3. Immigration and Refugee Board of Canada (Canadian IRB)**

53. The Canadian IRB evidence also assessed that laws passed to protect women in Pakistan had not yet changed their underlying status: 70-90% of all women had experienced domestic violence at the hands of husbands or family members, much of which went unreported. State protection was in practice unavailable to women at risk from their husband or family. Government-funded shelters provided housing, legal aid, medical treatment and counselling but were miserably overcrowded, putting women at

further risk of abuse. Honour crimes continued to be a problem, when a woman had shamed her family. A woman could divorce her husband, but social pressures made it difficult. There was a sharp rural/urban divide, with rural women regarded as chattels and urban women in a slightly better position, though life remained difficult for single women.

54. A 2007 Reply by the Canadian IRB indicated that whether a single woman could live alone in an urban environment would depend on her age, class, education and the setting. Highly educated and economically independent women could probably do so, but they were few in number. Older women were more likely to be able to live alone than younger women. Internal relocation required money and resources of one's own, since no housing benefit and so on was available from the government.

55. In 2010, the Canadian IRB published a document entitled *Pakistan: Circumstances under which a woman has the legal right to get a divorce through the courts (judicial divorce) through her own initiative; circumstances under which single women can live alone*, which set out the divorce rights for Muslim women in Pakistan, and also the position of single women. Dealing first with divorce, the report says this:

#### **"Divorce rights of Muslim women**

A Muslim marriage, says the Sustainable Development Policy Institute (SDPI), a Pakistan-based independent non-profit organization founded in 1992 "to serve as a source of expertise for policy analysis and development" ... is "a contract and can be dissolved like any other contract". ... Marriage among Muslims is similarly described as "a civil contract" that "can be the subject of dissolution for good cause" by Mian Muhibullah Kakakhel, the founder of Kakakhel Law Associates and a senior advocate of Pakistan's Supreme Court (23 Sept. 2008). As a contract, explains the SDPI, "both wife and husband have legal and religious rights to dissolve a marriage"

According to the SDPI, while a man has the "unilateral right of talaq" ...the "absolute and inherent power to repudiate his wife" without offering any reason (*Daily Star* 3 July 2010)-women legally dissolve their marriage under the following three circumstances ..:

- If the husband has "unconditionally delegated" the right of divorce in the *nikah nama* or marriage contract ....
- If the wife files suit in family court for *khula*, which means "untying the knot" ...or "to put off as a man is said to khula his garment when he puts it off" (Kakakhel Law Associates 23 Sept. 2008).
- If, under the *Dissolution of Muslim Marriages Act, 1939*, she files suit for judicial divorce in family court ...

In spite of these "pronounced, guaranteed and statutory rights," the Kakakhel lawyer reported that it is "extremely difficult" for a woman to ask for her right to divorce, not only because Pakistan is "a male-oriented and male-dominated society," but also because the woman is "psychologically debarred from having access" to the laws governing her right to divorce (23 Sept. 2008). For an assistant professor of political science at the Metropolitan State College of Denver corresponding with the Research Directorate, the degree of difficulty depends on the woman's social class, education and financial independence, as well as the level of support she can expect from her family (15 Oct. 2010). But in the case of divorce through *khula*, the main difficulty would be the attack on her moral character that would come under a cross-examining lawyer's questions (Assistant Professor 15 Oct. 2010).

#### **Judicial divorce**

Under the *Dissolution of Muslim Marriages Act, 1939*, a woman who "regards the husband [as] at fault" can initiate a judicial divorce through a family court ..., which were established under the *West Pakistan Family Courts Act, 1964*, to "adjudicate upon ... matters relating to the dissolution of marriage" (Kakakhel Law Associates 23 Sept. 2008). According to the SDPI, unless the couple reconciles, the family court issues a decree dissolving the marriage and sends it to a Union Council ..., an elected local government body of 13 councillors headed by a *nazim*, or mayor, and a *naib nazim*, or deputy mayor (UN HABITANT et al.).

The divorce does not come into effect until the end of *iddat* ..., a prescribed waiting period during which a woman cannot remarry (Omar July 2007); *iddat* can last either 90 days after the union council has received the dissolution decree or, if the wife is pregnant, until the birth of a child. ... If the divorce is granted, the Union Council issues a divorce certificate and the woman keeps her *mehr* (ibid.), or *mahr* (Shahid Sept. 2009), a dower given to the wife by the husband (Omar July 2007).

### Grounds for judicial divorce

Section 2 of the *Dissolution of Muslim Marriages Act, 1939* permits divorce on any one of the following grounds:

- (i) that the whereabouts of the husband have not been known for a period of four years;
- (ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;
- (ii-A) that the husband has taken an additional wife in contravention of the provisions of the Muslim Family Laws Ordinance, 1961;
- (iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;
- (iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;
- (v) that the husband was impotent at the time of the marriage and continues to be so;
- (vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease; ...
- (viii) that the husband treats her with cruelty, that is to say,
  - (a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or
  - (b) associates with women of evil repute or leads an infamous life, or
  - (c) attempts to force her to lead an immoral life, or
  - (d) disposes of her property or prevents her exercising her legal rights over it, or
  - (e) obstructs her in the observance of her religious profession or practice, or
  - (f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran,
- (ix) on any other ground which is recognized as valid for the dissolution of marriages under Muslim Law ... (Pakistan 1939)

Section 2 also allows a woman to repudiate a marriage that was contracted by her parents or guardians while she was still a minor, provided that the marriage was not consummated (Kakakhel Law Associates 23 Sept. 2008) or consummated before she was 16 years old (ibid.).

### Khula divorce

Female scholar Shagufta Omar, writing in 2007 in *Policy Perspectives*, a biannual journal published by the Institute of Policy Studies, Islamabad, defines *khula* as "divorce on the wife's demand," the basis of which is the Quran (July 2007). In Islamic or Sharia law a Muslim woman has the right to initiate divorce when she feels she can no longer live with her husband (Kakakhel Law Associates 23 Sept. 2008) because of what the SDPI calls "an irretrievable breakdown of the marriage" (ibid.).



According to Omar, the process for dissolving a marriage on the basis of *khula* is through an agreement between the woman and her husband (July 2007). This marriage dissolution, Omar says, is obtained "only through court since out-of-court *khula* settlements are not so common" (Omar July 2007). The SDPI also indicates that the wife files suit for *khula* in a family court ... On the other hand, the Kakakhel lawyer says that *khula* may be obtained either through mutual agreement or by court order (23 Sept. 2008).

Although a woman can dissolve her marriage through *khula*, she does so "by surrendering certain rights given to her," such as dower (Omar July 2007). A law professor at the University of Warwick who specializes in Islamic law and Pakistani women's rights also indicated in correspondence with the Research Directorate that, if a woman asks for *khula*, she must relinquish her *mehr* or marriage gift (17 Oct. 2010). The SDPI similarly states that, in a case of *khula*, the wife "usually" has to return the *mehr*, as well as "other benefits" obtained from the husband. However, Ayesha Shahid, a lecturer at the University of Hull in the United Kingdom, summarizes Pakistan Superior Court decisions on the payment of dower to divorced women in a 2009 conference paper in which she notes that

The courts have taken a positive and liberal approach in interpreting Islamic principles relating to dissolution of marriage by *khula* and payment/repayment of dower. The courts have refused to accept the plea of the husband for recovery of dower in cases where *khula* was obtained because of the cruelty or any other fault of the husband. (Sept. 2009)"

56. Dealing next with the circumstances of single women, the report identifies that there are variations across Pakistan, and also in relation to the age, prosperity, and educational status of the woman in question:

#### **"Whether single women can live alone**

For women to live alone and unmarried in Pakistan, it will depend on which province and in what context they are living, reported the Metropolitan State College of Denver Assistant Professor (15 Oct. 2010). The Assistant Professor explained that, socio-economically, "Pakistan has [a] very sharp rural and urban divide" (15 Oct. 2010).

**Rural** is collectivist, community/village based, agrarian, traditional, more illiterate and poor. Women are not recognized as an individual member of the community, they are members of their male-dominated family. Woman's life in the village context is a matter of concern for every man of the neighborhood community. There is no concept of an 'unattached' woman. She has to live with her family. What do widows, divorced or spinsters do? They live with their parental or in-laws family. Older women with grown up children normally depend on their sons or daughters. There are always exceptions to their situations in the rural context but generally it is not socially safe and acceptable for women to live in the rural context.

**Urban** is semi-collectivist and individualistic, more literate, with better infrastructure and transportation facilities and plenty of job opportunities i.e. skilled or unskilled. Urban is different but still there are difficulties for single women. Here, class is the main determinant of woman's choices for her life style. In big cities educated women with jobs or some property income would not have much difficulty to live alone. (ibid.)

The Law Professor also said that "[i]t all depends on who you are, what resources you have, which part of the country you come from, [and] what your own educational and economic, professional status is" (17 Oct. 2010).

#### **Degree of independence experienced by women**

Both the Assistant Professor and the Law Professor said that the ability of women to act independently differs depending on their level of education (Assistant Professor 15 Oct. 2010; Professor 17 Oct. 2010). For example, the Assistant Professor said that

"[Educated] urban, upper/middle class working women or housewives do not find it difficult to rent an apartment or to open a bank account or travel domestically or internationally.

Women in the rural areas normally do not rent a house or any other place. Due to lack of education, they are normally [accompanied] by a male member to open an account or to do other things in public sphere. (15 Oct. 2010)"

The Law Professor also indicated that, although there are no laws preventing a woman to open her own bank account, "it depends [on] who that woman is," whether she's literate, has her own identification, and can travel alone (17 Oct. 2010). As the Professor explained,

"This is more to do with access rather than the law or society. If a professional woman, earning good money went to rent an apartment, no one would bat an eyelid. [But] that is because her sense of autonomy and authority would make her able to do so. (17 Oct. 2010)"

### **Treatment of single women**

The Assistant Professor reported that a woman living alone in a rural area is an "exceptional situation" that "is not liked by her family or community" (15 Oct. 2010). However, the Assistant Professor allowed that the woman's age should be taken into consideration (15 Oct. 2010). If she is an older woman, in her 70s or 80s, it would not be a big problem in both contexts, rural and urban or in any class. A young or a middle age woman finds it hard to live alone in all of these contexts. All kind [of] gossips surround her and she is watched by everyone for every move she makes. (Assistant Professor 15 Oct. 2010)

The Law Professor stated that the absence of a male relative may make a woman "vulnerable" and added that "the worsening law and order situation" has made Pakistan "a generally unsafe place to be" (17 Oct. 2010). Younger women risk attracting "unwanted attention from men"; older women may find themselves taken advantage of by their helpers (Professor 17 Oct. 2010). The Assistant Professor also said that a woman "[living] alone in majority of the contexts such as rural (which is about 70% of Pakistan) and lower/middle class urban" would put herself at "risk for her safety and security" (15 Oct. 2010). The Law Professor likewise said that any attempt to break away from her family "might pose a danger" to the safety of even "a resourceful woman" (17 Oct. 2010).

### **Regional differences**

In a follow-up to initial correspondence with the Research Directorate, the Assistant Professor explained that of Pakistan's four provinces-Sindh, Punjab, Balochistan and Khayber Pakhtunkhah (KP) (formerly the North-West Frontier Province [NWFP])-the urban centres in Punjab and Sindh are "more educated and liberal" while cities in Balochistan and KP have a "very conservative culture. It would be easier for an educated single woman to live alone in Karachi or Lahore but not in Peshawar or Quetta" (18 Oct. 2010). The Assistant Professor added that

"[social] and physical mobility of single women in Pakistan is not an easy thing. An educated woman working in a multinational may move easily from Karachi to Lahore or Islamabad (capital city) [but] not to the rural areas or to the smaller cities. If she is hiding from her family or her husband, it would be much difficult for her do that." (18 Oct. 2010)

Similarly, the Law Professor said that "maybe" an "educated, professional woman," with "resources," could relocate and live alone in a city (17 Oct. 2010). But, the Law Professor cautioned, if she is young and does not have a male relative, it would be "difficult" (17 Oct. 2010).

57. A 2012 report by the Asian Human Rights Commission (AHRC) agreed with those findings. Older evidence from the AHRC largely predate the legal protections which were put in place in 2010 and 2011 and the slow but visible cultural change which that entails. We note, in particular, that the most recent Human Rights Watch report in the bundle is

the 2011 World Report, published in January 2011, and that there are no Integrated Regional Information Network News (IRIN) reports in the bundle after 27 January 2011. The latest Amnesty International report relied upon is dated 27 May 2010. Given the age of these reports, we are unable to place much weight upon their contents and neither party in their submissions directed us to these documents or relied thereon.

4. *'Safe to Return? Pakistani women, domestic violence and access to refugee protection - a report of a trans-national research project conducted in the United Kingdom and Pakistan' (Safe to Return?) [2008]* published by South Manchester Law Centre in partnership with Manchester Metropolitan University

58. The *Safe to Return?* Report was in the bundle, but neither of the parties directed us to any specific passages therein. We have had regard to the report, which we consider to be a well-constructed and careful research document based on field work in Pakistan by a single, multilingual researcher between 2003-2006 and interviews with 33 individuals and organisations in Pakistan conducted between February and July 2006, and individuals and organisations in the United Kingdom between October 2006 and July 2007.

59. *Safe to Return?* was considered at length by the Upper Tribunal in *KA and Others* (domestic violence risk on return) Pakistan CG [2010] UKUT 216 (IAC), at [214]-[242]. It is not in any sense new evidence: as published, it is now 8 years old, but the evidence considered was taken from interviews which took place between 10 and 13 years ago. The Tribunal in *KA and others* expressed some concerns about *Safe to Return?*:

"219. Turning in more detail to the *Safe to Return?* report, it has some other features (besides being several years old) which call for caution on our part. It is a campaigning document written in part by legal representatives who act for women in UK asylum-related cases and in places expressly notes that it reflects the experience of such representatives (see the reference at 8.11 to "the experience of legal practitioners handling the relevant evidence"). The report also contains a critique of the existing case law of the Tribunal and higher courts on internal relocation which it considers too restrictive; it is not simply an assessment of the situation in Pakistan. Further we find certain features relating to the nature of its principal findings and conclusions troubling. Many are set out in the form of broad generalisations with very little by way of qualification. The reason why that is a concern is that the authors candidly explain elsewhere in the report that their research had various limitations: that their primary research only covered parts of Pakistan; that they did not have access to comprehensive data regarding women's centres in Pakistan and that it relied heavily on a limited number of interviews (individual and collective) with various participants who were either victims of domestic violence or service providers for such women. The report also acknowledges the need for more research and for more diverse data (presently the authors explain, researchers are heavily reliant on press cuttings). On one or two key points of detail (see below our discussion about confidentiality) its findings are unclear. Such qualifications should in our view have made the authors less ready to generalise.

220. However, it remains that by virtue of the empirical research the authors conducted, and the fact that they seek to put that in the context of other studies and reports available, it represents the most detailed study that exists. In addition, although the limitations of the reach and quality of their own research do not deter the authors from advancing a series of broad generalisations, the specific observations

made by the principal field worker (and her assistant) show a clear determination to record faithfully all aspects, positive and negative, of the service provisions visited. (It is also a valuable source of information on subjects not intrinsically related to domestic violence - see e.g. its coverage in chapter 4 of the legal context impacting on women in Pakistan - but these are now somewhat dated)."

60. The Tribunal in *KA* considered that the position on domestic violence was improving slowly and at [221] that 'it would be unwise, therefore, to assume that the situation will not be subject to change in the next few years'. At paragraph 222, the Tribunal said this:

"222. It remains our assessment that within Pakistan there are many differences in the way that family, tribal and cultural (and sometimes religious) patterns of living impact on the position of women. One of the persons interviewed by the main *Safe to Return?* fieldworker noted, for example, the sharp contrast between the position of women from rural areas as compared with that of women in Lahore: "Lahore is a city and here women are progressive" (6.7.1). Such variations and different perceptions in a country with a large population spread over a large geographical area make it very difficult to generalise as to what will be the situation facing returning women who are victims of domestic violence. Against this background it continues to make very good sense that country guidance should continue to avoid broad generalisations and should emphasise the need for examination of the individual's particular circumstances. That is as true whether one is examining risk in a person's home area or in a place of potential relocation."

61. Dealing with the availability of shelters, and whether it was unduly harsh for internal relocation purposes to expect women to use them, the *KA* Tribunal said this:

"236. We wish to emphasise, however, that what emerges very strongly from the *Safe to Return?* report is that it is not sufficient simply to consider the issue of internal relocation by reference to whether there are available and adequate centres/refuges. Focus has to be not only on the provision but the general position women who make use of such centres will find themselves in the longer term.

237. ... So whilst we think the *Safe to Return?* report draws helpful attention to the need to look at the longer-term situation such women face, we do not find that the evidence contained in this report or the other sources helps us very much in forming a clear picture of how women victims of domestic violence who have made use of women's centres and refuges then resolve their difficulties in terms of finding places to live and work. The *Safe to Return?* report argues that the position is that in general such women end up being forced to return to their abuser husbands/families or face serious exploitation. But there is very little empirical evidence cited in support of these broad generalisations and, given the numbers of women said to use these services, we would have expected, if the general position was that these centres/shelters routinely failed to end the cycle of oppression the women who turn to them face, that would have been evident in the form of more reported cases in the press or in the Pakistan Human Rights Commission report or in available cases studies. Nevertheless, the uncertain state of the evidence makes it imperative in our view that decision-makers pay particular regard to how they think the individual applicant/appellant will be able to manage getting on with their lives after they have left the centres/refuges.

238. We need to consider further to what extent other factors such as class, age, culture, tribe, religion etc can further modify the position of women victims of domestic violence.

239. It is fairly clear that women who have their own financial means or access to financial help from family members or friends or who are well-educated or professional women are likely to be able to secure residential accommodation. We accept the observation made by the *Safe to Return?* authors that possessing a class status higher up the social ladder does not mean that such women do not still face discrimination and a degree of stigmatisation. However, even the authors themselves accept that if women have financial means they can in general survive (see 6.15) and the evidence is lacking to indicate that such women are in general unable to cope with such difficulties; although clearly some do not cope and some may even find they have lost more than poorer women (7.5.1).

240. On the other hand, concerning age, it would appear that most centres/refuges do not adequately cater for the needs of young girls on their own (*Safe to Return?*, 6.10) and young adult women are likely to find it more difficult to live alone than others (we note that is also the view taken by the Canadian IRB in December 2007).

241. Another important variable concerns women who have male children over five. From the *Safe to Return?* research, taken together with other materials, we are satisfied that women with boys over five may not be able to find a centre or refuge that will allow them to live together; the boys above this age are placed in orphanages or madrassahs in the area. As described by the *Safe to Return?* report:

“[On] admittance the mother is informed of this policy and has to then make a choice of being with her sons or accepting a place at the shelter. If the woman chooses to enter the shelter her sons are referred to the local madrassas or orphanages. This practice has not taken into consideration the impact this has on the children who may have been a witness to the violence. Apart from the trauma of separation from their mother the children may have specific psychological needs because of their previous experiences in their homes”.

242. We do not say that such arrangements are necessarily to be seen as making the mother and her son’s relocation unreasonable, only that this may be a factor which has considerable significance when considering the reasonableness of internal relocation.”

62. We adopt and rely upon that analysis of *Safe to Return?* The KA Tribunal concluded, so far as relevant to the present enquiry, that:

“iii. *The Protection of Women (Criminal Laws Amendment) Act 2006 (“PWA”), one of a number of legislative measures undertaken to improve the situation of women in Pakistan in the past decade, has had a significant effect on the operation of the Pakistan criminal law as it affects women accused of adultery. It led to the release of 2,500 imprisoned women. Most sexual offences now have to be dealt with under the Pakistan Penal Code (PPC) rather than under the more punitive Offence of Zina (Enforcement of Hudood) Ordinance 1979. Husbands no longer have power to register a First Information Report (FIR) with the police alleging adultery; since 1 December 2006 any such complaint must be presented to a court which will require sufficient grounds to be shown for any charges to proceed. A senior police officer has to conduct the investigation. Offences of adultery (both zina liable to hadd and zina liable to tazir) have been madeailable. However, Pakistan remains a heavily patriarchal society and levels of domestic violence continue to be high. ...*

vi. *The guidance given in SN and HM (Divorced women – risk on return) Pakistan CG [2004] UKIAT 00283 and FS (Domestic violence – SN and HM – OGN) Pakistan CG [2006] UKIAT 00023 remains valid. The network of women’s shelters (comprising government-run shelters (Dar ul-Amans) and private and Islamic women’s crisis centres) in*

*general affords effective protection for women victims of domestic violence, although there are significant shortcomings in the level of services and treatment of inmates in some such centres. Women with boys over 5 face separation from their sons.*

*vii. In assessing whether women victims of domestic violence have a viable internal relocation alternative, regard must be had not only to the availability of such shelters/centres but also to the situation women will face after they leave such centres."*

The author of *Safe to Return?* noted in her report, 8 years ago, that further research might be needed to take account of new and emerging evidence on domestic violence in Pakistan. We must look elsewhere for that evidence.

## **Discussion**

63. We have considered what conclusions we can draw from the country evidence. The generic country evidence indicates that despite protective legislation introduced in 2010 and after, sufficient state protection will normally not be available in the home area, in circumstances where a real risk of persecution or serious harm has been shown to exist there from a female applicant's family or husband. Any assessment of international protection needs will require a careful and fact specific assessment as to the nature, source and scope of the risk to the applicant at the date of hearing, including taking into account the possibility, if the woman has family support, a male protector, or is educated, wealthy, or older, of internal relocation to one of the larger cities.

64. We accept the evidence of Ms Brown regarding the strong and growing bond between the appellant, her partner, and their children, and we have relied upon it in the individual assessment of the appellant's circumstances which follows the country guidance in this decision. As regards country conditions, Ms Brown does not claim to be a country expert and the country conditions part of her report is derived from the report of Dr Ballard. She had no independent perspective to add to that of Dr Ballard, and her assessment of country conditions therefore stands or falls with that of Dr Ballard.

65. The principal country expert evidence is therefore that of Dr Ballard. Dr Ballard is a respected country expert who has assisted the Upper Tribunal and its predecessor the Immigration Appeals Tribunal in country guidance cases on a number of occasions, most recently in *TG and others (Afghan Sikhs persecuted) (CG)* [2015] UKUT 595 (IAC).

66. Dr Ballard did not give oral evidence and his report provides no sources for his opinions and conclusions. We have therefore given his evidence such weight as it will bear: where there are matters which concern us, we have not been able to resolve them by asking questions directly of Dr Ballard. It is clear from the present report that Dr Ballard had not been made aware of the much improved relations between the appellant and her partner: however, his report remains relevant as to the circumstances which he understood to be those of this appellant, that is, a female head of household, with no family support, and divorced or estranged from their spouse or male partner.

67. In general, we accept Dr Ballard's written evidence that a female head of household in Pakistan with no husband or family backing, would be treated as kinless and a demi-mondaine, because of her inability to explain her circumstances truthfully to new friends and neighbours. His opinion was that such a person would have little difficulty in finding

a room in a five star hotel but that without a respectable male guardian, she would be unable to find cheaper accommodation, and thus would be at risk of accepting an accommodation offer which she realised too late came with sexual strings attached. That observation was not sourced, and is not differentiated by age, social position, education or financial resources, as is the case in other generic reports before us. We treat that part of Dr Ballard's evidence with a degree of caution. We accept that accommodation is more readily available to women who are in a strong financial or social position, but we do not consider that the other country evidence, particularly the evidence of the Canadian IRB or the US State Department Report supports Dr Ballard's assertion that nothing short of a 5-star hotel will do.

68. We accept Dr Ballard's evidence of the limited availability of shelters, the scarcity of places, and the risk that children, particularly boys, who are over 5 years old, would not be admitted to the shelters, because the perception was that they should be with their fathers. His evidence is in line with the findings set out in the headnote to *KA (Pakistan)* in 2010 that:

*"(vi) ...The network of women's shelters (comprising government-run shelters (Dar-ul Amans) and private and Islamic women's crisis centres) in general affords effective protection for women victims of domestic violence, although there are significant shortcomings in the level of services and treatment of inmates in some such centres. Women with boys over 5 face separation from their sons.*

*(vi) In assessing whether women victims of domestic violence have a viable internal relocation alternative, regard must be had not only to the availability of such shelters/centres but also to the situation women will face after they leave such centres."*

69. In so far as the risk in a woman's home area is concerned, we also accept his assertion that where her family will not accept a woman's return to them, she runs a higher risk of ostracism on the basis that her sin would be perceived as having been exceptionally serious; however, we treat that assertion with a degree of caution in relation to women who are able to make their way in larger cities because they are older, or educated, in a good financial position, or have a male guardian.

70. The Canadian Immigration and Refugee Board, the respondent's Country of Information Report and the Pakistani Law Firm report all indicate that two types of divorce are open to Pakistani women: Khula divorce, which requires the filing of a divorce suit at the Family Court, either within Pakistan or from overseas through the appointment of an agent by way of a power of attorney; or judicial divorce, pursuant to section 2 of the Dissolution of Muslim Marriages Act 1939, on a limited number of grounds, including where the whereabouts of the husband have not been known for a period of four years. The social consequences, and risks, of divorce can be ameliorated where the female petitioner is abroad and the divorce is undertaken through Pakistani lawyers, on her instructions. It is not the case that divorce proceedings cannot be initiated without the husband's consent, or without a Nikah Nama: the Canadian evidence is clear on that point.

71. The evidence before us indicates that poorly educated rural women, who depend totally on their family for support, may well be in serious difficulty if ostracised by that family for making a love match or for divorcing their husband.

72. On the evidence before us, we consider that educated women, those with marketable employment skills, and older women, may well be able to relocate to a city and live alone: the risk of ostracism leading to destitution is not the same in that case. It is more likely that those who reach the United Kingdom would fall into the latter category. The social and educational status, and vulnerability to family control, of an appellant will be a question of fact in each appeal.

### Country guidance

73. Although we find that the circumstances of this appellant are not that of a lone female head of family (see below), we have considered what country guidance we can give in relation to women who are such circumstances. We give the following guidance:

- i. *Save as herein set out, the existing country guidance in SN and HM (Divorced women – risk on return) Pakistan CG [2004] UKIAT 00283 and in KA and Others (domestic violence – risk on return) Pakistan CG [2010] UKUT 216 (IAC) remains valid.*
- ii. *Where a risk of persecution or serious harm exists in her home area for a single woman or a female head of household, there may be an internal relocation option to one of Pakistan’s larger cities, depending on the family, social and educational situation of the woman in question.*
- iii. *It will not be normally be unduly harsh to expect a single woman or female head of household to relocate internally within Pakistan if she can access support from family members or a male guardian in the place of relocation.*
- iv. *It will not normally be unduly harsh for educated, better off, or older women to seek internal relocation to a city. It helps if a woman has qualifications enabling her to get well-paid employment and pay for accommodation and childcare if required.*
- v. *Where a single woman, with or without children, is ostracised by family members and other sources of possible social support because she is in an irregular situation, internal relocation will be more difficult and whether it is unduly harsh will be a question of fact in each case.*
- vi. *A single woman or female head of household who has no male protector or social network may be able to use the state domestic violence shelters for a short time, but the focus of such shelters is on reconciling people with their family networks, and places are in short supply and time limited. Privately run shelters may be more flexible, providing longer term support while the woman regularises her social situation, but again, places are limited.*
- vii. *Domestic violence shelters are available for women at risk but where they are used by women with children, such shelters do not always allow older children to enter and stay with their mothers. The risk of temporary separation, and the proportionality of such separation, is likely to differ depending on the age and sex of a woman’s children: male children may be removed from their mothers at the age of 5 and placed in an orphanage or a madrasa until the family situation has been regularised (see KA and Others (domestic violence risk on return) Pakistan*



*CG [2010] UKUT 216 (IAC). Such temporary separation will not always be disproportionate or unduly harsh: that is a question of fact in each case.*

- viii. *Women in Pakistan are legally permitted to divorce their husbands and may institute divorce proceedings from the country of refuge, via a third party and with the help of lawyers in Pakistan, reducing the risk of family reprisals. A woman who does so and returns with a new partner or husband will have access to male protection and is unlikely, outside her home area, to be at risk of ostracism, still less of persecution or serious harm.*

## **Decision in relation to this appellant**

### **Evidence before the Upper Tribunal**

74. For the appeal, we were provided with four bundles of evidence which included the appellant's six witness statements, dating from 18 March 2011 to the most recent of 18 May 2015, together with various reports from human rights organisations providing background information about the situation for women in Pakistan and information about Pakistani divorce law and procedure, case law relating to women in Pakistan and two expert reports.

75. The appellant gave oral evidence before us through the official interpreter in the Urdu language. She adopted her six statements as her evidence in chief and was cross-examined by Mr Melvin. Both parties had prepared skeleton arguments and made submissions at the hearing. In reaching our decision, we have had regard to all of the documents before us, including the written and oral submissions. We remind ourselves that the respondent no longer seeks to rely on the May 2010 refusal letter and that her case before the Upper Tribunal is therefore as set out in her refusal letter of 31 March 2014 and Mr Melvin's skeleton argument.

76. The principal country expert report was that of Dr Roger Ballard. The second report was from Christine Brown, an Independent Social Worker providing specialist social worker evidence in family cases. Her revised report of 31 September 2014 in the first bundle of evidence was supplemented by a shorter report dated 15 May 2015 in the second supplementary bundle. Neither expert gave oral evidence.

### **Evidence of the appellant's partner**

77. The appellant's partner did not give oral evidence: all we had before us was his untested witness statement of 30 September 2014, stating that he would prefer to continue living illegally in the United Kingdom, and that his principal reason for not accompanying the appellant to Pakistan was that he feared her husband and that they would be at risk if they were to live together in Pakistan as an unmarried couple. The appellant's partner asserted that his parents were not aware of his situation as the father of three illegitimate children and that they would not take him in with his new family.

78. We have however derived significant assistance from Ms Brown's description of her conversations with the appellant's partner, and of his care for the appellant and their children, as well as his financial support for members of his extended family in Pakistan.

## **Evidence of Dr Ballard**

79. In his report, Dr Ballard gave detailed consideration to the position of the appellant returning to Pakistan as a single woman with two illegitimate children, in the context of the cultural expectations of a patriarchal society. Dr Ballard considered that it was most unlikely that the appellant's husband would be able to track her down outside Lahore. He concluded, however, in the absence of a respectable male guardian, a single female head of household would find it impossible to find suitable accommodation.

80. Dr Ballard considered that a woman in the appellant's position as he understood it to be (a female head of household who was not married to, or widowed from the father of her children) risked accusations of adultery and fornication, and/or charges of *zina*. Such a person would be ostracised from society and would be unable to access any state resources: she might be treated as a prostitute, and would be vulnerable and at risk. He considered only two viable strategies to be available to a woman in the appellant's position: either disposing of her children in some way so as to enhance her prospects of remarriage, or accepting her status of social inferiority by establishing a relationship of concubinage with a male patron.

## **Evidence of Christine Brown**

81. In her report Ms Brown provided a family circumstances/Article 8 report, after interviewing the appellant and her partner. Ms Brown met and observed their two elder children. Her first report considered the appellant's circumstances in the United Kingdom and on return to Pakistan. A supplementary report was produced to address the implication to the appellant and the family of the birth in January 2015 of a further, female child. Ms Brown had the opportunity of seeing Dr Ballard's report, to which she made frequent reference in her own reports. She reached similar conclusions, in particular that the appellant would be left with no option other than to have resort to the sex industry in order to be able to provide the means to survive for herself and her children.

## **Respondent's submissions**

82. For the respondent, Mr Melvin relied on the respondent's letter of 31 March 2014, and the 2010 removal directions. In relation to the country guidance issue of the risk to lone women or female heads of household, with children born outside marriage, Mr Melvin suggested that the Upper Tribunal should not go beyond the summary in the respondent's country of origin information report. The Tribunal should not be prepared to find that there was a real risk of persecution.

83. The two expert reports produced by the appellants should be given little weight. Ms Brown was not a country expert. Dr Ballard had not met the appellant and the premise of his report was flawed: the Tribunal should not be prepared to find that any Pakistani woman with a child outside marriage would be ostracised and such a view was inconsistent with country guidance.

84. Dealing with the specifics of the appellant's appeal, Mr Melvin argued that in relation to Article 8 ECHR, any private and family life which the applicant, her partner and their children had developed while in the United Kingdom should be given little weight, having regard to section 117B (4) of the Nationality, Immigration and Asylum Act

2002. The principal appellant was a significant financial burden on the United Kingdom's economy, having had substantial access to the NHS through her miscarriages (at least nine) and her three successful pregnancies. The timing of the asylum claim, which was not made until after the birth of her first child, should be regarded as undermining the appellant's credibility.

85. As regards the asserted risk on return, Mr Melvin submitted that, as a matter of law, there was no need for the appellant to return to Pakistan as her husband's unfaithful spouse or as a lone female head of household. It was open to her to obtain a copy of her marriage certificate, instruct lawyers in Pakistan, and divorce her husband before leaving the United Kingdom, then to return with her new partner, even perhaps as his wife. The appellant had made no attempt to regularise her position in that way and he contended that she was deliberately creating obstacles to her return. There was no evidence that her husband had any ongoing interest in her and it was more likely than not that he had moved on and remarried by now.

86. The section 55 best interests of the children were to be with their parents. They were still very young: applying the principles in *Azimi-Moayed and others (decisions affecting children; onward appeals)*, [2013] UKUT 00197 and in *Zoumbas v Secretary of State for the Home Department* [2014] UKSC 75, no individualised evidence had been produced indicating any reason for them not to accompany their parents. All of the parties were citizens only of Pakistan and not of the United Kingdom. The children had the right to grow up in the culture of their country of nationality. The respondent would return the family together to Pakistan

87. Mr Melvin invited the Tribunal to depart from the preserved findings of the First-tier Tribunal, given the passage of time. He submitted that even if the appellant could not return to her home area, there was no credible evidence that her husband would have any interest in pursuing her in another part of the country.

### **Appellant's submissions**

88. For the appellant, Mr McCarthy relied on his skeleton argument and submitted that the appellant remained at risk in her home area. Although time had passed, the appellant's mother's advice to the appellant had been that her husband's attitude had not changed. The fear that he would still wish to do her harm was consistent with the background information as to societal attitudes towards women in Pakistan. As regards internal relocation, the respondent's approach to the case, that the appellant would be removed together with her partner, was wrong, since the evidence was that he would refuse to return with her. It was still open to him to make a fresh asylum claim and that would take some time to consider. His previous behaviour suggested that he was not prepared to leave the United Kingdom.

89. It was appropriate to approach the case on the basis that the appellant would be returning to Pakistan alone, with her children, and as such it would be unduly harsh to expect her to relocate to an unknown part of the country. The background evidence showed that women of her class and level of education could not live alone. She would have no access to accommodation and in the event that she managed to obtain a place in a shelter she would be separated from her son who, being over the age of five, would be

sent to an orphanage or a madrasa. She would face ostracism and discrimination and would be at risk as a fornicator and adulteress. If she tried to divorce her husband he would find out where she was and would reveal her status as an adulteress.

90. Even if the appellant returned to Pakistan with her current partner, Dr Ballard considered that she would be at risk because the couple are not married and their children are illegitimate. In Dr Ballard's opinion, the appellant had a compelling extra-territorial Article 8 claim because her partner, who loved his children dearly, was not willing to return with them to Pakistan.

### **Analysis of the individual appeal**

91. We take as our starting point the preserved findings of fact of the First-tier Tribunal on 30 July 2010, set out at paragraphs 41-52 in that decision. We note that the First-tier Tribunal found the appellant's account to be largely consistent and credible, including the account of her problems arising in her marriage from her abusive husband, and that it found that she would be at risk from her husband in her home area of Lahore. However we are mindful that five years have elapsed since those findings were made and we remind ourselves of the guidance given by the IAT in *Devaseelan* [2002] UKAIT 00702\* at paragraph 37:

"The first Adjudicator's determination stands (unchallenged or not successfully challenged) as an assessment of claim the Appellant was then making at the time of that determination. It is not binding on the second Adjudicator, but on the other hand the second Adjudicator is not hearing an appeal against it. An assessment of the matters which were before the first Adjudicator it should simply be regarded as unquestioned. It may be built upon and as a result the outcome of the hearing may be quite different from what might have been expected from a reading of the first determination only but it is not the second Adjudicator's role to consider arguments intended to undermine the first Adjudicator's determination."

92. In this appeal, whilst we have regard to the preserved findings, we had the benefit of hearing from the appellant at some length and were able to make our own observations from that evidence. We have not heard from the appellant's partner and we place little weight on the untested assertion in his witness statement that he would not accompany her and the children back to Pakistan. He has no lawful right to be here and we do not consider that he would remain without the appellant and their children.

93. We are particularly struck by the evidence both from the appellant, her partner, and from Ms Brown, regarding the closeness of the appellant's partner to the appellant and their children. There is no accidental quality to their family life: the appellant has tried very hard to have children, enduring the distress and discomfort of at least nine miscarriages in addition to her three pregnancies, with, it is clear from the medical evidence, full support now from her partner, including attending hospital appointments with the appellant. The evidence is clear that the appellant's partner is fully involved with the children, taking them to and from school and spending most of every day with his children and the appellant. He is restricted from living with her by her NASS conditions but he says in his statement that if he could, he would, and that he would like to stay overnight if that were permitted. We find that there is strong family life between the appellant, her partner, and the children.

94. The appellant was reticent about her partner's address: when asked where he lived, she said that he did not live with her, that she had never been to his house and did not know where it was, save that she presumed it was in Nottingham. We consider such a response to be self-serving and lacking in credibility. We consider it much more likely that the appellant was seeking to conceal the fact that the couple were in fact living together in breach of the conditions of her NASS accommodation, or that she did not want to disclose her partner's address in Nottingham due to his illegal status.

95. The appellant's evidence concerning her family in Pakistan and the contact she and her husband have with them was inconsistent and lacking in credibility. The evidence recorded in her six witness statements and her previous oral evidence was that she remained in contact with her mother, albeit with some difficulty, but not with her father. However, in her oral evidence to us, the appellant said that she had not spoken to her mother since January 2014 and that her mother was unaware of her third pregnancy and the birth of the appellant's daughter in January 2015 because her mother had not called the appellant.

96. As regards her estranged husband's behaviour while in the United Kingdom, the appellant's account of what happened was reasonably consistent, but in relation to his actions in Pakistan, her account varied: at first she said that she would know if her husband had divorced her and remarried, because he "comes home [to her parents' house] and tells all those things", visiting her mother's house whenever he wants to say anything. Later in her evidence, the appellant stated that her husband had visited her family home just once, just after the birth of her first child, on which occasion he was angry and had beaten up her younger brother. That discrepancy was further complicated by her statement, both to Ms Brown, and in her initial witness statement of 18 March 2011, that it was at the end of 2007, not long after her husband threw the appellant out, that her mother told the appellant that her husband was back in Pakistan, had visited the family home and beaten up the appellant's brother. In 2007, the appellant's first child was three years in the future and her new relationship, on the evidence, did not begin until May 2008.

97. Even if we were to accept, as did the First-tier Tribunal, that the appellant's husband remained in contact with her family until 2010, we cannot be satisfied on the evidence before us that he has kept in contact in the 6 years since then. There is no evidence other than the appellant's assertions to indicate that the appellant's husband has retained any interest in her. We note that it was he who ended the relationship by ejecting her from the family home and that, even on her own account, he has not contacted the appellant since, nor sought to file charges against her for adultery, or to harm her in any other way. Eight years have passed since the couple separated and we are not satisfied that her estranged husband has any continued interest in the appellant. Indeed we find merit in Mr Melvin's submission that it is likely that he has since remarried and that he may well have divorced the appellant unilaterally by way of Talaq.

Having regard to all the evidence, we are not now satisfied that there is a continuing risk to this appellant from her husband in her home area of Lahore. Neither is there any proper basis for concluding that the appellant would be at risk today from her husband's family or indeed from her own family. The appellant gave no evidence of any recent threats to her from either family. If a risk were to exist in the appellant's home area in Lahore, we do not consider that she has discharged the burden upon her of showing that she could not

relocate to another part of Pakistan where she would be safe. The First-tier Tribunal's finding to that effect has not been challenged in this appeal: rather, the appellant contends that the First-tier Tribunal failed to consider the risk to her of social ostracism.

98. We turn, therefore, to the risk of ostracism for this appellant as a single woman with illegitimate children. We have considered how much we are assisted by the evidence of Dr Ballard and Ms Brown and what weight their evidence will bear. We accept that Dr Ballard is a known and respected expert in his field and we give weight to his report to that extent in the general country guidance which we shall give. However, the factual matrix upon which his report was based does not reflect the circumstances in which the appellant would be returning to Pakistan now, in particular the unchallenged decision in the First-tier Tribunal that her partner has no right to remain in the United Kingdom and would be returned with her.

99. The First-tier Tribunal decision and Dr Ballard's report both proceeded on the basis that the appellant's partner provided only intermittent support, such that she was likely to be returning to Pakistan alone with her children. We note Dr Ballard's finding that to return with a male guardian would protect the appellant and that her reputation as a respectable woman could be restored by her becoming a wife and daughter-in-law in a new family, and that if her partner were able to marry her, that would legitimise her social status. He approached the appeal on the basis that the appellant's partner had not sought to legitimise their relationship by marrying her because his own family was unwelcoming to her. Dr Ballard does not appear to have been made aware of the partner's precarious status in the United Kingdom nor of the closeness which had developed over the years within their little family. Whatever doubts the appellant's partner may have had in 2010, when the First-tier Tribunal considered this appeal and the couple had only one son, the relationship has strengthened and solidified in the meantime. Her partner loves and supports both the appellant and her three children.

100. With regard to Ms Brown's reports, we have considerable reservations as to the weight we can attach to her overall conclusions, given that she has clearly gone well beyond her remit, commenting and expressing opinions as a country expert without indicating why she has the expertise which she purports to have in that respect. We find that we can give weight only to those aspects of the report within her area of expertise as a social worker, namely the family circumstances in the United Kingdom.

101. We place no weight on Mr McCarthy's assertion that the appellant's partner might now frustrate removal by claiming asylum after a long period in the United Kingdom. His asylum claim was made and failed in 2010, and that decision stands unchallenged. If a fresh claim were made now, on weaker grounds than those in 2010, it would in all likelihood be certified under section 94 of the Nationality, Immigration and Asylum Act 2002.

102. We conclude, therefore that the appellant would be returned to Pakistan accompanied by her children and by her partner, the father of her children, with all of whom she undoubtedly has family and private life. If they are returned to Pakistan together as a unit and relocate outside Lahore, we consider there to be no reason why they should face problems as an unmarried couple and no reason why the appellant and her partner could not marry.

103. It is the appellant's assertion that she cannot divorce her husband in order to be free to marry her partner, but contrary to her understanding, the country materials indicate that it is legally open to a woman to divorce her husband and initiate divorce proceedings inside or outside Pakistan, despite the patriarchal culture of that country. It has, therefore, always been open to the appellant to divorce her husband and remains open for her to do so, in the event that he has not already divorced her. Her assertion that such proceedings would alert her husband to her whereabouts and lead him to publicly denounce her as an adulteress, even if accurate, is mitigated by the fact that she could initiate proceedings from abroad or indeed from Pakistan, through a third party and using a lawyer in Pakistan. It would then be open to the appellant and her partner to marry, so legitimising her status and that of their children, either in the United Kingdom or in Pakistan.

104. As we have already stated, we find no reliable evidence to suggest that the partner's family would reject the appellant and their grandchildren, but in any event we conclude that this family could establish themselves in Pakistan with or without the support of extended family members. They would have the option of returning by way of Assisted Voluntary Return, with some money to tide them over and enable them to find accommodation suitable for the family in the short term. Thereafter, the appellant's partner could establish himself in employment given his skills as a chef, a driver and a machinery operator. The appellant is not at risk of being regarded as a single woman, or an adulteress, and the risk of being subjected to ostracism and discrimination does not arise in her case. Her circumstances in Pakistan would not amount to a risk of persecution or serious harm and we therefore dismiss her appeal on asylum and humanitarian protection grounds. As before, the Article 2 and 3 appeals stand or fall with the asylum and humanitarian protection grounds.

#### **Article 8 ECHR**

105. Turning to Article 8 ECHR, we accept that there is family life between the appellant, her partner, and their children. There is very little evidence of private life outside the family circle. We consider it more likely than not that this family would return together to Pakistan, since the appellant's partner has no right to remain in the United Kingdom.

106. The appellant does not claim to be able to bring herself within paragraph 276ADE or Appendix FM of the Immigration Rules. Nor do we find that there are any exceptional or compelling circumstances outside the Rules for which the respondent should consider exercising her discretion, as set out in *R (Nagre) v Secretary of State for the Home Department* [2013] EWHC 720 (Admin) and approved by the Court of Appeal in *Singh v Secretary of State for the Home Department* [2015] EWCA Civ 74.

107. In relation to the children's section 55 best interests, the eldest is a boy, now just 6 years old, and the youngest is now just 1 year old. All three children are still very young and are at an age where their best interests lie in remaining with their parents, which will be the case if they are returned to Pakistan as a family. They are too young to have established substantial links to the United Kingdom and there is no evidence to suggest otherwise.

108. We must have regard to part 5A of the Nationality, Immigration and Asylum Act 2002 (as amended) and in particular, to the statutory presumptions set out in section 117B thereof:

**“117B Article 8: public interest considerations applicable in all cases**

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –
  - (a) are less of a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –
  - (a) are not a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (4) Little weight should be given to –
  - (a) a private life, or
  - (b) a relationship formed with a qualifying partner,that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person’s immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person’s removal where –
  - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
  - (b) it would not be reasonable to expect the child to leave the United Kingdom.”

109. Applying those criteria, we consider that they operate to weaken rather than strengthen the appellant’s Article 8 case. We note that sections 117B(2) and 117B(3) are engaged: the appellant, who has lived in the United Kingdom for 12 years, still is not fluent in English, and she, her partner and the children are not financially independent and have already been a significant charge on the United Kingdom, both for maternity care and benefits. The indication is that such dependence will continue and therefore section 117B(3) is engaged, both of which reduce their ability to integrate into the United Kingdom.

110. Section 117B(5) is not relevant since the appellant has never had leave to remain and has been in the United Kingdom unlawfully since the expiry of her visit visa on 11 October 2006.

111. In relation to section 117B(4), little weight can be given to the appellant’s private life, or to family life between her and her partner, which was established when she was in the United Kingdom without leave. Her partner is not a qualifying partner, because he also is here without leave. Her family and private life was established at a time when neither the



appellant, nor her partner nor any of her children had any lawful basis of stay in the United Kingdom. Section 117B(6) does not avail the appellant, since none of her children is a qualifying child, because in order to qualify, they would need to be settled or be British citizens.

112. We conclude, therefore that it would not breach the United Kingdom's international human rights obligations, or any other international obligations, if the family were to be returned to Pakistan.

### **DECISION**

113. The making of the decision by the First-tier Tribunal involved the making of an error on a point of law. The decision has been set aside. We re-make the decision by dismissing the appellant's appeal on asylum, humanitarian protection and human rights grounds.

### **ANONYMITY**

114. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended), the appellant has been granted anonymity throughout these proceedings and after their conclusion, absent any order to the contrary by the Upper Tribunal or any other Court seised of relevant proceedings. No report of these proceedings, in whatever form, either during the proceedings or thereafter, shall directly or indirectly identify the appellant.

115. Failure to comply with this order may be treated as a contempt of court.

Signed *Judith AJC Gleeson*  
Upper Tribunal Judge Gleeson

Dated: 14 January 2016

## Appendix A

### Documents before the Upper Tribunal

<u>Date</u>	<u>Source</u>	<u>Description</u>
<b>2014</b>		
<b>2014</b>	<i>UK Home Office</i>	Country Information and Guidance – Pakistan: Women
<b>27 February 2014</b>	<i>US Department of State</i>	2013 Country Reports on Human Rights Practices: Pakistan
<b>2013</b>		
<b>14 January 2013</b>	<i>Immigration and Refugee Board of Canada</i>	Pakistan: Domestic violence, including effectiveness of the Protection of Women (Criminal Law Amendment) Act 2006; state protection and services available to victims
<b>15 January 2013</b>	<i>Immigration and Refugee Board of Canada</i>	Pakistan: Honour killings targeting men and women
<b>19 April 2013</b>	<i>US Department of State</i>	2012 Human Rights Reports: Pakistan (Section 6)
<b>2012</b>		
<b>2012</b>	<i>Asian Human Rights Commission</i>	The State of Human Rights in Pakistan in 2012 – Pakistan: Failure of the institutions related to the rule of law provides impunity to the perpetrators of violations human rights
<b>2011</b>		
<b>27 January 2011</b>	<i>Integrated Regional Information Networks News (IRIN)</i>	Pakistan: Hundreds of women die for “honour” each year
<b>24 January 2011</b>	<i>Human Rights Watch</i>	World Report 2011
<b>2 February 2011</b>	<i>Human Rights Commission of Pakistan (HRCP)</i>	HRCP urges probe into alleged honour killing
<b>28 February 2011</b>	<i>Asian Human Rights Commission</i>	Pakistan: A lady health worker raped and forced by police to withdraw her complaint
<b>8 March 2011</b>	<i>Inter Press Service News Agency (IPS)</i>	Women’s Day: Pakistan is not for single women
<b>8 March 2011</b>	<i>Asian Human Rights Commission</i>	Pakistan: A 16 year old girl was gang raped almost for one month – perpetrators were released by the police
<b>11 March 2011</b>	<i>Inter Press Service News Agency (IPS)</i>	Pakistan: At Home, and in Hell
<b>2010</b>		
<b>11 January 2010</b>	<i>Human Rights Watch</i>	Pakistan: Expedite Domestic Violence Legislation

<b>11 March 2010</b>	<i>US Department of State</i>	2009 Human Rights Report: Pakistan
<b>27 May 2010</b>	<i>Amnesty International</i>	Amnesty International Report 2010: Pakistan
<b>17 November 2010</b>	<i>Immigration and Refugee Board of Canada</i>	Pakistan: Circumstances under which a woman has the legal right to get a divorce through the courts (judicial divorce) through her own initiative; circumstances under which single women can live alone
<b>25 November 2010</b>	<i>Asian Human Rights Commission</i>	Pakistan: Women have little to celebrate on the International Day for Elimination of Violence against Women
<b>2009</b>		
<b>26 November 2009</b>	<i>Immigration and Refugee Board of Canada</i>	Pakistan: Resources available to female victims of violence in Karachi, Islamabad and Lahore
<b>2007</b>		
<b>24 January 2007</b>	<i>Immigration and Refugee Board of Canada</i>	Pakistan: Honour killings targeting men and women, especially in the northern areas (2001-2006)
<b>4 December 2007</b>	<i>Immigration and Refugee Board of Canada</i>	Pakistan: Circumstances under which single women could live alone
<b>2006</b>		
<b>25 November 2006</b>	<i>Amnesty International</i>	Pakistan: Panah needs your support

## APPENDIX B

### Appellant's evidence

1. The appellant adopted all six of her witness statements, confirming that she had had the contents translated to her and that they were true to the best of her knowledge information and belief. She stated that she was able to read and speak English to some extent. All of the witness statements postdate the First-tier Tribunal decision and they are to some extent repetitive. We summarise briefly the additional matters in each statement.
2. In her witness statement of 18 March 2011, the appellant set out the history of her relationships and stated that she had studied only to the level of Matriculation (Matric) in Pakistan. She had never worked, either in Pakistan or in the United Kingdom. She believed that as a single woman with one child, she would not be respected, she would be ostracised, treated as an outcast and stigmatised for living alone. She would be considered un-Islamic and immoral. Even in 'the slightly modern parts of cities, such as Karachi or Islamabad, where single women may have some opportunities of living alone or finding employment', the accommodation was too expensive and she would never be able to afford it. She wanted to give her son a normal childhood, with the opportunity of receiving an education.
3. In her second witness statement of 2 May 2012, the appellant confirmed that her son's father had now joined her in Nottingham, visiting them about twice a week, or more, and that the child was growing increasingly attached to him. They were in a subsisting and intimate relationship, actively trying for a second child. The appellant said she had suffered two miscarriages in her second relationship, the first having taken place in November 2010, about three months into her pregnancy. Her mother had been told of that miscarriage and was sympathetic. Her son was starting nursery school. There was no social security system in Pakistan and she would not be able to work there, which made her feel 'deeply terrified' of return to Pakistan.
4. The third statement, on 10 September 2013, disclosed that the appellant had suffered 9 miscarriages in total, three during her marriage, and six in her new relationship, three before the birth of her first child and three before she was able to sustain her second pregnancy. Both children were Pakistani citizens, as she understood it. Her elder son continued to attend nursery, but had changed to a different one. Her children's father was very important in the appellant's life and that of her sons. He was always there for her, especially for doctors' appointments, and spent about 4-5 days a week with her and the boys. He was a reliable and caring father to their sons and a loving partner to the appellant.
5. The next statement is dated 31 March 2014. The relationship between the appellant and her partner had become even closer. Her partner could not provide financial support because of his precarious status but he spent a great deal of time with his little family during the week and did whatever he could to look after all of them, taking the elder boy to the nursery and picking him up when needed, bathing and changing the children, and during the second pregnancy, taking full responsibility for the care of the older boy. When the family had influenza, he was there all the time. Her partner could not stay overnight because the family were in NASS accommodation but NASS had agreed that he could spend as much time as needed during the day. He returned home at night, to stay within the rules.
6. Both boys were very attached indeed to their father. He brought them presents often, especially on their birthdays and other such occasions. The elder boy would sit by the window, waiting for his father to arrive and saying 'I miss my daddy'. The younger would cry for his attention when he left. The elder boy spoke only English, although he understood Urdu. The appellant was thinking of starting English language courses to help her communicate more easily

in English with her children as they grew up. The appellant and her partner spoke 'mainly in English' to the older boy at home.

7. The next witness statement is dated 30 September 2014. By then, the appellant was 7 months pregnant again, with the couple's third child. The appellant was having a bad third pregnancy, with breathing difficulties caused by anxiety about her circumstances. Her partner continued to visit often but not live with the family, and to play an important role in the children's lives. He was still unwilling to return with them to Pakistan, partly because of the perceived risk to him from her husband, but mostly because he liked living in the United Kingdom. He was still buying presents and toys for the children and spending time with them, but could not give financial support because of his circumstances.

8. The appellant had not sought advice on a divorce: her understanding was that the terms of her marriage contract did not give her the option of divorcing her husband. In any event she considered that remarriage in Pakistan between the appellant and her current partner, even if the appellant were able to obtain a divorce, would not be a solution. They would still be considered adulterers with two illegitimate children and her husband knew about the children being born during their marriage.

9. The appellant's mother had been in contact less often recently, and not since January 2014. She was now in her sixties, frail and suffering overall poor health. She had broken her leg about a year earlier, and her health had deteriorated further after that. Her mobility was significantly impaired. The appellant's father remained unforgiving and if the appellant's name were mentioned, he would get angry. On more than one occasion, her mother had been told that if she mentioned her errant daughter again, she should leave his house altogether. Her father's financial circumstances had been modest at best throughout his life: he had seen no reason to have his daughters educated beyond matriculation and none of them had university educations. The appellant did not consider that she would be able to find decent employment or accommodation: shelter accommodation was short term and people would be suspicious of her if she were living in private accommodation, alone with three children and no husband.

10. On the same day, 30 September 2014, the appellant's partner wrote a letter of support, the only contribution he has made to these proceedings. He confirmed his nationality and his increasing concern that the family would be separated if the appellant and the children were returned to Pakistan. He considered that there would be a significant physical risk to him from the husband and his family, due to jealousy that the appellant was with him.

11. The appellant was not even divorced yet, so she would be unable to re-marry and they would have to live together as an unmarried couple. He did not believe that she could get divorced without the husband becoming aware of their address. The appellant's partner had lived in the United Kingdom for 13 years, albeit without any leave, and considered that he had established and built a life here. The children's birth certificates record that he is working in the United Kingdom as a chef. He considered that he would find it difficult to 'earn even a slightly decent living' in Pakistan. His father was a truck driver and when in Pakistan, her partner used to do odd jobs working in shops: his family earned very little money and their lifestyle in Pakistan had always been very simple and modest. They would be unable to provide the couple with any financial support. He considered that in those circumstances there would be 'absolutely no sense in my returning to Pakistan'. His family did not know that he had a family out of wedlock and certainly would not approve. His life in Pakistan 'was always one of desperation and hardship' and if returned he would simply leave again.

12. The appellant's final witness statement for this hearing was dated 18 May 2015. The third child, a girl, had been safely born, despite the appellant having a difficult pregnancy with some

breathing difficulties at 8-9 months. The child was healthy. She suffered back pain, caused by her childcare duties, and had also had mastitis, for which she took antibiotics. She was still married to her husband and getting divorced would not be easy. Any attempt to divorce her husband through the courts would give him an opportunity to accuse her of adultery and fornication, for which she considered that the police would take action against her. She remained clear that her partner would not return to Pakistan with her and that, therefore, she would be the lone parent of three small children.

13. The appellant gave oral evidence at the hearing. In answer to supplemental questions from her Counsel, she confirmed her evidence to the First-tier Tribunal that she had become estranged from her family following her love marriage, but that she had some contact with her mother. The appellant spoke of the difficulties in her relationship with her husband when she returned to the United Kingdom. He had changed. He was drinking and told the appellant that she was no longer attractive to him. He was having relationships with other women. Her husband would go to work, leaving the appellant at home. When he returned home he would quarrel with her about small matters. Her husband had land issues back home and when he was upset about that, he would pick a fight with her. Although he was not attracted to the appellant, her husband doubted her fidelity after they moved to Nottingham. He thought she was calling other men to the house when he was at work.

14. In March 2007, her husband saw the appellant speaking to a man who was a guest of their neighbour, outside the house. The man was speaking to the appellant as a sister: there was nothing going on. Her husband saw her in conversation with that man and called her a whore. He beat her up, saying that he had caught her red-handed with another man. He told the appellant that she was dirty, and to get out of the house. She had not heard from him since, but was certain that he would not have divorced her. The appellant did not know whether her husband had other women, since he would not have been with them when he met her mother around Lahore.

15. The appellant did not consider that her husband's attitude was likely to change. When he had thrown her out, there was no fault in the appellant, but that was no longer the case. He had thrown her out over one small matter: what would he not do now, when she had children outside her marriage?

16. The appellant stated that her contact with her mother was initiated by her mother telephoning, when she could do so away from the family. Her mother had last telephoned in January 2014. The appellant had told her mother of the birth of her second child. Her mother said that she had broken her leg and was unwell. She said that the appellant's husband had not changed his attitude and was not likely to do so. Her mother had not telephoned since then so she was not aware of the birth of the appellant's third child, or even that she had become pregnant again. If her mother telephoned, the appellant would tell her.

17. If she were returned to Pakistan, the appellant did not consider that any member of her family would be in a position to help her. Her mother would support her emotionally if she could, but was afraid of the appellant's father, her own husband. Their contact remained hidden and was not discussed with him. Her mother was also unwell and was in no position to assist the appellant in resettling with her children. The appellant's two younger siblings were still living at home. Her elder brother and his wife lived in Muscat, and another sister was married and living in Rawalpindi. If she were to return to Pakistan and seek support from her sister, the sister's parents-in-law would think less of her and it would spoil her sister's reputation and make her own position delicate. No member of the appellant's family could assist her.

18. The appellant would not be able to keep her irregular status and her relationship with the father of her children secret: even if she were able to do so, she would always be frightened that the truth would come out and people would discover her position. If that happened, neither she nor the three children would be allowed to live. The truth would always come out. She was frightened of the local community and the police in Pakistan, which was an Islamic country, where adultery was extremely sinful. All of her children would be beaten up in the community because they were illegitimate. A woman alone in that situation, without a husband or a father for her children was the kind of person people mistreated. She would be unable to escape or protect her children. Her daughter would be disadvantaged growing up with no proper family and in Pakistan, female children as young as three years old were sometimes raped. The appellant would have particular difficulty as a woman alone in protecting a female child.

19. The appellant stated that she remained very afraid of her husband even now, because she had children outside her marriage. As far as the appellant was aware, despite his hostility and his wealth, her husband had not filed a case against her in Pakistan or even an FIR. Her husband would be able to do so easily: he could give money to the police to bribe them and create a lot of problems for her. Her husband had a lot of money: he was a landlord, with both land and shops. She did not know where, or how many. That was men's business and not for discussion with women.

20. In cross-examination, the appellant confirmed that when she came to the United Kingdom in September 2006, she had no intention of returning to Pakistan without her husband. She had come to stay, for as long as he did. Her husband had invited her (as a visitor) and he said he would arrange the paperwork. It was not an issue for her what visa she had: she had simply handed over her passport to her husband to sort it out. The appellant was aware that her visa was good only for six months, since that was written on the passport, but he said he would arrange extension of the visa. She did not know whether he had ever applied to do so.

21. The appellant had not applied to regularise her status after her husband threw her out in March 2007, because she thought he would come and take her back. She thought that, despite his having said that wherever he saw her, he would kill her. Her husband had said that he could not kill her in the United Kingdom. The landlady, whom she called Auntie, had been supportive, telling the appellant not to worry, because her husband would come to collect her. All husbands and wives had quarrels, Auntie said. The appellant's husband never came, and she was very sad and quiet until she met her present partner, who gave her comfort and support. She started to feel better then, and eventually, they had a child together.

22. The appellant had no documents on which to travel and did not seek legal advice. It simply did not occur to her to regularise her situation until 2010, three years later, because she was not thinking of that. She had met her partner and got her life back, and in any case, she did not know the procedure to apply for a new visa, or for asylum. There was never any need to go to a solicitor, until she had her child, and her mother told the appellant that her husband had started threatening to harm her if she came to Pakistan. She had not asked anyone and it had not occurred to her that the situation would change as much as it did.

23. When she had her first child, her husband had gone to her family home to say bad things, he was swearing and beating her younger brother. He was not afraid of anyone. He had not come to the house again, but he would make remarks if he met her mother in public and gather people in the bazaar to hear them, so that her mother would be embarrassed. Her husband had said, openly, that if the appellant came he would not leave her alone.

24. The appellant had not divorced her husband because she considered that she had no right in Islamic law to do so. She had not taken advice on that point or made any application to the courts

in the United Kingdom or in Pakistan. Mr Melvin put it to the appellant that she had now been legally advised for several years and her solicitors had included evidence in the bundle which showed that she did have a right to seek a divorce in Pakistan, even from the United Kingdom. The appellant referred him to her solicitor.

25. The appellant was asked why the father of her children had not come to court to give evidence. She said that it was her life, principally, which was in danger, although there was also a risk to her partner. Her partner did not want to go back to Pakistan and she would not force him to do so. If he did return with her, the danger would multiply rather than reduce, because they were not married but they had children. People would say that she was a bad person, living with this man and having his children without marriage. Her partner could not provide any financial security for his family, because he was a poor man. Her partner was a poor man: he had no financial resources and his family were in a similar position. He could not offer her protection without money.

26. Her partner was not an educated man and could not obtain employment in Pakistan. His old father was a truck driver and her partner had many brothers and sisters, who relied on him financially. They would disapprove of him having children without being married and people would talk about his family members in that context. Her first husband was looking for the appellant.

27. Asked why she could not live elsewhere in Pakistan, the appellant said that wherever she stayed, whether it was Karachi, or Islamabad, the situation of Pakistan as a country meant that she and her family would not be allowed to live peacefully. She had not divorced her husband and remarried because it was her clear understanding that she would have to go to court to do so and that would make it easier for her husband to trace her. The police would not say a word if he came after her.

28. The appellant stated that she did not have a copy of her Nikah Nama because her husband had taken it. She was not prepared to undertake divorce proceedings unless the Tribunal would guarantee that after doing so she would be allowed to stay in the United Kingdom. If an overseas divorce was possible, she would expect a guarantee that it would cause no danger to herself or her children.

29. In re-examination, the appellant said she was unaware that there was a divorce procedure for Pakistani women which could be exercised from abroad. She had no control over her children's father. He was happy in the United Kingdom: his life was here. He had no wish to go to Pakistan with her. She was not prepared to pressurise him: he had told her that he could not and would not go with her.



**APPENDIX C**  
**Country evidence**

<u>Document</u>	<u>Summary</u>
<p><i>Home Office Country Information and Guidance, Pakistan: Women (2014)</i></p>	<p>The status of women in Pakistan differs in accordance with their social positioning. Patriarchal attitudes and deep-rooted stereotypes concerning women’s roles and responsibilities discriminate against them and maintain their subordination within family and society. Due to the prevailing patriarchal and misogynistic culture in Pakistan, women are victims of violence in both the private and public spheres.</p> <p>The Human Rights Commission for Pakistan reported that the need for the establishment of women’s shelters continued to be neglected, as did police reporting and investigation systems. Although many laws relating to women’s rights have been passed by Parliament, there have been no significant changes in the status of women in Pakistan. Honour killings, domestic violence, acid burning, rape and sexual assault are amongst the reported cases of violence against women in Pakistan. However, women who tried to report abuse faced serious challenges and are reluctant to pursue charges due to the stigma attached to divorce and their economic and psychological dependence on relatives. Divorcees faced specific stigmatization and social rejection.</p> <p>Extra-marital sex was criminalised and sexual relations between unmarried parties was punishable by up to five years imprisonment and fine.</p> <p>Although women are legally free to marry without consent, women who did so were often ostracised or risked being the victims of honour crimes. The government had failed to prosecute cases in which families punished women for marrying or seeking a divorce against the wishes of other family members.</p> <p>A representative of the Human Rights Commission of Pakistan (HRCP) stated that it was next to impossible for a single woman to live alone in Pakistan due to prejudices against women and economic dependence. Most women in rural areas lived with their families and it was generally not socially acceptable for women to live alone, although working women in urban areas found it easier to live alone.</p>
<p><i>US Department of State, Country Reports on Human Rights Practices: Pakistan (2014)</i></p>	<p>Section 6: Women in Pakistan are at risk of various types of societal violence and abuse, including: honour killings, facial, bodily, and genital mutilation, forced marriages, imposed isolation, and being used to settle disputes. Rape, domestic violence, sexual harassment and other harmful traditional practices were also a serious problem. Discrimination against women and girls continued: women were often treated as chattels, with domestic violence offences mainly committed by husbands and other male family members.</p> <p>Child abuse and commercial sexual exploitation of children persisted, with children being sold into prostitution and many young girls/women</p>

	<p>entered into forced marriages, arranged by their families. Although rape was frequent, prosecutions were rare, spousal rape was not deemed to be a crime, and rape by members of the police was a problem. Domestic violence is a widespread and serious problem.</p> <p>Divorced women were often left with no means of support as their families ostracised them, as were those who married without the consent of their family. Women faced significant discrimination in employment and were paid less than men for similar roles. In many rural areas, strong societal pressure prevented women from working outside of the home and some tribes even practiced sequestering women from all contact with men other than relatives. There are also significant barriers to education and medical assistance for women and girls.</p>
<p><i>Immigration and Refugee Board of Canada, Pakistan: Domestic Violence, including effectiveness of the Protection of Women (Criminal Law Amendment) Act 2006; state protection and services available to victims (2013)</i></p>	<p>Domestic violence in Pakistan is a widespread and serious problem, and can include torture, physical disfigurement, amputation, the denial of food, rape and the shaving of hair and eyebrows. The perpetrators of violence are often the victim's husband or family member and many cases of violence are not reported. Sources estimated that approximately 70 to 90 per cent of women in Pakistan had experienced domestic violence. Legislation has been passed in order to provide relief and protection to women against misuse and abuse of laws and prevent their exploitation; such laws have not provided any significant changes in the status of women.</p> <p>There is no sufficiency of protection from the government for victims of domestic violence. Police and other justice officers are often corrupt and do not carry out their duties in an ethical manner. Although there are some police stations for women, staffed by female officers, they are not very effective. There are also government funded centres for women that provide shelter, legal aid, medical treatment and counselling, but they mostly involve staying in miserable overcrowded conditions, where abuse of women continues. Private shelters are more effective, offering longer stays and greater support, but places are limited.</p>
<p><i>Immigration and Refugee Board of Canada, Pakistan: Honour Killings targeting men and women (2013)</i></p>	<p>Women in Pakistan are considered to be the carriers of the honour of their entire family. Women face discrimination and violence in all facets of life in Pakistan. The concept of women as property and source of honour is deeply rooted in the social, political and economic fabric of the country. Honour crimes include killings, assaults, acid throwing, confinement, imprisonment, interference with a choice of marriage, burning, and nose-cutting. Honour crimes occur when a woman is perceived to have brought dishonour to the family, as a way to protect family honour and preserve the family's good name. Honour crimes remain a serious and persistent problem in Pakistan, with rural areas most affected, and methods varying according to the region. Women are often urged by their families to commit suicide, with over 700 women committing suicide in 2011. Suicides of women are rarely investigated by the police.</p>
<p><i>US Department of State 2012 Human Rights Reports: Pakistan (2013)</i></p>	<p>Section 6: See summary above for US Department of State, Country Reports on Human Rights Practices: Pakistan (2014).</p>
<p><i>Asian Human Rights</i></p>	<p>A.7 Violations of Women's Rights: Women face discrimination in all facets</p>

<p><i>Commission, The State of Human Rights in Pakistan in 2012 – Pakistan: Failure of the institutions related to the rule of law provides impunity to the perpetrators of violations human rights (2012)</i></p>	<p>of life in Pakistan and brutal treatment such as domestic abuse, sexual violence and rape, torture, honour killings, and murder. Verdicts by illegal tribal judicial courts ensure the persistence of violence against women. It is believed that 70 per cent of people who commit honour killings in Pakistan escape punishment.</p> <p>J. No Place to be a Woman: No significant changes are yet visible in the position of women in society; they have limited access to employment, social security, respect and recognition. The patriarchal and often conservative mind-set of Pakistani society, together with persistent religious fundamentalism, entails gender based discrimination which affects the female population. There have been some encouraging improvements with the passing of protective statutes, but enforcement still appears inadequate. Serious problems persist, including honour killings, acid attacks and other forms of burning, rape and sexual harassment, domestic violence, early marriage, bullying, abusive language offences, abductions followed by forced religious conversion or induction into prostitution or human trafficking. Pakistan still ranks among the most difficult countries in the world to be respected as a woman.</p>
<p><i>Integrated Regional Information Networks News (IRIN), Pakistan: Hundreds of women die for “honour” each year (2011)</i></p>	<p>News Article: A 22 year old woman faced the most harrowing honour killing reported in recent months. According to reports she was murdered by her relatives for eloping with a man she had chosen to marry and they had stated that she had committed suicide.</p>
<p><i>Human Rights Watch, World Report 2011</i></p>	<p>The report outlined the deterioration of the security situation in Pakistan in 2010 and stated that violence and mistreatment of women and girls was a serious problem. Additionally, in 2010, a Christian woman from the Punjab province was the first woman in the country’s history to be sentenced to death for blasphemy.</p>
<p><i>Human Rights Commission of Pakistan (HRCP), HRCP urges probe into alleged honour killing (2011)</i></p>	<p>The HRCP called upon the Punjab government to ensure an early and transparent investigation of an alleged incident of honour killing of a young woman in the Bahawalpur district, following concerns that police were not taking interest in the investigation and one of the accused was being pampered by the police.</p>
<p><i>Asian Human Rights Commission, Pakistan: A lady health worker raped and forced by police to withdraw her complaint (2011)</i></p>	<p>Urgent Appeal Update: The Asian Human Rights Commission (ARHA) received information that a female government health worker was raped by a notorious gangster with the help of two police informants. The police made attempts to destroy the evidence and were attempting to coerce the victim into settling the case with the perpetrators.</p>
<p><i>Inter Press Service News Agency (IPS), Women’s Day: Pakistan is not for single women (2011)</i></p>	<p>Society in Pakistan is a family system, with no provision for being single. It was even more difficult to be a single mother. It was considered quite normal to remain in a bad marriage as there is stigma attached to being single. Single women are often pitied, which is mixed with suspicion. Safe and affordable accommodation and mobility are both serious challenges for single women. Single women who were educated, or who were financially strong and/or had family support, were in a stronger social position.</p>

<p><i>Asian Human Rights Commission, Pakistan: A 16 year old girl was gang raped almost for one month – perpetrators were released by the police (2011)</i></p>	<p>Urgent Appeal Case: Six armed men from a group of land grabbers from Karachi, abducted a 16 year old girl, along with her brother, and held them for ransom. During the month captivity, the time it took for the father to raise the necessary funds for ransom, the girl was subjected to gang rape. Following payment and their release, two individuals were arrested, but were released shortly after paying a bribe to the police. A public prosecutor raised questions about the ill intentions and negligence of the police.</p>
<p><i>Inter Press Service News Agency (IPS), Pakistan: At Home, and in Hell (2011)</i></p>	<p>For a woman to leave home is a threat to male honour. The situation for women in the Federally Administered Tribal Area got worse after the dismissal of the Taliban government in Kabul. The Taliban call the shots and they strictly oppose women’s role in society. Women are banned from participation and decision-making and the men decide who they can talk to and who they should marry and when. The female literacy rate is much lower in this region than it is nationwide and parents invest more on their sons education than their daughters.</p>
<p><i>Human Rights Watch, Pakistan: Expedite Domestic Violence Legislation (2010)</i></p>	<p>The Pakistani government was urged to reintroduce legislation to protect women and children from domestic violence after the Domestic Violence Bill lapsed. An amendment to the Penal Code that criminalised the harassment of women was a step forward but it needed a companion bill to provide a mechanism to investigate complaints. The law was criticised for providing legal protections without putting in place the mechanisms needed to give female workers access to the protections.</p>
<p><i>US Department of State, 2009 Human Rights Report: Pakistan (2010)</i></p>	<p>Section 6: Although rape was frequent, prosecutions were rare. There were no national statistics on rape, due to the serious underreporting of the problem. Police were at times implicated in rape cases and often abused or threatened victims and demand they drop charges, especially when the accused had paid the a bribe. Domestic violence was a widespread and serious problem. Husbands reportedly beat, and occasionally killed their wives and in-laws abused and harassed married women. Dowry and family related disputes often resulted in death or disfigurement by burning or acid. The cases of violence against women increased 13 per cent from the previous year. Women who tried to report abuse faced serious challenges and were usually returned to the abusive family members. Women were reluctant to pursue charges because of the stigma attached to divorce and their economic and psychological dependence on relatives. Women were also abused at government run shelters.</p>
<p><i>Amnesty International, Amnesty International Report 2010: Pakistan (2010)</i></p>	<p>Millions of Pakistanis suffered as a result of a sharp escalation in armed conflict between the government and armed groups. Women continued to be victims of honour killings with 960 incidents reported. Taliban groups closed or burned down girls’ schools, forced women to wear a veil and prohibited them from leaving their homes unless accompanied by male relatives. Several women were punished, shot dead or mutilated for alleged ‘immoral’ activities. Legal redress sought for abuses of women’s rights remained difficult to obtain. Child labour, domestic violence, sexual abuse and forcing girls into marriage to settle disputes continues. The government rarely took action to prevent such abuses or to ensure punishment of perpetrators.</p>

<p><i>Immigration and Refugee Board of Canada, Pakistan: Circumstances under which a woman has the legal right to get a divorce through the courts (judicial divorce) through her own initiative; circumstances under which single women can live alone (2010)</i></p>	<p>There are two ways in which a Muslim woman in Pakistan can divorce her husband: by judicial or <i>khula</i> divorce. It remains difficult for a woman to exercise her right to divorce, not only because Pakistan is a male-orientated and male-dominated society, but also because the woman may not be aware of her rights and sometimes was 'psychologically debarred' from exercising them.</p> <p>The ability of a woman to live alone and unmarried in Pakistan, will depend on the province and in what context they are living. There is a sharp rural/urban divide with rural areas not recognising women as individuals but as members of a male's family. Urban living is different but there remain difficulties for single women.</p>
<p><i>Asian Human Rights Commission, Pakistan: Women have little to celebrate on the International Day for Elimination of Violence against Women (2010)</i></p>	<p>In recognition of the International Day for the Elimination of Violence against Women, the article served as a reminder of how much Pakistan had yet to do to protect its women from gender-based violence and to ensure their safety, with an aim of inspiring consideration of the circumstances faced by women in Pakistan. There was an increase in forced marriage and forcible conversion by Muslim extremists. Women, who were members of religious minorities, were more vulnerable to discrimination and violence, and cases involving violence to women remain unsolved. Women continued to experience unmitigated abuse and were targeted in vicious, disfiguring attacks as well as being the victims of sexual assaults and murder.</p>
<p><i>Immigration and Refugee Board of Canada, Pakistan: Resources available to female victims of violence in Karachi, Islamabad and Lahore (2009)</i></p>	<p>A presentation on government initiatives to foster social, economic and legal empowerment of women stated that female complaint areas were set up at existing police stations for female victims of violence, staffed by women police officers. There were also women's police stations. Women's shelters existed, but they focused on mediating between couples, instead of offering women protection. Shelters were under resourced, limiting the available help. Private shelters were more helpful and could offer longer stays, but there were limited places available. There was little follow-up work after a woman left the shelter, which was of particular concern.</p>
<p><i>Immigration and Refugee Board of Canada, Pakistan: Honour killings targeting men and women, especially in the northern areas (2001-2006) (2007)</i></p>	<p>It is difficult to get an accurate picture of the extent of the problem since many honour killings go unreported, with only five per cent of rape and honour crimes being reported. Honour killings are mainly prevalent in rural areas of Pakistan and are usually carried out by male family members, with the methods varying by location.</p>
<p><i>Immigration and Refugee Board of Canada, Pakistan: Circumstances under which single women could live alone (2007)</i></p>	<p>According to statements from professors and NGO representatives, it is hard for single women to live alone both in urban and rural areas, due to security concerns and social constraints. Whether a woman can live alone depends on age, class, education and where she lives. Young unmarried/divorced women had more difficulty due to social pressures and difficulty in finding apartments to rent. Older women could live alone but still felt insecure socially and physically. The percentage of highly educated and economically independent women living alone is very low. In order to access internal relocation, you need money and resources. There were no government housing or other support services if</p>

	the woman could not support herself.
<i>Amnesty International, Pakistan: Panah needs your support (2006)</i>	An estimated 80 per cent of all Pakistani women suffer violence in the home and over the years over 250 of those women ended up in <i>Panah</i> – a shelter set up by Amnesty International, offering a safe haven to women where they have access to free legal aid, medical care and counselling. The report states that the <i>Panah</i> shelter was looking for a new home and was seeking a safe and affordable location to which it could relocate.