The legal framework for refugees and asylum-seekers:
with emphasis on refugee claims relating to sexual orientation and gender identity

The focus of this note and the accompanying seminar and discussion will be on the Refugee Convention and, in particular, the definition of ‘refugee’, and particular attention will be given to asylum claims based upon a person’s gender or sexual orientation.

Participants will have had some more general introduction to a wider human rights and international law framework, and how this may have distinct weakness in relation to the human rights and fundamental freedoms of those who may be at risk of harm on account of their gender or sexual orientation.

It should be noted that there are a variety of ways in which this framework may prove deficient for the protection of the rights and freedoms of such individuals. Broadly, there is potential for deficiencies to occur in three distinct areas:

- in the relevant legal standards (e.g. the ‘refugee’ definition)
- in processes (e.g. in the asylum determination process)
- in decision-makers and decision-making bodies

Neither this note, nor the accompanying seminar and discussion, can comprehensively address each of these areas. The note will focus on the relevant legal standards. The discussion may provide some limited opportunity to explore the other areas.

The starting point taken here is, therefore, the text of the relevant legal standards. That is the definition of ‘refugee’ contained in the Refugee Convention; and the two most prominent Articles of the European Convention in relation to asylum claims in the UK – the prohibition on torture and the right to private and family life.

Extracts are provided from key cases decided in the UK House of Lords and Court of Appeal. These are provided to assist in discussion, and to provide the basis for further reading and inquiry by participants in relation to refugee-status determination in the UK of claims brought on grounds of persecution based on gender or sexual orientation.

<u>The Refugee Convention definition of ‘refugee’:</u>

The “refugee” definition in the 1951 UN Convention relating to the Status of Refugees (“the Refugee Convention”):

> the term “refugee” shall apply to any person who:
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> owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is

> unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
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> In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

Articles 3 & 8 of the European Convention:

Articles 3 and 8 of the 1951 European Convention for the Protection of Human Rights and Fundamental Freedoms ("the European Convention"):

> **Article 3 – Prohibition of torture**
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> No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
>
> **Article 8 – Right to respect for private and family life**
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> 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
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> 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Key decisions:

The following are notes review key judgments, from which extracts are taken.

The "refugee" definition requires that a person must fear persecution on account of one of five reasons. A critical difficulty in establishing refugee status in gender or sexual orientation cases has been the need to demonstrate that the individual is at risk for one of these reasons.

Islam & Shah (25 March 1999, HL)
http://www.publications.parliament.uk/pa/ld199899/ldjudgmt/jd990325/islam01.htm

In *Islam & Shah*, the issues before the House of Lords was whether women in Pakistan formed a particular social group, on account of the way in which the state discriminated against women, particularly in relation to failing to provide protection to women (including the two women claiming refugee status in the

case) against domestic violence from their husbands or families. The Home Office had already accepted that the women were at risk of persecution, and accepted that they should not be returned to Pakistan (as this would be a violation of Article 3 of the European Convention). The following is taken from the opinion of Lord Hoffmann:

> In my opinion, the concept of discrimination in matters affecting fundamental rights and freedoms is central to an understanding of the Convention. It is concerned not with all cases of persecution, even if they involve denials of human rights, but with persecution which is based on discrimination. And in the context of a human rights instrument, discrimination means making distinctions which principles of fundamental human rights regard as inconsistent with the right of every human being to equal treatment and respect.
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> …
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> To identify a social group, one must first identify the society of which it forms a part. In this case, the society is plainly that of Pakistan. Within that society, it seems to me that women form a social group of the kind contemplated by the Convention. Discrimination against women in matters of fundamental human rights on the ground that they are women is plainly in pari materiae [*on a par*] with discrimination on grounds of race. It offends against their rights as human beings to equal treatment and respect. It may seem strange that sex (or gender) was not specifically enumerated in the Convention when it is mentioned in article 2 of the Universal Declaration of Human Rights. But the Convention was originally limited to persons who had become refugees as a result of events occurring before 1 January 1951. One can only suppose that the delegates could not think of cases before that date in which women had been persecuted because they were women. But the time limit was removed by the 1967 New York Protocol and the concept of a social group is in my view perfectly adequate to accommodate women as a group in a society that discriminates on grounds of sex, that is to say, that perceives women as not being entitled to the same fundamental rights as men. As we have seen, La Forest J. in the *Ward* case had no difficulty in saying that persecution on grounds of gender would be persecution on account of membership of a social group. I therefore think that women in Pakistan are a social group.

It is not enough that a person is at risk of persecution or is a member of a particular social group. It must also be shown that the persecution is on account of that membership. Lord Hoffmann continued:

> Answers to questions about causation will often differ according to the context in which the question is asked… Suppose oneself in Germany in 1935. There is discrimination against Jews in general, but not all Jews are persecuted. Those who conform to the discriminatory laws, wear yellow stars out of doors and so forth can go about their ordinary business. But those who contravene the racial laws are persecuted. Are they being persecuted on grounds of race? In my opinion, they plainly are. It is therefore a fallacy to say that because not all members of a class are being persecuted, it follows that persecution of a

> few cannot be on grounds of membership of that class. Or to come nearer to the facts of the present case, suppose that the Nazi government in those early days did not actively organise violence against Jews, but pursued a policy of not giving any protection to Jews subjected to violence by neighbours. A Jewish shopkeeper is attacked by a gang organised by an Aryan competitor who smash his shop, beat him up and threaten to do it again if he remains in business. The competitor and his gang are motivated by business rivalry and a desire to settle old personal scores, but they would not have done what they did unless they knew that the authorities would allow them to act with impunity. And the ground upon which they enjoyed impunity was that the victim was a Jew. Is he being persecuted on grounds of race? Again, in my opinion, he is. An essential element in the persecution, the failure of the authorities to provide protection, is based upon race. It is true that one answer to the question "Why was he attacked?" would be "because a competitor wanted to drive him out of business." But another answer, and in my view the right answer in the context of the Convention, would be "he was attacked by a competitor who knew that he would receive no protection because he was a Jew."

K & Fornah [2006] UKHL 46
http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd061018/sshd-1.htm

Nearly a decade on, the courts were still struggling with questions of whether women could constitute a particular social group, and how membership must be causally connected to the feared persecution. This case also raised the question of whether a family could constitute a 'particular social group' such that family members who were persecuted by reason of their membership of the family could claim refugee status. On causation, Lord Bingham explained:

> The text of article 1A(2) of the Convention makes plain that a person is entitled to claim recognition as a refugee only where the persecutory treatment of which the claimant has a well-founded fear is causally linked with the Convention ground on which the claimant relies. The ground on which the claimant relies need not be the only or even the primary reason for the apprehended persecution. It is enough that the ground relied on is an effective reason. The persecutory treatment need not be motivated by enmity, malignity or animus on the part of the persecutor, whose professed or apparent motives may or may not be the real reason for the persecution. What matters is the real reason. In deciding whether the causal link is established, a simple "but for" test of causation is inappropriate: the Convention calls for a more sophisticated approach, appropriate to the context and taking account of all the facts and circumstances relevant to the particular case.

The case concerned two women. K, from Iran, had claimed asylum, with her son, on account of persecution directed towards them by the Iranian authorities on account of her husband's political activities. K had been raped by Revolutionary Guards who had searched the family home. The House of Lords concluded that a family could constitute a particular social group. Having accepted this, Lord Bingham concluded:

> The Secretary of State points out that when the first appellant made herself scarce after the two visits to her house by Revolutionary Guards, there was no further approach to her, even when she visited her husband in prison, and there was no evidence of pressure on any other family member. These are fair points, and the Adjudicator might have accepted them and rejected the first appellant's claim. But having heard the evidence he did not, and made a clear finding that the persecution she feared would be of her as a member of her husband's family. It is not indeed easy to see any basis other than their relationship with her husband for the authorities' severe ill-treatment of the first appellant and their deliberately menacing conduct towards her young son. The Secretary of State suggests that the real reason for the persecution feared was not her membership of her husband's family but her bilateral marriage relationship with her husband, but this does not account for the implied threat to the child.
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> Since it is common ground that a family may be a particular social group for purposes of article 1A(2), the questions here are whether the Adjudicator was entitled to conclude that on the facts the family of the first appellant's husband was such a group and, if so, whether the real reason for the persecution which she feared was her membership of that group. Whether applying the UNHCR definition (para 15 above) or article 10(d)(i) and (ii), jointly or alternatively, of the EU Directive (para 16 above), I am of opinion that he was clearly so entitled.

Fornah, had fled Sierra Leone in order to escape being subjected to female genital mutilation (FGM). In her case, Lord Bingham concluded:

> Miss Webber for the second appellant submitted that "women in Sierra Leone" was the particular social group of which the second appellant was a member. This is a submission to be appraised in the context of Sierra Leonean society as revealed by the undisputed evidence, and without resort to extraneous generalisation. On that evidence, I think it clear that women in Sierra Leone are a group of persons sharing a common characteristic which, without a fundamental change in social mores is unchangeable, namely a position of social inferiority as compared with men. They are perceived by society as inferior. That is true of all women, those who accept or willingly embrace their inferior position and those who do not. To define the group in this way is not to define it by reference to the persecution complained of: it is a characteristic which would exist even if FGM were not practised, although FGM is an extreme and very cruel expression of male dominance. It is nothing to the point that FGM in Sierra Leone is carried out by women: such was usually the case in Cameroon (*GZ*, above) and sometimes in Nigeria (*RRT N97/19046*, above), but this did not defeat the applicant's asylum claim. Most vicious initiatory rituals are in fact perpetuated by those who were themselves subject to the ritual as initiates and see no reason why others should not share their experience. Nor is it pertinent that a practice is widely practised and accepted, a contention considered and rejected in *Mohammed v Gonzales*, above. The contrast with male circumcision is obvious: where performed for ritualistic rather than health reasons, male circumcision may be seen as symbolising the dominance of the male. FGM may ensure a young woman's

> acceptance in Sierra Leonean society, but she is accepted on the basis of institutionalised inferiority. I cannot, with respect, agree with Auld LJ that FGM "is not, in the circumstances in which it is practised in Sierra Leone, discriminatory in such a way as to set those who undergo it apart from society". As I have said, FGM is an extreme expression of the discrimination to which all women in Sierra Leone are subject, as much those who have already undergone the process as those who have not. I find no difficulty in recognising women in Sierra Leone as a particular social group for purposes of article 1A(2).

Baroness Hale also gave an opinion, from which the following extracts are taken:

> Unlike most modern constitutions and human rights instruments, the Refugee Convention does not list sex amongst the reasons for persecution which automatically give rise to a claim for refugee status. It does not even list sex amongst the prohibited reasons for discriminating between different classes of refugees in article 3 of the Convention: a proposal to include it was resisted, either on the ground that such discrimination was unthinkable or on the ground that it was inevitable: see James C Hathaway, *The Rights of Refugees under International Law* (2005, pp 255-256). But the world community has recognised the special problems of refugee women since at least the Nairobi Conference of 1985: see UNHCR Executive Committee Conclusions on *Refugee Women and International Protection*, 18 October 1985. Such has been the progress that the San Remo Expert Roundtable in September 2001 concluded that:
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> > "The refugee definition, properly interpreted, can encompass gender-related claims. The text, object, and purpose of the Refugee Convention require a gender-inclusive and gender-sensitive interpretation. As such, there would be no need to add an additional ground to the Convention definition."
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> Though time was that such issues were ignored or undervalued by the refugee accepting States, we had thought that in this country, at least since the ground breaking decision of this House in *Islam v Secretary of State for the Home Department; R v Immigration Appeal Tribunal, Ex p Shah* [1999] UKHL 20; [1999] 2 AC 629, such times were past. As the UNHCR says, in paragraph 5 of its *Guidelines on Gender-Related Persecution* (published on 7 May 2002, as a result of the San Remo meeting):
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> > "Historically, the refugee definition has been interpreted through a framework of male experiences, which has meant that many claims of women and of homosexuals, have gone unrecognised. In the past decade, however, the analysis and understanding of sex and gender in the refugee context have advanced substantially in case law, in State practice generally and in academic writing. These developments have run parallel to, and have been assisted by, developments in international human rights law and standards . . ."

> In other words, the world has woken up to the fact that women as a sex may be persecuted in ways which are different from the ways in which men are persecuted and that they may be persecuted because of the inferior status accorded to their gender in their home society. States parties to the Refugee Convention, at least if they are also parties to the International Covenant on Civil and Political Rights and to the Convention on the Elimination of All Forms of Discrimination against Women, are obliged to interpret and apply the Refugee Convention compatibly with the commitment to gender equality in those two instruments.

The most recent decision of the House of Lords in this area gives an example of how the European Convention may provide protection where the Refugee Convention does not. Unlike in the case of *Islam & Shah*, it was Article 8 (rather that Article 3) that was of relevance.

EM (Lebanon) [2008] UKHL 64
http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd081022/leban-1.htm

In this case, EM had fled Lebanon with her son. The sole issue for the House of Lords was whether the return of EM and her son to Lebanon would constitute a disproportionate interference with their family life (Article 8). There was no refugee claim before the House of Lords.

EM had experienced domestic violence at the hands of her husband, whom she had now divorced. If returned to Lebanon, under the law there, custody of her son would pass to her husband, with the possibility only of EM being granted limited visiting rights.

Lord Hope made some general points about the European Convention:

> As this case shows, the principle that men and women have equal rights is not universally recognised. Lebanon is by no means the only state which has declined to subscribe to article 16(d) of the United Nations Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979 which declares that States Parties shall ensure, on a basis of equality of men and women, the same rights and responsibilities as parents, irrespective of their marital status, in all matters relating to their children and that in all cases the interests of the children shall be paramount. For the time being that declaration remains in most, if not all, Islamic states at best an aspiration, not a reality. As the [*European*] court [*on Human Rights*] said in *Soering*, para 91, there is no question of adjudicating on or establishing the responsibility of the receiving state, whether under general international law, under the Convention or otherwise. Everything depends on the extent to which responsibility can be placed on the Contracting States. But they did not undertake to guarantee to men and women throughout the world the enjoyment without discrimination of the rights set out in the Convention or in any other international human rights instrument. Nor did they undertake to alleviate religious and cultural differences between their own laws and the family law of an alien's country of

> origin, however extreme their effects might seem to be on a family relationship.

The House of Lords agreed that the question was whether there would be a flagrant violation of the family life of EM and her son. Applying, and explaining this test, Lord Bingham concluded:

> Two members of the Court of Appeal, although taking no account of AF's right, appear to have held that the appellant's article 8 right would be flagrantly violated if she were returned to Lebanon, but felt unable to conclude that her right would be completely denied or nullified. As indicated above, these expressions do not propound different tests. But it is in my opinion clear that on return to Lebanon both the appellant's and AF's right to respect for their family life would not only be flagrantly violated but would also be completely denied and nullified. In no meaningful sense could occasional supervised visits by the appellant to AF at a place other than her home, even if ordered (and there is no guarantee that they would be ordered), be described as family life. The effect of return would be to destroy the family life of the appellant and AF as it is now lived.

Baroness Hale agreed with the result. In her opinion:

> In this case, the only family life which this child has ever known is with his mother. If he were obliged to return to a country where he would inevitably be removed from her care, with only the possibility of supervised visits, then the very essence of his right to respect for his family life would be destroyed. And it would be destroyed for reasons which could never be justified under article 8(2) because they are purely arbitrary and pay no regard to his interests. The violation of his right is in my view of greater weight than the violation of his mother's right. Children need to be brought up in a stable and loving home, preferably by parents who are committed to their interests. Disrupting such a home risks causing lasting damage to their development, damage which is different in kind from the damage done to a parent by the removal of her child, terrible though that can be.

Cases founded on sexual orientation (as opposed to gender) tend to raise similar questions regarding whether the individual's fear of persecution is on account of membership of a particular social group. However, unlike gender, a person's sexual orientation may not be overt. This raises particular issues where it is suggested that a person may exercise discretion in order to avoid persecution.

HJ (Iran) & HT (Cameroon) [2009] EWCA Civ 172
http://www.bailii.org./ew/cases/EWCA/Civ/2009/172.rtf

This case concerned two homosexual men, one from Iran the other from Cameroon. Each claimed to be at risk of persecution if returned to their home countries on account of their homosexuality. A key issue in the case was the extent to which their refugee claims could be defeated by the argument that, if

they returned to their home countries, they could avoid persecution by either not practising their homosexuality or exercising discretion.

Lord Justice Pill said:

> …the Anne Frank principle, the validity of which is not disputed in this appeal. It would have been no defence to a claim that Anne Frank faced well-founded fear of persecution in 1942 to say that she was safe in a comfortable attic. Had she left the attic, a human activity she could reasonably be expected to enjoy, her Jewish identity would have led to her persecution. Refugee status cannot be denied by expecting a person to conceal aspects of identity or suppress behaviour the person should be allowed to express.

In dismissing the appeals, Lord Justice Pill continued:

> The need to protect fundamental human rights transcends national boundaries but, in assessing whether there has been a breach of such rights, a degree of respect for social norms and religious beliefs in other states is in my view appropriate. Both in Muslim Iran and Roman Catholic Cameroon, strong views are genuinely held about homosexual practices. In considering what is reasonably tolerable in a particular society, the fact-finding Tribunal is in my view entitled to have regard to the beliefs held there. A judgment as to what is reasonably tolerable is made in the context of the particular society. Analysis of in-country evidence is necessary in deciding what an applicant can expect on return and cannot, in my view, be ignored when considering that issue.
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> Having said what I have, I recognise, of course, that there are limits, if a contracting state is to fulfil its obligation to uphold fundamental human rights, to what can be tolerated, when considering an asylum application, by way of restrictions in the receiving state. Whether a requirement to respect social standards has the effect of violating a fundamental human right is a matter of judgment for the Tribunal.

The Court of Appeal concluded that HJ could be reasonably expected to exercise discretion to avoid persecution. As regards, HT the Court of Appeal decided that the finding by the tribunal below that he would exercise discretion was sufficient to conclude that he was not at risk of persecution.

Amare [2005] EWCA Civ 1600
http://www.bailii.org./ew/cases/EWCA/Civ/2005/1600.rtf

Amare was a lesbian from Ethiopian. It was accepted that homosexuality was illegal in Ethiopia, and that it was generally regarded as culturally unacceptable. It was accepted that homosexuals did form a particular social group in that country. The tribunal below held that whereas homosexuality was illegal and reviled, this did not mean that Amare could not form a homosexual relationship without fear of persecution albeit that she would not be so free to practice her homosexuality as she would if in the UK.

The Court of Appeal upheld the tribunal's decision. In doing so, Lord Justice Mummery concluded:

> If Ms Webber's argument for a human rights based approach to persecution were to be accepted without qualification as she advanced it, there would in my judgment be a risk that tribunals might make what could be described as the opposite mistake. The Convention is not there to safeguard or protect potentially affected persons from having to live in regimes where pluralist liberal values are less respected, even much less respected, than they are here. It is there to secure international protection to the extent agreed by the contracting States. While, as I certainly accept, the sense to be accorded to persecution might shift and stretch as the international consensus develops, the Convention's guarantees remain limited by the two conditions I have described.
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> I would not wish it to be thought that these conclusions in some way run against the grain of human rights norms and aspirations. I hope they go in the opposite direction. There is, if I may say so, much wisdom in Schiemann LJ's observation in *Jain* (which I have set out) that absent international consensus burdens will be imposed upon those States which are most liberal in their interpretations and whose social conditions are most attractive, and that would carry great risks. Likewise, in my judgment, if courts proceed to apply the Convention without marked respect for the edge or reach of what the contracting States agreed.

A general issue that often arises in asylum claims is whether there is some other part of the person's home country to which he or she could safely relocate.

HC (Lebanon) [2005] EWCA Civ 893
http://www.bailii.org./ew/cases/EWCA/Civ/2005/893.rtf

This case was about a Lebanese Palestinian, homosexual man. Many Palestinians in Lebanon live in refugee camps, and HC was from one of these camps. Although it is not impossible to move from one camp to another, there are serious difficulties in doing so because of the competing factions who control the camps and suspicions of strangers.

One argument that had been raised to defeat HC's claim to refugee status was that he could internally relocate (i.e. live somewhere else in Lebanon). In deciding that the tribunal below must reconsider the case, Lord Justice Keene said:

> …nowhere does the adjudicator deal with the substantial amount of evidence before her which pointed to the acute problems faced by a man who was both a Palestinian refugee and a homosexual trying to relocate elsewhere in the Lebanon. Some of that evidence has been summarised earlier in this judgment. The two characteristics of being a Palestinian and being gay needed to be looked at in combination. Any rational consideration of this issue needed to take into account the evidence about the legal ban on Palestinians owning property in the Lebanon; the evidence about accommodation being too expensive in much of the Lebanon; the legal exclusion of Palestinians from many trades and professions; the few work permits granted to them; and the evidence about the extreme difficulty a homosexual would have in living normally in any Muslim area of the country.

Nowhere does the adjudicator appear to have taken account of the accumulation of those factors.

Her reasoning when concluding that the appellant could reasonably (and safely) relocate relied on several factors. One was the fact that he had lived without difficulty with his aunt for six weeks in Beirut before leaving the country. That does not tell one very much about his prospects for living safely in Beirut on a long-term basis. She also relied on his having worked in the city of Sidon. That may show that some black market employment is possible, but he was still *living* in Camp 100 at the time. The statement that it is possible for Palestinians to move from one camp to another ignored the evidence from Dr George about the difficulties a young gay man would have in so doing and the suspicion which would attach to him if he sought to do so. Finally, the fact that he had been out of the country for over four years does not assist with the dangers which the evidence indicated would be faced by a young homosexual in any Muslim part of the Lebanon, especially if Palestinian.

The final case led to discussion as to the meaning of persecution, and in particular whether the effects of past persecution could be sufficiently severe as to amount to persecution of themselves.

B [2005] UKHL 19
http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050310/hox-1.htm

In this case, Baroness Hale considered the use of rape as a means of persecution; and also whether its long lasting effects, particularly in communities and cultures where rape is viewed as a source of shame or contamination for the victim, could continue to give rise to a risk of persecution. The case concerned a Kosovan Albanian women, who had been raped by Serb police. The rape was carried out in front of her family and other members of the community.

The following extract is taken from the opinion of Baroness Hale:

> To suffer the insult and indignity of being regarded by one's own community (in Mrs B's words) as 'dirty like contaminated' because one has suffered the gross ill-treatment of a particularly brutal and dehumanising rape directed against that very community is the sort of cumulative denial of human dignity which to my mind is quite capable of amounting to persecution. Of course the treatment feared has to be sufficiently severe, but the severity of its impact upon the individual is increased by the effects of the past persecution. The victim is punished again and again for something which was not only not her fault but was deliberately persecutory of her, her family and her community. Mrs B is fortunate indeed because her husband has stood by her. But Mrs B states that this is seen as a 'big disgrace for a man' and Mr B states that 'according to our culture I should reject her.' The pressure to do so adds to the severity of the ill-treatment they may fear on return.

> If what they fear is capable of amounting to persecution, is it for a Convention reason? It is certainly capable of being so. In [*Islam & Shah*], this House held that women in Pakistan constituted a particular social group, because they shared the common immutable characteristic of gender and were discriminated against as a group in matters of fundamental human rights, from which the State gave them no adequate protection. The fact of current persecution alone is not enough to constitute a social group: a group which is defined by nothing other than that its members are currently being persecuted would not qualify. But women who have been victims of sexual violence in the past are linked by an immutable characteristic which is at once independent of and the cause of their current ill-treatment. They are certainly capable of constituting a particular social group under the Convention.
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> However, it is not suggested that the Kosovan authorities would discriminate against the B family in this way. So the final question is whether the authorities would be able and willing to provide sufficient protection against their ill-treatment at the hands of their own community: see *Horvath v Secretary of State for the Home Department* [2001] 1 AC 489. This has not been explored in evidence or argument. The most one can say is that it is not easy to protect against this sort of deep-seated prejudice but that in international law there is a clear duty to do so.

The extracts cited above are not intended to suggest a comprehensive review of the Refugee Convention, still less the alternative protection that may be provided under the European Convention. However, these case, and the extracts provided, highlight some of the critical issues that arise in asylum claims based on persecution on grounds of gender or sexual orientation. Of course, it must be recalled that in order to make a successful claim for asylum, the refugee must satisfy the decision-maker that he or she meets all the various elements of the “refugee” definition as set out in the Refugee Convention. (Exclusions from the protection of that Convention are not addressed here.)

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