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Feminist Rule of Law Reform and Health Impact of Legal Systems Premised on Women as Communal Gauges of Honor

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FEMINIST RULE OF LAW REFORM AND HEALTH IMPACT OF LEGAL SYSTEMS PREMISED ON WOMEN AS COMMUNAL GAUGES OF HONOR

*Tzili Mor*¹

Gender equality is touted as key for sustainable development, improved public health, decreased poverty, and robust democratic systems. Yet despite growing interest by international bodies and national governments, the “gendering” of rule of law reform has received limited critical attention. This Article argues that transformative gendered rule of law reform requires holistic and intersectional analysis of the domestic legal landscape that genuinely accounts for lived experiences. Using Jordan as a case study, it critiques the short-sighted and perhaps harmful “technical” feminist law reform efforts of calling for repeal of isolated provisions related to sensational “honor killings.” As in many countries, Jordan’s legal system sends mixed messages about the state’s role in delineating and dismantling gender roles and stereotypes that undergird laws which both reflect and shape popular perceptions. Such laws may persist in part due to an alarming dearth of research on the immense physical, psychological, and emotional toll inherent in maintaining a social order premised on gender stereotypes—such as women’s actual or suspected conduct serving as proxy for family or community honor. This Article asserts that gendering reform of laws premised on gender stereotypes requires holistic analysis that includes shifting the discourse toward health impact data and collective gains and away from often unproductive campaigns perceived to condemn “culture and tradition.” A public health and human rights framing could provide a more “neutral” and disarming lens of analysis and deepen advocacy beyond sensational cases and short-term spikes in public attention toward a long-term holistic reform agenda that seeks to dismantle patterns of power and abuse fueled by legally-entrenched gender stereotypes.

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1. This Article was motivated by the author’s experience as a Human Rights and Gender Specialist with the American Bar Association Rule of Law Initiative in Jordan during 2013–2014. She completed the piece during her time as a Visiting Jurist at the University of California, Los Angeles School of Law, Visiting Scholars and Researchers Program. She extends her immense gratitude to the numerous faculty members and women’s human rights advocates who offered their thoughtful and thought-provoking comments throughout the process.

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INTRODUCTION

Recent outcry in Morocco and across the world over the suicide of a teenager whose family allegedly forced her to marry her rapist highlights the injustice in legal systems premised on gendered notions of “honor.” While Morocco amended the provision in early 2014,² Jordan’s Penal Code continues to exonerate a rapist who marries his victim.³ Yet, calls to amend such provisions in isolation of their socio-legal context are misguided and fail to dismantle patterns of abuse and power fueled by adverse gender-based stereotypes. The option of marrying one’s rapist may seem harsh, but it may be the only viable option to avoid collateral consequences for the victim and her family, in the absence of more meaningful reform. Dynamics of gender control require a critical examination of the incentives and the health and human rights consequences of continued criminalization of socio-sexual relations premised on notions of “honor.”⁴ Feminist legal theory posits a holistic analysis of health and legal implications of these constructs, not as trifling notions, but as the foundational tenets of legal codes and jurisprudence.

This Article critiques the entrenched separation between feminist contextual analysis and calls for “gender equal” law reform. It envisions a re-conceptualized feminist, gendered rule of law reform that re-imagines legal advocacy not as mere sequenced, isolated changes but as holistic reform grounded in intersectional analysis. Feminist legal theory refers to a myriad of methods that unveil,

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2. Aida Alami, *A Loophole for Rapists is Eliminated in Morocco*, N.Y. TIMES (Jan. 23, 2014), <http://www.nytimes.com/2014/01/24/world/africa/after-debate-moroccan-government-amends-rape-law.html>. Only the exoneration clause was removed from Article 475 of the Moroccan Penal Code. Smail Bellaouali, *Morocco to Change Law that Allowed Rapists to Avoid Punishment by Marrying Their Victims*, HUFFINGTON POST (Jan. 23, 2013), http://www.huffingtonpost.com/2013/01/23/morocco-rape-marriage-law_n_2532259.html.
 3. Laws encouraging or forcing a victim to marry her rapist are or have been until recently featured worldwide, including in Africa, parts of Asia, and in over fourteen Latin American countries, such as Peru and Costa Rica, where the victims’ consent was often not a factor in legally sanctifying such unions. VARIETIES OF FEMINIST LIBERALISM 196 (Amy Baher, ed., 2004).
 4. *Morocco: Amendment of Rape Provision is a Step in the Right Direction*, AMNESTY INT’L (Jan. 23, 2014), <http://www.amnesty.org/en/news/morocco-amendment-rape-provision-step-right-direction-2014-01-23>.

critique, and deconstruct legal features that oppress, disempower, or marginalize populations based on gender and power dynamics.⁵ Feminist analysis is recast here in intersectionality terms that account for multiple axes of identities and violations. A semi-literate Bedouin girl living in a remote desert village who is raped by a cousin and might be forced to marry him to avoid crippling social stigma for her and her family and prosecution for him, grapples with reconciling the multiple facets of her identity, as well as with surviving multilayered violations to her autonomy, liberty, dignity, equality, and health. In contrast, “Technical Feminism,” is coined here to capture efforts to apply quick technical fixes, such as slapdash legal reforms that might strike down isolated discriminatory provisions but fail to analyze and imaginatively resolve systemic problems undermining women’s status within their local legal and social contexts.⁶

Whether due to time constraints or pressure to yield “impact” fruits, rule of law reform generally tends to favor the latter approach of technical feminism.⁷ Typical rule of law approaches operate on three levels: overhaul of laws and legislation, reform of state institutions, and improved good governance principles (such as judicial branch independence and accountability).⁸ A more recent fourth objective aims to tackle “social norms” to enhance support for rule of law.⁹ Complementary efforts to facilitate access to justice increasingly seek to ensure that marginalized populations benefit from legal guarantees for remedy and redress. The “gendering” of rule of law reform has surfaced as a recent concern enjoying growing support from multilateral institutions, such as United Nations agencies tasked with rule of law standards-setting and programming,

5. See MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 1–2 (1999) (explaining that feminist legal theory examines the role gender has played in the development of the law and explores the manner in which the law has contributed to the subordination, discrimination, and inequality of women); see also Maxine Eichner, *On Postmodern Feminist Legal Theory*, 36 HARV. C.R.-C.L. L. REV. 1, 34–35 (2001) (explaining that feminist legal theory also examines the differences among women based on axes of power such as race, class, age, and sexuality).

6. See *infra* Part V.B.

7. See *infra* Part V.A.

8. See Thomas Carothers, *The Rule of Law Revival*, FOREIGN AFF., Mar./Apr. 1998, available at <http://www.foreignaffairs.com/articles/53809/thomas-carothers/the-rule-of-law-revival>.

9. Rachel Kleinfeld, *Advancing the Rule of Law Abroad: Next Generation Reform* 79 (Carnegie Endowment for International Peace, 2012).

development partners, and national governments.¹⁰ This Article focuses on the initial, and arguably the most foundational stage of feminist rule of law reform—an analysis of the domestic legal landscape informed by the reality of girls’ and women’s lives that is prerequisite for transformative rule of law reform.

Using Jordan as a case study, this Article aims to illustrate the short-sighted and perhaps counter-productive technical feminist strategy of calling for repeal of isolated provisions related to “honor killings” rather than thoughtfully tying together a reform agenda that addresses the resultant and causative health and human rights violations, including sexual and reproductive rights. A 2010 Pew Global Attitudes Project survey found near universal support for gender equality worldwide with widespread agreement that more changes are still needed.¹¹ Jordan was one of few exceptions.¹² While 61% of respondents in Jordan supported equal rights for women, only 37% believed additional changes were needed to reach that goal.¹³ In reality Jordan’s gender gap placed 134 out of 142 countries ranked by the World Economic Forum in 2014.¹⁴ As an upper middle-income country¹⁵ with substantial regional and western support, Jordan provides fertile ground and promises far reaching impact for paradigmatic rule of law reform.

Like most legal systems, Jordan’s legal system sends mixed messages about the state function in delineating gender roles and place in society. On the one hand, Jordanian laws “over-protect” (or

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10. See UNITED NATIONS, *NEW VOICES: NATIONAL PERSPECTIVES ON RULE OF LAW ASSISTANCE 5–7* (2011), available at <http://www.unrol.org/files/FINAL%20National%20Perspectives%20Report.pdf> (outlining joint recommendations to enhance rule of law assistance, including empowering women to engage in rule of law reform and targeting reform to meet their particular needs).
 11. See PEW GLOBAL ATTITUDES PROJECT, *GENDER EQUALITY UNIVERSALLY EMBRACED, BUT INEQUALITIES ACKNOWLEDGED* 5, 13 (2010), available at <http://www.pewglobal.org/files/2010/07/Pew-Global-Attitudes-2010-Gender-Report-July-1-12-01AM-EDT-NOT-EMBARGOED.pdf>.
 12. See *id.* at 13.
 13. *Id.* (noting a greater acknowledgment for needed reform by 59% and 51% of survey respondents in neighboring Egypt and Lebanon, respectively).
 14. WORLD ECON. FORUM, *THE GLOBAL GENDER GAP REPORT 2014, Jordan Country Profile* (2014), available at <http://reports.weforum.org/global-gender-gap-report-2014/economies/#economy=JOR>.
 15. *Data for the Country of Jordan*, THE WORLD BANK, <http://data.worldbank.org/country/jordan> (last visited Jan. 11, 2015).

over police) women from working in certain sectors or at night,¹⁶ requiring guardians to make decisions for and on behalf of adult women about key issues such as marriage,¹⁷ and by detaining women for their own good to protect them from potential “honor killings.”¹⁸ On the other hand, laws “under-protect” women by reducing penalties for their murder and injury by relatives,¹⁹ criminalizing extramarital relations,²⁰ pushing victims to marry their rapists,²¹ retaining loopholes for child marriages,²² and by banning abortion even in cases of rape and incest.²³ Such a system thus sustains the exoneration of a rapist from punishment for marrying his victim as the only viable legal and social solution for the victim herself. Law reform efforts to tackle one aspect in isolation, or devoid of the broader socio-legal normative context, might be pragmatic, or easier, but they fail to dismantle assumptions about “gender-appropriate”²⁴

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16. See JORDANIAN WOMEN’S UNION (JWU), JORDAN SHADOW NGO REPORT SUBMITTED TO CEDAW COMMITTEE 11–12 (Afaf Al Jabiri ed., 2012) [hereinafter JWU Report], available at <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/JordanianCoalitionforthesession.pdf> (explaining that instead of striving to help women obtain jobs typically considered exclusively male and for which women were considered unfit, such as working in quarries or at night, Jordan laws over-protect women by simply prohibiting them from working in such positions with limited exceptions).
 17. See *id.* at 42 (explaining that a woman is unable to enter into a marriage contract by herself and that all decisions regarding marriage are left to the woman’s male guardian).
 18. See MANSUR ET AL., THE ECONOMIC UNDERPINNINGS OF HONOR CRIMES 16 (Information and Research Center – King Hussein Foundation 2010), available at <http://irckhf.org/en/haqqi/research/economic-underpinnings-honor-crimes-jordan>.
 19. JORDAN PENAL CODE art. 340.
 20. JORDAN PENAL CODE art. 282.
 21. JORDAN PENAL CODE art. 308.
 22. *Jordanian Personal Status Law of 1976*, in PALESTINIAN WOMEN AND SECURITY: A LEGAL COLLECTION 59, 59 (Stephanie Chaban et al., eds 2012), available at <http://www.marsad.info/en/content/jordanian-personal-status-law-1976>; INFO. & RESEARCH CTR., KING HUSSEIN FOUND., TO BE A GIRL IN JORDAN: A LEGAL AND CULTURAL BIAS 8, 81 (2011), available at <http://irckhf.org/en/haqqi/research/be-girl-jordan> [hereinafter TO BE A GIRL IN JORDAN]. Criminalizing sexual relations outside sanctioned unions might also be interpreted as “over-protecting” women by ensuring (married) women’s rights to maintenance and custody, among others.
 23. JORDAN PENAL CODE arts. 321, 324.
 24. See Andrzej Kulczycki & Sarah Windle, *Honor Killings in the Middle East and North Africa: A Systematic Review of the Literature*, 17 VIOLENCE AGAINST WOMEN 1442, 1457–58 (2011) (discussing Jordan’s laws and policies that explicitly discriminate against women and girls in text and practice). This Article uses the increasingly debated terminology of “women and girls” rather than the more inclusive “gender” as a practical matter and thereby places a deeper analysis of gender, gender identity complexities, and politics as beyond its scope.

behaviors that will be required to bring about lasting, meaningful change.

This Article draws on feminist legal analysis to link together cause, impact, and power dynamics to transform the laundry-list approach to law reform characterized by lengthy lists of proposed amendments to sex-discriminatory provisions, into a thoughtful, comprehensive legal framework bridging health and rights, context and reality. Section I situates the practice of “crimes of honor” in global and domestic contexts highlighting its scope, determinants, and justifications as grounded in women’s value as communal gauges of honor. It also outlines scholarly debates about terminology and framing. Section II highlights the glaring dearth of health research on the impact of honor-based laws on women and communities and the dire need for data collection as an essential starting point, a baseline for progress, and to inform discourse and policy around such violations. It provides a novel approach of shifting the focus to health consequences caused by constant, vigilant self- and community-policing of “gender-appropriate” behavior reinforced by laws premised on gender-stereotypes.

Building on this framework, Section III explores the framing of gender-related violence and discrimination, such as “honor crimes,” within a human rights and health paradigm that includes reproductive and sexual rights. It proposes a discursive shift to a public health and rights analysis as a more neutral, and potentially more effective reform tactic that ventures beyond sensational cases and short term spikes in public attention toward a long-term holistic reform agenda. Section IV features Jordan as a case study assessing recent, inadequate reform responses and strategies to tackle honor-based laws and practices that simultaneously over-protect and penalize women. Section V concludes by offering principles to gender rule of law reform to minimize the shortcoming of technocratic efforts to amend isolated sex-discriminatory provisions. The proposed guiding principles, while by no means a complete prescription for change, provide an entry point of analysis for national advocates and their allies to better explain the harms of the status quo and the potential for community benefits from reform, and to equip law-makers with critical talking points to build constituent support for transformative, gendered rule of law reform.

I. BACKGROUND: “CRIMES OF HONOR”

Women’s bodies dot history as symbols of nationalist aspirations and gauges of communal honor. They represent purity and chastity. If tarred, they foul collective ideals, irreparably shame their familial

or social microcosms. Girls and women are seen as custodians of the family honor and thus their roles in society are controlled, constructed, and influenced by customs that are often misinterpreted to disadvantage them.²⁵ This section contextualizes and outlines the epidemiology of gender-related crimes justified on the basis of honor, while recognizing existing research gaps and terminology shortfalls.

A review of the literature on so-called “honor killings” in the Middle East and North Africa (MENA) revealed that “[m]ost studies focus on legal aspects . . . and characteristics of victims and perpetrators,” with scarce primary data research on the practice itself, related attitudes and perceptions.²⁶ There have been no significant studies looking at the health impact of socio-legal systems that judge women’s behavior based on notions of “honor,” an aspect addressed in Section II.

A. *Definition and Terminology*

This Article employs the short-hand terms “crimes of honor” and “honor killings” to signify a constellation of crimes, primarily against women, characterized by the purported motivation for their commission. Such crimes encompass a range of gender-based violent acts, including murder in the name of honor, assault, confinement or imprisonment, and interference with choice in marriage, “where the publicly articulated ‘justification’ is attributed to a social order claimed to require the preservation of a concept of ‘honour’ vested in male (family and/or conjugal) control over women and specifically women’s sexual conduct: actual, suspected or potential.”²⁷ The range of “dishonorable” conduct has expanded over time to regulate women’s behavior deemed to challenge male power and control²⁸ and as overly autonomous or individualistic. Transgressive or “offending” behaviors include a woman’s refusal to marry a designated spouse, marrying by choice without family approval, marriage outside of a woman’s religion,²⁹ and behaving outside

25. *Id.* at 1442–43. “Rooted in social standing, cultural mores, and institutions, the concept of family honor provides a socially sanctioned justification for murder because a woman is regarded as a vessel of the family reputation.” *Id.* at 1442.

26. *Id.*

27. “HONOUR” CRIMES, PARADIGMS AND VIOLENCE AGAINST WOMEN 4 (Lynn Welchman & Sara Hossain eds., 2005) [hereinafter “HONOUR”].

28. *Id.* at 5, 79.

29. *See, e.g.*, Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, *Implementation of General Assembly 60/251 of 15 March 2006 Entitled “Human Rights Council” Addendum*, 313, Human Rights Council, U.N. Doc. A/HRC/4/20/Add.1 (Mar. 12, 2007) (by Philip Alston) (condemning a “continuing

accepted gender norms,³⁰ such as identifying as or engaging in same sex relations.³¹ The “honor” defense has also been invoked by perpetrators with “ulterior motives” such as desire to avoid exposure of incest, to increasingly common “commercial” interests of families seeking to “retain property rights; gain compensation from the accused; settle a personal vendetta; or to prevent women from claiming inheritance.”³² Such alleged misuse of the “honor defense” further reinforces the popular notion that women’s “honor” infuses collective thinking about women’s honor as a commodity to be exploited, and as a gauge of “honorable” conduct, requiring all the more policing of women’s behavior.

Terminology around so-called “honor crimes” and “honor killing” is problematic.³³ The very terminology imputes lofty motives to criminal violence and murder and may inadvertently serve to legitimize them as a category befit of special mitigated treatment.³⁴ For simplicity, this Article employs this terminology as it appears in the national and global scholarship to capture broad manifestations of violence as understood within their contexts.

pattern of honour killings in the Syrian Arab Republic in which women are killed by a family member, usually because she has married outside her religion or because of suspicions of sexual impropriety”).

30. See “HONOUR,” *supra* note 27, at 186. Research by the Centre for Egyptian Women’s Legal Assistance found that “bad behavior” by women might include “laughing too loud in a public street or enjoying talking to a male stranger.” *Id.* at 137, 140.
31. U.N. High Comm’r for Human Rights, *Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity: Rep. of the High Comm’r for Human Rights*, ¶ 25, Human Rights Council, U.N. Doc. A/HRC/19/41 (Nov. 17, 2011).
32. Femin Ijtihad, *Honour Killings: Myths and Motives* (June 2014), available at <http://feminijtihad.com/2014/06/14/honour-killings-myths-and-motives/>.
33. “HONOUR,” *supra* note 27, at 9. The terminology is susceptible to “exotici[z]ation” especially in the West, and might conflate women’s conduct and collective honor, see *id.* at 4–5, “imply[ing] that women ‘embody’ the honour of males” which could disguise the “real motivation” behind systemic abuses of women and girls, *id.* at 6, 8.
34. *Id.* at 9–10. The term “femicide” arguably more accurately captures the phenomenon which scholars propose includes not only the murder but the period of preceding threats and “waiting” to be killed. Nadera Shalhoub-Kevorkian, *Reexamining Femicide: Breaking the Silence and Crossing “Scientific” Borders*, 28 SIGNS 581, 581 (2003) (expanding the definition of femicide to the period when a woman “is effectively sentenced to death by murder and lives under the continual threat of being killed”). However, the term does not cover the constellation of associated crimes and the reality of male victims punished for same-sex transgressions. See U.N. High Comm’r for Human Rights, *supra* note 31, ¶¶ 20, 25 (stating that honor crimes “can be directed at individuals of any sex”).

Various legal systems, dating back to Roman times and spanning the globe,³⁵ maintain mitigating circumstances and hence exemptions or reduced punishment for crimes committed in a “fit of fury,” or in the heated “state of passion.”³⁶ Scholars and popular understanding often stereotypically link “crimes of honor” with the East, and, erroneously, with Islam,³⁷ and individual-driven “crimes of passion” or the “provocation defense”³⁸ with the West.³⁹ This dichotomy serves to obscure “the intersectionality of political, economic, social, cultural, and gender factors faced by all women around the world.”⁴⁰ Intersectional analysis magnifies and amplifies human rights violations experienced along axes such as gender, ethnicity, race, class, and education level.

A regional comparative study concluded that criminal codes in the Middle East and North Africa “consistently remind us that the primary social identification of women is as reproductive and sexual

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35. See Manuel Eisner & Lana Ghuneim, *Honor Killing Attitudes Amongst Adolescents in Amman, Jordan*, 39 *AGGRESSIVE BEHAV.*, 405, 405–06 (2013) (citing diverse legal systems tolerant of honor killing, including Roman law, 19th century Latin America, and the Italian Penal Code); Kulczycki & Windle, *supra* note 24, at 1443 (explaining that “Honor killings have historically occurred in many deeply patriarchal cultures, including the Balkans and other parts of Mediterranean Europe.”).
 36. E.g., Lama Abu-Odeh, *Comparatively Speaking: The “Honor” of the “East” and the “Passion” of the “West”*, 1997 *UTAH L. REV.* 287, 290–91 [hereinafter Abu-Odeh, *Comparatively Speaking*].
 37. See “HONOUR,” *supra* note 27, at 13–14; cf. Kulczycki & Windle, *supra* note 24, at 1455–56 (“Islam may be interpreted in ways that . . . condemn honor killings.”). A study on the incident of honor killing in Pakistan reported cases among Muslim, Christian, and Hindu populations, suggesting that the practice reflects cultural, rather than religious norms. Muazzam Nasrullah et al., *The Epidemiological Patterns of Honour Killing of Women in Pakistan*, 19 *EUR. J. PUB. HEALTH* 193, 195 (2005).
 38. Carolyn B. Ramsey, *Provoking Change: Comparative Insights on Feminist Homicide Law Reform*, 100 *J. CRIM. L. & CRIMINOLOGY* 33, 33 (2010). Notably, the “provocation defense” premised on beliefs and passions persists in democratic, “developed” jurisdictions around the world, including in U.S. law. *Id.* at 33, 44–45. “Heat of passion” criminal mitigation has served to protect “a broader class of angry, jealous, predominantly male defendants than the traditional doctrine of the nineteenth century did.” *Id.* at 33. In contrast, by 2008, three of Australia’s six states—Tasmania, Victoria, and Western Australia—have abolished the provocation defense reflecting substantive equality analysis and reform of criminal law. *Id.* at 34–35.
 39. “HONOUR,” *supra* note 27, at 13.
 40. Special Rapporteur on Violence Against Women, Its Causes and Consequences, *Rep. of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, ¶ 23, Human Rights Council, U.N. Doc. A/HRC/20/16 (May 23, 2012) (by Rashida Manjoo) [hereinafter *Gender-Related Killings of Women Report*].

beings who are constrained by men, the family, and the state.”⁴¹ This paradigm reduces a woman’s worth to her purity and chastity and positions her as a lesser human than a man who is held to have multidimensional worth. Lingering judicial accommodations, exemptions and reduced penalties for “crimes of honor” reinforce the power exercised by families and tribes over women, while elevating the value of men’s lives.⁴²

B. *Prevalence and Determinants in Context*

The prevalence of so-called honor crimes should be examined in the broader context of gender-based violence and the systemic structural hurdles to gender equality and dignity. Looking at the numbers of women killed for “honor” is a necessary, but crude, insufficient, and misleading indicator for the scope and impact of honor-based legal regimes fueled by social norms, and vice versa. Systemic statistics about the so-called honor crimes and analysis about their placement within broader gender-based violence are sorely lacking. Worldwide, more than a third of women experience sexual violence in their lifetime, and “38% of murders of women are committed by an intimate partner.”⁴³ It is unclear how many women are subject to crimes that restrict, injure, maim, and murder them under pretext of honor. In one of the only known global estimates, the United Nations Population Fund (UNFPA) contends that about 5,000 women are murdered for reasons of “honor” every year.⁴⁴ This figure that has not been updated since its publication in 2000.⁴⁵

Like most countries, Jordan lacks reliable data on honor crimes as well as comprehensive studies on gender-based violence. The latest nation-wide population study examining domestic violence, revealed that a “third of ever-married women have experienced physical

41. Dr. Didem Özalpat, *Gender, Sexuality and the Criminal Laws in the Middle East and North Africa: A Comparative Study*, 4 INT’L L. Y.B. 71, 71 (2011) (reviewing SHERIFA ZUHUR, GENDER, SEXUALITY AND THE CRIMINAL LAWS IN THE MIDDLE EAST AND NORTH AFRICA: A COMPARATIVE STUDY (2005), available at <http://dl.dropboxusercontent.com/u/64736171/GenderSexualityandCriminalLaws.pdf>).

42. *See id.*

43. *Fact Sheet: Violence Against Women*, WORLD HEALTH ORG. (last updated Oct. 2013), <http://www.who.int/mediacentre/factsheets/fs239/en/index.html>.

44. U.N. Population Fund, *Ending Violence Against Women and Girls*, State of the World Population 2000, 29 (2000), <http://www.unfpa.org/swp/2000/pdf/english/chapter3.pdf> [*Ending Violence Against Women and Girls*]. No updated estimates to this largely underreported practice are available. Kulczycki & Windle, *supra* note 24, at 1442.

45. Kulczycki & Windle, *supra* note 24, at 1442.

violence.”⁴⁶ In Jordan, a country of about 6.4 million primarily urban inhabitants,⁴⁷ the government estimates that about 20-25 women and girls are killed under the pretext of honor every year.⁴⁸ The same number has been cited since 1999, most recently in the government’s treaty compliance report to the UN Committee on the Elimination of All Forms of Discrimination Against Women in 2010. While in absolute terms the 20-25 figure may seem low, by some accounts it constitutes a quarter to a third of homicides in Jordan.⁴⁹ At any given time, 25 to 60 women and girls are kept in “protective” detention, placed there by administrative governors, to “protect” them from relatives seeking to kill them for tarnishing the family’s honor.⁵⁰ About a third of respondents in a 2007 study “personally knew somebody who had been threatened with an honor killing” or who had died in an honor killing and 4% had such a killing in their extended family.⁵¹ The number of reported victims and the scope of people aware of the commission of such crimes are at odds, reinforcing activists’ claims about the substantial under-reporting of the crime. Advocates assert that the number grossly underestimates the true scope of the phenomenon, mostly due to under-reporting and cases that are disguised as accidents or suicides.⁵²

Unlike global statistics that point to intimate partners as the most likely violent perpetrators against women, multiple studies confirm that the “typical” perpetrator of an “honor” crime is the victim’s youngest brother or male cousin, from her natal family, chosen for

46. DEP’T OF STATISTICS, JORDAN & CF INT’L, JORDAN POPULATION AND FAMILY HEALTH SURVEY 2012, 199 (Oct. 2013), <http://dhsprogram.com/pubs/pdf/FR282/FR282.pdf> [hereinafter POPULATION AND HEALTH SURVEY 2012].

47. *Population & Growth Rate Estimation, 1999-2012*, JORDAN DEP’T OF STATISTICS (2013), http://www.dos.gov.jo/dos_home_e/main/ (follow “Population and Housing” hyperlink; then follow “Demographic statistics” hyperlink; then follow “Population Estimation” hyperlink).

48. Comm. on the Elimination of Discrimination Against Women, *Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women*, ¶ 63, U.N. Doc. CEDAW/C/JOR/5 (Sept. 24, 2010) [hereinafter Jordan CEDAW Report 2010].

49. Stefanie Eileen Nanes, *Fighting Honor Crimes: Evidence of Civil Society in Jordan*, in DECONSTRUCTING SEXUALITY IN THE MIDDLE EAST 65, 71 (Pinar Ilkcaracan ed., 2008).

50. Special Rapporteur on Violence Against Women, Its Causes and Consequences, *Rep. of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Mission to Jordan*, ¶¶ 27–28, Human Rights Council, U.N. Doc. A/HRC/20/16.Add.1 (May 14, 2012) (by Rashida Manjoo) [hereinafter *Mission to Jordan*]; Eisner & Ghuneim, *supra* note 35, at 2.

51. Eisner & Ghuneim, *supra* note 35, at 2.

52. *Id.*

the task by a family council.⁵³ A younger relative is selected to preserve lower sentences meted to minors, “the higher income potential of older males in the family, and the high probability that if unmarried and childless, the youth can start a new life more easily once released from prison.”⁵⁴ “Honor killings” by husbands or other relatives are rare.⁵⁵ Notably, the considerations underlying the selection of the perpetrator—younger brother who will be more leniently sentenced—seem deeply influenced by the incentive structure of penalties illustrating the potent power of legal sanction.⁵⁶ Altering incentives then carries the potential of affecting corresponding behavior—whether by addressing leniency or extending penalty to all family members who collude in planning and committing such crimes.⁵⁷ Since both perpetrators and victims are typically young—the majority of victims are women under 24 years⁵⁸—juvenile justice laws must also be accounted for in a holistic analysis for reform.

To be effective, a feminist reform agenda must continuously tackle societal perceptions and justifications of discriminatory or violent acts. The numbers of femicide victims fail to fully capture the scope and impact of the practice. Even more alarmingly, there is no clear evidence that tolerance of so-called “honor killings” is decreasing.⁵⁹ Survey respondents in Jordan explained that according to custom and tradition, family honor depends on a girl’s behavior.⁶⁰ More than

53. Kulczycki & Windle, *supra* note 24, at 1452. Brothers of victims were the most frequent perpetrators (76%) followed by fathers (13%). MANSUR ET AL., *supra* note 18, at 50–51. The majority of perpetrators are young with 64% being under the age of 30 years old, and 42% of perpetrators being under 24 years old. *Id.* at 52.

54. Kulczycki & Windle, *supra* note 24, at 1452.

55. *See id.* at 1453. In contrast, in Pakistan, the majority of 1,957 women killed for “honor” between 2004–2007 were adult married women killed by their husbands for allegations of adultery. Nasrullah, *supra* note 37, at 195. Though most perpetrators are men, a mother related that she killed her newborn grandchild born out of wedlock in a secret home birth. She explained that: “I was terrified. If her father and brothers learned what happened they would have killed her and me. Honor is the most important thing in our family.” MANSUR ET AL., *supra* note 18, at 47.

56. Kulczycki & Windle, *supra* note 24, at 1452.

57. *See id.* at 1457.

58. More than half (54%) of all victims are under 24 years of age, and 13% of victims are girls under the age of 18, based on an analysis of 102 so-called “honor crimes” registered with government bodies between 2000–2009 and interviews with 29 convicted perpetrators. MANSUR ET AL., *supra* note 18, at 43–44, 48.

59. Kulczycki & Windle, *supra* note 24, at 1459.

60. TO BE A GIRL IN JORDAN, *supra* note 22.

80% of parents surveyed in a national study believe that “protecting a girl’s honour means protecting the family honour.”⁶¹ Any damage to the girls’ reputation damages that of the family; consequently, any actual or suspected transgressions by girls—but not by boys—can lead to swift reactions, such as the killing of the girl by her relatives to “restore” the honor of the family. The survey concluded that there is clear unequal treatment within the family, as the boy child’s reputation does not carry the same weight and his actions do not trigger the same consequences that might result in his murder.⁶²

A 2013 study, touted as “one of the first to attempt to gauge cultural attitudes to honour killings in the region,” surveyed the attitudes of 856 youths from 14 schools in Jordan’s capital, Amman.⁶³ The findings suggest that “about 40% of boys and 20% of girls believe that killing a daughter, sister, or wife who has dishonored the family can be justified.” Predictive attitudes in support of the practice were premised on “collectivist and patriarchal world views,” belief in the importance of “female chastity,” and general belief that personal use of force is morally justified.⁶⁴ Boys were more than twice as likely as girls to approve of honor killings.⁶⁵ About 70% of boys and 30% of girls agreed that “[i]t is okay to kill for honor,” generally signifying a deeper complexity of honor than that merely sanctioning killing a woman for sexual impropriety.⁶⁶

61. *Id.* at 49.

62. *Id.*

63. Eisner & Ghuneim, *supra* note 35, at 406; *Belief that Honour Killings are ‘Justified’ Still Prevalent Among Jordan’s Next Generation, Study Shows*, UNIV. OF CAMBRIDGE (June 20, 2013), <http://www.cam.ac.uk/research/news/belief-that-honour-killings-are-justified-still-prevalent-among-jordans-next-generation-study-shows> [hereinafter *Belief that Honour Killings are ‘Justified’*].

64. Eisner & Ghuneim, *supra* note 35, at 414; *Belief that Honour Killings are ‘Justified,’ supra* note 63 (“[R]eligion and intensity of religious beliefs are not associated with support for honour killings.”).

65. Boys from “traditional families” with low educational levels were the most likely to support the practice. Eisner & Ghuneim, *supra* note 35, at 414; *Belief that Honour Killings are ‘Justified,’ supra* note 63.

66. Eisner & Ghuneim, *supra* note 35, at 410. Interviews with 200 adults in three urban centers in Jordan in 2005–2006 painted a more complex picture: “95% disagreed/strongly disagreed with the statement that ‘honor killings are morally just’”; but “72% agreed that Jordanian culture requires that when promiscuity occurs, family honor should be cleansed through honor killing.” Kulczycki & Windle, *supra* note 24, at 1447, 1454 (citing ELLEN R. SHEELEY, RECLAIMING HONOR IN JORDAN: A NATIONAL PUBLIC OPINION SURVEY ON “HONOR” KILLINGS 19, 33 (2007)).

C. Scholarship Debates

Scholarship on “honor killings” emblematically separates the attendant human rights violations from the health impact and socio-cultural context (or generalized framework of gender-based violence), perhaps embodying a traditional divide in human rights discourse along the seemingly separate spheres of civil and political rights (e.g., non-discrimination, autonomy, privacy) and economic, social, and cultural rights (such as health).⁶⁷ Moreover, scholarship and advocacy around crimes based on notions of “honor,” and its corollary “shame,” address them separately from other relevant legal provisions and realities of women’s lives.⁶⁸

Recent scholarship emphasizes that “crimes of honor” transcend religion, cultures, societies, and geography, rooting them instead in a general patriarchal structure of oppression and the “privileging of male power and sexuality.”⁶⁹ Scholars of the Middle East and North Africa (MENA) region⁷⁰ lament the state’s role in reinforcing “entrenched patriarchal and other socio-cultural attitudes that give rise to these violent acts” of self-help vigilantism and in failing to intervene in the “private . . . context of honor killings.”⁷¹ Other scholars resist a patriarchal reading of the “honor killing” label arguing that “all systems of morality . . . are constraining,” and that men’s conduct also affects their kinswomen and family reputation.⁷² The stark difference is in the gendered roles and consequences for transgressing such constraints.

So-called “honor crimes” are a lightning rod for impassioned and conflicting reactions among scholars and communities. Some groups in countries with such provisions champion them as reflective of their traditional values.⁷³ Other groups consider them inapposite to local

67. See Lynn Welchman & Sara Hossain, *Introduction: ‘Honour,’ Rights and Wrongs*, in “HONOUR,” *supra* note 27, at 1, 3–5.

68. Radhika Coomaraswamy, *Preface: Violence Against Women and ‘Crimes of Honor,’* in “HONOUR,” *supra* note 27, at xi.

69. See, e.g., Silvia Pimentel et al., *The ‘Legitimate Defence of Honour,’ or Murder with Impunity? A Critical Study of Legislation and Case Law in Latin America*, in “HONOUR,” *supra* note 27, at 245.

70. MENA remains a commonly used label for the region in the rule of law field, though the terminology of “West Asia” is preferred by some as more neutral of Colonial implications.

71. Kulczycki & Windle, *supra* note 24, at 1455.

72. Lila Abu-Lughod, *Seductions of the “Honor Crime,”* 22 DIFFERENCES: A J. FEMINIST CULTURAL STUD. 17, 21 (2011).

73. Coomaraswamy, *supra* note 68, at xii.

religion and deeply violative of basic rights.⁷⁴ Feminist scholarship lacks consensus on ways to frame the phenomenon or to tackle its adverse consequences for women. Some legal scholars argue for a crime of passion, as opposed to honor-based crime defense, seeking to limit the breadth of potential victims and excuses.⁷⁵ Others counter that judges and popular perceptions confound the two, as do the courts in Jordan, by drawing on both fit of passion and insult to honor to reduce sentences.⁷⁶

Critics of the Western focus on sensational “honor killings” reject the framing of “culture” or religion, specifically Islam, as the sole cause for such killings, pointing to the much greater numbers of other forms of violence against women, particularly in non-Muslim-majority countries.⁷⁷ Another analysis equates harm to “honor” with damage to reputational property that should be held by the woman without reference to her sexuality and suggests compensation in line with redress for crimes against property, positioning women as the potential holders of honor property.⁷⁸ That proposal however delinks “honor crimes” analysis from the broader context of legal systems replete with evident and hidden discriminatory provisions and practices.

As the sections below illustrate, efforts to repeal isolated legal provisions related to “honor killings” without reform of broader strands of legal “paternalistic protectionisms” and other harmful laws are short sighted at best, and harmful at worst.⁷⁹ For example, the repeal of the provision which incentivizes a rapist to marry his victim to avoid prosecution will not magically dissipate the survivor’s deeply restricted options in law and society. In fact one of her only tangible solutions—a quick marriage—might no longer be available, while the possibility of a reduced penalty for her injury or killing by a relative incensed at her tarnished reputation remains.

74. *Id.*

75. *See, e.g.*, Abu-Odeh, *Comparatively Speaking*, *supra* note 36, at 288.

76. JORDAN PENAL CODE arts. 340 (relating to honor), 98 (relating to passion/fit of fury); Catherine Warrick, *The Vanishing Victim: Criminal Law and Gender in Jordan*, 39 *LAW & SOC’Y REV.* 315, 322–23 (2005). “[A]lthough the basis for an Article 98 claim concerns passion rather than honor, the distinction between the two is sometimes blurred by the courts.” *Id.* at 339.

77. Abu-Lughod, *supra* note 72, at 18.

78. Johanna Bond, *Honor as Property*, 23.2 *COLUM. J. GENDER & L.* 202, 210 (2012).

79. Kulczycki & Windle, *supra* note 24, at 1458–59.

II. HEALTH CONSEQUENCES OF HONOR-BASED LEGAL SYSTEMS

By analyzing the under-examined health impact of honor-based systems, this section advances a health and human rights analysis of the notions that undergird legal systems with provisions that condone resorting to “honor” to justify violations of women’s rights. Honor-based legal systems impose a female-protectionist approach premised on gender stereotypes about a fairer, but weaker and dependent-prone sex. In exchange for such paternalistic “protection,” women pledge to an unspoken bargain of conduct control and policing, lest they appear to have detracted from their own value and hence the collective value of their family, and as such forgo all social and legal protections.

The health harms implicit in this bargain form the lining of ideological assumptions that inform institutional and legal regulation of women as subordinates, but also serve to harm the community as a whole. There is an alarming dearth of research on the health impact, such as the physical, psychological, and emotional toll inherent in societal order undergird by adverse sex stereotypes enshrined in law (and vice versa).⁸⁰ Very few studies examine broad “honor crimes” related health impact. Despite the widespread global epidemic of gender-based violence and decades of legal reform initiatives, the persistent lack of systemic data collection and the understudied health impact curtail the imaginative potential of advocacy and scope of analysis needed for effective, feminist rule of law reform.

This section describes the epidemiology of five categories of populations affected by different and cumulative health harms that flow from honor-based, or adverse sex stereotypes-based legal systems.⁸¹ It may be the first attempt to classify sub-groups affected by the “disease” to help identify harms and syndromes, with an eye to conjure new interventions that account for both health impact and

80. See, e.g., Gina Dillon et al., *Mental and Physical Health and Intimate Partner Violence Against Women: A Review of the Literature*, 2013 INT’L J. FAM. MED., Jan. 2013, at 1, 1–3 (discussing the health impact on women that are victims of intimate partner violence in which research was “restricted to violence against women from a current or previous intimate partner”).

81. *Epidemiology*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/epidemiology> (last visited Jan. 11, 2015) (defining epidemiology as “the study of how disease spreads and can be controlled”).

deficient legal reform.⁸² The five overlapping categories are A) “victimized/disgraced women”; B) other women in the community; C) male relatives as monitors and enforces; D) paramours; and E) collective community toll.

A. “Victimized/Disgraced Women”

Other than being killed, the women who are injured, or maimed suffer the most obvious harms to their psychological and physical health.⁸³ Women perceived to have transgressed (shifting) norms of conduct are often likened to a disease themselves.⁸⁴ A “disgraced woman” is like an infection that must be cleansed: “A woman is like an olive tree. When its branch catches woodworm, it has to be chopped off so that the society stays clean and pure.”⁸⁵

If they are pregnant and survive an attempt on their lives by relatives, they must carry to term the product of the rape or incest, placing them at both the risks related to pregnancy and childbirth and the psychological impact of carrying and birthing the product of a violent act.⁸⁶ Such sexual violence often result in unwanted

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82. See generally *id.* (applying the definition of epidemiology to the study of sex stereotypes-based legal systems equates such legal systems to a disease and focuses attention on how practices such as “honor crimes” might spread and be controlled).
83. *Ending Violence Against Women and Girls*, *supra* note 44 (“Gender-based violence — in various forms including rape, domestic violence, ‘honour’ killings and trafficking in women — exacts a heavy toll on mental and physical health.”).
84. Kathryn Christine Arnold, *Are the Perpetrators of Honor Killings Getting Away with Murder? Article 340 of the Jordanian Penal Code Analyzed Under the Convention on the Elimination of All Forms of Discrimination Against Women*, *Comment*, 16 AM. U. INT’L L. REV. 1343, 1354–57 (2001).
85. Rana Hussein, *Murder in the Name of Honor* 24, available at <http://www.femtales.com/wp-content/uploads/papers/NameofHonor.ppt> (quoting tribal leader, Trad Favez).
86. See MARIA DE BRUYÑ, *VIOLENCE, PREGNANCY, AND ABORTION ISSUES OF WOMEN’S RIGHTS AND PUBLIC HEALTH: A REVIEW OF WORLDWIDE DATA AND RECOMMENDATIONS FOR ACTION* 21–24 (Chapel Hill: IPAS, 2ed. 2003), available at <http://www.ipas.org/~media/Files/Ipas%20Publications/VioPregAbortionEng2.ashx>. “Forced pregnancy” is one of the categories that under certain systemic conditions can trigger a charge of “crimes against humanity” under the Rome Statutes of the International Criminal Court. Rome Statute of the International Criminal Court, art. 7(g), July 17 1998, A/CONF. 183/9. Notably, prior to the 1998 Statute of the International Criminal Court, the Geneva Conventions which prohibited rape in situations of armed conflict defined rape in terms of an offense against the woman’s honor rather than a violent, sexual offence. Convention Relative to the Protection of Civilian Persons in Time of War, art. 27, ¶ 2, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims in International Armed Conflicts, Aug. 12, 1949 art 76(1), U.N. Doc. A/32/144 (June 8, 1977), in 16 I.L.M. (1977) 139.

pregnancies, high-risk pregnancies, and pregnancy-related problems, including miscarriage, pre-term labor, and low birth weight, and subjects victims to sexually transmissible infections, including HIV/AIDS.⁸⁷ Fear of subsequent retaliation by abusers or violence by relatives seeking to restore “lost honor” prevent women from accessing health care services for the host of potential physical, sexual, and mental health harms.

Women pregnant from either forced or consensual sex might resort to unsafe abortion.⁸⁸ A cleaning woman from impoverished East Amman raped by her employer handled her unwanted pregnancy by “taking massive pain killers. . . punching [her] belly with [her] hands [and] pushing a gas cylinder on to [her] belly to abort the child.”⁸⁹ Abortion is illegal in Jordan and there are no official statistics on the incidence and harms of unsafe abortion.⁹⁰ A 2007 survey revealed that post-abortion cases constituted the second most frequent cause of admission to obstetric departments in public hospitals in Jordan.⁹¹ Worldwide statistics confirm that unsafe abortion exacts a heavy toll: every year 8.5 million women experience complications from unsafe abortion that require medical attention,⁹² an estimated 47,000 women die from unsafe abortions,⁹³ and millions are temporarily or permanently disabled.⁹⁴ It is of little relief for a “disgraced” woman

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87. Linda G. Haddad et al., *Screening for Domestic Violence in Jordan: Validation of an Arabic Version of a Domestic Violence Against Women Questionnaire*, 3 INT’L J. WOMEN’S HEALTH 79, 80 (2011), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3061851/#b2-ijwh-3-079>.
88. *See Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2008*, WHO, http://whqlibdoc.who.int/publications/2011/9789241501118_eng.pdf?ua=1 (last visited Jan. 11, 2015).
89. *Getting Away with Sexual Abuse in Jordan*, IRIN, (Jan. 27, 2014), <http://www.irinnews.org/report/99544/getting-away-with-sexual-abuse-in-jordan>.
90. Jordan Report to the Comm. on the Elimination of Discrimination Against Women, *Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women*, ¶ 196, U.N. Doc. CEDAW/C/JOR/3-4 (Mar. 10, 2006) [hereinafter Jordan CEDAW Report 2006].
91. Sabry Hamza, *An Assessment of Post-Abortion Care Services in Ministry of Health Hospitals in Jordan*, USAID JORDAN, 1 (Oct. 2008), available at <http://www.hpcpromise.org/jo/sites/default/files/researches/articles/Assessment%20of%20PAC%20Services%20in%20MOH%20Hospitals.pdf>.
92. *Facts on Induced Abortion*, GUTTMACHER INST. (Jan. 2012), http://www.guttmacher.org/pubs/fb_IAW.pdf.
93. *Unsafe Abortion*, *supra* note 88, at 38.
94. *Preventing Unsafe Abortion*, WHO, http://www.who.int/reproductivehealth/topics/unsafe_abortion/hrpwork/en/ (last visited Jan. 11, 2015).

who survives an unsafe abortion, potentially with life-long injuries, that she may enjoy a lesser penalty for inducing the miscarriage.⁹⁵

Women who refuse to marry their rapists or are unwilling or unable to marry a paramour and carry to term must then anguish over the fate of their illegitimate child, who will be taken away at birth⁹⁶ and face a lifetime of discrimination, ridicule, and want. Children born out of wedlock constitute an additional sub-group of harmed individuals.⁹⁷ Women who fear violence and abuse by a trusted family member or intimate partner exhibit complex, deep psychological reactions including “loss of a sense of trust and safety and intense feelings of helplessness” compounded by “the impact of being hurt by someone who was thought to be caring and protective” which often results in “[h]igh anxiety, passivity and/or apathy.”⁹⁸ Typically, male relatives verbally threaten the woman during the time leading up to her attempted or actual killing.⁹⁹ Besieged by the psychological terrors of impending death, some women might consider suicide as welcomed relief.

“Disgraced” women thus face a Hobson’s choice between seeking shelter in one of few existing institutions with meager chances of rebuilding their lives, as a woman living alone is rarely an option in conservative Jordan,¹⁰⁰ or be subject to “protective detention” and risk languishing in prison. Women who opt for or become subject to “protective detention”¹⁰¹ face the added stress, anxiety, and depression that accompany incarceration and the stigma of detention once released, often to the very family member seeking to harm them.¹⁰² There is also evidence that poor women may be more frequent victims of honor crimes,¹⁰³ which would require further

95. For a discussion of Jordan laws on abortion see *infra* notes 344–47 and accompanying text.

96. See *infra* text accompanying notes 319–326.

97. See *infra* text accompanying note 325.

98. Muntaha Gharaibeh & Arwa Oweis, *Why Do Jordanian Women Stay in an Abusive Relationship: Implications for Health and Social Well-Being*, 41 J. NURSING SCHOLARSHIP 376, 377 (2009).

99. Human Rights Watch, *Honoring the Killers: Justice Denied for “Honor” Crimes in Jordan* 11 (April 2004), available at <http://www.hrw.org/sites/default/files/reports/jordan0404.pdf>.

100. *Mission to Jordan*, *supra* note 50, ¶ 83 (pointing out that survivors of violence are unable “to rebuild their lives independently, as this is viewed as socially unacceptable”).

101. *Id.* ¶¶ 27–28.

102. Human Rights Watch, *supra* note 99, at 1.

103. MANSUR ET AL., *supra* note 18, at 53.

study of the intersectional realities of poverty, class, and gender leading to “honor crimes” and their associated health harms.

B. Other Women in The Community

The prospect of gender-related honor killings serves the same aim as the threat of rape. Some feminists describe rape as “nothing more or less than a conscious process of intimidation by which all men keep all women in a state of fear.”¹⁰⁴ Arguably, the intimidation is even greater for women in honor-based legal systems who are subject to constant, extreme scrutiny by family and society. The ever-present threat of so-called honor killings, even if not nearly as prevalent as sexual or other physical violence, serves as a terrorizing tool used to preserve social order through fear. It is a tool that is reinforced and encouraged by a legal system that weighs the severity of the “disgrace” or violation to the honor of the family, as an inverse calculation for the severity of the penalty for violent vigilante “re-instatement” of collective honor.¹⁰⁵

Women know and dread the consequences for actual and, even more so, suspected or perceived transgressions. In a study of Jordanian women about experiences and beliefs regarding family violence, women cited “unmet gender role expectations” as the most common reason for violence against women in Jordan.¹⁰⁶ The mere threat of “honor killing” instills grave fear and exacts a heavy psychological toll on women, as they might become its victims. In her mission report on Jordan, the UN Special Rapporteur on Violence against Women stressed the harms of “[a] culture of fear” where women mistrust and fear most “being judged by society” and “social stigma,” including if they speak up or seek legal redress for violence.¹⁰⁷ Psychological studies conducted in Pakistan affirm the adverse health effects of the existence of so-called honor killings in a society: “it threatens the safety, physical, and mental health of women, as ‘honor’ killings not only work as a mode of social control,

104. SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN, AND RAPE* 15 (1993).

105. Human Rights Watch, *supra* note 99, at 4–6.

106. Such role expectations extend both to women in terms of their reputation, education and jobs, reproduction, and household duties, and to men, as providers and protectors. Men perceived to fall short of their gender roles—e.g., unable to get a job or sufficient income for the family, or whose wife earns more—might resort to violence against his wife and children to assert his honor and pride. Diane S. Morse et al., “*An Effect that is Deeper than Beating*” *Family Violence in Jordanian Women*, 30 *FAM. SYS. HEALTH* 19 (2012).

107. *Mission to Jordan*, *supra* note 50, ¶ 84.

but a fear tactic, creating an environment of anxiety and risk and act to perpetuate very fearful notions.”¹⁰⁸

Women’s willingness to access often life-saving reproductive and sexual services suffers when they fear stigma and legal repercussions if they seek such care.¹⁰⁹ Unmarried women, in particular, might fear availing of services that might reveal a broken hymen or lead to a virginity test that could result in their indictment for unlawful extramarital relations.¹¹⁰ Reproductive cancer screening services in Jordan are woefully underutilized.¹¹¹ Barely 28% of women over 35 have ever had a Pap smear test for early detection of cervical cancer which every year claims dozens of women’s lives in Jordan.¹¹² Reluctance to access any sexual health services might also partly explain that while breast cancer is the most common cancer for women in Jordan, only a fifth of adult women ever had a clinical breast examination.¹¹³ Rates are even lower in the more conservative badia southern region of Jordan.¹¹⁴

Beyond instilling fear, anxiety, and related mental stresses, the practice is linked to broader controls on women’s conduct and choices. “Honor crimes” are generally employed by family members to control “women’s sexual choices and limit[] their freedom of movement” and their conversations, friendships or choice of marriage partner.¹¹⁵ The punishment must be visible as it “serves a social objective, namely, influencing the conduct of other women.”¹¹⁶ The potential of murder by a family member produces trauma that often results in women and girls limiting their own rights, such as choice of spouse, field of study, preferred profession, or work outside the home.¹¹⁷ Damage to a family’s reputation could include a married

108. Sujay Patel & Amin Muhammad Gadit, *Karo-Kari: A Form of Honour Killing in Pakistan*, *TRANSCULTURAL PSYCHIATRY* 683, 691 (2008).

109. Mohannad Al Nsour et al., *Breast and Cervical Cancer Screening Among Women in Jordan: Findings from the Behavioural Risk Factor Surveillance System – 2007*, 4 *OPEN BREAST CANCER J.* 1, 1, 6 (2012), available at <http://benthamscience.com/open/tobcanj/articles/V004/1TOBCANJ.pdf>.

110. See Lama Abu-Odeh, *Honor Killings and the Construction of Gender in Arab Societies*, 58 *AM. J. COMP. L.* 911, 917–18 (2010) [hereinafter Abu-Odeh, *Honor Killings*].

111. Al Nsour, *supra* note 109, at 1.

112. *Id.* at 4.

113. *Id.*

114. *Id.*

115. Gender-Related Killings of Women Report, *supra* note 40, ¶ 45.

116. *Id.*

117. Nadera Shalhoub-Kevorkiyan, *Researching Women’s Victimisation in Palestine: A Socio-Legal Analysis*, in “HONOUR,” *supra* note 27, at 168.

woman seeking help for family violence or being falsely suspected of having an affair due to witnessed interaction with a male.¹¹⁸

The greater the number of women in public spaces, such as in higher education, in the job market,¹¹⁹ in politics, the greater the perceived need for control and fear. The range of suspect behaviors that might result in reprimands at best, or killing at worst, has thus widened which results in more severely limiting women's activities.¹²⁰ Women must negotiate their everyday interactions with men with extreme caution and care. They must police their own conduct as well as harshly monitor that of their peers in an environment of anxiety, fear, and risk, where gossip and rumor could ignite "honor-correcting" violence. Women must police the behavior of related females "as the consequences of dishonor affect the entire family"¹²¹ including their own options and value. Such a culture of fear disempowers women and limits "women's active participation in the country's economic, political and social development."¹²²

C. *Male Relatives as Monitors and Enforcers*

Men carry the burden of monitoring, policing, and ultimately punishing their female relatives.¹²³ They are expected to resort to a violent act against a loved sister, daughter, or aunt, to "redeem" the collective honor of the family. Families or communities may impose great pressure on those selected to do the killing—many whom tend to be younger male siblings or cousins.¹²⁴ Studies of the practice in west Asia explain that women's compromised sexual purity

118. One Jordanian woman explained that "[m]y husband's unmarried brother was sometimes coming and asking for a cup of tea. When my husband came and saw his brother sitting, he started slapping me and once he pulled me outside the house to his car where he wanted to get some gasoline for burning me . . ." Morse et al., *supra* note 106, at 24.

119. Despite women having high educational attainment, females have not been similarly represented in the labor force. See DANIEL G. BATES & AMAL RASSAM, *PEOPLES AND CULTURES OF THE MIDDLE EAST* 246, 300 (2d ed. 2001).

120. See, e.g., Aida Touma-Sliman, *Culture, National Minority and the State: Working Against the "Crime of Family Honour" Within the Palestinian Community in Israel*, in "HONOUR," *supra* note 27 (stating that men are attempting to exert more control over women's new freedoms and mobility by punishing them for any behavior deemed an overt expression of their sexuality).

121. Kulczycki & Windle, *supra* note 24, at 1448.

122. *Mission to Jordan*, *supra* note 50, ¶ 84.

123. See, e.g., BATES & RASSAM, *supra* note 119, at 241 (stating that it is the role of the men in Islamic cultures to protect their honor by controlling the women around them).

124. Kulczycki & Windle, *supra* note 24, at 1453.

automatically damages the male relatives' "standing within the society" and subjects the entire family to "humiliation and indignity, and such shame can only be rectified by punitive actions, such as the death of the person who ostensibly brought shame over the family."¹²⁵

The pressure on the perpetrator to kill his sister or his mother on the basis of suspicion alone has been only tangentially recognized as also victimizing the male relative.¹²⁶ The chief judge of the High Criminal Court in Jordan lamented the mental harm to the killer: "Nobody can really want to kill his wife or daughter or sister. But sometimes circumstances force him to do this. Sometimes, it's society that forces him to do this, because people won't forget. *Sometimes, there are two victims - the murdered and the murderer.*"¹²⁷

The man thus must make a public showing of the act lest the community suggest that he is "socially impotent" or "without honor."¹²⁸ Honor, therefore, "is not only what women must keep intact to remain alive, but also what men must fiercely defend so as not to be reduced to women."¹²⁹ In "high honor" cultures, such as Jordan, men who fail to act swiftly and decidedly in the face of an affront to the honor lose social capital and prestige.¹³⁰ Honor becomes a particularly precious commodity when individuals may otherwise lack power in society in terms of status, wealth, and opportunity.

A study of youths in Jordan asserted that boys, who generally tend to hold more traditional views than girls, are able to rationalize attitudes in support of honor killings.¹³¹ These boys see such killings as "rightful because they serve to protect a valuable good—female chastity and, by implication, family honor—and because they punish

125. Eisner & Ghuneim, *supra* note 35, at 407.

126. Warrick, *supra* note 76, at 338.

127. *Id.*

128. See *Pakistan: Violence Against Women in the Name of Honour*, AMNESTY INT'L (Sept. 1999), <http://www.amnesty.org/en/library/asset/ASA33/017/1999/en/5d9201f4-e0f2-11dd-be39-2d4003be4450/asa330171999en.pdf>.

129. *Id.*; DAVID GHANIM, GENDER AND VIOLENCE IN THE MIDDLE EAST 43 (2009) ("A man's masculinity is socially constructed through his ability to deny other men sexual access to his female relatives. Therefore masculinity is also related to punishing transgressions of this moral code.").

130. See generally Joseph A. Vandello & Dov Cohen, *Male Honor and Female Fidelity: Implicit Cultural Scripts that Perpetuate Domestic Violence*, 84 J. PERSONALITY & SOC. PSYC., 997 (2003) (presenting a study on cultural perceptions of how a woman's infidelity reflects on the male in the relationship).

131. See Eisner & Ghuneim, *supra* note 35, at 10.

behavior that threatens this valuable good.”¹³² The self-interested tendency to displace responsibility for violent actions allows perpetrators “to perceive their actions as resulting from the dictates and teachings of authorities rather than from their own personal responsibility.”¹³³ The reduced penalties for so-called “crimes of honor” reinforce the respect and gratitude extended to perpetrators by members of their family and community and “further enhance a sense of displaced responsibility.”¹³⁴

Such scripted reactions are learned and acquired.¹³⁵ Yet, there is a dearth of research on the emotional and psychological toll of policing, monitoring, and harming a loved one for a presumably greater cause.¹³⁶ Given that the reaction is considered by psychologists to be learned and not an emotional knee jerk reaction, the role of law as reinforcing such conduct by minimizing its punishment cannot be understated.¹³⁷ It is in the discursive space of law and gender roles that these health and human rights costs are most hidden.

D. *Paramours*

In situations of consensual friendships or sexual relations, the male partners in the offending or transgressive conduct may also be subject to violence or murder.¹³⁸ The Penal Code in Articles 340 and 98 extend lenient punishment for the serious injury or murder of the lover.¹³⁹ The male lovers or boyfriends who are harmed, killed, shamed or who grieve the loss of their female companions are rarely acknowledged.¹⁴⁰ Generally, the male paramour need not fear

132. *Id.*

133. *Id.*

134. *Id.*

135. Danielle Hoyek et al., *Murders of Women: ‘Crimes of Honour’ Between Reality and the Law*, in “HONOUR,” *supra* note 27, at 132 (“The killer learns the motivations, the justification, and the crime in such a situation is . . . a consequence of . . . the rules and norms that the individual has acquired through the social process of upbringing. These values and patterns prepare him as a person for the commission of this type of crime, justified within the socio-cultural context in which he lives.”).

136. *Id.*

137. *Id.*

138. *Pakistan: Violence Against Women in the Name of Honour*, *supra* note 128, at 4 (“Significantly, the men who are killed for reasons of honour are invariably targeted by the male relatives of the women whose alleged breach of the code of honour constitutes the rationale for such acts.”).

139. JORDAN PENAL CODE arts. 98, 340.

140. JORDAN PENAL CODE art. 98.

violence by his own family (who would not be privy to reduced penalty), and although he may be targeted, so-called honor killings overwhelmingly victimize women.¹⁴¹

Same-sex lovers have also been targeted under the guise of “honor killings” as such conduct likewise shames the family.¹⁴² A UN High Commissioner for Human Rights report noted cases of same sex couples who have been subject to so-called honor killings:

[Lesbian, gay, bisexual and transgender] LGBT persons are also among the victims of so-called “honour” killings, carried out against those seen by family or community members to have brought shame or dishonour on a family, often for transgressing gender norms or for sexual behaviour, including actual or assumed same-sex sexual activity.¹⁴³

Human Rights Watch documented such cases in Iraq, which resonate with activists in Jordan (though not as well documented).¹⁴⁴ In Iraq, men “faced violence or murder because they were not ‘manly’ enough, incurring shame on the whole extended household.”¹⁴⁵ Unlike in Iraq, consensual homosexual relations are not technically outlawed in Jordan, but the stigma and societal condemnation are similar.¹⁴⁶ Under Jordanian law, adultery prosecution may only commence upon a complaint by a spouse or a male guardian.¹⁴⁷ Finally, paramours might be severed from close male friends as they have broken the unspoken pact of mutual virginity and keeping their respective female relatives off bounds.¹⁴⁸

141. Kulczycki & Windle, *supra* note 24, at 1453.

142. Report of the U.N. High Comm’r for Human Rights, *Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity*, 19th Sess., ¶¶ 40–44, U.N. Doc. A/HRC/19/41 (Nov. 17, 2011).

143. *Id.* ¶ 25.

144. “*They Want Us Exterminated*”: *Murder, Torture, Sexual Orientation and Gender in Iraq*, HUM. RTS. WATCH 43 (Aug. 2009), available at <http://www.hrw.org/sites/default/files/reports/iraq0809webwcover.pdf>; see also COUNTRY RESEARCH SECTION OF THE DEP’T OF IMMIGRATION & CITIZENSHIP, *SEXUAL MINORITIES – JORDAN 10* (July 2009), available at http://www.justice.gov/eoir/vll/country/australian_refugee_review_tribunal/jordan/JOR310709-aus_jordan_sexual_minorities_200907.pdf.

145. “*They Want Us Exterminated*,” *supra* note 144.

146. *Id.* at 55.

147. See *infra* note 254 and accompanying text.

148. Abu-Odeh, *Honor Killings*, *supra* note 110, at 943.

E. Community

There are collective health harms emanating from an atmosphere of fear and threat that requires every woman to police herself as well as other women's conduct, and for men to serve as constantly vigilant vigilantes, and to rationalize resorting to aggression to resolve perceptions of compromised honor. A study of villages in Pakistan warns that "honor killing has immense untoward effects on the physiological, psychological, and sexual health of young people in the community. The fear of being a victim of honor killing impels youth to indulge in other forms of unconventional sexual practices like . . . child sex, and bestiality."¹⁴⁹

Perhaps the most harmful health impact on the community and the society is the lingering acceptance and justification of violence for stepping outside narrowly-construed gender stereotypes and roles.¹⁵⁰ Most women (70%) in Jordan justified wife beating for various reasons such as if the wife betrays her husband (65%) or if she insults him (38%).¹⁵¹ This rate of acceptance of violence is higher than exhibited by women in neighboring countries such as Egypt, Iraq, and Turkey.¹⁵² A study of seven Associations for Family Planning and Protection clinics in Jordan revealed that 97.2% of women reported experiencing controlling behaviors as the most prevalent form of domestic violence, 73.4% reported experiencing

149. Ashfaque Talpur, Abstract, *Exploring the Impact of Honor Killing on Sexual Behavior and Perceptions of Sexuality Among Young People: A Comparative Study in Two Villages of Sindh, Pakistan*, 11 CULTURE, HEALTH & SEXUALITY (SPECIAL ISSUE), S1, S99–100 (2009).

150. DEP'T OF STATISTICS, JORDAN & MACRO INT'L, JORDAN POPULATION AND FAMILY HEALTH SURVEY 2007, 163 (Aug. 2008), http://pdf.usaid.gov/pdf_docs/PNADN523.pdf [hereinafter POPULATION AND HEALTH SURVEY 2007].

151. POPULATION AND HEALTH SURVEY 2012, *supra* note 46, at 193. Notably, while still comparatively high, the rates of acceptance of "wife beating" seem to have dramatically decreased compared with results from the 2007 Population and Health Survey. In 2007 90% of women (compared with 70% in 2012) justified wife beating, primarily if the wife betrays her husband (88% in 2007 compared with 65%, in 2012), or if she insults him (66% in 2007 compared with 38% in 2012). POPULATION AND HEALTH SURVEY 2007, *supra* note 150, at 163. The 2012 survey did not ask women whether "disobeying one's husband" justifies beatings, which in 2007 elicited an affirmative response from 55% of surveyed women. *Id.*

152. Cari Jo Clark, Impact of Violence Against Women on Maternal Health in the Middle East, Address at Univ. of Minn. Medical School, (Apr. 8, 2013), <http://www.wilsoncenter.org/sites/default/files/Wilson%20Center%20Clark%202013%204%2018.pdf>.

psychological violence, and 31.2% reported experiencing physical violence.¹⁵³ According to the latest available national health survey addressing domestic violence, a third of ever-married women experienced physical violence, most commonly at the hands of a current husband (57%), followed by brothers (one in four women or 27%), fathers (one in five women or 21%), and mothers (10%).¹⁵⁴ Overall, 32% of ever-married women experienced emotional, physical, and/or sexual violence from their husband.¹⁵⁵

Patterns of control, psychological, and physical abuse are fueled by laws, policies and practices which reinforce men's policing of women's conduct, or risk greater harms of social disapproval and shame.¹⁵⁶ "Societies exhibiting a culture of honor place a high premium on strength and social regard (especially among males) in connection with one's person, family, reputation, and property, presumably because economic and social factors made such priorities socially adaptive at some point in time."¹⁵⁷ The threat of "honor killing" serves as a powerful tool of subordination and oppression. The costs of that threat are immeasurable, not only for women but for national development.¹⁵⁸ By leaving non-state actors to exact a

153. C.J. Clark et al., *A Prevalence Estimate of Intimate Partner Violence in Jordan*, 15 E. MEDITERRANEAN HEALTH J. 880, 884–85 (2009).

154. POPULATION AND HEALTH SURVEY 2012, *supra* note 46, at 202. Compare with rates reported in the previous, 2007 survey: physical violence by current or previous husband (57% in 2012 compared with 64% in 2007), followed by brothers (27% in 2012 compared with 20% in 2007), fathers (21% in 2012 compared with 20% in 2007), and mothers (10% in 2012 compared with 20% in 2007). POPULATION AND HEALTH SURVEY 2007, *supra* note 150, at 163.

155. POPULATION AND HEALTH SURVEY 2012, *supra* note 46, at 199.

156. *See ICPD AND HUMAN RIGHTS: 20 Years of Advancing Reproductive Rights Through UN Treaty Bodies and Legal Reform*, CTR. FOR REPRODUCTIVE RIGHTS & UNITED NATIONS POPULATION FUND 3 (June 2013), http://www.unfpa.org/rights/docs/icpd_and_human_rights_20_years.pdf [hereinafter CRR & UNFPA] (providing that states must take measures to combat laws, policies, and practices that interfere with individuals' rights to autonomous decisions and contribute to the diminished status of women); *see also supra* notes 123–30 (discussing males' roles as "monitors and enforcers" of their female relatives).

157. Ryan P. Brown et al., *School Violence and the Culture of Honor*, 20 PSYCHOL. SCI. 1400, 1400 (2009). Extensive studies in the United States have demonstrated that communities with pronounced "culture of honor" tend toward violent defense of one's honor and endorse attitudes supportive of violence in the service of restoring or defending one's reputation, family, or property. Studies claim that "culture-of-honor states are typically hotter, poorer, and more socially unstable than non-culture-of-honor states, and any of these differences might explain the apparent association between culture of honor and violence." *Id.* at 1400–01.

158. *See Human Rights Watch, supra* note 99, at 6 ("Violence against women, including 'honor' crimes, is a matter of concern to the royal family of Jordan, which has

deadly price for perceived offenses to collective honor, the state fails not only the victims, but society at large, as it disavows its most basic role as enforcer of rule of law and human rights. Feminist legal reform should thus account for the intersection of health and human rights violations at play and fashion concerted strategy accordingly.

III. LINKING HONOR, HEALTH, AND HUMAN RIGHTS

A discursive shift to health and human rights would serve to more effectively tackle notions of “honor” and gender to expose the assumptions that underlie laws, policies, and practices that legitimize “honor-driven”¹⁵⁹ gender control and policing, especially as women’s roles are changing and evolving with higher educational attainment. Such framing provides a more “neutral” and disarming lens of analysis and advocacy moving from sensational cases and spikes in public attention toward a holistic reform agenda.

“Honor-based” crimes are a major public health and human rights concern. They form a feedback loop of inter-related violations and harms that amplify and justify abuse against women.¹⁶⁰ Removing one ring in this—that is, amending one aspect or legal provision—fails to disrupt the feedback loop, as it continues to affect women in multiple ways. In Jordan, a woman pregnant from rape may not legally access an abortion, though she may perversely benefit from a reduced penalty for inducing a miscarriage to preserve her family’s “honor.”¹⁶¹ Lack of enforced legal protections for free and consensual marriages taint one law, while the criminal law encourages rapists to marry their victims to escape prosecution.¹⁶²

suggested that raising the status of women is key to ending such violence as well as to economic development.”); see also Kenneth Lasson, *Bloodstains on a “Code of Honor”: The Murderous Marginalization of Women in the Islamic World*, 30 WOMEN’S RTS. L. REP. 407, 409–10 (2009) (asserting that rights of women are regressing in many Islamic nations due to the absence of strong central governments and presence of tribal leaders and, instead, the presence of tribal leaders and warlords).

159. See *infra* note 409.

160. Josyan Madi Skaff, *Gender-Based Violence in the Middle-East: A Review*, 178 VIOLENCE AGAINST WOMEN & MENTAL HEALTH 12, 12 (2013) (cautioning that “researchers, advocates and health care professionals must work together to develop culturally sensitive interventions” that emphasize “access to education, civil and political rights for all the women in the region”).

161. See *infra* note 214.

162. See *infra* note 214.

Addressing the mitigating circumstances for so-called honor crimes alone will hardly resolve this complex reality.

This section will position “crimes of honor” within a human rights and health framework to illustrate the critical importance of examining the health consequences tied to the human rights violations cascading from such crimes. It builds on the epidemiology of personal and public health consequences that flow from an honor-based legal system toward crafting a more complex, nuanced, and comprehensive feminist reform agenda.

A. *Situating “Honor crimes” in Health and Human Rights Discourse*

Gender-related killings and violence have been recognized as a major public health concern¹⁶³ and a serious violation of basic human rights, including dignity, freedom from inhumane degrading treatment and torture, non-discrimination and equality, and the rights to health, autonomy, security, and life.¹⁶⁴ Gender-based violence generally entails control of (primarily) women’s conduct, sexuality, and physical, mental, and reproductive health and rights. Its causes and consequences dwell at the juncture of health and human rights.

Health and Human Rights

Public health and human rights analysis highlights the costs and benefits of realizing or failing to respect, protect, and promote human rights,¹⁶⁵ particularly for marginalized groups or devalued communities. Promoting and protecting the right to health is inextricably linked to the realization of human rights. In turn, violations or neglect of human rights can have serious health

163. *Ending Violence Against Women and Girls*, *supra* note 44; see also WORLD BANK, *Gender-Based Violence, Health and the Role of the Health Sector* (June 2009), <http://siteresources.worldbank.org/INTPHAAG/Resources/AAGGBVHealth.pdf>; see generally WHO *Sexual and Reproductive Health, Sexual Violence*, http://www.who.int/reproductivehealth/topics/violence/sexual_violence/en/ (“Sexual violence is a serious public health and human rights problem with both short- and long-term consequences on women’s physical, mental, and sexual and reproductive health.”) (last visited Jan. 11, 2015).

164. Convention on the Elimination of All Forms of Discrimination Against Women, 11th Session, January 20-30, 1992, *General Recommendation No. 19: Violence Against Women*, [hereinafter CEDAW General Recommendation 19] available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#rem19>.

165. Jonathan Mann et al., *Health and Human Rights*, in *HEALTH AND HUMAN RIGHTS: A READER* 7, 18 (Jonathan M. Mann & Michael A. Grodin eds., 1999).

consequences, such as the harms from gender-based violence.¹⁶⁶ The 1946 founding constitution of the World Health Organization declares that “[t]he enjoyment of the highest standard of health is one of the fundamental rights of every human being”¹⁶⁷ It defines health holistically to mean a “state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”¹⁶⁸

This expansive definition of health is replicated, reinforced, and elaborated upon by the UN Treaty Monitoring Bodies interpreting the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of All Forms of Discrimination Against Women, as well as through international community consensus documents.¹⁶⁹ The Committee on Economic, Social, and Cultural Rights, which oversees compliance of its namesake convention, stressed that even the basic approach of “prevention, treatment and control of epidemic, endemic, occupational and other diseases”¹⁷⁰ requires the “promotion of social determinants of good health, such as . . . gender equity.”¹⁷¹

Social determinants of health, or the conditions and circumstances that shape people’s lives, are affected by access to power, resources, and to claiming rights. Women’s and girls’ lives are often the product of intersecting factors of inequalities and inequities which substantially affect their health and their communities. The WHO

166. WHO, *Linkages Between Health & Human Rights*, <http://www.who.int/hhr/HHR%20linkages.pdf?ua=1> (last visited Jan. 11, 2015).

167. WHO, *Constitution of the World Health Organization* (1986), <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1>.

168. WHO, Preamble to the Constitution of the World Health (45th ed. Supp. Oct. 2006). The definition has not been amended since 1948. See *WHO Definition of Health*, WHO, <http://www.who.int/about/definition/en/print.html> (last visited Jan. 11, 2015).

169. Fourth World Conference on Women, Beijing, China, Sept. 4-15, 1995, *Report of the Fourth World Conference on Women*, ¶ 94, U.N. Doc. A/CONF.177/20/Rev.1 (Oct. 17, 1995) [hereinafter Beijing Platform for Action]; International Conference on Population and Development, Cairo, Egypt, Sept. 5-13, 1994, *Report of the International Conference on Population and Development*, ¶ 7.2 U.N. Doc. A/CONF.171/13 (Oct. 18, 1994) [hereinafter ICPD Programme of Action].

170. International Covenant on Economic, Social and Cultural Rights, art. 12.2(c), *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3, 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

171. Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Article 12 of the International Covenant on Economic, Social and Cultural Rights), ¶ 16, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter CESCR, General Comment No. 14 on Health].

asserts that “gender inequality damages the physical and mental health of millions of girls and women across the globe, and also of boys and men” and promotes “taking action . . . to address women’s rights to health is one of the most direct and potent ways to reduce health inequities.”¹⁷² Legal systems premised on gender-stereotypes exact health tolls in multiple dimensions: the health toll of hyper-vigilance and policing of “proper” behavior, the harms of gender-based violence, and the adverse health outcomes due to legally-entrenched intersecting social hierarchies.

Reproductive and Sexual Rights

Gender stereotypes, particularly those premised on notions of women as repository of communal honor, are enshrined in laws and practices designed to regulate women’s chastity and cabin their behavior. The emergence of reproductive and sexual rights in international and regional human rights documents tackles gender inequality from the epicenter of health and human rights. The overlap of rights to health and human rights, such as the right to non-discrimination, self-determination (autonomy) and privacy¹⁷³ birthed the right to reproductive health and subsequently sexual health and rights.¹⁷⁴ The 1994 ICPD Programme of Action reflected

172. WHO, *Social Determinants of Health: Women and Gender*, http://www.who.int/social_determinants/themes/womenandgender/en/ (last visited Jan. 11, 2015).

173. CRR & UNFPA, *supra* note 156, at 3 (“Autonomy is a central component of the rights to life, privacy, and liberty, amongst others, and includes individuals’ rights to make informed decisions about their bodies, to determine the number and spacing of their children, and to be free from coercion, discrimination and violence.”); CEDAW, *General Recommendation 24: Article 12—Women and Health*, 20th Sess., ¶ 31, U.N. Doc. A/54/38/Rev.1 (1999) [hereinafter CEDAW General Recommendation 24] (“States parties should also, in particular, [r]equire all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice”); ICPD Programme of Action, *supra* note 169, ¶ 4.1.

174. Mindy Jane Roseman & Alice M. Miller, *Symposium: Normalizing Sex and Its Discontents: Establishing Sexual Rights in International Law*, 34 HARV. J.L. & GENDER 313, 331–32 (2011). Key human rights relevant to reproductive rights include the rights to life, liberty and security of person, health, to decide the number and spacing of children, to consent to marriage and to equality in marriage, privacy, equality and non-discrimination, freedom from torture or other cruel, inhuman, or degrading treatment or punishment, freedom from sexual and gender-based violence and harmful practices, access sexual and reproductive health education and family planning information, and enjoy the benefits of scientific progress. *Reproductive Rights Are Human Rights*, CTR. FOR REPRODUCTIVE RIGHTS 7 (2009), http://reproductiverights.org/sites/crr.civicactions.net/files/documents/RRareHR_final.pdf.

unprecedented international community consensus by 179 states proclaiming reproductive rights are human rights already recognized in domestic and international law.¹⁷⁵ The ICPD reiterated the WHO's definition of health and explicitly linked it to "all matters relating to the reproductive system and to its functions and processes,"¹⁷⁶ including the right to decide if, when, and how frequently to reproduce.¹⁷⁷ Reproductive health was defined as striving for "[e]qual relationships between men and women in matters of sexual relations and reproduction, including full respect for the physical integrity of the human body, [and] mutual respect and willingness to accept responsibility for the consequences of sexual behaviour."¹⁷⁸ The watershed 1995 Fourth World Conference on Women in Beijing reinforced that the "human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality . . . free of coercion, discrimination, and violence."¹⁷⁹

State Duty to Gender Health Rights

Gendering the analysis of health and human rights grounds it in the lived experiences of women and men and invokes international

175. CRR & UNFPA, *supra* note 156, at 2 (concluding that "states agreed that coercive laws, policies, and practices that do not respect individuals' autonomy and decision making must be eliminated" through "legal, policy, budgetary, and other measures").

176. ICPD Programme of Action, *supra* note 169, ¶ 7.2.

177. *Id.*; CRR & UNFPA, *supra* note 156, at 1 (explaining that reproductive rights means the decision to determine "the number, spacing, and timing of their children"); Beijing Platform for Action, *supra* note 169, ¶ 94 ("Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so."). The Amman Declaration reaffirmed these rights in 2012, urging for their implementations led by the National Center for Human Rights, which unfortunately has been battling a crisis of legitimacy and effectiveness. *Amman Declaration and Program of Action*, THE NAT'L CTR. FOR HUMAN RIGHTS ¶¶ 25, 27,

<http://www.nchr.org.jo/english/tabid/96/mid/445/newsid445/33/Default.aspx> (last visited Jan. 11, 2015) (reaffirming the principles of reproductive health of the ICPD, including on "matters related to their sexuality" and calling for a review of laws that discriminate or "criminalize access to sexual and reproductive health services").

178. ICPD Programme of Action, *supra* note 169, ¶ 7.34; Beijing Platform for Action, *supra* note 169, ¶ 96.

179. Beijing Platform for Action, *supra* note 169, ¶ 96. The Beijing Platform also broke new ground by providing states with detailed definitions of violence against women and concrete strategic objectives and actions. *Briefing Paper: Beijing+5 Assessing Reproductive Rights*, CTR. FOR REPRODUCTIVE RIGHTS 5 (Nov. 2000), http://reproductiverights.org/sites/default/files/documents/pub_bp_Beijing+5.pdf.

human rights norms triggering state duty. The International Covenant on Economic Social and Cultural Rights explicitly mandates states to uphold the right to “the highest attainable standard of physical and mental health”¹⁸⁰ as “[h]ealth is a fundamental human right indispensable for the exercise of other human rights.”¹⁸¹ The right has been interpreted to require states to adopt a “gender-based approach [that] recognizes that biological and socio-cultural factors play a significant role in influencing the health of men and women.”¹⁸² Women’s rights to health include state duty to reduce health harms from domestic violence and to institute “preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.”¹⁸³

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) bans discrimination against women,¹⁸⁴ recognizing that promotion of women’s health depends on the realization of other human rights, whether equality in marriage, education, freedom from violence, equal pay and employment opportunities, and influence on law-making.¹⁸⁵ Moreover, under CEDAW’s Article 5(a) state parties agree

[t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women[.]¹⁸⁶

About a third of CEDAW’s 188 state parties lodged reservations, or legal limits on their duty to implement certain obligations under CEDAW, most prominently due to religious and cultural objections

180. International Covenant on Economic, Social and Cultural Rights, art. 12, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3, 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

181. CESCR, General Comment No. 14 on Health, *supra* note 171, at ¶ 1.

182. *Id.* ¶ 20.

183. *Id.* ¶ 21.

184. Convention on the Elimination of All Forms of Discrimination Against Women, Mar. 1, 1980, 1249 U.N.T.S. 13, 16 (entered into force Sept. 3, 1981) [hereinafter CEDAW]; CEDAW General Recommendation 24, *supra* note 173, at 3–7.

185. CEDAW General Recommendation 24, *supra* note 173, at 3; Rebecca J. Cook, *Gender, Health and Human Rights*, 342 HEALTH & HUM. RTS. 350, 361 (1995).

186. CEDAW General Recommendation 24, *supra* note 173, at 17.

to equality in family relations.¹⁸⁷ However, only about a handful explicitly sought to limit the application of Article 5's call to subvert adverse sex and gender-based stereotypes.¹⁸⁸

Gender-based violence, including so-called honor crimes, domestic violence and marital rape, inheritance deprivation, early and forced marriage, constitute forms of oppression that harm women's health and deny the fulfillment of a wide array of human rights.¹⁸⁹ By linking gender, health and human rights, experts and governments have acknowledged the impact of gender violence, such as honor-based crimes, on women's health, status, and self-esteem.¹⁹⁰ However, the welcome progress in analysis by governments and national advocates has often focused solely on an *aspect* of violence, such as so-called honor crimes, rape, or severe domestic violence, rather than tackle gender-related violations and femicides in their broader context of meager legal protections, scant access to justice, and persistent laws and implementation infused with adverse gender-stereotypes.

B. Human Rights Framing of "Honor Crimes"

In 2000 the international community for the first time explicitly urged governments to specifically address so-called "honor crimes" through law and related measures¹⁹¹ as part of broader law reform efforts to effectively criminalize and ensure redress for sexual and gender-based violence and harmful practices.¹⁹² Human rights

187. *Declarations and Reservations*, CEDAW, available at <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-8.en.pdf> (last visited Jan. 11, 2015).

188. *Id.*

189. The International Federation of Gynecology and Obstetrics similarly and categorically "concluded that future improvements in women's health require not only improved science and health care, but also social justice for women and removal of socially and culturally conditioned barriers to women's equal opportunity." Cook, *supra* note 185, at 353.

190. Cook, *supra* note 185, at 353.

191. Convention on the Rights of the Child, 1577 U.N.T.S. 3, 49 (Nov. 20, 1989) [hereinafter CRC]; *Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action*, ¶ 69(e), U.N. Doc. A/RES/S-23/3 (Nov. 16, 2000).

192. Actions to be taken at the national level by government shall include "[d]evelop[ing], adopt[ing] and fully implement[ing] laws and other measures . . . to eradicate harmful customary or traditional practices, including . . . so-called honour crimes, which are violations of the human rights of women and girls and obstacles to the full enjoyment by women of their human rights and fundamental freedoms . . ." *Id.*

standard-setting bodies, such as UN committees that monitor state compliance with international human rights treaties¹⁹³ and special procedure expert rapporteurs, tackled “crimes of honor” through their particular prism or mandate of rights, predominantly couching them in terms of violations to rights to life, equality and non-discrimination, as illustrative of an extreme form of gender violence,¹⁹⁴ or as a harmful traditional practice.¹⁹⁵ The UN General Assembly adopted several resolutions since 2000 on so-called honor crimes urging states to prevent and eliminate such crimes.¹⁹⁶

At least four different thematic rapporteurs—under the mandate of the UN Human Rights Council special procedures—have addressed crimes against women in the name of “honor.”¹⁹⁷ The Special

193. Regional treaties also address violence premised on stereotypical gender roles. *See* Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, June 9, 1994, Hein’s 4118 KAV. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women mandates signatory states in the Americas to specifically ensure women are valued “free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.” *Id.* at art. 6(b). Additionally, this Convention mandates implementation of legislation and other measures to combat “legal or customary practices which sustain the persistence and tolerance of violence against women.” *Id.* at art. 7(e). The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa requires signatory states to eliminate harmful practices based on sex stereotypes. Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, art. 2(2), art. 4(2)(d), art. 5, July 11, 2003, available at <http://www.au.int/en/sites/default/files/Protocol%20on%20the%20Rights%20of%20Women.pdf>.

194. *See* CEDAW General Recommendation 19, *supra* note 164.

195. *See* Comm. on the Rights of the Child, General Comment No. 13: The Right of the Child to Freedom from All Forms of Violence, Apr. 11, 2011, ¶ 29, UN Doc. CRC/C/GC/13 (2011) (asserting that harmful traditional practices include “honour crimes” against children); G.A. Res. 59/165, U.N. Doc. A/RES/59/165 (Feb. 10, 2005) (“*Emphasizing* that such crimes are incompatible with all religious and cultural values.”).

196. *See, e.g.*, G.A. Res. 57/179, ¶ 3, U.N. Doc. A/RES/57/179 (Jan. 30, 2003); G.A. Res. 55/66, ¶ 4, U.N. Doc. A/RES/55/66 (Jan. 31, 2001).

197. *See* Spec. Rapporteur on Violence Against Women, *Rep. of the Spec. Rapporteur on Violence Against Women, its Causes and Consequences*, Rashida Manjoo, U.N. Doc. A/HRC/20/16/ (May 23, 2012) (by Rashida Manjoo); Special Rapporteur, *Rep. Submitted by Mr. Abdelfattah Amor, Special Rapporteur, in Accordance with Commission on Human Rights Res. 2001/42, Addendum, Study on Freedom of Religion or Belief and the Status of Women in the Light of Religion and Traditions*, U.N. Doc. E.CN.4/2003/73/Add.2 (Apr. 24, 2009) (by Abdelfattah Amor); Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the Special Rapporteur on the Independence of Judges and Lawyers*, Mr. Param Cumaraswamy, U.N. CN.4/1999/60 (Jan. 13, 1999) (by Param Cumaraswamy); Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Rep. of the Spec. Rapporteur, Ms.*

Rapporteur on Violence Against Women (SR on VAW) has most extensively discussed the issue, placing it within the context of gender-based violence, outlining an analytic framework and specific recommendations to states.¹⁹⁸ In a 2012 report devoted exclusively to “gender-related killings,” the SR on VAW reinforces the importance of holistic examination of the conditions and structural challenges that enable such crimes:

[A]n understanding of gender-related killings requires taking into account the political, social and economic contexts within which it takes place, including the responses of men to women’s empowerment; the political, legal and societal reaction to such killings; the principle of the continuum of violence; and patterns of structural discrimination and inequality that continue to form part of the reality of women’s lives.¹⁹⁹

In 1999 the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions explicitly classified “honor crimes” as a form of extrajudicial executions and has urged governments to “end systematic and institutional impunity for those who kill women in the name of honour and so-called morality.”²⁰⁰ The Special Rapporteur on the Independence of Judges and Lawyers collaborated with the Rapporteur on extrajudicial executions focusing on the “courts view [of] defence of the honour of the family as a mitigating

Asma Jahangir, Submitted Pursuant to Comm. on Human Rights Resolution 1998/68, U.N. Doc. E/CN.4/1999/39 (Jan. 6, 1999) (by Asma Jahangir).

198. The UN Special Rapporteur on Violence Against Women visited Jordan, November 11–24, 2011. *Mission to Jordan, supra* note 50.
199. Gender-Related Killings of Women Report, *supra* note 40, at ¶¶ 18, 29 (“Culturally and socially embedded, these manifestations [of gender-related killings] continue to be accepted, tolerated or justified—with impunity as the norm. States’ responsibility to act with due diligence in the promotion and protection of women’s rights, is largely lacking as regards the killing of women.”).
200. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Rep. of the Special Rapporteur, Asma Jahangir, Submitted Pursuant to Comm. on Human Rights Resolution 2002/36*, ¶ 98, U.N. Doc. E/CN.4/2003/3 (Jan. 13, 2003) (by Asma Jahangir); Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Rep. of the Special Rapporteur, Ms. Asma Jahangir, Submitted Pursuant to Comm. on Human Rights Resolution 1998/68*, ¶ 75, U.N. Doc. E/CN.4/1999/39 (Jan. 6, 1999) (by Asma Jahangir) (“States, and in particular members of the judiciary in the countries concerned, to use all their authority and integrity to bring this unacceptable practice to an end.”).

circumstance” and the need for ending impunity for such crimes.²⁰¹ A decade later, in 2009, the Special Rapporteur on Freedom of Religion and Belief issued a *Study on Freedom of Religion or Belief and the Status of Women in Light of Religion and Traditions* which rejects any religious or cultural relativist reasoning to justify crimes of “honor” or exempting from penalty rapists who marry their victims among a host of identified harmful practices.²⁰² Each special rapporteur—even when working in concert with counterparts²⁰³—framed the issue in terms of her thematic mandate and associated sets of rights, but has not fully examined the issue in the broader context of women’s place in society, controlling power axes, and intersecting rights violations.

Treaty monitoring bodies (TMBs) tasked with overseeing state compliance with international human rights treaties highlighted crimes of “honor” against women almost exclusively in the context of the need for accountability and increased penalties. TMBs, such as the Committee Against Torture, the Committee on the Rights of the Child,²⁰⁴ and CEDAW, “expressed concerns that honour-related crimes often go unreported, are rarely investigated and usually go

201. Special Rapporteur on the Independence of Judges and Lawyers, *Rep. of the Special Rapporteur on the Independence of Judges and Lawyers, Mr. Param Cumaraswamy*, ¶ 41, U.N. Doc. E/CN.4/1999/60 (Jan. 13 1999) (by Param Cumaraswamy) (“[M]en who commit ‘honour killings’ normally receive considerably shorter sentences”); see also Special Rapporteur on the Independence of Judges and Lawyers, *Mr. Param Cumaraswamy, Submitted in Accordance with Comm. Res. 1999/31*, ¶ 28, U.N. Doc. E/CN.4/2000/61 (Feb. 21, 2000) (by Param Cumaraswamy) (urging governments “to bring those responsible to justice” and to uphold “their responsibility under international law to prevent, to investigate and to punish human rights violations”).
202. Special Rapporteur, *Rep. Submitted by Mr. Abdelfattah Amor, Special Rapporteur, in Accordance with Commission on Human Rights Res. 2001/42, Addendum, Study on Freedom of Religion or Belief and the Status of Women in the Light of Religion and Traditions*, ¶¶ 155–58, 165–69, U.N. Doc. E/CN.4/2002/73/Add.2 (Apr. 24, 2009) (by Abdelfattah Amor) [hereinafter *Report on Freedom of Religion and the Status of Women*].
203. The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Ms. Asma Jahangir worked closely with United Nations Special Rapporteurs on violence against women and on the independence of judges and lawyers to address the issue. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Rep. of the Spec. Rapporteur, Ms. Asma Jahangir, Submitted Pursuant to Comm. on Human Rights Resolution 1998/68*, ¶ 8, U.N. Doc. E/CN.4/1999/39 (Jan. 6, 1999) (by Asma Jahangir).
204. Rep. of the Comm. Against Torture, *Concluding Observations: Jordan*, 44th Sess., Apr. 26-May.14, ¶ 18, U.N. Doc. CAT/C/JOR/CO/2 (2010); Comm. on the Rights of a Child, *Concluding Observations: Jordan*, 44th Sess., Apr. 26-May.14, ¶ 38, U.N. Doc. CRC/C/JOR/CO/3 (2010).

unpunished, and that when they are punished the sentences are far less than those for equally violent crimes without the ‘honour’ dimension.”²⁰⁵ In its latest review of Jordan, a party to key international human rights treaties,²⁰⁶ the Committee Against Torture explicitly lamented that “honour crimes” are not “treated as seriously as other violent crimes.”²⁰⁷

The CEDAW Committee was the first treaty-monitoring body to explicitly condemn the practice. In its 1992 General Recommendation on Violence against Women, the Committee urged states to address violence against women by revising laws “to remove the defence of honour in regard to the assault or murder of a female family member.”²⁰⁸ The Human Rights Committee, which monitors implementation of the International Covenant on Civil and Political Rights, issued an interpretation in 2000 on “equality of rights between men and women” clarifying that so-called honor crimes which go unpunished constitute a serious violation of civil and political rights, in particular the right to life (Article 6) and equality and non-discrimination (Article 26).²⁰⁹ Treaty monitoring bodies have traditionally interpreted honour as protection of reputation, specifically in the context of defamation.²¹⁰ In contrast their analysis of the right to dignity in human rights treaties²¹¹ has included

205. Gender-Related Killings of Women, *supra* note 40, ¶ 49.

206. See *Ratification of International Human Rights Treaties – Jordan*, UNIV. OF MINN. HUM. RTS. LIBRARY <http://www1.umn.edu/humanrts/research/ratification-jordan.html> (last visited Jan. 11, 2015).

207. Comm. Against Torture, Concluding Observations, Jordan, *supra* note 204, ¶ 18.

208. CEDAW General Recommendation 19, *supra* note 164, ¶ 24(r)(ii).

209. U.N. Office of the High Comm’r for Human Rights, Human Rights Comm., Gen. Comment No. 28: Article 3 (the equality of rights between men and women), ¶ 31, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Mar. 29, 2000).

210. CRC, *supra* note 191, art. 16(1) (“No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.”); International Covenant on Civil and Political Rights art. 17(1), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] (“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”).

211. U.N. Comm. on the Elimination of Discrimination Against Woman, Gen. Recommendation No. 25, on art. 4, ¶1, of the Convention on the Elimination of All Forms of Discrimination Against Woman, on Temporary Special Measures, ¶19, 30th Sess., (2004) [hereinafter CEDAW General Recommendation 25] (“The provision of general conditions in order to guarantee the civil, political, economic, social and cultural rights of women and the girl child, designed to ensure for them a life of dignity and nondiscrimination, cannot be called temporary special measures.”); CRC, *supra* note 191, at art. 37(c) (“States Parties shall ensure that . . . [e]very child

women's rights in admonishing states against polygamy, unequal inheritance and widowhood practices, and female genital mutilation.²¹²

To date, four treaty-monitoring bodies tasked with overseeing compliance with their respective human rights treaty, raised "crimes of honour" and related laws during their reviews of Jordan.²¹³ Overall, the TMBs outlined multiple entry points for reform to end impunity for honor crimes and rape, better prosecute and punish violent abusers, and substitute shelter for "protective custody" for women at risk of violence.²¹⁴ None of the committees explicitly linked the constellation of related laws with adverse and systemic health consequences.

deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person"); G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women: The States Parties to the Present Convention, at 1 (Dec. 18, 1979) [hereinafter CEDAW, Preamble], available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>; ICCPR, *supra* note 210, art. 10(1) ("All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.").

212. U.N. Rep. of the Comm. on the Elimination of Racial Discrimination, Mar. 3–21, 2003, ¶¶ 107, 114, U.N. Doc. A/58/18; U.N. GAOR, 58th Sess., Supp. No. 18 (2003), (considering harmful traditional "practices that are harmful to the health and dignity of women"); U.N. Rep. of the Human Rights Comm. Vol. I, Mar. 17–Apr. 4, 2003, ¶ 81(10), U.N. Doc. A/58/40(Vol. I); U.N. GAOR, 58th Sess., Supp. No. 40 (2003), (emphasizing that polygamy "violates the dignity of women and constitutes unacceptable discrimination against women").
213. U.N. Convention on the Elimination of All Forms of Discrimination Against Women, Comm. on the Elimination of Discrimination against Women, Concluding Observations of the Comm. on the Elimination of Discrimination Against Women: Jordan, ¶¶ 27–28, U.N. Doc. CEDAW/C/JOR/CO/5 (Mar. 23, 2012) [hereinafter CEDAW: Concluding Observations, Jordan]; Comm. Against Torture: Concluding Observations, Jordan, *supra* note 204, ¶¶ 18–19; CRC: Concluding Observations, Jordan, *supra* note 204, ¶¶ 38–39.
214. CEDAW: Concluding Observations, Jordan, *supra* note 213, ¶¶ 5, 27–28, 40 (calling for legal abortions in cases of rape and incest); Comm. Against Torture, Concluding Observations, Jordan, *supra* note 204, ¶ 18; U.N. Int'l Covenant on Civil & Political Rights, H.R.C. Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Comm.: Jordan, ¶¶ 3, 8, U.N. Doc. CCPR/C/JOR/CO/4 (Nov. 18, 2010), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/467/05/PDF/G1046705.pdf?OpenElement>; CRC: Concluding Observations, Jordan, *supra* note 204, ¶¶ 29, 38–39 (including concerns about discriminatory treatment of children born in and out of wedlock); U.N. Convention on the Elimination of All Forms of Discrimination Against Women, Comm. on the Elimination of Discrimination Against Women, Concluding Comments of the Comm. on the Elimination of Discrimination Against Women: Jordan, ¶¶ 23–26, U.N. Doc. CEDAW/C/JOR/CO/4 (Aug. 10, 2007).

By undermining women's choices such as whom to marry, when to engage in sexual relations, whether to have children, to be free from violence, or seek redress for sexual violence, Jordan's legal system violates women's health, sexual and reproductive rights. Women's bodies and choices are not seen as their own thereby eviscerating their sense of autonomy, right to self-determination, physical integrity, privacy, and equality and exposing women to myriad psychological and physical harms. Such health consequences include adverse harms of early childbearing, the constant threat of an "honor killing," the life-long trauma of rape or forced choice to marry one's rapist, psychological toll of being required to carry to term a pregnancy resulting from rape, injuries from domestic violence, and disabilities from unsafe abortions. Jordan's honor-based laws inflict real health harms caused by and resulting from violations of women's human rights. The next section provides an epidemiology of the groups affected by having to maintain and partake in such a system.

IV. JORDAN'S LEGAL SYSTEM AS A CASE STUDY FOR FEMINIST LEGAL REFORM

Similar to many other legal systems,²¹⁵ Jordan's legal system remains premised on the criminality of socio-sexual relations in terms of "shame" and "honor" which not only ignore the health consequences for victims and their families, but also reinforce patterns of abuse, discrimination, and human rights violations. This section will analyze select problematic legal provisions in tandem to paint the complex, inter-related interplay of existing laws that uphold a "paternalist protection from harm" approach toward women and girls while at the same time reinforce and legitimize gender-based-violence and discrimination.²¹⁶ Legislation motivated by seeing women and their wombs as objects for regulation and protection from "harm" or that treats them as perpetual "dependents," subordinate and cement women's "secondary" social status.²¹⁷

215. Not only around the world, but 23 states in the United States still criminalize adultery, a "vestige of the way American law has anchored legitimate sexual activity within marriage." Ethan Bronner, *Adultery, an Ancient Crime that Remains on Many Books*, N.Y. TIMES (Nov. 14, 2012), <http://www.nytimes.com/2012/11/15/us/adultery-an-ancient-crime-still-on-many-books.html>.

216. See JWU Report, *supra* note 16, at 11–12.

217. The Civil Service law, governing public sector employees where most women work, treats women as "dependent"—either excluding her from health and family allowances male employees may access, or else excluding husbands from accessing wives' pensions unless the men are disabled or otherwise dependent. See *id.* at 37.

Although Jordan is featured as a case study, legal systems across the globe either still or until recently have grappled with similar subordinating tensions.²¹⁸ Many countries, including Canada, United States, Peru, Honduras, Bolivia, El Salvador, Dominican Republic, and Ecuador, have amended their criminal codes to condemn rape as a crime rather than an offense against morality, striking language of “honorable reputation,” “purity” and “chastity” in favor of legal terminology of sexual violence and crime victims.²¹⁹ Yet in the absence of holistic and intersectional reforms, such welcome yet minimal criminal law changes to tackle stereotypes about rape have yet to mitigate structural and systemic gender injustices and alarmingly high rates of sexual and domestic violence in those very countries.²²⁰

Honor-Based Legislative Framework

Jordan’s legal system sends mixed-messages about the state’s role in delineating women’s gender roles and place in society. Legislation on women’s rights is “based on commitment to and respect for their roles as mothers”²²¹ seeking to preserve their welfare, wellbeing, and honor. Reinforcing the notion that laws should regulate and protect women, Jordan’s legal system continues to rely—albeit inconsistently—on male guardianship for women.²²²

On one hand, laws “over-protect” women from working in certain sectors or at night,²²³ require guardians to make decisions for and on behalf of adult women about key issues such as marriage,²²⁴ and detain women for their own good to protect them from potential

The Labor Code, governing the private sector, bars women from certain professions (such as mining) and working at night (with some exceptions). *Id.* at 11–12. Women must retire earlier than men in all sectors. *See id.* at 13.

218. Brooke Stedman, *The Leap from Theory to Practice: Snapshot of Women’s Rights Through a Legal Lens*, 29 MERKOURIOS UTRECHT J. INT’L & EUR. L. 4, 21 (2013) (Neth.).

219. *Id.* at 21, 22 & n.170.

220. *Id.* at 27. Some feminist scholars and activists caution that rates of violence spike following legal reform as a form of backlash against women. Given such concerns, decision-makers and implementers should account and aim to mitigate such anticipated negative consequences.

221. Jordan CEDAW Report 2010, *supra* note 48, ¶ 154.

222. JWU Report, *supra* note 16, at 39.

223. JORDAN LABOR LAW art. 69.

224. JORDAN PENAL CODE art. 282.

“honor killings.”²²⁵ On the other hand, the laws fail to protect women by lacking constitutionally-based sex equality advocated for by local human rights and feminists activists and scholars during the 2011 Constitutional reforms.²²⁶ The laws punish women by reducing penalties for their murder and injury by relatives,²²⁷ criminalize courtship and non-marital relations,²²⁸ push victims to marry their rapists,²²⁹ fail to outlaw marital rape,²³⁰ retain loopholes for child marriages,²³¹ ban abortion in cases of rape and incest,²³² and give a reduced penalty for a woman who self induces an abortion to “protect her honor.”²³³

Laws and social realities interact to create a menu of dire options as illustrated by the composite story of Hala. Hala is a single woman pregnant as a result of rape. If Hala reports the rape, she might be accused of having sex outside wedlock. Because abortion is illegal she can only opt for carrying the pregnancy to term. If she gets an unsafe abortion and survives, she could benefit from a reduced punishment for inducing an illegal abortion to preserve her honor. She must also consider social stigma and the risk of her family killing her because she damaged their reputation and honor by becoming pregnant out of wedlock. She knows she can only be safe from threats of honor killings if she is detained in the local jail for her own protection or if she tries to get to a women’s shelter in the capital city. If a relative, most likely her brother, tries to kill her, he can invoke a mitigating circumstance based on the notion of protecting honor that will significantly reduce his sentence.

She also knows that in a system premised on male guardianship, babies born to unwed mothers are typically taken away to a state orphanage. Living alone as a single woman, much less a single (never-married) mother, is not a socially-acceptable option. Under the law, if she marries her rapist, she will gain “respectability” and he will be exempt from prosecution. Even though she has barely turned

225. Rana Husseini, *Jordan*, in *WOMEN’S RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA: PROGRESS AMID RESISTANCE 5–7* (Sanja Kelly & Julia Breslin eds., 2010), available at http://www.freedomhouse.org/sites/default/files/inline_images/Jordan.pdf.

226. Warrick, *supra* note 76, at 318–19.

227. *Id.* at 322.

228. See JORDAN PENAL CODE arts. 279, 282.

229. Warrick, *supra* note 76, at 319–21.

230. JORDAN PENAL CODE art. 292.

231. Husseini, *supra* note 225, at 5.

232. JORDAN PENAL CODE art. 321.

233. JORDAN PENAL CODE art. 324.

15, the judge will permit an early marriage because she is pregnant. The law, however, will not protect her from further assaults if she marries her rapist. Once she is married, rape by a spouse is not a crime. As this web of intersecting laws and realities illustrates, removing the option of an honor defense, or repealing the rapist exemption alone, will only tighten the feedback loop of laws; not grind it to a much overdue halt.

Constitutional Reforms Fail Women

The 2011 reforms to Jordan's constitution—motivated by on-going sweeping region-wide calls for greater political participation and better living conditions—have largely failed women.²³⁴ Despite concerted efforts by civil society²³⁵ and support by key Jordanian royal family members,²³⁶ the revised constitution continues to lack the specific ground of “gender” or “sex” in its non-discrimination clause, which contains three other enumerated grounds.²³⁷ Article 6(1) states that “Jordanians shall be equal before the law with no discrimination between them in rights and duties even if they differ in race, language or religion.”²³⁸ Proponents of the current language argue that the word “Jordanians” applies to both women and men and thus the clause does not require additional grounds.²³⁹ Some legal professionals interpret the three enumerated grounds as an exclusive list, while others see them as illustrative.²⁴⁰ Progressive civil society voices lament the omission of gender and sex from the list of non-discriminatory grounds, fearing continued discrimination in issues of personal law and the politically-thorny question of women being able to transmit their Jordanian citizenship to their non-Jordanian

234. *Constitutional Reform in Jordan: Progress and Disappointments*, WOMEN'S LEARNING PARTNERSHIP (Oct. 27, 2011), <http://www.learningpartnership.org/lib/constitutional-reform-jordan-progress-and-disappointments>.

235. *Id.*

236. *World Report 2012: Jordan*, HUM. RTS. WATCH, http://www.hrw.org/sites/default/files/related_material/jordan_2012.pdf [hereinafter *World Report 2012*].

237. *Id.*

238. JORDAN CONST. art. 6(1).

239. ARAB WOMEN ORG., SUBSTANTIVE EQUALITY AND NON-DISCRIMINATION IN JORDAN SHADOW REPORT, ¶ 97 (Feb. 2012), available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AWO-Mosawa_forthesession_Jordan_CEDAW51.pdf [hereinafter AWO SHADOW REPORT].

240. Compare *id.* (stating that women rights activists consider “all Jordanians” as written in Article 6(1) to include “both men and women”), with *World Report 2012*, *supra* note 236 (stating that despite women's rights activists advocating for the inclusion of “gender” as a prohibited form of discrimination, the final revision to Article 6(1) only includes “discrimination based on race, language, or religion”).

husbands and their joint offspring.²⁴¹ In addition to this constitutional omission, Jordan lacks a general non-discrimination law or framework.²⁴²

No constitutional provision mentions the terms “sex” or “gender.”²⁴³ The 2011 gender-hollow constitution technically supersedes national laws and international human rights treaties ratified by Jordan.²⁴⁴ In contrast to international gender equality guarantees, the 2011 constitution reinforces a protectionist view of women essentialized as reproductive vessels within legally recognized family structures.²⁴⁵ New Article 6(5), for example, provides for special care for mothers, children, people with disabilities, and the elderly and singles out “youngsters and those with disabilities” in need of particular protection “against abuse and exploitation.”²⁴⁶ The limitation to youth and people with disabilities thus fails to establish a general or gender-specific claim against abuse.²⁴⁷ Another new article might potentially curtail protections against violence perpetuated in the name of “preserving family honor” or morals. Article 6(4) asserts that “family is the basis of society the core of which shall be religion, morals and patriotism; the law shall . . . strengthen its ties and values.”²⁴⁸ Arguably then, new Article 6(4) could further legitimize the superior value of the family

241. *World Report 2012*, *supra* note 236.

242. U.S. DEP’T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2011, 17, available at <http://www.state.gov/documents/organization/186643.pdf> (last visited Jan. 11, 2015).

243. The word “male” appears in the context of the male-only hereditary line of royal succession. JORDAN CONST. art. 28.

244. MOHAMMAD KHALIL AL-MOUSSA, USING CEDAW IN THE JORDANIAN LEGAL SYSTEM: A HANDBOOK FOR PRACTITIONERS (2009); see also Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention of the Rights of the Child*, ¶ 5, U.N. Doc. CRC/C/JOR/4-5 (Mar. 1, 2013) [hereinafter *Jordan CEDAW Report 2013*] (“[I]nternational treaties take precedence over national laws, coming second only to the Constitution in the hierarchy of laws established in Jordan.”).

245. Women were mentioned specifically in only one Article calling for future legislation to, among other protections, “[e]stablish[] special conditions for the work of women and juveniles.” JORDAN CONST. art. 23(2)(d). Women here are equated with juveniles consistent with the paternalistic-protectionist view of women in other Jordanian legislation.

246. JORDAN CONST. art. 6, § 5.

247. See *id.* Article 77 of the amended Labor Code, imposes more severe penalties for violations of protections “relating to the rights of women and children.” *Jordan CEDAW Report 2010*, *supra* note 48, ¶ 15.

248. JORDAN CONST. art 6, § 4.

and the role of law in preserving its “values” based on “morals and patriotism,” rather than to protect kinwomen from being targeted for perceived harm to the family’s honor and morals.²⁴⁹

Criminalization of Courtship and Non-Marital Relations

All sexual relations outside the context of an approved marriage are illegal in Jordan and subject to criminal penalties.²⁵⁰ Since even consensual sexual relations between non-married adults are criminalized, victims of sexual violence are unlikely to report the crime against them, which can be turned into a *charge* against them.²⁵¹ The government considers as a “major achievement” the 2001 Penal Code reforms that established “equality between men and women in the matter of adultery”²⁵² under the aptly titled section on “Misdemeanors Relating to Family Norms and Morals.”²⁵³ In reality, the law is stacked against women. Although adultery is justiciable only upon a complaint by either aggrieved spouse, a woman’s relative as her guardian may also lodge complaints of adultery against his female ward.²⁵⁴ There is no equivalent option against a male adulterer.

Men, but not women, may legally marry up to four women, including in a “mut’a” or temporary marriage arrangement often concluded for the purposes of legitimizing sexual relations.²⁵⁵ Mut’a marriages, while generally uncommon, may be contracted for a limited time to render licit, otherwise criminalized non-marital sexual relations.²⁵⁶ Activists spotlight the often inherent unequal power

249. *See id.*

250. JORDAN PENAL CODE art. 282.

251. *See infra* note 254 and accompanying text.

252. Jordan CEDAW Report 2006, *supra* note 90, ¶ 30 (describing the repeal of Articles 282–84 of the Penal Code by interim law No. 86 of 2001).

253. JORDAN PENAL CODE art. 282–86.

254. *See* Jordan CEDAW Report 2006, *supra* note 90, ¶ 30. Article 284 provides that: “Pursuing the male and female who commit adultery can only be done according to a complaint submitted by the husband or wife, provided that the marriage bound still exists, and also based on a complaint by the female’s guardian.” JORDAN PENAL CODE art. 284.

255. Jordan CEDAW Report 2006, *supra* note 90, ¶ 246; Gihane Tabet, *Women in Personal Status Laws: Iraq, Jordan, Lebanon, Palestine, Syria* 5 (Gender Equality and Development Section, UNESCO, Working Paper No. 4, July 2005), available at http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/Women_in_Personal_Status_Laws.pdf.

256. Majid Khadduri, *Marriage in Islamic Law: The Modernist Viewpoints*, 26 AM. J. COMP. L. 213, 214 (1978). The practice of temporary marriages is better documented in Shia majority countries such as Iran and Iraq. “Shi’i law recognizes a short-term

dynamics between a man and a woman in such an arrangement and caution that women might typically expect the temporary marriage to turn permanent, rather than to serve as a mere temporal contracts for sex—deeply stigmatizing the oft young and impoverished woman involved.²⁵⁷ Temporary marriage might seem like a creative tool to bypass legal condemnation for non-marital sex. But, just like young couples redeploying the law enabling a rapist to marry his victim, to eschew their own parents' approval for their choice of marriage partner, such modifications fall short of needed structural and systemic reforms. They are band-aid solutions to problematized realities in need of permanent transformative change.

Unlike men, unmarried women suspected of illicit sexual relations must frequently undergo notoriously unreliable virginity tests to determine whether their hymens are intact as a way to prove or disprove crimes of “honor.”²⁵⁸ Yet, despite strict societal expectations that women remain virgins until married,²⁵⁹ no law excuses or reduces the penalty for killing a bride whose wedding night failed to produce the “bloody sheet” testament to her virginity.²⁶⁰ While obviously positive, the legal omission exposes the inconsistencies in addressing presumed offenses to family honor—in this case a (biologically flawed) proof of a broken hymen and hence the absence of the expected and guarded virginity upon marriage.

“Crimes of honor” in the Criminal Code

In a distorted notion of equality, Article 340 of the Penal Code was revised to ensure both men and women enjoy mitigating circumstances for injuring or killing an adulterous spouse.²⁶¹ Unlike

marriage contract known as the mut'a, or temporary marriage. Sunni law condemns the mut'a as being contrary to the spirit of the law.” *Id.*

257. See, e.g., Kelly McEvers, *Abuse of Temporary Marriages Flourishes in Iraq*, NPR (Oct. 19, 2010, 3:42 PM), <http://www.npr.org/templates/story/story.php?storyId=130350678>.

258. MANSUR ET AL., *supra* note 18, at 22. While police and forensic officials claim that there must be “evidence of a crime” or “strong evidence” before such tests are ordered, others believe such exams will “avoid a crime” and thus are “good to do.” Human Rights Watch, *supra* note 99, at 21–22.

259. Abu-Odeh, *Honor Killings*, *supra* note 110, at 916–17.

260. *Id.* at 917.

261. JORDAN PENAL CODE art. 340(1)–(2). Prominent Muslim religious authorities have sided with feminists on the harms of so-called honor killings. In February 2000 the Al Azhar Ifta Council issued a fatwa that individuals lack the religious right to kill adulterous female relatives. Warrick, *supra* note 76, at 331 (citing Rana Husseini, *Al Sabeel Survey Weighs in Against Amending Article 340*, JORDAN TIMES, Feb. 23, 2000, at 3). Warrick adds that “the fact that the same custom [honor killings] can be

women, men also benefit from reduced penalties for harm or murder of their female kin and their lovers engaged in illicit relations.²⁶² A man's responsibility to protect his and the family's honor extends to sisters, ascendants, and descendants under Article 340(1).²⁶³ A wife may enjoy the same reduction in sentence, but only if she catches her adulterous husband in the "act" or with a lover in the marital home.²⁶⁴ In other words, men may claim to have committed a crime of "honor" or passion, whereas women may only claim the latter. Moreover, both the legal system and prevailing societal norms and pressures situate women and men differently with regard to benefitting from a crime of "passion" (or "honor") defense.

An analysis of cases related to crimes of honor revealed that courts rarely invoked Article 340, but instead have systematically relied on general "fit of fury" mitigation articles²⁶⁵ since the mid-1960s in handing out reduced or symbolic sentences for "honor killings."²⁶⁶ The commonly cited Article 98 requires that a crime be committed in "a state of rage which is the result of an unjustifiable and dangerous

both hailed as Islamic and condemned as un-Islamic reveals the contingent nature of the incorporation of both Islam and custom into politics and law." *Id.* at 334.

262. JORDAN PENAL CODE art. 340(1).

263. *Id.* Article 340(1) provides:

Whoever surprises his wife or one of his female decedents or ascendants or sisters in the act of adultery or in illegitimate bed and murders her immediately or her lover or both of them or assaulted her or both of them and the assault resulted in death or injury or harm or permanent disfiguration, he/she shall benefit from a mitigation excuse.

Id.

264. JORDAN PENAL CODE art. 340(2). Article 340(2) provides:

The wife who surprises her husband in the act of adultery or in an illegitimate bed in their home and murders him or his lover or both of them immediate or assaulted him or both of them and the assault resulted in death or injury or harm or permanent disfiguration, she shall benefit from the same excuse mentioned in the paragraph above.

Id.

265. In addition to Articles 340 and 98, judges rely on general mitigating excuses and factors (Articles 97, 99–100) informed by their personal biases and gender stereotypes. Arab Women's Legal Network et al., *Submission on Select Issues Affecting Children, and in Particular Girls*, U.N. HUM. RTS. 13 (June 2013), http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/JOR/INT_CRC_NG_O_JOR_15742_E.pdf [hereinafter AWLN Report 2013].

266. Warrick, *supra* note 76, at 337 & n.49, 338. Judges are product of their time and personal biases. See Abu-Odeh, *Honor Killings*, *supra* note 110, at 932–33 (drawing on Arab nationalism to explain Jordan's judicial change toward the widest possible leniency for honor killers).

act committed by the victim.”²⁶⁷ Women’s actual or perceived sexual transgressions are interpreted as an “unjustifiable and dangerous act.”²⁶⁸ Article 98 lacks the requirement of catching the victim in the “act” and as such has enabled judges to loosen the standards and broaden the scope of presumably “offensive” conduct to legally excuse the practice of “honor crimes.”²⁶⁹ Judges have also stretched the immediacy of the “fit of fury” to several days from finding out about an illicit act until exacting a violent response.²⁷⁰ Jordan’s top court, the Court of Cassation, has broadly interpreted Article 98 to cover a wide range of “offenses” committed by women to justify killing them to uphold honor, with varying interpretation of the time allowed to pass between finding out about the offensive conduct and the commission of the crime.²⁷¹

The typical six-month sentences handed down by criminal courts have been increasingly replaced by stricter sentences of up to ten years in prison in cases of so-called honor crimes.²⁷² Yet while some courts have issued higher sentences, decisions remain sympathetic to the honor defense.²⁷³ Reliable statistics on the frequency of such cases are difficult to attain. Despite the promising trend toward

267. JORDAN PENAL CODE art. 98.

268. *Id.*

269. *See id.*; *infra* note 271 and accompanying text.

270. Abu-Odeh, *Honor Killings*, *supra* note 110, at 926.

271. *Mission to Jordan*, *supra* note 50, ¶ 24 (“[L]eaving the home without permission or talking to an unrelated man are acts that have also resulted in the killing of women in the name of ‘honour.’”). In Jordan’s civil law system, decisions by the Cassation Court are considered precedents when issued by a panel of five or more judges. The Constitutional Court established under the 2011 constitution issues binding, precedent-setting decisions on all courts and “authorities.” JORDAN CONST. art. 59, § 1.

272. *Mission to Jordan*, *supra* note 50, ¶ 26. In a very atypical case, in December 2013 a judge issued the death penalty to two brothers who strangled their divorced sister to death to “cleans the family’s honor.” *Jordan to Execute Brothers for Strangling Sister in “Honor” Killing*, AL-AKHBAR ENGLISH (Dec. 29, 2013), <http://english.al-akhbar.com/node/18055>.

273. Judges still issue conservative decisions despite of, or because of, increasing number of women judges: from one woman in 1996 to 148 women judges (or 17% of all judges) in 2013. *See* JORDANIAN NAT’L COMM’N FOR WOMEN, NATIONAL REPORT, PROGRESS OF JORDANIAN WOMEN: IN PURSUIT OF JUSTICE, PARTICIPATION AND EQUALITY (2010–2011) [hereinafter JNCW National Report], *available at* http://www.women.jo/admin/document/JNCW_Progress%20of%20Jordanian%20Women_EN.pdf; Abeer Numan, *Female Judges ‘Paving the Way for Equality in the Judiciary,’* JORDAN TIMES (Sept. 9, 2013, 11:11 PM), <http://jordantimes.com/female-judges-paving-the-way-for-equality-in-the-judiciary>.

harsher sentencing, tweaking the criminal code provisions remains insufficient, as are partial attempts at law reform. Judges remain the ultimate arbiters of morality in their, often conservative, interpretive discretion. This approach would persist absent progressive judicial guidance and oversight within the context of holistic reform premised on robust research on the adverse consequences of the gendered application of law.²⁷⁴

Most advocacy and scholarship around “crimes of honor” in Jordan focus almost exclusively on Article 340.²⁷⁵ On its face, Article 340 contains no explicit mention of the term “honor.”²⁷⁶ Some analyze Article 340 in conjunction with article 98, the general mitigation clause for crimes committed in a “fit of rage.”²⁷⁷ The 2001 compromise reform of Article 340—following a concerted civil society campaign to gather citizen signatures in 1999 later co-opted by the royal family eager to solidify the country’s positive international reputation as attractive for investment and diplomatic cache²⁷⁸—eliminated the complete exemption from any penalty and added similar mitigating factors for women.²⁷⁹ Due to controversial debates in the lower House of Parliament, the revisions were passed as a temporary law while Parliament was on recess.²⁸⁰ The provisions in the Jordanian code that excuse perpetrators of “honor crimes” are traced to the French Penal Code of 1810 and the Ottoman Penal Code of 1858 brought to Jordan under the Ottoman rule, which ended in 1918.²⁸¹ Yet despite its “foreign importation,” local leaders cling to it as a symbol of indigenous cultural values.²⁸²

Lackluster Protection Against Violence by Family Members

Women and girls in Jordan who fear violence at the hands of brothers (the majority of “honor killers”), fathers, or husbands have

274. See Abu-Odeh, *Honor Killings*, *supra* note 110, at 931–32.

275. *Id.* at 949.

276. JORDAN PENAL CODE art. 340.

277. See Abu-Odeh, *Honor Killings*, *supra* note 110, at 925. Article 98 of the Jordan Penal Code provides: “Whoever commits a crime while in a state of rage which is the result of an unjustifiable and dangerous act committed by the victim, benefits from a mitigating excuse.” JORDAN PENAL CODE art. 98.

278. Human Rights Watch, *supra* note 99, at 15–17.

279. *Id.*

280. *Id.*

281. Abu Odeh, *Honor Killings*, *supra* note 110, at 914.

282. See *id.* at 914–15.

limited legal protections or recourse.²⁸³ In line with a wave of anti-domestic violence laws adopted over the past decade,²⁸⁴ the much-touted Protection Against Family Violence Act came into effect in 2008.²⁸⁵ The law sets up a new civil protection order regime but lacks a definition of the “violence” it purports to protect against, merely referencing the Penal Code which itself lacks relevant, specific definitions.²⁸⁶ Feminists generally call for laws with broad definitions of all forms of violence against women.²⁸⁷ The Family Protection Law refers solely to domestic violence and the individuals legally protected from such violence.²⁸⁸ It fails to provide even bare minimum domestic violence guarantees against the core forms of violence: physical, sexual, psychological, and economic.²⁸⁹ The 2008 law also precludes protection in the form of the yet to be fully utilized “protection orders,” against abusive brothers who do not reside in the same household as the potential victim.²⁹⁰ The law authorizes arrest of up to two months for willfully violating a protection order.²⁹¹ Finally, the Act’s main thrust has become “reconciliation” through family reconciliation committees rather than prevention, protection, prosecution, or redress.²⁹²

283. See Human Rights Watch, *supra* note 99, at 22–25; *supra* note 53 and accompanying text.

284. Over two-thirds (125) of all countries have laws on domestic violence, up from only 89 laws in 2006. U.N. Women, 2011–2012 Progress of the World’s Women: In Pursuit of Justice 33, 136–37 (2011), <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>; U.N. Secretary-General, *In-Depth Study of All Forms of Violence Against Women: Rep. of the Secretary-General*, ¶ 318, General Assembly, U.N. Doc A/61/122/Add.1 (July 6, 2006).

285. JORDAN FAMILY PROTECTION LAW NO. 6 arts. 3–5.

286. *Id.* arts. 2–5 (showing an absence of a definition); JORDAN PENAL CODE art. 340.

287. See U.N. Women, *supra* note 284, at 32–34.

288. JORDAN FAMILY PROTECTION LAW NO. 6 arts. 3–5.

289. See *generally id.* (showing an absence of the bare minimum domestic violence guarantees throughout); U.N. Div. for the Advancement of Women, Dep’t of Econ. & Social Affairs, Handbook for Legislation on Violence against Women 24, U.N. Doc. ST/ESA/329 (2009) (recommending that legislation should “include a comprehensive definition of domestic violence, including physical, sexual, psychological and economic violence”).

290. JORDAN FAMILY PROTECTION LAW NO. 6 arts. 2–3, 13–15.

291. *Id.* art. 16.

292. *Id.* art. 7 (prioritizing referrals to the family reconciliation committees); see also *id.* art. 2 (stating that family members must live in the same household); *id.* art. 3 (outlining who falls under “family members”); JWU Report, *supra* note 16, at 14–16 (analyzing the Family Protection Law).

Impunity and Incentive for Sexual Violence

The law fails to specifically outlaw rape by a spouse and provides a paradoxical solution for girls and women raped by a non-spouse—to marry their rapists to avoid social stigma associated with non-marital sex—whether consensual or coerced.²⁹³ In another mixed legal message, the Penal Code reforms substantially raised penalties for statutory rape and forced sex of women under 18,²⁹⁴ and added specific penalties for rape by those in positions of authority.²⁹⁵ On the other hand, Article 308 exempts an alleged rapist from prosecution if he marries his victim.²⁹⁶ The marriage must last at least five years for the perpetrator to avoid felony prosecution, unless he divorces the woman for a “legitimate cause.”²⁹⁷ Once a woman is married she has no legal recourse against rape by her husband.²⁹⁸

293. See JORDAN PENAL CODE arts. 304–08.

294. The Penal Code chapter on “Seduction and Violating Women’s Quarters” provides for gender-specific crimes of seduction, fondling, and sexual violation of girls. See Jordan CEDAW Report 2010, *supra* note 48, ¶¶ 58–60 (explaining that the amended code stipulates heavier penalties for rape, including life imprisonment with hard labor for rape of a female minor). The crimes of fondling and proposition of immoral acts do apply to boys under 15 years of age (see arts. 305–306). Rape provisions frame the crime as perpetrated solely against women, and not men (art. 292), though some “indecent acts” extend to male victims (arts. 296, 298).

295. JORDAN PENAL CODE art. 285(2).

296. *Id.* art. 308(1) (“If a correct marriage contract is concluded between the perpetrator of one of the crimes stipulated in this section and the victim, any pursuit shall be stopped; if a judgment was issued in the case, execution of penalty shall be suspended.”).

297. *Id.* art. 308(2) (“The Public Prosecution shall regain its right to reinstate the legal action and implement the penalty if, before the passage of three years of committing the misdemeanor; or five years of committing the felony, such marriage ended by divorcing the woman without a legitimate cause.”). There are opposite views on this requirement: women’s rights lawyers consider Article 308 to “practically sentence a girl to a five-years imprisonment during which she is vulnerable to various forms of physical, sexual and psychological violence. As a result, she might go to court and ask for divorce herself, which means she will lose all her rights.” In contrast, Sharia judges defend the five-year period “as a form of protection for the girl and a prevents [sic] chances of circumventing the law and escaping penalties.” Taghreed Al-Doghmi, *In Jordan Raped Women are Married to Their Abusers in the Name of the Law*, ARAB REPORTERS FOR INVESTIGATIVE JOURNALISM (Nov. 3, 2013), <http://arij.net/en/jordan-raped-women-are-married-their-abusers-name-law>.

298. The provision addressing rape in general appears to specifically exempt husbands who force non-consensual sex on their wives. JORDAN PENAL CODE art. 292(1) (“Whoever has sexual intercourse with a female – *other than his wife*- against her will by the use of force or threats or trick or deception, he shall be punished with temporary imprisonment with hard labor for a period not less than ten years.”) (emphasis added).

Bypassing notions of justice, the law reinforces societal pressure on victims of sexual violence to avoid social stigma and compromise their family's "honor" by providing an "incentive" (against stigma) to marry the aggressor, especially if the rape resulted in pregnancy.²⁹⁹ The government extols the provision as a "possibility on family and social grounds" for the Penal Code to illustrate "how greatly it is concerned for the woman's future and how earnestly it seeks to ensure her support and maintenance."³⁰⁰ There are no legal criteria to determine the victim's willingness to enter into such a marriage. Media reports estimate that between 2009 and 2013 about 159 alleged rapists have escaped punishment through marriage.³⁰¹ Given the lack of credible, systemic statistical data on such crimes and the general underreporting of rapes, as is the case in all countries,³⁰² the actual number of sexual violence incidents in Jordan is likely substantially higher. A chief forensic physician at the state-run family protection unit lamented that only 20-25% of reported rape cases were prosecuted, citing "[a]rticle 308 of the penal code [as] the major factor to blame [as] [i]t hampers all efforts to achieve justice for survivors of sexual violence."³⁰³

As in other countries with similar provisions, the exemption results in the perverse outcome of absolving the rapist of any wrongdoing and allowing rape to reduce the marriageable age of the victim.³⁰⁴ It thus sends a clear message of impunity and permission for men to simply avail themselves of girls and women who may otherwise rebuff their advances, and who—pressured by their family concerned about social norms—will likely have to marry their assailants once they are no longer considered virgins. Additionally, while the provision and legal process presumably seek the victim's consent to the marriage (while eschewing any need for consent for the sex

299. Jordan's abortion ban provides no exemptions for victims of incest or rape. JORDAN PENAL CODE art. 321–25.

300. See Jordan CEDAW Report 2010, *supra* note 48, ¶ 64.

301. Al-Doghmi, *supra* note 297.

302. See, e.g., David Allen, *The Reporting and Underreporting of Rape*, 73(3) S. ECON. J. 623, 623 (2007) ("The U.S. Department of Justice estimated that for the period 1994–1995 only about one-third of rape victims reported the crime to the police, making rape the most underreported of all violent crimes.").

303. *Getting Away with Sexual Abuse in Jordan*, *supra* note 89.

304. See Special Rapporteur, *Civil and Political Rights, Including the Question of Religious Intolerance*, ¶ 165, Econ. and Soc. Council, Comm'n on Human Rights, U.N. Doc. E/Cn.4/2002/73/Add.2 (Apr. 24, 2009) (by Abdelfattah Amor) [hereinafter *Civil and Political Rights*] ("That applies to some communities in Mexico, to Costa Rica, Lebanon, Peru and Uruguay and to the Republic of Korea.") (citations omitted).

before or after the marriage) “societal pressures may push victims to accept this solution as the only way to be reintegrated into their communities.”³⁰⁵ The government has acknowledged that “as a rule the victim accepts marriage with her aggressor in order to avoid being shamed or out of fear of her family’s vengeance.”³⁰⁶

The government continues to justify Article 308, which exempts from punishment rapists who marry their victims, “as a way of conferring protection and some sort of compensation to the victim, for the social stigma associated with rape.”³⁰⁷ Yet, the ultimate aim for such a provision is to “rectify a social problem rather . . . than to punish a crime.”³⁰⁸ Local religious leaders have criticized the state’s inability to punish rather than “reward” a rapist with a marriage.³⁰⁹ Although the government recognizes that such marriages based on duress are “incompatible with a valid contract of marriage,” it has not contemplated reform beyond mere calls for amending that sole Article of the penal code.³¹⁰

Child Marriage in Cases of Out of Wedlock: Pregnancy and Poverty

Although Jordan raised the legal age of marriage to 18 in 2001, it provides for marriage of girls as young as 15 if the Chief Justice and a special committee deem the union to be in the girl’s “interest.”³¹¹ According to the Chief Justice, child marriages should only be allowed in cases “that might involve pregnancy out of wedlock or dire poverty.”³¹² In 2011, girl brides made up 12.6% of all marriages in Jordan.³¹³ With the downturn in the economic conditions of

305. *Mission to Jordan*, *supra* note 50, ¶ 18.

306. Jordan CEDAW Report 2010, *supra* note 48, ¶ 64.

307. *Mission to Jordan*, *supra* note 50, ¶ 18.

308. Warrick, *supra* note 76, at 321.

309. The General Fatwa Department issued a fatwa in December 2012 stating that “rape is one of the gravest and most dangerous crimes, therefore, a harsh punishment must be issued against the attacker while allowing him to marry the victim is considered a reward for his crime, and this cannot be sanctioned under any guidance or law.” Al-Doghmi, *supra* note 297.

310. Jordan CEDAW Report 2010, *supra* note 48, ¶ 64.

311. TO BE A GIRL IN JORDAN, *supra* note 22, at 79. The 2010 revision raised the legal marriage age to 18 from 15 for girls and 16 for boys.

312. *Id.* at 81.

313. Areej Abuqudairi, *Early Marriage Persists in Society Despite Law Amendments — Activists*, JORDAN TIMES (Apr. 29, 2013, 11:36 PM), <http://jordantimes.com/early-marriage-persists-in-society-despite-law-amendments—activists>.

families, there has been a reported resurgence of early marriages.³¹⁴ This legal loophole enables families to coerce (or persuade) girls to marry against their will. Early marriage—whether coerced or supposedly consensual—has been globally condemned and linked to documented physical and psychological health harms suffered by young brides,³¹⁵ including the inherent risks of adolescent pregnancy and childbirth that result in substantially higher rates of childbirth complications, maternal and newborn deaths and disabilities, and for contributing to a “cycle of ill-health and poverty.”³¹⁶

The early marriage loophole echoes and bolsters Article 308 by encouraging an alleged rapist to marry his victim as a means of salvaging her social standing and the honor of her family.³¹⁷ In both scenarios, where the law allows for sex-based early marriage or “incentivizes” marrying one’s rapist with minimally required consent, the girl’s or woman’s mental and physical health consequences, and her rights to autonomy, dignity, and non-discrimination are compromised by “quick” fixes to promote collective “tranquility.”³¹⁸

Better to Marry One’s Rapist than Birth “Illegitimate” Children

As in many legal systems, Jordan’s law considers children to “legitimately” exist and enjoy equal rights only if they were born within a recognized marriage. In addition, whereas gender stereotypes continue to dictate that mothers must care for young children, fathers, not mothers, hold legal guardianship over decisions

314. Cf. Rana F. Sweis, *In Jordan, Ever Younger Syrian Brides*, N.Y. TIMES (Sept. 13, 2014), <http://www.nytimes.com/2014/09/14/world/middleeast/in-jordan-ever-younger-syrian-brides.html> (discussing Syrian marriages occurring in Jordan for the same reasons).

315. U.N. POPULATION FUND, MARRYING TOO YOUNG 11 (2012), available at <https://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/MarryingTooYoung.pdf> (“Among the disabilities associated with early childbirth is obstetric fistula, an injury which leaves girls in constant pain, vulnerable to infection, incontinent, and often shunned by their husbands, families and communities.”); see also *What is the Impact?*, GIRLS NOT BRIDES, <http://www.girlsnotbrides.org/what-is-the-impact/> (last visited Jan. 11, 2015).

316. WHO, *Fact Sheet No. 364: Adolescent Pregnancies* (Sept. 2014) at <http://www.who.int/mediacentre/factsheets/fs364/en/> (last visited Jan. 11, 2015) (“Pregnancy and childbirth complications are the second cause of death among 15 to 19 year olds globally.”).

317. See Jordan CEDAW Report 2010, *supra* note 48, ¶ 64.

318. See, e.g., JORDAN CONST. art. 6, § 3 (asserting the elevated value of social tranquility: “The State shall ensure tranquility and equal opportunities to all Jordanians.”); JORDAN CONST. art. 6, § 4 (extolling the family and its morals as the corner stone of society); AWLN Report 2013, *supra* note 265, at 11.

related to their children.³¹⁹ In cases of divorce, mothers often receive automatic custody of children until puberty (for Muslims)³²⁰ or age 7 (for Christians), but fathers retain the legal authority over decision-making related to the children.³²¹ Children who are born “out of wedlock” are often considered “a product of a crime” (extramarital relations).³²² They are punitively torn from their mothers and “placed in government care until their lineage is established.”³²³ It is often nearly impossible for mothers to regain custody of so-called “illegitimate” children.³²⁴ A morass of laws governing parental lineage set up a lifetime of discrimination for both the child and the mother.³²⁵ According to a judge from the Islamic Chief of Justice Department, even in cases of rape, to prove a child’s parental lineage, the father’s confession and a marriage contract are required.³²⁶ Consequently, single women pregnant as a result of rape face dire

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319. See U.N. Children’s Fund, *Children in Jordan Situational Analysis 2006/2007*, 26 (2007), http://www.unicef.org/sitan/files/SITAN_Jordan_Eng.pdf (noting that Jordan may categorize children as “illegitimate”); see also *Jordan Fact Sheet*, EMBASSY OF THE U.S., http://jordan.usembassy.gov/acs_fact_sheet-.html (last visited Jan. 11, 2015).
320. JORDAN PERSONAL STATUS LAW OF 1976 art. 162; see also Gov’t of Jordan, *Replies to the List of Issues to Be Taken up in Connection with the Consideration of the Fourth Periodic Report of Jordan*, ¶ 17, H.R. Comm., Int’l Covenant on Civ. & Pol. Rts., U.N. Doc. CCPR/C/JOR/Q/4/Add.1 (Sept. 16, 2010) [hereinafter *Jordan CCPR Report 2010*].
321. JWU Report, *supra* note 16, at 24; *Mission to Jordan*, *supra* note 50, ¶ 66.
322. 145 PARL. DEB., H.C., (3d Sess.) (Mar. 29, 2010) (Can.).
323. Human Rights Watch, *supra* note 99, at 4.
324. JORDAN CIVIL STATUS LAW art. 23. A 2000 circular issued by the Ministry of Social Development defined three categories of “children of unknown parentage”: orphans, children of incestuous relationships, and children of “illicit sexual relations where one or both of the parties has been sanctioned by a court for their conduct.” *Jordan CEDAW Report 2013*, *supra* note 244, ¶ 104. Anecdotal evidence reveals that unmarried pregnant women, including migrant workers, bypass birthing in hospitals to avoid the risk of having their newborns taken away to state institutions. Cf. *In Their Own Words: Migrant Domestic Workers in Jordan*, COATNET, www.caritas.org/resources/Coatnet/MigrantDomesticWorkersJordan.html (last visited Jan. 11, 2015) (noting that a migrant worker residing in Jordan delivered her baby at home because she did not have a marriage certificate).
325. Experts explain that a DNA test to establish paternity may not be ordered by judges when requested by unmarried women to determine paternity for out-of-wedlock children. See Al-Doghmi, *supra* note 297 (“Sharia Courts do not recognize DNA because the Personal Status Law does not allow for it to be used on its own. There has to be an actual marriage, or a confession by the father for DNA to be accepted.”). Moreover, where DNA tests are privately available they are prohibitive in cost and as such out of reach for most women.
326. *Getting Away with Sexual Abuse in Jordan*, *supra* note 89.

options. Because abortion is illegal they may only opt for carrying the pregnancy to term, and given social stigma (and risk of “honor killing) over “illicit” pregnancies and the risk of separation from their children born of out wedlock, a hasty marriage to (most likely) their rapist becomes an almost compulsory solution.

The False Alternative of “Protective” Custody

Women who seek protection from threats of harms, especially from family members, must choose between one of few available shelters in the country, or be put under administrative “protective detention.”³²⁷ Women and girls who escape potential injury or murder by relatives under the so-called cover of “honor” are often themselves detained for their “own protection.”³²⁸ The Prevention of Crime Act empowers governors to place persons who may constitute a danger to the community in administrative detention; a provision that has been used without due process or review to indefinitely detain girls and women whose lives might be at risk.³²⁹ In 2011, “120 women were in administrative detention in the [women’s prison near Amman], of whom at least 25 were women at risk of suffering a so-called honour crime.”³³⁰ There are documented cases of women imprisoned “for their own safety” by order of the governor from 5 to 10 years.³³¹ The release of women from protective detention requires a male relative or guarantor.³³² In some cases families have promised not to harm their daughters, but, upon their release, have proceeded to kill them.³³³ In 2012, at least one woman was killed by her father in Al Ruseifa city, north of the capital, after she was released to his care because he signed a pledge to the governor not to harm her.³³⁴

327. HUM. RTS. WATCH, GUESTS OF THE GOVERNOR 10 (2009), available at <http://www.hrw.org/sites/default/files/reports/jordan0509webwcover.pdf>; Hillary Mayell, *Thousands of Women Killed for Family “Honor,”* NAT’L GEOGRAPHIC NEWS (Feb. 12, 2002),

http://news.nationalgeographic.com/news/2002/02/0212_020212_honorkilling.html.

328. *Jordan: Victims Jailed in ‘Honor’ Crime Cases*, HUM. RTS. WATCH (Apr. 20, 2004), <http://www.hrw.org/news/2004/04/19/jordan-victims-jailed-honor-crime-cases>.

329. MANSUR ET AL., *supra* note 18, at 16.

330. *Mission to Jordan*, *supra* note 50, ¶ 27.

331. Human Rights Watch, *supra* note 99, at 1, 12.

332. *Mission to Jordan*, *supra* note 50, ¶ 28.

333. See Human Rights Watch, *supra* note 99, at 10.

334. *Jordan 2012 Human Rights Report*, U.S. DEP’T OF STATE 21, <http://www.state.gov/documents/organization/204579.pdf> (last visited Jan. 11, 2015) [hereinafter *Jordan 2012 Human Rights Report*].

Whether in custody or a shelter, women's options are limited. The government and the legal framework continue to de-prioritize due diligence and protection from violence, opting instead to "vanish" the potential victim and her possible stain on her family's honor.³³⁵

"Rapist" Marriage Provision Used to Bypass Requisite Guardian Consent to Marriage

Women may typically only marry with the consent of a male guardian.³³⁶ Women who defy family preference for a groom, or opt to choose a partner not approved by the family, may technically not be able to marry due to the required legal guardian's consent. In situations where the couples prefer not to separate despite family pressure, they may see themselves as "married" but in reality the law deems them as engaged in an "illicit relationship."³³⁷ Although women must technically provide their free and full consent to marriage,³³⁸ the required approval and intimate involvement by the woman's family in selecting a partner, as prescribed by law, reinforce that decisions about their sexuality and sexual and reproductive rights are made collectively and premised on key tenets of family morals of honor.³³⁹ Marriage contracts are generally concluded between the woman's guardian and the intended husband.³⁴⁰

In a modern twist, some young couples—given the legal and social context in Jordan—have "creatively" used Article 308 to marry against the wishes of their families.³⁴¹ When parents disapprove of their choice of potential spouse, some couples have arranged for the woman to allege "forced" illicit relations activating the legal (and social) remedy of Article 308 encouraging the woman to marry her alleged rapist (in this situation her boyfriend whom she wishes to

335. See Warrick, *supra* note 76, at 327–28.

336. AMIRA EL-AZHARY SONBOL, *WOMEN OF JORDAN: ISLAM, LABOR, & THE LAW* 135 (Syracuse Univ. Press, 2003); JWU Report, *supra* note 16, at 42.

337. See *id.*

338. Jordan CEDAW Report 2010, *supra* note 48, ¶ 301.

339. See generally SONBOL, *supra* note 336, at 125–26 (suggesting that marriage in Jordan is an event that requires nearly total deference to the norms and morals of a woman's family and her community).

340. Women may insert favorable conditions in their marriage contract, such as stipulations that they be allowed to work, or seek a divorce if their husband takes another wife (as polygyny is legal). Jordan CCPR Report 2010, *supra* note 320, ¶ 8; see *id.* at 171–72. This innovative tactic remains little known to most women, and of possibly little interest to the guardian who negotiates and concludes the contract on their behalf. See *e.g.*, SONBOL, *supra* note 336, at 155.

341. Al-Doghmi, *supra* note 297 ("In some cases, [A]rticle 308 might encourage minors to have sex in order to persuade their families to marry them . . .").

marry against her parents' wishes) to avoid shame for her and penalty for him. A prominent Jordanian lawyer also cited an uncommon case of a woman marrying a younger male love interest under this provision,³⁴² utilizing it to bypass laws that restrict freedom of choice of partner and punish extramarital relations.

Abortion Ban Exception for "Honor"

Abortion is prohibited and criminalized with narrow exceptions when necessary to avert imminent danger to the woman's health or her life.³⁴³ A reduced penalty for inducing an abortion is available to a woman or to a relative who seeks to terminate a pregnancy "to protect [the woman's] honor."³⁴⁴ The law specifically envisioned the need for a woman to abort an "illegitimate" pregnancy for the explicit purpose of "protect[ing] her honor" and by extension that of her family.³⁴⁵ Notably, Article 324 mitigates the usual maximum three years' imprisonment³⁴⁶ only for the woman and a relative (to the third degree) but not for a healthcare professional who might have the proper credentials, training, or equipment to provide a safe abortion procedure.³⁴⁷ Thus to benefit from a penalty reduction, the woman must resort to undergoing a potentially life threatening, self-induced unsafe abortion. If she survives the ordeal, she may then seek a mitigated sentence.

Criminalized Sexual Relations and Stigma Deter Claiming Rights

Because sexual relations outside marriage are criminalized, victims of sexual crimes are less likely to report a crime against them, as such

342. *See id.*

343. *See* Jordan CEDAW Report 2010, *supra* note 48, ¶ 240.

344. JORDAN PENAL CODE art. 324. Article 324 of the Penal Code states:

Any woman, who causes her miscarriage in order to protect her honor, shall benefit from a mitigating factor. The person who commits one of the crimes stipulated in articles (322 and 323 [stipulating criminal penalties for abortion]) in order to protect the honor of one of his decedents or relatives up to the third degree, he/she shall benefit from the mitigating factor.

Id.; *see also* Jordan CEDAW Report 2010, *supra* note 48, ¶ 240.

345. *See* JORDAN PENAL CODE art. 324.

346. *Id.* 321–22.

347. *Id.* 324. Healthcare professionals, such as doctors, surgeons, and midwives, who provide abortions not for the life or imminent danger of death of the woman are slapped with heavier penalties; the law requires penalties for them to be "increased by one third." *Id.* 325.

an allegation may be easily turned into a *charge* against them.³⁴⁸ In many contexts the abusive conduct may not constitute a crime.³⁴⁹ For example, only sexual harassment by a superior in a workplace is regulated,³⁵⁰ and no law circumscribes sexual harassment in educational institutions, which women attend in record numbers and relate tales of pervasive harassment, primarily by fellow male students and by some faculty members.³⁵¹ Given that such on-campus harassment is not technically outlawed and no clear grievance procedure is available while any non-marital sexual contact is criminalized, female students avoid formal complaints for fear of themselves being accused of impropriety.

Unsurprisingly, less than 2% of Jordanian women suffering severe and repeated sexual or physical family violence seek help from the police and only about 4% from social service agencies, according to the last available national Population and Family Health Survey on

348. See *supra* note 245 and accompanying text.

349. See *infra* note 350 and accompanying text.

350. JORDAN LABOR CODE art. 29(6). Article 29(6) of the Labor Code, as amended in 2008, states that

The employee shall have the right to leave work with no notification while keeping his/her legal rights related to the end of service and the arising compensations of damages in any of the following cases: . . . If the employer or his representative assaulted him during work by beating or degradation.

Id. Abuse by colleagues and subordinates is not covered. JWU Report, *supra* note 16, at 9. The remedy allows a victim to leave work and request compensation equal to three to six months pay plus a one-month notice. The law lacks penalties for the offender, or guarantees against retaliation against complainants who pursue charges.

351. See, e.g., Raghda Butros, *Harass Me, if You Can*, BEAMMAN, <http://beamman.com/on-the-street/people-/799-harass-me-if-you-can> (last visited Jan. 11, 2015) (recounting experiences of sexual harassment at the University of Jordan). In 2012, University of Jordan students produced a short video on sexual harassment on campus. Jadaliyya Reports, *Sexual Harassment Video that Led to Removal of Rula Quawas as Dean at the University of Jordan*, JADALIYYA (Oct. 30, 2012), <http://www.jadaliyya.com/pages/index/8086/sexual-harassment-video-that-led-to-removal-of-rul>; Fastervids, *Sexual Harassment at the University of Jordan*, YOUTUBE (Nov. 25, 2012), http://www.youtube.com/watch?v=Vzj8iy8b_fk. Female students are seen standing at different points on campus holding up placards with words that were hurled and hissed at them at those locations. See *id.* Following heated controversy about the video, which officials roared tarnished the reputation (“honor”) of Jordan’s top academic institution, the University of Jordan demoted Dr. Rula Qawwas, the professor who oversaw the project. See Letter from Fred M. Donner, President, Middle East Studies Ass’n, to Ikhleif Tarawneh, President, Univ. of Jordan (Oct. 26, 2012), available at <http://www.mesa.arizona.edu/pdf/Jordan20121026.pdf>.

the topic.³⁵² Women and girls who endure sexual harassment or violence prefer not to expose the crime, or report the offender.³⁵³ In its report to the UN Committee on the Convention on the Elimination of All Forms of Discrimination Against Women which monitors compliance with its namesake treaty, the government recognized that women “are reluctant to exercise their legal rights because they believe that any complaint means disgrace” and that “[m]any women who lodge complaints withdraw them after the legal process has begun under pressure from those around them.”³⁵⁴ The systemic underreporting has been attributed to “fear of family fragmentation, fear of losing custody of children in the case of divorce, and fear of affecting the family’s reputation.”³⁵⁵

When a woman survives a violent attack, she is often pressured by family to drop any charges against the perpetrator. As explained by a local women’s rights group, “Societal customs often serve to pressure the guardians of a female victim to waive personal claims and drop charges to avoid social stigma, particularly in cases of sexual assault, rape, and homicide.”³⁵⁶ Prosecutions are automatic for cases that require more than 20 days of hospitalization,³⁵⁷ which are rarely recommended by medical reports.³⁵⁸ However, forensic reports typically conclude that resultant injuries do not require more than 10 days of hospitalization, making the crime a misdemeanor.³⁵⁹ If a woman drops the case—as the law allows in such cases—there is no public right of prosecution and the case is closed.³⁶⁰

352. POPULATION AND HEALTH SURVEY 2012, *supra* note 46, at 213–14. Women were most likely to seek help from their own family (84%) or from their husband’s family (19%). *Id.* Compare with the 2007 survey in which 7% of abused Jordanian women sought police help and less than 1% from social service agencies. POPULATION AND HEALTH SURVEY 2007, *supra* note 150, at 179.

353. *Id.* at 215. Women who have experienced only sexual violence are the least likely (5%) to seek help, and as compared with women who experienced physical violence (38%). *Id.*; see also, POPULATION AND FAMILY HEALTH SURVEY 2007, *supra* note 150, at 179.

354. Jordan CEDAW Report 2010, *supra* note 48, ¶ 44.

355. *Mission to Jordan*, *supra* note 50, ¶ 13.

356. AWO SHADOW REPORT, *supra* note 239, ¶ 23.

357. JORDAN PENAL CODE art. 333 (proscribing a mandatory punishment of imprisonment for three months to three years where the victim is unable to carry out his or her work activities for more than 20 days).

358. JWU Report, *supra* note 16, at 33.

359. JORDAN PENAL CODE art. 334(2); JWU Report, *supra* note 16, at 33.

360. JORDAN PENAL CODE art. 334(2); JWU Report, *supra* note 16, at 33.

The government's acknowledged that women avoid exercising or claiming their rights and reject seeking redress to avoid bringing shame and tarnishing the "family's honor." Yet neither the state nor activist advocacy has focused on the links between the criminalization of sexual relations, adverse laws and meager legal protections, and women's reluctance to claim their rights.

Families Torn Between Victim and Perpetrator

Even once a so-called crime of honor is reported and the accused is arrested and charged, the law permits judges to slash in half a perpetrator's sentence when he is excused by the victim's family.³⁶¹ Judges may exercise their discretion to reduce sentences regardless of the family's request but typically reductions are based on the victim's family's stated preference.³⁶² In cases of "honor crimes," the victim's family is also the defendant's family. The same family likely partook in the decision for the defendant to carry out the violence and will likely seek to drop the charges against him.³⁶³

Despite the conflict of interests of a family tacitly grieving for a daughter but wishing to avoid further pain of a son imprisoned,³⁶⁴ the state opts to privilege "the interests of private actors, rather than treating these crimes as public offenses that affect all of society and that touch on fundamental rights that the state has a duty to protect."³⁶⁵ Between 2000 and 2010, in over 78% of cases families waived their right to a full prosecution and sentence and opted for reduced penalties for perpetrators.³⁶⁶ Consequently, only a small number of so-called "honour killings" cases proceed to trial.³⁶⁷

In summary, Jordan's legal system constrains women's options. Coerced marriage as a slapdash solution to restoring or preserving honor might seem better than the other legally-sanctioned alternatives: a reduced penalty for maiming or killing women who engaged or are presumed to have engaged in improper relations—

361. JORDAN PENAL CODE art. 99(3) ("The court has the power to reduce any other criminal sentence by half."); *Mission to Jordan*, *supra* note 50, ¶ 25. The law stipulates for the reduction by half of any sentence other than life imprisonment and capital punishment (which are subject to other reductions). See JORDAN PENAL CODE art. 99.

362. *See id.* art. 99(3); *Mission to Jordan*, *supra* note 50, ¶ 25.

363. *See Mission to Jordan*, *supra* note 50, ¶¶ 24–25.

364. Arguably the family may have reconciled the need for the violence given the perceived transgression against its honor. *See id.*

365. Warrick, *supra* note 76, at 341.

366. *See Mission to Jordan*, *supra* note 50, ¶¶ 2, 25.

367. Jordan CEDAW Report 2010, *supra* note 48, ¶ 63.

whether by consent or by force, protective custody, or perilously self-inducing an honor-preserving abortion.

Law and Norms in Action: Campus Violence, Honor, and Women's Underemployment

The complex interplay of honor, gender roles and expectations, and intersecting identities is exemplified in the increasingly discussed on-campus violence across Jordan. Women today make up an overall majority of undergraduate university students in Jordan (51%).³⁶⁸ Their presence is ubiquitous on nearly every public university campus in the country.³⁶⁹ The flagship University of Jordan with campuses in the capital, Amman, and in the southern town of Aqaba, reported 65% female students in 2011–12.³⁷⁰

Recent reported rise in campus violence³⁷¹ has been attributed to tribal loyalties, with an overwhelming number of incidents linked to relatives concerned about female students. While the brawls are primarily motivated by the “honor” of women, they are fought out between men.³⁷² The Jordan Times extensively covered the incidents

368. Women have earned the top grades in college admission tests earning them access to study tracks of their choosing. Jordan CEDAW Report 2010, *supra* note 48, ¶¶ 132–34. In contrast, women constitute about 20% of faculty members across Jordan. *Id.* ¶¶ 79–80.

369. *Id.* ¶¶ 132–33 (“The country is experiencing a wave of predominance by women in terms of acceptance at State-run universities” and “women regularly earn the highest marks, winning the top ten places in all branches.”).

370. *Bachelor Students Distributed According to Faculties*, UNIV. OF JORDAN, <http://www.ju.edu.jo/FactsAndFigures/Facts%20and%20Figures.pdf> (last updated July 10, 2012). Notably female Bachelor students at the University of Jordan (UJ) make up the majority in most faculties, including fields considered traditionally male-dominated such as sciences (77%), law (56%), business (62%), IT (53%); and nearly half (44%) in the medical track, considered the most prestigious track. *Id.* Women also constitute 52% of all postgraduate students, though less represented in some key professions such as law (28%), technology and engineering (45%), sciences (49%). *Id.*

371. About 50 fights were recorded by National Campaign for Defending Students' Rights between January and April 2012 alone. Khetam Malkawi, *Tribal Loyalties Behind Majority of Campus Violence Incidents*, JORDAN TIMES (Dec. 7, 2013), <http://jordantimes.com/tribal-loyalties-behind-majority-of-campus-violence-incidents>.

372. Social science research from other contexts likewise link greater propensity and justification of violent acts to prevailing cultures of honor. A study based on data from a 20-year period in the United States found that “culture-of-honor” states had more than twice as many school shootings per capita as non-culture-of-honor states, suggesting that acts of school violence reflect “retaliatory aggression springing from intensely experienced social-identity threats.” Brown et al., *supra* note 157, at 1400.

and reported that about 62% of violent incidents at universities are tribal related and 60% “are related to sexual harassment against girls.”³⁷³ A University of Jordan source explained that campus clashes “between students affiliated with two tribes” were sparked after “a student saw a female relative, also a student, talking to a male student from another tribe.”³⁷⁴ The deep and instinctual involvement of male relatives in policing their female relatives’ behavior has expanded to spark and justify violence among young people, including on university campuses, resulting in heightened anxiety, hyper vigilance, injuries, and at times deaths.³⁷⁵

Jordan has been dubbed a “development paradox.” Despite high educational attainment by women, their participation in the formal labor market has remained very low, including for the region, increasing by a mere 2.4% over the past decade.³⁷⁶ About 14.7% of women, compared with 63.5% of men, participate in the formal labor force. Women’s unemployment is almost double that of men (20% compared with 10% for men).³⁷⁷ These rates are substantially higher among youth.³⁷⁸ Structural constraints provide only partial explanations, ranging from lack of affordable childcare, unreliable public transportation, limited job openings, and laws that exclude women from certain sectors and working-hours. Employers complain about progressive laws stipulating for paid maternity leave and childcare benefits for women, though a newly-established state fund aims to offset employers’ costs.³⁷⁹ A deeper analysis might link both

373. Malkawi, *supra* note 371.

374. Khetam Malkawi, *Violence Breaks Out at University of Jordan*, JORDAN TIMES (Mar. 10, 2012), <http://jordantimes.com/violence-breaks-out--at-university-of-jordan>.

375. See Khetam Malkawi, *WISE University Suspends Classes Over Brawl*, JORDAN TIMES (Dec. 31 2013), <http://jordantimes.com/wise-university-suspends-classes-over-brawl> (describing “[v]iolent acts in the Kingdom’s universities” as a phenomenon developing in the past two years and reporting that major clashes at universities in the south of Jordan, also considered as more conservative and movement by Bedouin tribes resulted in more than four casualties, and ensuing days of unrest that shut down the universities and nearby roads).

376. JNCW National Report, *supra* note 273, at 65.

377. *Select Indicators for 2012*, DEP’T OF STATISTICS, JORDAN, http://www.dos.gov.jo/dos_home_a/jorfig/2012/1.pdf (last visited Jan. 11, 2015).

378. Unemployment is 22% for males and 45% for females. Areej Abuqudairi, *Youth Unemployment Remains a Major Challenge for Jordan*, JORDAN TIMES (Dec. 31, 2012), <http://jordantimes.com/youth-unemployment-remains-a-major-challenge-for-jordan>.

379. See Stefanie Brodmann et al., *Social Insurance Reform in Jordan: Awareness and Perceptions of Employment Opportunities for Women*, *Social Protection & Labor Discussion Paper*, No. 1402, 41, THE WORLD BANK (June 2014), available at <http://www->

women's reluctance and inability to partake in the formal labor market to constraining attitudes about the consequences if their conduct outside the home is seen to potentially harm communal or family "honor."

V. INTEGRATING FEMINIST LEGAL REFORM PRINCIPLES

Feminist legal theory questions the conceptualizing of rule of law that favors order premised on status quo of power relations and norms presumed to be a natural, or even inevitable default, a normative standard oft based on presumptions of gender inequality and bias. An effective feminist reform agenda would pair legal analysis with credible research to inform the public and policymakers about the adverse health consequences *and* human rights violations and the critical need for additional reforms.³⁸⁰ A feminist reform agenda will strategically reach farther and deeper than current piecemeal efforts aimed at low-hanging fruit that, while perhaps easier to pick, often fail to see the forest (orchard) for the trees and as such might entrench rather than dismantle systemic discrimination.

The discourse for legal reform must account for the public health impact of maintaining a legal system premised on the notion of women as repository and gauges of family and collective honor. The intersection of rights (law) and health is absent from calls for law reform in Jordan. Reorienting the discourse to include and at times focus on the public health consequences has worked to reframe debates around controversial issues with religion and culture-specific sensitivities in other countries, such as abortion, early marriage, and female genital mutilation/cutting.³⁸¹ Feminist activists and lawyers in Colombia successfully re-oriented abortion discourse away from entrenched, Catholic church-dominated rhetoric about "life of the

wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2014/07/03/000470435_20140703093018/Rendered/PDF/891870NWP0P132085273B00PUBLCI001402.pdf.

380. See, e.g., Martha Albertson Fineman, *Gender and Law: Feminist Legal Theory's Role in New Legal Realism*, 2005 WIS. L. REV. 405, 405 ("[F]eminism is at its core an interdisciplinary endeavor; feminist scholars are well accustomed to integrating work from multiple disciplines."); see also discussion *supra* Part III (placing "'crimes of honor' within a human rights and health framework to illustrate the critical importance of examining the health consequences tied to the human rights violations cascading from such crimes").

381. See, e.g., Belkis Giorgis, *Eliminating Female Genital Mutilation – A Public Health and Cultural Perspective*, RH REALITY CHECK (Feb. 11, 2013, 12:51 PM), <http://threalitycheck.org/article/2013/02/11/international-day-zero-tolerance-eliminating-female-genital-mutilation-public-h/>.

unborn” to a public health and human rights concern affecting women and the community as a whole, culminating in a landmark 2006 Constitutional Court decision that legalized abortions under certain conditions.³⁸² The campaign around the constitutional litigation stressed the public health toll of unsafe abortions while featuring the sympathetic case of a woman diagnosed with cancer who was unable to legally terminate her pregnancy in order to safely receive radiation treatment and died,³⁸³ leaving the newborn and her other children orphaned. The Colombian court ultimately concluded that “[p]rotecting sexual and reproductive rights is a direct path to promoting the dignity of all human beings, and a step forward in humanity’s advancement towards social justice.”³⁸⁴

Despite setbacks for women during recent regional and national calls for reform, the time is ripe for Jordan’s feminist movement to realign and regain its momentum, dampened by the disappointing 2011 reforms. This section will first outline critical shortcomings in existing calls for gender equality reform that fall short of holistic re-examination of the legal system’s premise of honor. It will then draw on feminist legal analysis and feminist values that link cause, impact, and power dynamics to leverage a thoughtful, comprehensive legal framework analysis bridging health and rights, context, and reality.³⁸⁵ Albeit complex, such intersectional analysis of discrimination and

382. See Rebecca J. Cook, *Foreword to C-355/2006: Excerpts of the Constitutional Court’s Ruling that Liberalized Abortion in Colombia*, WOMEN’S LINK WORLDWIDE 7 (2007). The decision legalized abortions in cases where a pregnancy threatens a woman’s life, her physical or mental health, and in cases of rape, incest, or grave fetal malformations incompatible with life outside the womb. *Id.* at 6.

383. See Nicole Karsin, *Abortion Adds to Colombia’s Election Turmoil*, WOMEN’S ENEWS (May 25, 2006), <http://womensenews.org/story/campaign-trail/060525/abortion-adds-colombias-election-turmoil#.VDBgFmRdVel> (sharing the story of Colombian Marta Gonzalez, who was dying of cancer because she could not interrupt her pregnancy); Nicole Karsin, *Colombians Push Abortion onto National Agenda*, WOMEN’S ENEWS (Dec. 22, 2005), <http://womensenews.org/story/abortion/051222/colombians-push-abortion-national-agenda#.VDBTN2RdVek> (explaining the campaign’s high-impact litigation strategy to demonstrate the effect of abortion bans on Colombian women).

384. Corte Constitucional [C.C.] [Constitutional Court], mayo 10, 2006, M.P.: J. Rentería & C. Hernández, Sentencia C-355/2006, Gaceta de la Corte Constitucional [G.C.C.] (Colom.), as reprinted in *C-355/2006: Excerpts of the Constitutional Court’s Ruling that Liberalized Abortion in Colombia*, WOMEN’S LINK WORLDWIDE 32 (2007), http://www.womenslinkworldwide.org/pdf_pubs/pub_c3552006.pdf.

385. This section focuses on the need for more robust analysis, and not on the process required, which would include broad participation, ownership, mobilization, and accountability to link analysis to successful reform campaigns. Research is also still needed on the interactions between formal legal systems and informal tribal and customary law in reinforcing gender discrimination.

impact would equip legislators with both a strategic roadmap and arguments and rationales based on women's lived experiences to warrant structural reform of laws and biases.

A. *Disjointed Feminist Reform Agenda*

Attempts at reform toward women's empowerment and gender equality³⁸⁶ in Jordan have generally concentrated on either calls for the repeal of a specific article or demands to amend or repeal an overwhelmingly long laundry list of various laws and regulations.³⁸⁷ The "repeal this article" approach assumes (or hopes) that the repeal of an isolated Article will resolve a long standing legally-sanctioned social bias and practice.³⁸⁸ The national debate about so-called honor killings centered nearly exclusively on the mere elimination of Article 340 from the penal code.³⁸⁹ Recently, there have been calls for the repeal of Article 308 which allows rapists to escape prosecution if they marry their victims.³⁹⁰ Whether a strategic tactic to ask for a minimum change that will stir the least resistance, or shortsightedness about meaningful reform, this approach has failed to address the core, underlying assumptions that scaffold such laws.

Calls for reform by non-governmental organizations (NGOs) and women's rights groups have offered little explanation of the harmful interaction of the various problematic provisions and only minimal analysis of the underlying gender assumptions that need to be addressed (which if mentioned will be vaguely characterized as "patriarchy"). Campaigns are rarely premised on in-depth studies or analysis of the adverse health and human rights impact of existing

386. The currently preferred language of the UN agency on women (UN WOMEN) and related donors. *See About UN Women*, UN WOMEN, <http://www.unwomen.org/en/about-us/about-un-women> (last visited Jan. 11, 2015).

387. *See* Rana Hussein, *Women's Commission Delivers Activists' Demands on Penal Code Amendments to Talhouni*, JORDAN TIMES (Aug. 24, 2014, 10:21 PM), <http://www.jordantimes.com/womens-commission-delivers-activists-demands-on-penal-code-amendments-to-talhouni> (reporting that the Jordanian National Commission for Women (JNCW) sent a letter to the minister of justice demanding changes to discriminatory articles). The JNCW, a national semi-governmental organization, issues "demands for reforms" to each new parliament packaged in a long laundry list of specific articles or laws generally that should be revised. *See id.*

388. *Cf. Mission*, JORDANIAN NAT'L COMM'N FOR WOMEN, http://www.women.jo/en/about.php?cat_id=10&type=0 (last visited Jan. 11, 2015) (describing JNCW's mission, including "narrow[ing] the gap between formal acknowledgment of women's rights as detailed by legislation and actual societal attitudes towards women").

389. *See supra* notes 275–82 and accompanying text.

390. *See supra* note 297 and accompanying text.

provisions and the lingering costs in the absence of needed reforms.³⁹¹ For example, although some women's rights advocates have called for legal abortions in cases of rape and incest, no campaign or analysis on "crimes of honor" seems to analyze the Penal Code's allowance for self-induced, unsafe abortion to preserve a woman's "honor" and the resultant health and human rights impact.³⁹² Reproductive and sexual rights are not conditioned on the need to "preserve honor." Such conception of honor is inapposite to that of dignity defined by human rights law to mean inherent worth of an individual to enjoy a range of human rights, including equality, non-discrimination, and freedom from inhuman, degrading treatment, privacy, health, and life.³⁹³

Campaigns generally lack firm research foundation on the scope of harms and attendant implications needed to better inform and mobilize grassroots support. For example, calls for the repeal of Article 308 appealed to the general unfairness of the practice, rather than to call for a serious study of the impact of marriages between victims and their rapists on the coerced wives and resultant

391. In its 2011 National Progress Report on Jordanian Women, the JNCW recommends that "[n]ational efforts should be continued to complete the process of refining and taking out from current legislation any discrimination against women, and any legal text that ceased to be appropriate, or does not meet the needs of women and the Jordanian society at this stage." JNCW NATIONAL REPORT, *supra* note 273, at Ch. I, § 4. JNCW linked its findings on denial of women's inheritance rights to broader power dynamics that sustain gender violence: "[T]here is [a] fundamental relationship between violence and discrimination against women . . . [and their deprivation of equal rights to ownership and] inheritance as well as other rights in different areas." JORDANIAN NAT'L COMM'N FOR WOMEN, JORDAN HASHEMITE FUND FOR HUMAN DEV., U.N. POPULATION FUND, WOMEN'S RIGHTS TO INHERITANCE: REALITIES AND PROPOSED POLICIES 8 (2012), available at http://www.johud.org.jo/SystemFiles/SSfile_635143893539732903.pdf [hereinafter REALITIES AND PROPOSED POLICIES]. The brief recommendations section did not reflect this "finding." *Id.* at 27–28. Also, advocacy calls for reform of provisions related to violence against women have not effectively drawn on the links to economic marginalization. *Id.* at 26–27.

392. See *supra* notes 343–47 and accompanying text.

393. See ARAB WOMEN ORG. ET AL., SUBSTANTIVE EQUALITY AND NON-DISCRIMINATION IN JORDAN ¶ 250 (2012), available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AWO-Mosawa_forthesession_Jordan_CEDAW51.pdf for a discussion of reported cases of forced or non-consensual sterilization and hysterectomy of women with mental disabilities. According to a report by the Arab Women Network in Jordan, in 2010 three-fourths of hysterectomies were performed on girls and women with intellectual disabilities. *Id.* The underlying justification is "to avoid social stigma and honor-related issues, if the girl or woman becomes pregnant as a consequence of rape." *Id.*

children.³⁹⁴ Despite a myriad of small-scale studies, there has never been a comprehensive, national baseline study conducted on gender-based violence in Jordan, its scope, consequences, and tolls. The closest such studies are the 2007 and 2012 Health and Population Survey which focused almost solely on domestic violence rates.³⁹⁵

Over the past 15 years, there *have* been several successful campaigns that resulted in legal reform to benefit women and the government has revised several core aspects of the Personal Status Law (for Muslims) and the Penal Code.³⁹⁶ Legislative reform, however, has been piecemeal, watered-down, and laws usually passed as interim or provisional while parliament is away, granting them lesser value and potentially limited tenure. Recent reforms and new laws (such as the 2008 Family Protection Act and the 2009 Anti-Trafficking law) have resulted in a matrix of at times inadequate or contradictory guarantees and protections,³⁹⁷ lack of harmonization with existing codes, and have been accompanied by lukewarm enforcement, and inadequate public awareness about the revisions.³⁹⁸

Feminist campaigns have tended to be brief, suffer from lack of broad-based coalitions with strong grassroots following, often driven by availability of funds and thus vulnerable to donor agendas. Long lulls and seeming inaction exist between campaign “bursts” which tend to focus on reform of a particular Article—as in the 1999 “National Campaign to Eliminate So-Called ‘Honour Crimes’” which focused on the repeal of Article 340³⁹⁹ or general awareness

394. Al-Doghmi, *supra* note 297.

395. POPULATION AND HEALTH SURVEY 2012, *supra* note 46, at 199; POPULATION AND HEALTH SURVEY 2007, *supra* note 150, at 171.

396. See *infra* notes 399–400 and accompanying text.

397. See *supra* notes 288–92 and accompanying text; see also note 350 for a discussion of the new sexual harassment provision in the labor code.

398. A campaign on the denial of women’s inheritance rights drew on Islamic guarantees to reinforce women’s legitimate right to inheritance resulted reforms under the Provisional Jordanian Personal Status Law no. 36 of 2010. REALITIES AND PROPOSED POLICIES, *supra* note 391, at 9, 13. The revisions extended the “grieving period” before a woman may be approached to give up her inheritance share in return for other “compensation.” *Id.* at 17. Jordan’s Personal Status laws, premised on Islamic Sharia, always guaranteed women’s property and inheritance rights, though in reality women have been reluctant to claim their shares. *Id.* A 2010 study of women in the populous Irbid governorate illustrate that despite high awareness of this right (91%), only 26% received it, and 15% voluntarily gave away their share. *Id.* at 23–24.

399. See Danielle M. Becknell, *Gender Based Violence in Jordan: Domestic Violence and Honor Crimes* pt. 2, § 8 (Indep. Study Project Collection, Paper No. 428, 2005), available at

campaigns on violence against women, as with the 16 Days of Activism activities promoted by the Jordanian National Commission for Women, a national semi-governmental umbrella women's rights organization.⁴⁰⁰

A feminist agenda for reform accounts for the ways the legislation operates in a complexity of formal and informal systems of laws, policies, practices, and social norms. To be effective, it must delve into deeper analysis paired with credible research to inform both policy and the public. Feminists could capitalize on locally popular human rights discourse, imbuing it with more specific and nuanced analysis of violations and their impact in a manner that integrates a health dimension. Reorienting the discourse based on an analysis that tells the story of the various problematic legal provisions coupled with solid research about their harms could infuse new possibilities for feminist law reform in Jordan.

B. *Gendering Rule of Law Reform*

Reform is a perpetual process of analyzing intersectional realities and the nexus of lingering and new violations. A much-needed feminist legal analysis might run afoul of current "rule of law" programming that favors technical feminism's calls for quick, if superficial outcomes. Donor-driven legal reforms for gender equality, even if locally desired, strive for what has been derisively termed "feminism that cannot wait" or "UN and International Civil Society Feminism" which, however well intentioned and well funded, remains unsustainable absent deeper, more thoughtful analysis and longer-term discourse.⁴⁰¹ Such "Instant Feminism"⁴⁰²—as can be

http://digitalcollections.sit.edu/cgi/viewcontent.cgi?article=1427&context=isp_collection. The 1999 "National Campaign to Eliminate So-Called 'Honour Crimes'" called for the abolishment of Article 340 and for related amendments such as higher penalties, limits on sentence reduction, and greater investigative and prosecutorial authority.

400. A critic of a recent campaign sponsored by the U.N. and international organizations as part of the global 16 Days of Activism Campaign Against Gender Based Violence writes "the current Orange campaign drawing attention to 'violence against women' [is] an embarrassingly futile, superficial bandage on the cleft that is violent inherent discrimination against women in our collective Jordanian psyche." Siwar Masannat, *How Can There Be a Feminist World – A Talk by Gayatri Spivak*, (Dec. 1, 2013), <http://www.7iber.com/2013/12/how-there-can-be-a-feminist-world-a-talk-by-gayatri-spivak/>.

401. Professor Gayatri Chakravorty Spivak, Columbia Univ., *How Can There Be a Feminist World?* (Nov. 16, 2013) (recording available in the Columbia Global Center Middle East).

402. *Id.*

seen in the appointment of staff lacking relevant background to serve as gender focal points in government ministries and in some donor missions—seeks easy, “low hanging fruit” results.⁴⁰³ Local groups might likewise opt for simplified, repeal-this-one-provision campaigns because they are easier to organize and mobilize around, and might be less politically risky.⁴⁰⁴

What might be termed “Feminism in a box”—to echo the “government in a box” kits promoted in Afghanistan⁴⁰⁵—short-shrifts analysis and advocacy for more than mere “gender neutral” laws peppered with a few “gender specific protections” related to reproductive functions, pregnancy, and breastfeeding.⁴⁰⁶ Such technical, pop-up feminism prefers to support superficial, disjointed campaigns that raise piecemeal awareness with watered down calls for legislative action.⁴⁰⁷ The potential of feminist legal analysis goes beyond cosmetic, isolated amendments to identified sex-discriminatory provisions. It entails a radicalization of notions. As one scholar couched it, meaningful change means that the “mother thinks honor, daughter thinks reproductive justice.”⁴⁰⁸

This sub-section proposes three simplified principles based on human rights and feminist legal theory⁴⁰⁹ to inform analysis needed

403. *Id.*

404. *Id.*

405. See Joe Klein, *Harvesting Democracy in Afghanistan*, TIME (Mar. 31, 2010), <http://content.time.com/time/magazine/article/0,9171,1977134,00.html>; Mark Memmott, *In Afghanistan: ‘Government in a Box’ Includes Cash, Equipment, New Leaders*, THE TWO-WAY NPR’S NEWS BLOG (Feb. 22, 2010, 12:55 PM), http://www.npr.org/blogs/the-two-way/2010/02/afghanistan_marjah_government.html.

406. See *supra* Part V.A.

407. See *supra* Part V.A.

408. Spivak, *supra* note 401.

409. This approach presents a complementary, yet more radicalized version of common international human rights-based principles approach to policy and legislative reform: autonomy, equality and non-discrimination, accountability, participation and empowerment, and international cooperation (and donor support). See in the context of reform around reproductive rights in the framework of the CRR & UNFPA, *supra* note 156, at 3–4; U.N. DEP’T OF ECON. & SOC. AFF., DIV. FOR THE ADVANCEMENT OF WOMEN, HANDBOOK FOR LEGISLATION ON VIOLENCE AGAINST WOMEN, at 14, U.N. Doc. ST/ESA/329, U.N. Sales No. E.10.IV.2 (2009) [hereinafter U.N. Handbook on Legislation]; *The Human Rights-Based Approach*, UNFPA, <http://www.unfpa.org/rights/approaches.htm> (last visited Jan. 11, 2015) (“[T]he 1994 International Conference on Population and Development (ICPD) is underpinned by human rights principles. The ICPD and ICPD +5 placed population, reproductive health and gender equality in a human rights-based framework linked to human development and sustained economic growth.”).

for integrated advocacy for substantive gender equality that accounts for gender, sexuality, health, and human rights and their shifting dynamics. The principles call for 1) holistic, comprehensive reform measures; 2) recognizing intersectionality and interdependence of identities and rights; and 3) dismantling assumptions and power dynamics. Each component is outlined below in terms of its analytic advantage vis-a-vis underexplored potential for law reform for gender equality in Jordan.

Holistic, Comprehensive Reform Measures

Calls to amend a single penal code provision or focus solely on one criminal aspect in isolation of its context are misguided. Feminist legal theory provides for holistic solutions⁴¹⁰ based on analysis of health and legal implications of a system premised on gender stereotypes. Bifurcation and often banishment of women's reproductive and sexual needs and rights from concerted legal reform strategies simply re-entrenches existing dynamics.⁴¹¹ For example, calling for the cancellation of Jordan's Penal Code provision that exonerates a rapist who marries his victim for at least 5 years, might in reality remove a victim's only viable legal and social solution. In the absence of legal abortions in cases of incest and rape; reduced penalty for self-induced miscarriage to preserve the family's "honor"; and mitigated punishment for murder of presumably promiscuous women, focusing solely on ensuring a rapist is prosecuted instead of betrothed seems grossly insufficient.

The United Nations' Handbook for Legislation on Violence against Women outlines a "model framework for legislation on violence against women" and instructs lawmakers to adopt a human rights-based and comprehensive legislative approach.⁴¹² It calls for laws

410. Feminist scholars and activists from across the globe, including Jordan, contributed to a five year project by the Centre of Islamic and Middle Eastern Laws and The International Centre for the Legal Protection of Human Rights (INTERIGHTS), culminating in the publication of 'Honour': Crimes, Paradigms, and Violence Against Women, in which they advocate for a holistic approach to "crimes of honor" that account for cultural, community, judicial, political, and economic perspectives. See "HONOUR," *supra* note 27, at 1-2.

411. Most strategies proposed in the review of MENA studies were "essentially reactive approaches, mostly dependent on state support, and political and societal will." Kulczycki & Windle, *supra* note 24, at 1458. Strategies tended to focus on an aspect, such as legal (refer to vague repeal of discriminatory laws and increased penalty for honor killings), training and increased number of women in police and judiciary, improved services (including reproductive health, though those are not tied to needed legal and regulatory reform), and raised public awareness. *Id.* at 1457.

412. U.N. HANDBOOK ON LEGISLATION, *supra* note 409, at iii.

that go beyond the limited approaches of criminalization of forms of violence against women “to make effective use of a range of areas of the law, including civil, criminal, administrative and constitutional law, and address prevention of violence, and protection and support of survivors.”⁴¹³ Notably, the Handbook relies exclusively on the term “violence against women” but deems it a form of gender-based discrimination and argues for gender-specific, gender sensitive legislation, not gender blind or gender-neutral laws that might be manipulated by abusers.⁴¹⁴

While a useful guide for feminists and lawmakers in Jordan, the Handbook framework eschews broader and deeper discussion of gender-based violence premised on gender-based assumptions, power relations, and the hazards of law as an entrencher rather than an agitator of the status quo. It further focuses on a narrow approach of legislation targeting violence against women, and for example, only references reproductive rights in the context of the need for integrated health services for victims/survivors to include access to reproductive health care.⁴¹⁵

An integrated approach, pulling in health and human rights aspects coupled with education about gender-based violence for professionals and communities, is essential. For example, a review of gender-based violence, including “honor killings,” concluded that “[e]mpowerment of women is an essential first step” and would require both amending discriminatory laws and “[i]mprov[ed] access to health information,” healthcare, and services, including shelters and legal aid to facilitate women’s “greater control over [their] bodies and health choices.”⁴¹⁶ But perhaps most fundamentally, a holistic approach must tackle the underlying assumptions that prevent women from enjoying their reproductive and sexual rights or rebuilding their lives living on their own following the breakdown of a violent marriage. A more holistic approach would analyze the impact on multiple spheres of women’s lives, linking access to resources (from funds, to inheritance, property, and housing) and political power, to

413. *Id.* at 14.

414. *Id.* at 15.

415. The Handbook does instruct lawmakers to amend or remove “provisions contained in other areas of law, such as family and divorce law, property law, housing rules and regulations, social security law, and employment law that contradict the legislation adopted, so as to ensure a consistent legal framework that promotes women’s human rights and gender equality, and the elimination of violence against women.” *Id.* at 16.

416. Skaff, *supra* note 160, at 21.

altered adverse sex stereotypes, better health outcomes and services, to effective and relevant protections and remedies.

Recognizing Intersectionality and Interdependence of Identities and Rights

Feminist legal theorists highlight that identities as well as forms of repression exist at the intersection of multiple axes of power. These scholars nuance traditional gender analysis to account for such multiple dimensions such as race, ethnicity, class, religion, age, and sexuality:⁴¹⁷ pointing out that gender is “always modified”⁴¹⁸ by other aspects of identity and discrimination. UN Committees, tasked with monitoring Member States’ compliance with human rights treaties, and UN expert reports⁴¹⁹ increasingly reflect this analysis in their guidance to states on implementing their human rights obligations.⁴²⁰

Women in Jordan, as elsewhere, traverse complex realities of gender, ethnic, religious, and community affiliations, among

417. See, e.g., Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN’S L.J. 191, 191 (1989–90); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1241–45 (1991); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN’S RTS. L. REP. 7, 7 (1989).

418. See DRUCILLA CORNELL, *BEYOND ACCOMMODATION: ETHICAL FEMINISM, DECONSTRUCTION, AND THE LAW* 129–31 (1991).

419. The U.N. Handbook for Legislation on Violence Against Women instructs that laws should “[a]cknowledge that violence against women is a form of discrimination, a manifestation of historically unequal power relations between men and women, and a violation of women’s human rights” and address “multiple forms of discrimination” faced by women. U.N. HANDBOOK ON LEGISLATION, *supra* note 409, at 13–14. It raises intersectionality of discrimination by instructing states to pass legislation with “specific provision for the appropriate and sensitive treatment of women complainants/survivors of violence who suffer from multiple forms of discrimination.” *Id.* at 15. The Special Rapporteur on Violence Against Women, in addressing gender-related killings, urged states to gather data and analyze “factors such as race, ethnicity, education, sexual orientation and economic status, among others, to establish systemic patterns that exacerbate existing vulnerabilities.” Gender-Related Killings of Women Report, *supra* note 40, ¶ 18.

420. The Committee on the Elimination of Racial Discrimination in its 2000 General Recommendation 25 on *Gender Related Dimensions of Racial Discrimination* cautions that race and ethnic discrimination with a disproportionate impact on or adverse consequences for women do not “escape detection” because “there is no explicit recognition or acknowledgement of the different life experiences of women and men, in areas of both public and private life.” CEDAW General Recommendation 25, *supra* note 211.

others.⁴²¹ Jordan is generally described as a homogenous society with 98% classified as Arab and over 92% Sunni Muslims.⁴²² It also hosts substantial refugee populations from neighboring conflicts and a sizable migrant worker population, primarily from south and southeast Asia.⁴²³ In reality, complex family and community relations and social norms dictate and inform social interactions. Family names trigger instant affiliation to an extended family, community, or clan with identifiable location of origin, such as Bedouin, Circassian, or Palestinian.⁴²⁴ Jordan's ruling Hashemite family traces its roots to the Prophet Muhammad, creating a powerful web of identity and legitimacy to power.⁴²⁵ Along the complexities of intersecting axes of political and social powers in Jordan are competing/complementary pressures by nationalist-patriotic agendas, Islamic movements, and clan demands.⁴²⁶ For example, recent clashes between Islamic movement followers and Bedouin clans in

421. Notably, the demographic and religious make up of Jordan is a politically contested issue. See Robert Satloff & David Schenker, *Contingency Planning Memorandum No. 19 Political Instability in Jordan*, COUNCIL ON FOREIGN RELATIONS 2 (May 2013), http://i.cfr.org/content/publications/attachments/CPA_contingencymemo_19.pdf. It is unsurprising that the government itself is reluctant to publish accurate numbers about the balance of the population. There are no recent statistics listed by the Jordanian Department of Statistics or the Higher Population Council.

422. CIA, *Jordan*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/jo.html> (last visited Jan. 11, 2015); *The People of Jordan*, THE HASHEMITE KINGDOM OF JORDAN, <http://www.kinghussein.gov.jo/people1.html> (last visited Jan. 11, 2015). Jordan also hosts substantial populations from ongoing neighboring conflicts in Palestine/ Israel, Iraq, and Syria. Jordan recognizes only some religions and denominations, though the constitution prohibits discrimination on the basis of religion. JORDAN CONST. ch. 2, art. 6, cl. 1.

423. The emphasis is on preserving "our women's honor" while seeing foreign women in Jordan as less deserving of honor. Following her visit to Jordan in 2011, the UN SR VAW reported that

An important source of discrimination and abuse is the tendency to "otherize" foreign women and feed into racist or prejudiced misconceptions about their sexuality and moral standing. Some employers will not afford the same kind of "respect" to these working Asian women that they normally would show towards Jordanian women.

Mission to Jordan, *supra* note 50, ¶ 37.

424. *The People of Jordan*, *supra* note 422.

425. *The Hashemites*, THE HASHEMITE KINGDOM OF JORDAN, http://www.kinghussein.gov.jo/hash_intro.html (last visited Jan. 11, 2015).

426. ROBERT SATLOFF & DAVID SCHENKER, *POLITICAL INSTABILITY IN JORDAN* 1–3 (2013), available at <http://www.cfr.org/jordan/political-instability-jordan/p30698> (writing on behalf of the Council on Foreign Relations).

Jordan reported to be linked to the urban-based Islamists' limited knowledge of the tribes' "way of life in the badia [desert region]."⁴²⁷

The realities of women's lives are shaped, informed, and constructed by overlapping matrixes of social norms, laws, policies, practices, power structures and their shifting positions within. Laws that enable leniency for perpetrators of so-called honor killings or exempt rapists who marry their victims undercut a slew of interdependent rights, including rights to non-discrimination, dignity, freedom from inhuman treatment, autonomy, physical integrity, privacy, free choice of spouse, health, sexual and reproductive rights, life, and access to effective remedy.⁴²⁸ The realization of one right often depends, at least in part, on the enjoyment of the others.⁴²⁹ Hence, analysis and reform of one in the isolation or dismissal of the others, while perhaps easier, might in fact result in more harm than good; a step forward in formal reform of a repealed discriminatory provision, a constellation of steps backward that reinforce stereotypical assumptions.⁴³⁰

Finally, a legacy of both colonialism and what some critics and local activists term as democracy imperialism promoted by international donors and rule of law outfits must inform and contextualize the analysis.⁴³¹ Feminist scholars and activists from across the globe, including Jordan, joined a multiyear initiative to advocate for a holistic approach to "crimes of honor" that account for cultural, community, judicial, political, and economic perspectives.⁴³² They acknowledge that "colonial heritage and contemporary global power structures (military, political, economic, and other) necessarily

427. Taylor Luck, *Islamists Face Uphill Battle as Tribes Reject Their Approach to Reform*, JORDAN TIMES, Jan. 6, 2012.

428. See *supra* Part III.

429. *The Human Rights Based Approach to Development Cooperation*, HRBA PORTAL, <http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies> (last visited Jan. 11, 2015).

430. The 2003 U.N. Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (the Common Understanding) follows the core human rights principles of universality and inalienability; indivisibility; inter-dependence and inter-relatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law. *Id.* While this approach asserts that human rights cannot be ranked, the conventions underlying the two sets of rights—civil and political rights—which must be immediately enforced, and economic, social, cultural which are to be progressively realized in line with available resources. ESCOR General Comment 1990/5, U.N. Doc. E/1991 23 (Dec. 14, 1990).

431. See "HONOUR," *supra* note 27, at xii.

432. *Id.* at 3.

complicate strategies of response to violence against women.”⁴³³ Ultimately, local feminists are best positioned to account for the impact of colonialism on efforts to reform “crimes of honor,” and the lingering influence of colonial discourse in shaping and complicating the “possibilities not only for international alliances but also for the safety and reception of indigenous voices that contest crimes of honor.”⁴³⁴

Accounting for intersectionality and interdependence render law reform even more challenging. Effective law reform advocacy would incorporate analysis and research on these nuanced realities. In the most basic sense, local lawmakers would be more successful in seeking changes in favor of women’s rights if they point to the reform’s potential in ameliorating harms and yielding advantages for their constituent communities in ways that reflect those communities diversities and capturing their lived realities, which rarely fit neat legal categories or can be fixed by discrete legal reforms.

Dismantling Gendered Assumptions and Power Dynamics

Discourse around law reform in Jordan and by its leading NGOs on the international stage has pivoted around equality of rights and opportunity, pushing for predominantly gender neutral laws in a legal system “purified” of sex-discriminatory provisions.⁴³⁵ Although some leading advocates have noted notions of traditions and social norms as contributing to discrimination and violence against women,⁴³⁶ few have openly called for a systemic dismantling of assumptions about “gender-appropriate” social, sexual, and

433. *Id.*

434. *Id.* at 43.

435. See speech by Princess Basma Bint Talal, the Jordanian royal member most associated with promotion and patronage of women’s rights, who vowed to continue with efforts to “purify our legislation that still includes discriminatory clauses [against women] in order to ensure justice, equality and equal opportunities.” See Rana Hussein, *Fighting For Women’s Rights Should Not Be Seasonal*, JORDAN TIMES, Dec. 11, 2013, at 2 (citing Basma Bint Talal, Princess, Jordanian Royal Family, Closing Event of 16 Days of Activism on International Human Rights Day (Dec. 10, 2013)). She added that “[t]raditions and social norms are contributing to this [continuing scourge of violence against women], and changing them is a necessity to prevent the defamation of religions and the positive values of our society.” *Id.*

436. *Id.* (citing Basma Bint Talal, Princess, Jordanian Royal Family, Closing Event of 16 Days of Activism on International Human Rights Day (Dec. 10, 2013)).

reproductive behavior and holding girls and women as gauges of collective honor.⁴³⁷

Feminist legal theory has moved the discussion from examining similarities and differences between men and women (“equality” and “differences” feminism) to analyzing critically assumptions and societal norms that constrain and harm women.⁴³⁸ Recent local advocacy in Jordan has opted to tentatively list “culture and tradition” or at times more directly, but just as vaguely labeled, “patriarchy” in laundry lists of “challenges” for gender parity.⁴³⁹ Feminist campaigns and calls for action or legal changes have shied away from critically critiquing the assumptions that undergird Jordan’s mixed-origins legal system.

Pioneers of “dominance” feminist legal theory stress the inherently oppressive nature of male power in defining female sexual behavior; “[i]n feminist terms, the fact that male power has power means that the interests of male sexuality construct what sexuality as such means, including the standard way it is allowed” to be felt “and expressed and experienced, in a way that determines women’s biographies, including sexual ones.”⁴⁴⁰ Despite valid critiques by (arguably misnamed) “sex positive” feminists who elevate female agency in sexual relations,⁴⁴¹ dominance theory may better resonate in Jordan’s current conservative context, necessitating a local analytic journey about a reality in which “*men* and *their* desires bear the responsibility; and that female obedience to the dictates of [women’s

437. The Coalition for Sexual and Bodily Rights in Muslim Societies, joined by the Jordanian Women’s Union and ZENID assert that “[s]exual and bodily rights are central to the realization of women’s human rights and gender equality” and calls for the repeal of “[a]ll laws and policies that legitimize customary practices which put women’s bodies and sexuality at the disposal of men, family and society.” The Coalition for Sexual and Bodily Rights in Muslim Societies, *CSBR Core Values*, COALITION FOR SEXUAL & BODILY RTS. IN MUSLIM SOCIETIES, <http://www.csbronline.org/about-csbr/our-core-values/> (last visited Jan. 11, 2015). One wonders whether the abortion ban or unequal pension and labor benefits would be included in such reform.

438. See, e.g., Maxine Eichner, *On Postmodern Feminist Legal Theory*, 36 HARV. C.R.-C.L. L. REV. 1, 34 (2001) (“[T]he debate over equality in *feminist legal theory* [has moved] beyond the discussion of women’s differences from men and toward examination of societal norms that disadvantaged women.”) (emphasis added).

439. See *supra* note 391 and accompanying text.

440. CATHARINE MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 129 (1989).

441. Aziza Ahmed, “*Rugged Vaginas*” and “*Vulnerable Rectum*”: *The Sexual Identity, Epidemiology, and Law of the Global HIV Epidemic*, 26.1 COLUM. J. GENDER & L. 1, 18–19 (2013).

stereotypical roles] is better conceptualized as bondage [rather] than choice."⁴⁴²

Rights advocates in Jordan might identify themes of subordination rather than restrict campaigns to specific laws (such as calls to reform the Social Security law, or repeal of the provision that permits rapists to marry their victims to escape prosecution) or mount general vague awareness-raising campaigns (such as the 16 Days campaign merely seeking to inform that violence against women exists and is problematic).⁴⁴³ A thematic grouping could, for example, address pervasive crosscutting discrimination against women on the basis of their marital status in all spheres of society, from minimizing their need for consent to a marriage, as in cases where they were raped, to loss of employment benefits for widows who remarry, to lack of remedy for domestic abuse and rape by their spouse, and limited legal rights of their children if born out of wedlock. Given the high premium Jordanian society places on education for girls and women and increasing efforts to facilitate their entry and retention in the formal job market, campaigns could link discrimination to the overall economic and social harms to society, in addition to the overall health costs of preserving a sex-stereotyped based society.

Human rights bodies have urged states to ensure that programs aimed at addressing gender-based violence incorporate efforts to combat gender-based stereotypes and other underlying causes.⁴⁴⁴ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) uniquely calls on states to counter harmful sex stereotypes by taking measures to:

[M]odify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women⁴⁴⁵

442. SUSAN BORDO, *UNBEARABLE WEIGHT: FEMINISM, WESTERN CULTURE, AND THE BODY* 22 (1993).

443. See *supra* Part V.A–B.

444. See, e.g., Comm. on the Elimination of Discrimination Against Women, *Concluding Comments of the Committee on the Elimination of Discrimination Against Women: Peru*, ¶ 19, U.N. Doc. CEDAW/C/PER/CO/6 (Feb. 2, 2007).

445. CEDAW, *supra* note 184, art. 5(a).

A comprehensive reform agenda should thus seek the most critical point of leverage to get at root causes and harmful patterns by utilizing the various change-making tools of the state: law-makers, courts, and the executive (and in Jordan, the royal court). This Article eschews proposing a specific reform agenda or prescription of reform sequencing order as that can only result from concerted, consultative, analytic, research-based, and locally-driven endeavors depending on prevailing national conditions and tactical mapping for potential entry points and political partnerships.

Courts are an alternative site for gender equality reform in the face of legislative inaction.⁴⁴⁶ A comprehensive strategy could make tactical use of this tool, without losing sight of the broader, holistic reform analysis and agenda. Jordan's newly established constitutional court, despite procedural hurdles to accessing it, provides a potentially potent avenue for challenging legislation with "thoughtful consideration of the assumptions underlying, and the purposes served by, sex-based classification."⁴⁴⁷ Unlike its predecessors, the new court is uniquely constitutionally empowered to issue precedents binding on all other courts and institutions.⁴⁴⁸ Feminist legal activists could petition the court to build careful interpretation and jurisprudence on gender and human rights principles. Unlike a provision-by-provision reform by political actors, the constitutional court could articulate doctrine and develop broad standards of legal analysis for gender equality grounded in a new constitution and contemporary realities.

Given the current conservative makeup of the court (nine male justices), a constitutional litigation strategy would take short and long-term approaches to prime and utilize the court in a careful sequencing of evolving jurisprudence. Initial cases could seek to establish gender equality precedents with non-controversial cases where male plaintiffs and men in general would benefit (taking a page from the U.S. sex equality legal strategy book of the 1970s). Under Jordanian law (as of early 2014), unlike a widow, a widower may only access his deceased wife's pension if he is disabled and lacks other income or pension.⁴⁴⁹ Premised on sex stereotypes of a

446. See *infra* note 447 and accompanying text.

447. Hon. Ruth Bader Ginsburg & Barbara Flagg, *Some Reflection on the Feminist Legal Thought of the 1970s*, 1989 U. CHI. LEGAL F. 9, 16 (1989).

448. JORDAN CONST. art. 59, § 1 states "The Constitutional Court shall have the competence of oversight on the constitutionality of the applicable laws and regulations and its judgments shall be issued in the name of the King; its judgments shall be final and binding on all authorities and on all"

449. See *infra* note 450.

male as the presumptive breadwinner, this provision could serve as an initial step toward gender-equality jurisprudence that attempts to begin to dismantle adverse sex stereotypes and consequently addresses the many other provisions that discriminate against women for similar gender-based assumptions.⁴⁵⁰

Judicial strategies must however account for the limited role of courts in dismantling stereotypical assumptions and addressing complex intersections of health and human rights violations. Instructively, the precedent-setting 1970s sex discrimination litigation strategy in the United States challenged the government's ability to enforce sex-role stereotypes, by exposing "the law's differential treatment of men and women, typically rationalized as reflecting 'natural' differences between the sexes," as a tool of subordination, "even when conceived as protective of the fairer, but weaker and dependent-prone sex."⁴⁵¹ A similar analysis could benefit an agenda of reform of Jordan's protectionist, honor-based laws. Court-issued, potentially transformative orders must complement a holistic strategy for reform of laws and practices, well-informed and motivated lawmakers and implementers, and encouraged embrace by communities.

Following her fact-finding visit to Jordan, the UN Special Rapporteur on Violence Against Women concluded that holistic solutions are required to address both the individual empowerment of women and the social, economic, and cultural barriers which they encounter. She instructed the government to couple empowerment

450.

Access to inherited pensions becomes restricted if a woman marries or a widow re-marries, though such restrictions are not placed on men. Upon retirement, additional funds are made available to male employees as family/dependency allowances. For women to receive such allowances, they must demonstrate eligibility through complicated procedures proving that they, and not male relatives are providing financial maintenance to the family or dependents. Women are also provided an option to cash-in their pensions when they become married, widowed or divorced, thus excluding them from future pension benefits. In the case of marriage, the presumption is that once married a woman will terminate employment.

WORLD BANK, JORDAN COUNTRY GENDER ASSESSMENT: ECONOMIC PARTICIPATION, AGENCY AND ACCESS TO JUSTICE IN JORDAN 65 (July 2013), available at <https://openknowledge.worldbank.org/bitstream/handle/10986/16706/ACS51580WP0P130ox0379850B00PUBLIC0.pdf?sequence=1>.

451. Ginsburg & Flagg, *supra* note 447, at 11.

with social transformation to tackle the systemic and structural causes of inequality and discrimination, which often lead to violence against women.⁴⁵² An integrated feminist agenda would weave health harms and human rights violations into a holistic reform narrative rooted in lived realities, political practicalities, and concerted strategies that challenge gendered assumptions and power dynamics.

CONCLUSION

This Article seeks to stoke the rule of law imagination toward a more gendered and ultimately more effective legal reform path that accounts for and enhances lived realities. Rather than a series of discrete changes to isolated laws, feminist legal reform inspires deeper analysis, informs advocacy, and guides equitable legislative reform and judicial responsibility. Reframing rule of law's technical approach to holistic feminist examination of cause, effect, and lingering development challenges, as well as tradition and culture discourse to human rights and health analysis, could tackle gendered assumptions toward transformative reform. Reframing will amplify research that captures harms and health costs and will equip lawmakers and constituencies with interlinked facts, figures, and narratives that make for more equitable legal and justice systems.

There is an alarming dearth of research worldwide on the health impact, the physical, psychological, and emotional toll inherent in societal orders undergirded by adverse sex stereotypes enshrined in law (and vice versa). The understudied health consequences of violations against women, such as those flowing from honor-based legal systems, compounded by the lack of systemic collection of gender-related data curtail the imaginative potential of advocacy and curb the scope of analysis needed for feminist rule of law reform. Very few studies examine broad "honor crimes"-related health impacts that account for both the subordination of women and the harm to the community as a whole. This Article provides perhaps the first attempt to classify the groups subjected to health and human rights violations built into honor-based systems, or generally, systems premised on rigid, adverse sex stereotypes. Jordan's legal system is complicit in inflicting health harms that prevent full realization of human rights by enforcing paternalistic state protections, while failing to mitigate an environment of fear and threat. That ever dangling Damocles' sword inflicts untold health harms and inhibits active participation by women in national development. Similar

452. See *Mission to Jordan*, *supra* note 50, ¶ 103–05.

scenarios play out in different legal contexts around the world, where states both protect and punish women for stepping out of prescribed gender roles.

Discrimination and subordination exist and are reinforced in the places where laws interact. The ultimate key to ameliorating the health harms and human rights violations in such a system might lie in decriminalizing sexual relations outside a sanctioned marriage. This solution follows from the emergent sexual and reproductive rights framework, but might backlash in the context of Jordan.⁴⁵³ Yet meaningful reform addressing so-called honor killings might only be possible with the dismantling of assumptions that underlie laws and practices that punitively regulate extra-marital sexual relations along sex-stereotyped lines. As long as courtship is criminalized what are viable options for women and their family members who feel obliged to police them?⁴⁵⁴ As long as abortion remains illegal and contraceptives taboo for the unmarried and young, what are women's options? What are the options for "disgraced" or divorced women? Society will not sanction women living alone, and divorcées must re-marry unless they wish to remain in their natal family home, assuming their family will accept them back (or can afford the additional household member in tight economic times).

Although the case of Jordan and similar legal regimes may ring singular, their study yields broadly applicable observations. In arguing for a new analytic dimension and framing of the discourse around honor crimes, this Article situates human rights and health within feminist advocacy for holistic legal reform that accounts for particularities of context and lived experiences. The new framing proposes a reform agenda that moves from a technical strategy of isolated amendments to a gendered reform agenda rooted in data on health and human rights violations, including sexual and reproductive rights. In Jordan, as around the world, gender discrimination and

453. Similar backlash plays out today in the United States. While adult consensual sexual relations are not criminalized, dealing with related consequences has become harder. The United States has stripped away rights for women and families making it all the more challenging to raise "out of wedlock" children, terminate unwanted pregnancies, obtain justice for sexual harassment and assault—where perpetrators can still enjoy reduced sentences based on a "heat of passion" defense.

454. See The Coalition for Sexual & Bodily Rights in Muslim Societies (CSBR), *CSBR Core Values*, WOMEN FOR WOMEN'S RIGHTS (WWHR), <http://www.kadinininsanhaklari.org/eski/wwhr.org/category/csbr-core-values.html> (last visited Jan. 11, 2015) (joining the CSBR as member organizations from Jordan are Zenid and the Jordanian Women's Union).

violence taint everyday life with tacit and at times explicit state approval. While gender roles and “culture” change over time, whether rapidly or glacially, laws often flash-freeze such ever shifting, amorphous notions. Legal systems disserve women by codifying such notions and by failing to exert strong counterweights of law and judicial enforcement in ensuring progressive and updated interpretations.

Despite decades of unprecedented rule of law reforms worldwide, it remains a challenge to identify countries that have adopted holistic, feminist legal reforms resulting in impactful transformative societal change. While the United States sports a web of gender non-discrimination laws and dedicated institutions, it consistently ranks lower than other high and middle-income nations on gender justice and structural equality measures.⁴⁵⁵ While post-apartheid South Africa rightfully boasts a landmark constitution and progressive social reform and gender laws, rates of sexual and domestic violence continue nearly unabated. In a reality of complex contexts, the effective way forward remains murky absent gendered analysis and empirical study of rule of law reforms that can inch progress from its “sticky” baseline.⁴⁵⁶ Intersectional foundational analysis and research that can be systematically produced, funded, and harnessed to imaginative feminist legal principles might guide rule of law efforts and advocacy processes toward transformative change and shift the focus of advocacy from slogans to synthesis of analysis, research, and lived realities.

455. The United States ranked at 23rd on a global gender equality scale trailing behind countries in Africa, Asia, South America, and Europe. WORLD ECON. FORUM, THE GLOBAL GENDER GAP REPORT 8 (2013), available at http://www3.weforum.org/docs/WEF_GenderGap_Report_2013.pdf.

456. U.N. Deputy Secretary-General, *NEW VOICES: National Perspectives on Rule of Law Assistance*, 24 (2011), available at <http://www.unrol.org/files/FINAL%20National%20Perspectives%20Report.pdf> (“In South Africa, Uganda and Nigeria, among others, the lack of international support for developing national research and empirical study capacity in the rule of law area was identified as an important gap in efforts to evaluate the impact of reforms.”).