

RISK ON RETURN FOR PAKISTANI WOMEN WHO HAVE LOST THE SUPPORT OF BOTH THEIR IN-LAWS AND THEIR NATAL KINSFOLK

AN ANTHROPOLOGICALLY INFORMED COMMENTARY ON
THE FINDINGS OF UPPER CHAMBER OF THE IAT IN KA
AND OTHERS (DOMESTIC VIOLENCE – RISK ON RETURN)
PAKISTAN [2010] CG

by

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1 The context within which this document has been prepared

The central concern of KA and Others (domestic violence – risk on return) Pakistan CG [2010] UKUT 216 (IAC) is to establish the level of support and protection available to women who have parted company with their families as a result of having been subjected to intolerable levels of domestic violence can expect to gain access if they are returned to Pakistan. Running to no less than 271 paragraphs covering 78 pages, it must be one of the longest and most detailed determinations yet to emerge from the Immigration and Asylum Tribunal. As a result one can only presume that it was prepared in the hope that it would stand as a yardstick against the background of which such cases being heard in the lower Tribunal could readily be determined for some considerable time to come.

That there is a need for such guidance is clear. As an anthropologist with considerable personal experience of familial developments in Pakistan, as well as within Pakistani communities in the UK, I have been instructed to prepare well over six hundred expert reports dealing with the underlying familial and cultural issue in all manner of proceedings in the civil and criminal courts as well as in the IAT, a substantial proportion of which had arisen as a result of domestic violence and subsequent marital breakdown in a wide range of circumstances, sometimes in Pakistan, sometimes in cases where the appellants only had temporary right of abode in the UK, so likewise giving rise to applications for asylum and/or humanitarian protection, and in others where the victim had permanent rights of abode in the UK, with the result that any resultant proceedings took place either in the civil, criminal or family courts.

Whilst the findings of KA only have traction in those cases where the victim has not been granted unlimited right of abode in the UK, to the extent that a substantial part of my workload involves appeals being heard in the IAT, I am acutely aware that a significant number of domestic violence cases involving Pakistani (and to a significantly lesser extent involving Indians and Bangladeshis) are currently being processed through the Tribunal, and that they often require the preparation of lengthy reports to do the case of the appellant justice. But to the extent that the vast majority of these cases are heard in the lower Tribunal, where they establish no citeable precedent one way or the other, I have become steadily more irritated when I find myself repeatedly round the same basic mulberry bush in the process of preparing my reports.

With this in mind I have taken to preparing generic ‘background reports’ on issues in which I find myself seriously at odds with current CG guidance and COIR material. I have already prepared, and regularly utilise three such reports, respectively addressing the History and Current Position of Pakistan’s Christian minority, secondly of Pakistan’s Ahmadi minority, and thirdly of Afghanistan’s Sikh and Hindu minority, which I routinely attach as generic background report, which I invite the Tribunal to scrutinise before going on to consider the more narrowly focused analytical account of the specific issues in hand which I set out in my report proper. I have prepared this generic background document with just the same purpose in mind.

2 My initial response to the findings of the Tribunal in KA

In approaching the Tribunal’s findings in this case as an anthropologist – as opposed to a lawyer – I rapidly found myself deeply disturbed by the findings of the Tribunal in this case. My key reasons for doing so were quite straightforward: in the course of considering the evidence which had been placed before it, I came to the conclusion the Tribunal had substantially misread the character and consequences of the *practical* difficulties which Pakistani women can expect to face if for some reason (of which there are many) they failed to secure the support of members of their natal family in the aftermath of the collapse of their marriage in the face of an intolerable level of domestic violence.

Moreover I also came to the conclusion that this misreading had occurred at least four distinct levels:

- i. The Tribunal had paid insufficient attention to the internal dynamics of corporately extended families, and their members’ acute concern with matters of honour (*izzat*), most especially in situations where the behaviour of female members of the family had been such that it could publicly be identified as ‘deviant’ or ‘immoral’.
- ii. Meanwhile the Tribunal had paid over-much attention to the degree of support and protection which they presumed that the courts – and indeed virtually all other agencies of the state – would be able and willing to offer to women who found themselves in a position in which they had lost the support of, and hence were estranged from their natal kinsfolk than their husbands and in-laws.
- iii. And that in doing so the Tribunal had simultaneously underestimated the risks and depredations to which such women were likely to find themselves exposed from a wide range of non-state actors, including their in-laws, their immediate natal kinsfolk, and neo-fundamentalist activists committed to ‘the promotion of virtue and the

suppression of vice’, and last but not least, from predatory males who were only too ready to exploit their condition of personal vulnerability.

- iv. Over and above all this I also came to the conclusion that in considering the prospect that women in a situation might overcome their local familial difficulties by means of internal relocation, the Tribunal had seriously under-estimated the severity of the challenges which lone women (in the sense of women who lack male guardians able and willing to vouch for their respectability) can expect to find themselves confronted if they resolve their difficulties by seeking to re-establish themselves in some other part of Pakistan in which they have no prior contacts on whom to rely.

Hence my central objective in this document is to re-analyse the arguments and conclusions set out in KA, and in doing so to substantiate these four inter-connected lines of argument.

3 The testimony set before the Tribunal in KA

3.1 The basic facts of the case

There appears to have been no significant argument about the facts of the case. The appellant, KA, had an arranged marriage, and bore her husband two children. However the marital relationship broke down as a result of domestic violence. The appellant returned to her natal family, taking her two children with her. Her husband registered an FIR under the Hudood ordinance against her on (false) grounds of adultery, as a result of which she was arrested and kept in custody for two days before her father managed to secure her release. Nevertheless her husband and in-laws continued to pursue her, and to threaten her father and brother with violence. Fearing that her husband would continue to pursue her and her family through the courts, her father sold jewellery enabling the appellant and her children to take a flight to the UK where she lodged and application for asylum.

3.2 Sources of expert evidence laid before the Tribunal

Three experts were instructed to give evidence before the Tribunal. Two were experts in Pakistani Law: Dr. Lau was instructed by the appellant, and Dr. Shah by the respondent. The third expert was Dr Balzani, a social anthropologist with extensive fieldwork experience in India, as well as with members of the Ahmadi community in the UK, but not in Pakistan itself. Dr. Balzani made up for this deficiency by relying heavily on a Report jointly prepared by South Manchester Law Centre and the Manchester Metropolitan University entitled *Safe to Return? Pakistani women, domestic violence and access to refugee protection – A report*

of a transnational research project conducted in the UK and Pakistan¹ to support her arguments and conclusions.

Given that there were few, if any, disagreements about the facts of the case, the arguments considered by the Tribunal fell into three main spheres:

- i. The risk of the appellant finding herself prosecuted for adultery (or some other trumped up charge) on her return
- ii. The extent to which the appellant could expect to rely on resources such women's shelters, crisis centres and so forth to assist her in resolving any difficulties she might encounter on her return.
- iii. And in any event, whether she could resolve her difficulties by means of internal relocation to some other part of Pakistan.

3.3 Evidence from Dr. Lau and Dr. Shah

Insofar as these issues raised issues of Pakistani law, the Tribunal concluded that

It is right to say that there was a great deal of common ground between Dr Lau and Dr Shah on matters of Pakistan law and both representatives acknowledged that both had given evidence in good faith and on the basis of real expertise in the field of Pakistan law. In any event, we found the evidence both gave as to relevant aspects of Pakistan law and practice to be weighty. Both possess formidable academic credentials and have also been able to draw on the opinions of lawyers and judges practising in Pakistan (Dr Shah having experience as a law practitioner in Islamabad). Both impressed us by their readiness to adjust their position according to the state of the evidence as it developed during the proceedings.

In the light of these remarks it is quite clear that in addressing the issues that had arisen in the case, the two lawyers found it necessary to set systematically contextualise their remarks in the light of much wider procedural, cultural and social considerations. From an anthropological perspective that come as no surprise whatsoever: no matter how law is taught in law school, law in practice is inevitably set in a particular social, cultural and institutional context, which of necessity profoundly conditions the outcome of legal processes. Moreover it Dr. Lau and Dr. Shah were in broad agreement about the formal principles of Pakistani law, they often disagreed about their contextualised implications:

However, whilst we recognise that both have also written on aspects of Pakistan society as well as on matters of Pakistan law, we note that by and large they based their opinions on such matters on the background evidence as found in major country

¹ Nadia Siddiqui, Sajida Ismail, and Meg Allen *Safe to Return? Pakistani women, domestic violence and access to refugee protection – A report of a transnational research project conducted in the UK and Pakistan*, published by South Manchester Law Centre in Partnership with Manchester Metropolitan University

reports. Although both had published work dealing with such aspects it was far less clear to us that what they told us about such aspects reflected any particular expertise.

Dr Lau, for example, was not entirely consistent in the evidence he gave concerning whether an attempted murder suspect would be accepted by a Darul Aman and ventured opinions on the level of risk to women of honour killings that did not distinguish carefully between key variables.

Dr Shah, for example, ventured to suggest that in Lahore cases of persecution by government officials are taken seriously and in that city “[m]ost of the people are educated and wealthy”, a suggestion very difficult to square with the background country information. It was noticeable that at the hearing both experts were readier to qualify some of their opinions on non-legal issues under cross-examination. Dr Shah, for example, conceded that in his written report his references to Lahore just cited his primary focus was on formal legal processes normally followed rather than actual practices.

A further, related, caveat we have is that is that once these two experts turned from evaluating general issues of law to evaluating social and political matters and the appellant’s particular case each in our view was rather too ready to adopt and defend a view on her likely situation on return, without fully addressing the evidence pointing to a different view. For example, in his report Dr Lau for his part said he was sure that the appellant could not achieve safety by relocating as the police would locate her; yet under questioning at the hearing stated a different view, without mentioning his shift in position. Dr Shah seemed too ready to assume that the appellant would be able to seek and obtain police protection in her home area.

In so noting the Tribunal appears to have come close to suggesting that in their efforts to contextualise their legal evidence, they had ranged significantly beyond their core expertise.

3.4 Evidence from Dr. Balzani

Although Dr. Balzani is a fellow anthropologist, it is also worth noting that she was similarly handicapped by the fact that she, too, could not speak with the benefit of having conducted first-hand ethnographic fieldwork in Pakistan, or from first-hand observations of the operation of Pakistani legal processes, as is clear from the Tribunal’s observation that:

We found Dr Balzani’s use of answers sent to her by two lawyer contacts in Pakistan very useful and this lent weight to her observations on the law and practice in Pakistan. We also recognise that in an important sense hers was the hardest task in that she was asked to cover a great deal of ground relating to the general legal and social situation in Pakistan and the position of women generally as well as women facing adultery accusations. However, whilst we are grateful for her help in drawing together different background sources of relevance and conveying comments by two lawyers in Pakistan, we must confess to finding her own observations of limited help otherwise.

Her own lack of legal expertise did not stop her stating her opinion incorrectly on a number of legal matters; Dr Shah in his written oral evidence correctly identified a number of such errors (although it is fair to say that her error concerning marital rape is also made by the latest US State Department report). She did not furnish sufficient information about her own research methodology on the main issues at stake in this appeal.

Much of her interview-based research conducted with men and women of Pakistan origin in the UK appeared to be with Ahmadis, whose experiences in Pakistan are likely to be very different from most Pakistanis. Quite a few of the opinions she expressed in her report were not sourced. Her readiness to state dogmatic conclusions both about general legal, social and political matters and about the likely risk facing the appellant did not instil confidence in us that she reached her conclusions by a proper consideration of evidence pointing for and against them. We accept she was sincere in seeking to discharge her duty to the Tribunal to assess the evidence objectively, but we do not think her evidence reflected sufficient command of the subjects covered.

Given that this was identified in advance as a CG case, I was disturbed to note that that no social scientist with first-hand knowledge of current developments in Pakistan was instructed to prepare expert evidence for use in these proceedings.

3.5 The Tribunal's comments on the overall quality of the expert evidence laid before it

There were a number of differences between the three experts on matters other than Pakistan law. For example, they did not agree over the issue of whether the appellant's husband was likely to get custody of the appellant's children. To take another example, although Dr Lau found it outrageous (in oral evidence) that Dr Shah should say (in his February 2010 report) that allegations of adultery are common and often the precursors of divorce, Dr Balzani had expressed the same view in her report of October 2008 where she maintained that it was known that husbands accused their wives of adultery simply to get rid of them. However, since we derived limited assistance from all three on such matters, we need only refer to such differences in limited contexts in the course of our later analysis of the appellant's case.

3.6 The grounds on which the tribunal rejected the appeal

In paragraphs 244 – 263 the Tribunal reviewed the risk of the appellant finding herself prosecuted for adultery (or some other trumped up charge) on her return, as well as the extent to which the appellant could expect to rely on resources such women's shelters, crisis centres and so forth to assist her in resolving any difficulties she might encounter on her return, and in the course of so doing concluded that that none of the arguments which her representative had advanced on this front held water.

At paragraph 264 the tribunal turned to the matter of internal relocation, with respect to which is observed that:

264. Para 339O of the Statement of Immigration Rules HC 395 as amended make clear that it is always necessary to examine the particular circumstances of the individual concerned. Relying heavily on the evidence of both Dr Lau and Dr Balzani and the *Safe to Return? Report*, Mr Fripp submitted that the appellant would not have a viable option of internal relocation whereas Mr Bourne urged that we take the opposite view.
265. As regards safety, we reject Mr Fripp's submission that wherever the appellant sought to move in Pakistan the authorities or her husband's family would track her down. Mr Fripp has properly not suggested that someone in her position would be on any centralised database and we can find no evidence to suggest that. As regards her husband and his family we take account of the interconnectedness of families in Pakistan. Equally, however, we bear in mind the evidence indicating that (at least in the private sector) centres/refuges generally keep their locations confidential. We consider that it is of material importance that Pakistan is a very large country geographically and has a large population, estimated in July 2008 as nearly 173 million and that there is no evidence to suggest that the state agencies either at a federal or provincial level hold sophisticated nationwide databases on their citizenry. Whilst it appears that in some instance local police are told the names of women residing temporarily in centres or refuges for women victims of domestic violence, there is insufficient evidence to show that this leads to persons outside the local areas being able to access that information.
266. We consider that if the appellant seeks to relocate in Pakistan there is only a remote possibility of the appellant's husband's family being able to trace her through official or unofficial channels. Although the appellant's husband comes from a professional family having a lawyer for a father, the evidence does not indicate that this family has power or influence of the type that might enable it to gain the assistance of the Pakistan police and/or security services in tracking down the appellant.
267. As to reasonableness, we have already set out our assessment of the general position regarding the availability of assistance to women in the form of shelters. In short we concluded that whilst the services offered are far too few and have many shortcomings, even in the private NGO sector, nevertheless it cannot be said that women returning to Pakistan who seek to access such shelters would be at real risk either of being denied assistance or of receiving ill treatment in them. Nor do we consider the fact that the shelter workers might come to know that the appellant faced criminal charges would cause a woman in the appellant's position to be turned away, since their services are particularly designed to help women fleeing from husbands who have made false accusations against them. Whilst we have earlier observed that there can be issues of mothers in shelters facing separation from male children when they reach the age of 5, the appellant has no sons, only two daughters.
268. We note Mr Fripp's submission that the appellant has no history of employment and has modest education and that away from her home area she would lack potential male or other support. She also has two young female children and would face particular pressures as a young mother on her own. These factors would interact with the general societal discriminations faced by women in Pakistan.

We accept that these features will give rise to some degree of hardship. However, we would first of all observe that she and her children have no known health problems and that she has already shown a certain degree of resourcefulness in having been able to leave her husband's home, then seek safety first with her parents and then with friends of theirs and then take steps to travel to the UK and seek asylum. It is true that in taking these steps the appellant had the support of her family but that, it seems to us, is an extremely important background consideration in her case: they have not disowned her (as some families do with women similarly situated to her) and they have shown in the past that they have been ready and able to help with obtaining legal assistance and financial assistance.

269. The appellant now says in her most recent witness statement and in evidence to us that her father no longer has property or assets and faces expensive medical treatment and would not be able to assist as before, something she repeated before us. We consider this inconsistent with her earlier evidence that her father had sold only some of his property and gold to help her leave the country; and in our judgment she has not adequately explained how it has come about that she can say he no longer has any other property or any gold. In any event, it remains, even on her own latest account, that he has a pension following retirement from employment in the professional sector and she has not suggested that the family's standard of living has declined. We also know that the appellant has three sets of relatives, none of whom are said to be poor or to have expressly turned their back on her. Given the lengths to which her father and mother went to before to assist her we do not consider that they would leave her to relocate elsewhere in Pakistan without any kind of family assistance, whether in the form of financial or other assistance. Even though the appellant's level of education is modest, it is still above that of many women in the larger cities and she (although she chose to give evidence before us through an interpreter) speaks English. We agree with Dr Shah that this would be an asset for some employers in the big cities. She would, of course, have two young children and so if she were to work would need help with their care during the day, but it seems clear that such help is available at a low cost.

In the event the Tribunal ultimately concluded that the third issue was decisive. It took the view that

270. The appellant says that she fears social isolation and disgrace. The expert and background evidence highlights the damage done to women's reputation by being made the subject of FIRs relating to adultery allegations and being detained in police custody. We do not seek to belittle the difficulties the appellant will face in her home area as a result of her husband's past vendetta against her and his likely continued pursuit of her through the courts, but we do not consider that in other parts of Pakistan her history would become known or that she would need to make it known to those she associated with. It is clear from the background evidence that in the larger cities single women with children can get by and there is not the same level of social scrutiny that occurs in the smaller towns and rural areas.

271. For the above reasons, we conclude that the appellants would have a viable option of internal relocation. The decision we remake is to dismiss the appellants' appeals.

3.7 *The Tribunal's headline observations in the light of these findings*

- i. In general persons who on return face prosecution in the Pakistan courts will not be at real risk of a flagrant denial of their right to a fair trial, although it will always be necessary to consider the particular circumstances of the individual case.
- ii. Although conditions in prisons in Pakistan remain extremely poor, the evidence does not demonstrate that in general such conditions are persecutory or amount to serious harm or ill-treatment contrary to Article 3 ECHR.
- iii. The Protection of Women (Criminal Laws Amendment) Act 2006 ("PWA"), one of a number of legislative measures undertaken to improve the situation of women in Pakistan in the past decade, has had a significant effect on the operation of the Pakistan criminal law as it affects women accused of adultery. It led to the release of 2,500 imprisoned women. Most sexual offences now have to be dealt with under the Pakistan Penal Code (PPC) rather than under the more punitive Offence of Zina (Enforcement of Hudood) Ordinance 1979. Husbands no longer have power to register a First Information Report (FIR) with the police alleging adultery; since 1 December 2006 any such complaint must be presented to a court which will require sufficient grounds to be shown for any charges to proceed. A senior police officer has to conduct the investigation. Offences of adultery (both *zina* liable to *hadd* and *zina* liable to *tazir*) have been madeailable. However, Pakistan remains a heavily patriarchal society and levels of domestic violence continue to be high.
- iv. Whether a woman on return faces a real risk of an honour killing will depend on the particular circumstances; however, in general such a risk is likely to be confined to tribal areas such as the North West Frontier Province (NWFP) and is unlikely to impact on married women.
- v. Pakistan law still favours the father in disputes over custody but there are signs that the courts are taking a more pragmatic approach based on the best interests of the child.
- vi. The guidance given in SN and HM (Divorced women – risk on return) Pakistan CG [2004] UKIAT 00283 and FS (Domestic violence – SN and HM – OGN) Pakistan CG [2006] UKIAT 00023 remains valid. The network of women's shelters (comprising government-run shelters (Dar ul Amans) and private and Islamic women's crisis centres) in general affords effective protection for women victims of domestic violence, although there are significant shortcomings in the level of services and treatment of inmates in some such centres. Women with boys over 5 face separation from their sons.
- vii. In assessing whether women victims of domestic violence have a viable internal relocation alternative, regard must be had not only to the availability of such shelters/centres but also to the situation women will face after they leave such centres.

3.8 *An immediate commentary on the Tribunal's findings and headline observations*

From my perspective as an anthropologist, one of the most striking features of the headline summary is its narrow focus on formal legal provisions and administrative policies as a means of assessing the extent to which the Pakistani legal system, supplemented by state agencies of one kind or another are – or at least are ostensibly in a position to – offer a sufficiency of protection to women who have suffered from domestic violence of one sort or another. It is not just that all but the last of the items on the list focus on these legal and administrative matters – so much so that the prospect of relying on internal relocation is a viable means of resolving such problems appears almost as an afterthought – but also that the headline items, as well as the body of the determination, effectively marginalises any consideration of the political and socio-cultural contexts with which these formal provisions are actually played out – in other words what can best be described as the anthropological dimensions of the considerations which the Tribunal might reasonably be expected to take significant cognisance, most especially in the context of a Country Guidance case.

However it is manifestly not the case the decision makers in KA had no access to evidence on this score. My colleague Dr. Marzia Balzani did her best to provide an anthropological perspective on the matters at hand, but the Tribunal found it possible to put many of her arguments and analyses to one side on the grounds that she had no first-hand ethnographic knowledge of Pakistan. What she could and did do, however, was to bring a mass of up to date empirically grounded information which was set out by n Siddiqui, Ismail and Allen *Safe to Return? Pakistani women, domestic violence and access to refugee protection – a Report*, which had been recently published by South Manchester Law Centre in Partnership with Manchester Metropolitan University – in other words a document dealing quite precisely with the issues which were being addressed in this CG case – to the attention of the Tribunal.

4 The tribunal's assessment of the arguments and analyses set out in 'Safe to Return?'

4.1 *The Tribunal's initial overview*

In Paragraphs 144 and 145 the Tribunal sums up the report's procedural approach as follows:

Safe to Return? is a report dated January 2007, written by N Siddiqui, S Ismail & M Allen. It describes itself as a "trans-national study of the complex issues which impact on Pakistani women who might seek refugee protection in the UK against domestic violence".

Its study of women's refuges in Pakistan is based on a number of research methods, in particular qualitative interviewing, individual (legal) case studies, a field trip in November 2005-February 2006, where 'familiarisation' interviews were carried out with relevant stakeholders, and a later field trip in June-July 2006, where one of the researchers (assisted some of the time by a research consultant) undertook visits to a range of service provision contexts in Pakistan, and carried out both individual interviews and (seven) group discussions (1.8). The report explains that it was not possible to identify a sample using formal survey or sampling methods; the scattered nature of provision, and the lack of formalised networks, meant that the two field workers had to use less formal methods to contact potential participants (1.5.) The study also assembled and drew upon a range of documentary sources across both countries (1.1.).

The report notes that monitoring and evaluation data was not available in Pakistan and much information was sourced from newspapers. The authors note that it was difficult initially to make contact with service providers in Pakistan, but that as the research progressed participants facilitated access to other service providers and to women victims/ survivors who were using services (1.4.3.). The Pakistan-based research was carried out in the regions of Punjab, Sindh and the North West Frontier Province, with specific focus on cities in these regions, namely Peshawar, Lahore, Faisalabad, Islamabad, Rawalpindi, Karachi and Hyderabad (1.5.1). Several shelters were visited in two of the three regions covered by the report.

In Paragraphs 146 – 148 the Tribunal immediately goes on to observe that the summary of the report contains three paragraphs which were manifestly germane to the case before it:

Service provision for women victims of domestic violence in Pakistan is described as "particularly severe" and inadequate, Para 11 of the report's summary states:

"[this] can be seen at all levels, from legislation through to over-subscribed women's shelters which are limited in number and in resources, and crucially, to the lack of rehabilitation or aftercare. There is no system of state care or re-housing for women made homeless following violence; this fact alone plays a major role in the decisions many women make to return to violent relationships, exacerbated by their weak socio-economic position, lack of education and financial dependence. Additionally, the attitudes towards women who attempt to live without a male relative that pervades society in Pakistan results in their isolation and ostracism, exposing women to further risk of harm."

Para 12 of the summary deals with specific concerns about shelters in Pakistan:

"The majority of shelters are grossly under resourced and offer very poor or no childcare provision. Policies within shelters which exclude boys over the age of five create severe dilemmas for women, and provide disincentives to access shelters. They are usually overcrowded, provide sub-standard facilities, rarely have a key worker system, offer poor working conditions, no casework supervision, and no training or worker accountability. The workers often appear to run shelters with very little input from trustees. Life after living in a shelter often means returning to a violent situation, remarriage or

returning to the natal family if they are willing or able to allow her access. In the absence of these 'options', women are often open to sexual exploitation to support the children and to avoid destitution."

The report's view of internal relocation as stated at para 19 of the summary is that:

"...This study has demonstrated the limited and temporary circumstances in which women reach a 'place' which can be deemed 'safe'. The specific conditions relevant to women in both Pakistan and the UK (where they may face involuntary return) place most women in circumstances which, rather than offer safety, heighten potential danger."

4.2 *The weight allocated to the analysis and conclusions set out in 'Safe to Return?'*

Nevertheless when it came to make an assessment of the significance of the findings of this report, the Tribunal took the view that it could give as little weight to its findings as it gave to Dr. Balzani's observations. I have set out the relevant paragraphs below, but given the serious consequences of the Tribunal's assessment of the weight which should be assigned to its contents, I have annotated it observations as I go along.

The importance of having regard to the latest country information is also highlighted for us by the nature of the expert report by Dr Balzani. Leaving aside our earlier comments on her report and addendum, it is noticeable that a significant number of her sources are not based on recent research. The only exception is the January 2008 *Safe to Return?* report, but even that report is now over two years old and its own fieldwork research dates from trips made in 2005 and 2006. It also relies in part on several older sources.

Virtually all Country Experts rely on published material to reinforce their personal knowledge as and when it becomes available. Moreover academics are not journalists: having gathered their raw observations they invariably spend a considerable time sorting and analysing their findings, and even longer writing it all up and arranging for it to be printed in a considered report. Whilst Journalists work to overnight deadlines, two years is good going for an academic report. Unless the subject under discussion is known to be subject to rapid change, I cannot see how academic analysis can be assigned no significant weight because it refers to data which is two years old. If that were true, there would be little point in consulting the resources stacked up in the library.

Turning in more detail to the *Safe to Return?* report, it has some other features (besides being several years old) which call for caution on our part. It is a campaigning document written in part by legal representatives who act for women in UK asylum-related cases and in places expressly notes that it reflects the experience of such representatives (see the reference at 8.11 to "the experience of legal practitioners handling the relevant evidence").

4.3 *Advocates rather commentators?*

There can be no dispute that the authors of *Safe to Return?* identify themselves as addressing a matter of pressing social policy. However just as one would expect of an academic document addressing such issues, its authors manifestly make great efforts to produce a balanced analysis, as is immediately apparent in the very paragraphs of which the Tribunal is critical, which summarises the outcome of a workshop in the UK discussing (amongst other things) the issue of internal relocation, and which was attended by both immigration lawyers and HOPOs. The two paragraphs read as follows:

Discussion on internal relocation provided valuable insight on the range of perspectives across all sectors, with one underpinning feature: the extent of the commonality of these perspectives.

All participants (apart from the Home Office) stated that it would be difficult, if not impossible, for a lone woman, with or without minor children, to live safely and independently in Pakistan. Whilst the situation of the woman might vary from case to case, the experience of legal practitioners handling the relevant evidence supported these doubts about the viability of internal relocation. Apart from the difficulty of obtaining work and accommodation in her attempts to settle into a new community, participants concluded that a lone woman would be regarded with considerable suspicion. The dangers associated with the inter-connectedness of communities, and the complicity of the police in the way in which they service individuals within communities, have been highlighted above and heighten the ensuing dangers of internal relocation.

All that the report highlights is a substantial difference of opinion between those who act for the respondent in immigration cases (HOPOs), and those who act for claimants (immigration lawyers), a difference of opinion which the authors quite properly note.

Meanwhile to return to the findings of the Tribunal in KA:

The report also contains a critique of the existing case law of the Tribunal and higher courts on internal relocation which it considers too restrictive; it is not simply an assessment of the situation in Pakistan. Further we find certain features relating to the nature of its principal findings and conclusions troubling. Many are set out in the form of broad generalisations with very little by way of qualification.

4.4 *Research Methodology*

If I read the Tribunal's comments on this score aright, it may well be that it was also conclude that the remarks which I have set out in this report – and all the other which I have prepared in which I have challenged the validity of the 'objective evidence' advanced by the respondent – are similarly *ultra vires*. Likewise the Tribunal appears to set impossibly high

research standards – at least in my opinion – to which they expect empirically-oriented researchers to conform:

The reason why that is a concern is that the authors candidly explain elsewhere in the report that their research had various limitations: that their primary research only covered parts of Pakistan; that they did not have access to comprehensive data regarding women's centres in Pakistan and that it relied heavily on a limited number of interviews (individual and collective) with various participants who were either victims of domestic violence or service providers for such women. The report also acknowledges the need for more research and for more diverse data (presently the authors explain, researchers are heavily reliant on press cuttings). On one or two key points of detail (see below our discussion about confidentiality) its findings are unclear. Such qualifications should in our view have made the authors less ready to generalise.

All survey-based reports very properly set out the basis on which they have collected the data, the challenges they have faced in so doing, the resulting limitations of the data they have collected – and almost invariably the need for further research. As an anthropologist I can also readily confirm that in the developing world in general, and in Pakistan in particular, accurate and reliable socio-economic data is as rare as hens' teeth. Moreover when it comes to public service provision, and most especially provisions for disadvantaged sections of the population, official statistics are grossly unreliable: all too often the funds allocated for staffing (if allocated at all) have frequently been embezzled along the way, very often including the funds for the construction of the buildings in which the service was supposed to operate. In a country of the size and complexity of Pakistan, researchers have little opportunity other than to insert a few dipsticks into the morass.

However, it remains that by virtue of the empirical research the authors conducted, and the fact that they seek to put that in the context of other studies and reports available, it represents the most detailed study that exists. In addition, although the limitations of the reach and quality of their own research do not deter the authors from advancing a series of broad generalisations, the specific observations made by the principal field worker (and her assistant) show a clear determination to record faithfully all aspects, positive and negative, of the service provisions visited. (It is also a valuable source of information on subjects not intrinsically related to domestic violence - see e.g. its coverage in chapter 4 of the legal context impacting on women in Pakistan - but these are now somewhat dated).

At last an observation with which I can agree. In the light of my knowledge and experience of conducting first-hand research in Pakistan, I can readily confirm – in sharp contradiction to the findings of the Tribunal – that in my opinion the *Safe to Return?* researchers did an excellent academic job, given the constraints under which they were working.

5 The effectiveness of law enforcement and the implementation of social policy in contemporary Pakistan

5.1 *Progress: real or imagined?*

Considered overall, the greater part of the discussion and analysis set out in KA focuses on current developments in Pakistani law, and on associated developments in social policy with respect to women who have found themselves exposed to domestic violence. Moreover as Dr. Shah consistently pointed out, when considered in formal terms the Pakistani authorities appear, at least on the face of things, to have made a considerable amount of progress towards agreed-upon international standards. However black-letter law and formally articulated public policy is one thing. Implementation – especially in the context of jurisdictions whose processes of governance can only be described as chaotic – is quite another. This was no news to the authors of KA, who relied extensively on the Human Rights Commission of Pakistan’s Annual Reports, as indeed the authors of *Safe to Return?*

5.2 *HRCP reports as a valuable longitudinal data base*

By and large the HRCP has been deeply critical of the Government of Pakistan’s efforts to defend the legal rights of the minorities, the poor, of the excluded and ill-connected, and hence – amongst other things – of women who find themselves exposed to domestic violence. But more significantly still for our purposes, its series of annual reports provide a very significant barometer by means of which to make an assessment of trends over time, which are necessarily frozen in the context of a ‘snapshot’ report such as *Safe to Return?* In other words the much respected HRCP annual reports are not only up to date (in the sense that they cover the previous calendar year) but also provide a basis for assessing the direction of travel of human rights within the Pakistani jurisdiction as a whole.

So far as I can see the principal grounds on which the authors of KA set the findings set out in *Safe to Return?* to one side were threefold:

- i. That the scope of their investigation was too limited
- ii. That their findings were out of date
- iii. And although they do not say so explicitly, that the situation might have improved since the empirical research was carried out.

Whilst the first two observations do not hold good with respect to the HRCP reports, the longitudinal character of the data-base provides its authors with a ready opportunity to discuss the direction of travel,

5.3 *The findings of the 2010 HRCP report on the State of Human Rights in Pakistan*

True to form, the report opens with a balanced assessment of developments during the course of 2010:

Ratification by Pakistan of all core international human rights treaties was among the positive highlights of the year, although the benefits were not immediately visible to the people. Two new laws were enacted to deal with sexual harassment. The Commission of Enquiry on Missing Persons cited the intelligence agencies' role in enforced disappearances and for the first time the Supreme Court issued notices to these agencies' heads. In the conflict-ravaged Swat region, the Taliban could no longer patrol the roads or flog citizens. The activities of non-governmental organisations grew, although many of the threats they faced also increased.

The 18th Amendment to the Constitution through a consensus offered a glimpse of what could be achieved when political actors put their mind to it. The amendment also acknowledged three more rights, to education, information and fair trial.

That being said, growing militancy, extremism and intolerance increased threats to people's rights in the country, and the state's inability, and perhaps its apathy too, to deal with many challenges continued to make life more and more difficult. Although there were hints of movement towards acknowledging and addressing the concerns of the people in Balochistan, it would take a lot more to undo the damage done by the persistent indifference of the state towards its people.

While all people suffered as a result of the government's inability to provide a safe environment, the most vulnerable were members of minority communities and women. Journalists and human rights defenders encountered hazards in highlighting the tribulations of ordinary citizens and many paid the price for their mission with their lives. It is difficult to remember a year when the picture was particularly rosy for women's rights in Pakistan and this year too, women continued to be killed for other people's notions of honour.

All tiers of government seemed interested in consolidating their hold on power and paid little attention to the people's real problems. The parliament struggled to establish its say in the formation of official policies and in maintaining legislative oversight of the decisions taken. The devolution of powers from the federation to the provinces under the 18th Amendment did not carry over to the districts and further down the administrative ladder. There was little urgency to ensure people's representation at the grassroots level nor any indication when the local bodies system would be revived.

The year was a particularly bad one for religious freedoms in Pakistan and all indications suggest that worse times are in store. There was a direct link between the rise of the Taliban and the suppression and oppression of the minorities and of all those whose beliefs differed with those of the extremists or who dared to expose hatred and violence in the name of religion.

5.4 *In the Chapter on the position of women the Report went on to observe that*

The human rights picture largely remained bleak for women in 2010 with violence continuing against them unchecked and protection provided by the law eroding. The

illegal practices of killings girls and women in the name of honour and giving them away to settle disputes continued. Decisions by jirga sustained illegal practices such as Swara, Vani and Karo Kari. Talibanisation and hurdles to realization of their socio-economic rights added to women's suffering. The suicide rate among women remained high and a large number of women were murdered as well, often for petty causes.

Women and law

While declarations of commitment to empowerment of women abounded, the task remained unfulfilled because of absence of concrete measures. After taking the first steps in the right direction, the government seemed to lack the ability to follow through. Some pro-woman legal provisions also faced reversal. The injustices that victims of domestic violence face at home and in the form of absence of government protection continued. The failure of the government to push the Domestic Violence (Prevention and Protection) Bill was seen as a setback to efforts to ensure protection for women. The Bill was passed unanimously by the National Assembly on August 4, but it lapsed after the Senate failed to adopt it within the three month period prescribed by the constitution. The legislative process for the proposed law now had to be started fresh. The government reiterated its resolve to reintroduce the Bill but that was not done until the end of the year.

In a setback to efforts to ensure equal protection of law for women, the Federal Shari'at Court ruled that sections 11, 28 and 29 of the Protection of Women (Criminal Laws Amendment) Act of 2006 were unconstitutional, on the contention that these provisions negated the over-riding effect of the Hudood Ordinance of 1979. HRCP expressed alarm that the FSC verdict not only sought reversion to provisions of the 1979 Hudood Ordinance, which were highly discriminatory to the rights of women, but also undermined the legislative authority of parliament in encroaching upon its power to translate people's demands into laws, and subverted the functioning and authority of the mainstream judiciary. The government and the civil society were urged to challenge the FSC decision to ensure that women's rights were not compromised.

The National Commission on the Status of Women (NCWS) also opposed the verdict, arguing that it only resuscitated the injustices against women that they had fought to eradicate. The NCWS called upon the government to strongly oppose the judgement as it could not only take the nation back to square one, but also exploited religion for political gains.

On August 10, the Senate Standing Committee on Women Development discussed Gender Reforms Action Plan and the reasons for its closure. The Gender Reforms Action Plan (GRAP) was initiated in 2005 to help improve the status of women through fiscal, political, legal and institutional reforms in the government structures at the federal, provincial and district levels in order to ensure gender equality in society. The Senate committee was informed that three evaluation reports on the five-year performance of GRAP had concluded that the plan was unable to achieve the desired objectives and that gender development grants had been released without assessing the needs of the districts. The project barely managed to spend 84 million out of the allocation of 250 million. A review panel decided in June not to extend GRAP and the project was closed on June 30. The committee expressed surprise

and dissatisfaction over the failure by the Ministry of Women Development to consult or even inform the committee before wrapping up such a major project.

In the light of these remarks there is little sign that either the legal status of women in distress, or indeed that publicly funded initiatives to relieve their difficulties had significantly improved during the course of 2010; on the contrary there had been significant reversals on both fronts. Moreover the report accurately identifies just why this has occurred. In the first place has been rendered chaotic as a resultant of irreconcilable rivalries between President Zardari, Nawaz Sharif, the leader of the parliamentary opposition, the Chief Justice of Supreme Court and the Army Chief of Staff; and if that is not enough, the whole edifice is threatened by the rising tide of neo-fundamentalism, supported by its allies in the Federal Shari'at Court, all of whom regard all initiatives which seek to improve the position of women as part of a dastardly plot to undermine the integrity of Islam. So it is that even when those of a more liberal frame of mind manage to propose legal amendments to remedy the worst aspects of the current order, or to arrange the allocation of funds to develop better services to assist women in distress, the conservative consensus – backed by fears of upsetting the neo-fundamentalists – invariably manages to undermine the whole project before it gets off the ground.

5.5 *The Dar-ul-Aman system*

Such considerations also need to be borne in mind with respect to the facilities actually available in system of public shelters for women known as Dar-ul-Aman, about which there was much discussion during the KA proceedings. Whilst the HRCP report does not deal with specifically with these institutions, an article in *Dawn*, Pakistan's leading newspaper of record, discussed these issues at length in an article dated 23rd August 2009. It reads as follows:

ONE of the more neglected — both by the government and society at large — areas of public life in Pakistan is the institute of Dar ul Aman. It is supposed to be a `shelter home` for women who need security from even their own near and dear ones. In Punjab there is a Dar ul Aman in almost each of its 35 districts and almost all of them remain overcrowded, as violence and discrimination against women is rampant in our society.

For example, Multan`s Dar ul Aman is made for 30 women but there are more than 80 of them while in Sahiwal space for 15 is filled with 35 inmates. The same is the situation in Lahore and other cities. Leaving one`s own home for an unknown destination must be the severest of pains and an act of last resort for any human being, particularly for a woman and that also in a society like that of ours heavily tilted against the female face.

It means when a woman leaves her home (it may be of her parents or her husband), she would be facing very hostile environment and unbearable life. And searching for more favourable and friendly environment she would reach Dar ul Aman. But alas in many cases she finds herself in a worse situation. Dar ul Aman is a `shelter home` but mostly it would acquire the shape of a jail.

Last year the situation saw a little bit improvement when the Punjab government recruited new in charges of Dar ul Amans who are mostly women whose behaviour has started sending positive signals about the institution. But in some cases where men are still in charge, the situation resembles hell. Most of the inmates of Dar ul Aman are there through courts but it is rather unfortunate that even courts are under the influence of patriarchal society and are not fully sensitive to the emotional and environmental needs of the victims.

These hapless women are admitted in Dar ul Aman by court orders but in some emergency cases the court process proves counter-productive as the victim needs immediate protection. Also these women cannot leave Dar ul Aman on their own without court orders, and when they wish to do so sometimes, they are given in the hands of their relatives who were the primary cause of their leaving the home. And in some such cases we have heard the news of the victim being killed.

[The authorities] need to take immediate and effective measures to improve physical and environmental conditions of this institute of importance. There is immediate need to improve the hygienic condition in all Dar ul Amans. Next the quality of food should be improved. Moreover, the inmates should be provided free, proper and prompt legal aid which should be coming forth from the provincial government. Also there should be proper and pertinent arrangement for mental and physical rehabilitation and vocational training so that when a victim of domestic violation leaves this shelter home, she is an efficient and effective member of our society and not a psychiatric patient.

A bill passed by the National Assembly some time back against domestic violation is a refreshing sign on the part of the government but the real test would be its implementation as there already exist some women-friendly laws on the statute book but they are not being acted upon. Last but not the least is the role of courts, especially superior courts. Recently superior courts of the country have taken cognizance of the plight of the more vulnerable sections of society and passed very courageous and unprecedented orders for their security, welfare and rehabilitation in society.

One hopes that the same courts will take care of the interests of this most oppressed and suppressed section of womenfolk (who are already a disadvantaged part of our population) and issue orders/guidelines for improvement and better working of the institution of Dar ul Aman.

6 The findings of ‘Safe to Return?’ reconsidered in the light of more recent developments

The conclusions reached in the HCRP report are view is further confirmed in an academic study entitled *Safe to Return? Pakistani women, domestic violence and access to refuge*

protection - A report of a trans-national research project conducted in the UK and Pakistan,
² which makes the following observations

6.1 *Government shelters Dar-ul-Amans (houses of peace)*

"The government shelters are sub-jails; they are extremely oppressive and behave like a family patriarch in controlling women. Government shelters say they provide counselling but they are either not there or absent. Help with children is completely absent. I personally have a problem with them as the management look down on the women and in some, women say they are forced to take part in prostitution."

Dar-ul-Amans are government-run shelters for women fleeing domestic violence, funded by the provincial governments' Social Welfare and Women's Departments.

Admissions to these shelters are only accepted via the courts and police. The maximum period of stay for women is three months but in some cases women can remain at the shelter until their cases are resolved (which can be up to a year). Travel outside the shelter is restricted to court appearances or medical assistance. One of the residents interviewed said: 'We are not allowed to go out of the shelter unless we have to appear in court'. The women are expected to remain within the confines of the shelter. Food, clothing and accommodation are free. Legal representation is available to women but they have to make a small contribution for the cost of documentation, for example, getting a divorce certificate. The shelters also offer counselling and basic vocational skills, such as, sewing and embroidery.

The Dar-ul-Amans are usually situated in public areas and are sign-posted. They have security guards posted at the entrance of the main gates. The buildings tend to be old and run down with heavy metal fences restricting women's mobility. A resident, who wished to remain anonymous, said:

"We make tazbi (rosary) here and are desperate to leave the shelter. The charpai (beds) at the shelter are broken, there are big rats everywhere - they go on plates and we eat out of them and we also cook there. Women and children get ill and some are dying but no-one does anything - no one cares. The doctor has to be paid 130 rupees - no-one has that money. We are not allowed out but they could allow us to go into the garden because we need some fresh air. "

In the shelters visited as part of the research the women had a rota for cooking the meals and cleaning. There were six to eight beds in a room and sometimes up to ten or more women shared a room. Residents discussed how they were prevented for security reasons from using the grounds to relax or take exercise. They shared communal areas and spent much of their time in their rooms or sitting on the veranda. In exceptional cases the Dar-ul-Amans allowed some women to remain with them on a long-term-basis, for example, in situations where they had no family. They

² Nadia Siddiqui, Sajida Ismail, and Meg Allen *Safe to Return? Pakistani women, domestic violence and access to refugee protection – A report of a transnational research project conducted in the UK and Pakistan*, published by South Manchester Law Centre in Partnership with Manchester Metropolitan University

also arranged marriages for the residents who had no family, because as one worker said: 'a woman needs a man to look after her'.

Different seasons also affected the conditions in the shelters. During the summer the conditions within the shelters were extremely poor because the fans or air coolers had usually broken down and were not replaced or repaired, due to lack of resources. In contrast, in winter there was no heating provided. Staff at the Dar-ul-Amans visited confirmed they were under resourced and sometimes the workers paid money out of their own pockets to support the women.

During our second fieldwork visit (May-July 2006) there had been some recent discussion between

the government and NGO run shelters to share and develop policies and practices to improve service provision for the women. Unfortunately, the general ethos of the government shelters of treating women as prisoners and running the shelters as sub jails has not helped to move these initiatives forward. A recent change in policy for both government run and private shelters is that they do not admit boys over the age of five (previously boys up to the age of eleven were admitted with their mothers). As a result the boys are separated from their mothers and sent to the orphanages or madrassas in the locality.

In terms of their distribution, the shelters are mainly established in the cities and are used by women from both urban and rural areas, although workers and organisations believed that the majority of the women who use the government and private shelters are from rural areas. It is relevant to note that the government's commitment to establishing shelters in Pakistan has been slow. This is further reflected in the inadequate service provision available to women fleeing domestic violence. During our fieldtrips it was difficult to ascertain exactly how many government-run shelters existed in Pakistan. It was claimed that the government had promised to set up shelters in every District, but it was clear that this commitment has not been realised.

Quite apart from the shocking conditions under which the inmates of these shelters find themselves living, it is also quite clear that they offer no direct route to rehabilitation in society at large – unless they manage to ‘reconcile’ either with the husbands or their in-laws.

Moreover the report goes on to comment on the role of the Police in such contexts:

The role of the police is to protect all its citizens but in Pakistan women are discouraged from seeking protection from them. The police treated domestic violence as a family matter and told the victims to resolve the matter within the family. The police are reluctant to take action against the perpetrators of these crimes. If a woman does go to the police station to report a crime she is made to feel guilty about depriving her children of a home. Police are not interested in domestic violence cases. No legal action is taken in domestic violence cases. If cases are referred to the police they too reconcile the couple and treat it as a family matter. ... The police are very negative and don't take the issue of domestic violence seriously e.g. if a woman reports an incident the police will say "you must have done something wrong", again blaming the woman.

6.2 *Newspaper reports on the same theme*

A report from the Pakistan Daily Times dated 2nd October 2009 reads as follows

7 more girls escape from Women Crisis Centre

PESHAWAR: NWFP government-run Women Crisis Centre (WCC) has failed to provide proper shelter and protection to helpless and distressed girls and women as seven more girls have escaped from the centre after fleeing of two girls from there in August, WCC sources have said.

The sources told Daily Times on Thursday that the centre's management has failed to protect and provide facilities to helpless girls and that is why, women and girls are fleeing from the centre. The sources said that on September 26, a girl Ayesha broke the lock of the centre's main gate in the absence of watchman and escaped from there along with other six girls. The cook of the centre informed Faqirabad police about the incident. The police blocked all exit points, but were unable to find the girls.

The girls fled from the centre after a girl was killed by her two brothers in the premises of a sessions court in Peshawar on September 26 when the centre officials brought her to the court. The official sources said that the girls fled from the centre the same day after the murder fearing their deaths at the hands of their relatives. It was the second incident as two other girls had fled from the centre on August 26. Noor Zaman, father of one of the girls, has filed a case against the centre management in a local court.

The in-charge of the centre, when contacted, said the watchman was present at the centre during his duty hours. However, other watchmen were on leave. She dispelled the impression that the government's lukewarm attitude was one of the reasons for dilapidated condition of the centre. The official said that Minister for Social Welfare and Women Development Sitara Ayaz was keen to work for the uplift of the centre and was taking personal interest in its affairs. She said that the district social welfare officer and other authorities were informed immediately and action against absent watchmen was also taken.

A further consequence of the devolution of responsibility for 'women development' (and hence for Crisis centres) from the Federal Government to the Provincial authorities is that activities in this are receive even less priority than they did before. Hence a recent report in Dawn reads as follows:

ISLAMABAD - Women crisis centres all over the country not only failed to utilise the allocated budget in the financial year 2009-10 despite an alarming increase in the number of violence-hit women but also illegally retained Rs 17.16 million in their commercial bank accounts.

On the other hand, according to the annual report by Aurat Foundation, 8,000 women were subjected to violence last year. The failure of the women crisis centres to spend the allocated budget reflects either their apathy towards distressed women or lack of awareness among victim women regarding such rescue/welfare centres in the country. The ministry manages 25 women crisis centres, known as Shaheed Benazir

Bhutto Centres for Women. According to the Audit Report 2010-11 on the accounts of the ministry, the funds released to these centres during 2009-10 were not fully utilised by them and Rs 17.158 million were lying unspent in commercial bank accounts at the end of the financial year. It further says the approval of the Finance Ministry was not obtained by the Ministry of Women Development to open these accounts while these centres were not supposed to retain unutilised funds after the closure of the financial year.

“By retaining unspent balance of allocated funds, the funds are made vulnerable to misuse. It is worth mentioning that the details of unspent balances at the centers in Hyderabad, Muzaffargarh, Jacobabad and Mirpur (AJK) were not provided to the audit team,” says the report. The management in its response mentioned that the Ministry of Finance was being approached for allowing retention of unspent balances.

When contacted, Dr Farzana Bari, a women rights activist, said: “The budgetary allocation for women development sector is already very low but if the released funds are not utilised, it shows the weakness of the Women Development Ministry and the crisis centres.” She said lack of accountability was another factor involved in this corruption. While talking about the women facing violence of any form, Bari said they needed shelters, but due to inefficiency and corruption of such institutions, they did not get any help.

6.3 *KA and others’ position on the issue of Risk on Return*

However in the course of its determination of KA, the Tribunal took a substantially more positive view of the support which the Dar ul Amans are able to provide to women who have been subjected to violence and comprehensive marginalisation by their husbands and families:

225. However, as regards the issue of internal relocation as it affects women who are divorced or who are victims of domestic violence or who will return as single women, it is important to examine more closely what services exist for them by way of crisis centres, shelters or refuges and to consider these taking into account a range of factors such as class, age, health, education, child responsibilities etc.
226. We have devoted considerable space to what is said in the background evidence about women’s crisis centres, shelters and refuges. That is because the evidence on which Mr Fripp relies includes the expert report of Dr Balzani and on the 2008 Safe to Return? report, both of which appear, at least in some passages, to take the position that women’s shelters in general do not offer adequate protection to women victims of domestic violence in Pakistan. If that view is accepted, then existing Tribunal country guidance requires major revision.
227. We do not criticise Dr Balzani or the authors of the Safe to Return? report for advancing such a view for it must be said that there are some items of evidence which, taken in isolation, would appear to lend it strong support: for example it is said in a 2007 press report that government centres for such women are “deserted”

and it is said by one source that they are only open to women who are referred by courts. Some of the women interviewed by the authors of the Safe to Return? report made serious criticisms of the care they had received. But, as we hope will be clear from our lengthy summary of the relevant background evidence, on these and other points of fact it is not always a situation where the evidence only points one way. We must also bear in mind that whilst the fieldwork conducted by the main Safe to Return? researcher sheds significant light on the state of service provision, there does not exist any study that has conducted an independent nationwide survey of such centres and the conclusions reached in many other sources are based on just a few examples or on anecdotal evidence.

228. We shall come shortly to the evidence relating to the appellant, which included the fact that her father sought to secure a place for her in a government Darul Aman in Lahore but was told they could not assist someone who faced an FIR alleging serious criminal charges. We also take account of Dr Lau's opinion that generally speaking Darul Amans were unlikely to take an attempted murder suspect.
229. Having considered all the evidence, we find that women's shelters, whether government or private, are unlikely to turn women away if they face charges relating to adultery. As regards government shelters the evidence was indeed that they are principally designed for use by women who have been referred by the courts. Further, as we have seen, one of the main purposes of setting up shelters for women has been to respond to husbands seeking to misuse adultery laws for their own ends. There is virtually no evidence to suggest that women are turned away in respect of such charges. Although we lack clear evidence, we also doubt that women would be turned away from shelters if they face other serious criminal charges that are raised against them in conjunction with adultery charges. Once again, workers in the shelters would be all too aware that the husbands involved in such cases seek to misuse not just the adultery laws but other laws when acting oppressively against their wives. (How workers would react to a woman facing criminal charges unrelated to a background of domestic violence/adultery is much less clear, but even here we would note that the general thrust of the background evidence is that women are not turned away.)
230. It is extremely difficult to accept the assertion that the centres/refuges generally fail to keep their addresses secret from the families of such women. According to the Safe to Return? report, the first points of contact for women who are victims of domestic violence are the crisis centres. This report's authors appear to have found that at this stage crisis centre workers will often make contact with the woman's family or relations, but their findings on this subject are described as being based only on what was found in one crisis centre where the researcher did an internship (6.2.1.) It is stated:
- "If the woman is accepted by the shelter then the worker will immediately inform the family that she is with them. This is done to prevent husbands or families from registering false cases against women or the NGOs which can lead to workers in NGOs being arrested...If the family wishes to visit or contact the women they are told to make arrangements through the office and a meeting will be arranged with the consent of the woman."

231. However, in the next paragraph the authors emphasise that “The address of the shelter is strictly confidential”. And, as we have already highlighted, they describe the procedure at three of the specific centres visited as being to keep the refuge’s address strictly confidential without suggesting that this procedure was ineffective. This report also makes very clear that in any event in almost all these refuges those who run them employ security guards around the clock.
232. Although the evidence, especially that set out in the most detailed treatment contained in Safe to Return? is not entirely clear, it seems that the crisis centres can sometimes inform the women’s family that they are involved (this also serves the objective which many centres appear to have of helping the women and families to reconcile), but that in any event women’s shelters keep their addresses strictly confidential. Whilst Safe to Return? and other sources also make clear that there have been problems in a number of (if not most) centres where family members have made threats against the centre and centre workers, at the same time the fieldwork visits recorded in Safe to Return? do not suggest that any of the centres visited generally failed as a consequence to protect the women they helped.
233. As regards conditions, it is sufficiently clear that in general such centres/refuges are under-resourced and that women in them suffer varying degrees of hardship. In some centres it would appear that they lack even very basic facilities. However, as is acknowledged by the authors of Safe to Return?, private centres offer a somewhat better standard of assistance than government centres and conditions in some of the private centres visited (which admittedly were said to be considered as the “better” ones) were not described as falling short of basic minimum standards (Pannah, indeed, was described as having “excellent living conditions”). It must also be borne in mind that it would appear from the Safe to Return? report that quite a few of the centres in the private sector offer a number of services to women, including legal assistance, counselling, vocational training, employment opportunities, health care and sometimes education for any children. It is clearly not the case that this private sector provision is generally of a high standard; even in this sector conditions in some centres are grossly inadequate. However, it is difficult to gainsay that the generality of existing centres manage to provide effective assistance to women who turn to them for help without exposing them to conditions that are below basic minimum standards.
234. It appears to be suggested by some passages in the Safe to Return? report, that women's centres/refuges generally expose the women occupants to sexual exploitation and prostitution. We do not know what some of the active women’s NGOs and lawyers in Pakistan, who refer women to such centres have made/would make of the Safe to Return? critique, although we would not be surprised if some took umbrage at the implied suggestion that they are routinely complicit in a pattern of inhuman and degrading treatment of women who have turned to them for help. But there was no suggestion that any of the shelters visited by the Safe to Return? researcher(s) were considered by them to expose women occupants to sexual exploitation or prostitution. The essential fact as we see it is that all that can safely be said is that at present some of the existing centres fail to protect their women occupants and some provide conditions that fall below basic

standards. There is no empirical basis for concluding that the above negative features mean that in existing centres conditions generally are inhuman or degrading or even unduly harsh. Whilst therefore we consider that decision makers need to be vigilant for further evidence that may come to light based on a more comprehensive survey, we consider the background evidence overall continues to indicate that although there are far too few centres relative to the underlying need for them, women who are victims of domestic violence are able, through the diverse network of government centres, women's NGOs and private charities, to obtain assistance and protection in urban parts of Pakistan away from their family networks.

235. We wish to emphasise, however, that what emerges very strongly from the Safe to Return? report is that it is not sufficient simply to consider the issue of internal relocation by reference to whether there are available and adequate centres/refuges. Focus has to be not only on the provision but the general position women who make use of such centres will find themselves in the longer term.
236. One of the main conclusions of the report is that there is a lack of after-care and rehabilitation and the absence of any re-housing for women made homeless following violence. Its authors emphasise that this fact plays a major role in limiting the decisions and choices such women then go on to make (see para 11). But the report also informs us that although in several centres/refuges, women are expected to leave after a relatively short time, those who run them do sometimes allow women to stay longer and sometimes even allow them back. So whilst we think the Safe to Return? report draws helpful attention to the need to look at the longer-term situation such women face, we do not find that the evidence contained in this report or the other sources helps us very much in forming a clear picture of how women victims of domestic violence who have made use of women's centres and refuges then resolve their difficulties in terms of finding places to live and work. The Safe to Return? report argues that the position is that in general such women end up being forced to return to their abuser husbands/families or face serious exploitation. But there is very little empirical evidence cited in support of these broad generalisations and, given the numbers of women said to use these services, we would have expected, if the general position was that these centres/shelters routinely failed to end the cycle of oppression the women who turn to them face, that would have been evident in the form of more reported cases in the press or in the Pakistan Human Rights Commission report or in available cases studies. Nevertheless, the uncertain state of the evidence makes it imperative in our view that decision-makers pay particular regard to how they think the individual applicant/appellant will be able to manage getting on with their lives after they have left the centres/refuges.
237. We need to consider further to what extent other factors such as class, age, culture, tribe, religion etc can further modify the position of women victims of domestic violence.

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

7 An alternative perspective: a commentary on the Dr. Storey's critique of *Safe to Return?* in the light of the contents of the most recent HRCP report.

7.1 Extract from the latest (2010) annual report of the Human Rights Commission of Pakistan

In my opinion there is a great deal of substance in these observations, especially when one turns to the findings of independent observers of current developments in Pakistan. With this in mind the section devoted to the experiences of women in the current (2010) Report of the much respected Human Rights Commission of Pakistan reads as follows:

The human rights picture largely remained bleak for women in 2010 with violence continuing against them unchecked and protection provided by the law eroding. The illegal practices of killings girls and women in the name of honour and giving them away to settle disputes continued. Talibanisation and hurdles to realization of their socioeconomic rights added to women's suffering. The suicide rate among women remained high and a large number of women were murdered as well, often for petty causes.

Women and law

While declarations of commitment to empowerment of women abounded, the task remained unfulfilled because of absence of concrete measures. After taking the first steps in the right direction, the government seemed to lack the ability to follow through. Some pro-woman legal provisions also faced reversal. The injustices that victims of domestic violence face at home and in the form of absence of government protection continued. The failure of the government to push the Domestic Violence (Prevention and Protection) Bill was seen as a setback to efforts

to ensure protection for women. The Bill was passed unanimously by the National Assembly on August 4, but it lapsed after the Senate failed to adopt it within the three month period prescribed by the constitution. The legislative process for the proposed law now had to be started fresh. The government reiterated its resolve to reintroduce the Bill but that was not done until the end of the year.

The draft bill gave an aggrieved person the right to approach a first class magistrate's court with an application directly or through an authorised person. The court was to

fix a hearing within three days and give a decision within 30 days. The court protection orders could prevent the accused from committing or aiding or abetting domestic violence, or from dispossessing an aggrieved person of the shared household. Monetary relief to meet expenses and losses as well as for maintenance could also be given. The first breach of a protection order was punished with imprisonment between six months and one year, and with a fine of Rs. 100,000, which was to be paid to the aggrieved person. A second or third violation was to be punished with up to two years of imprisonment and a minimum fine of Rs. 200,000.

In a setback to efforts to ensure equal protection of law for women, the Federal Shari'at Court ruled that sections 11, 28 and 29 of the Protection of Women (Criminal Laws Amendment) Act of 2006 were unconstitutional, on the contention that these provisions negated the over-riding effect of the Hudood Ordinance of 1979. HRCP expressed alarm that the FSC verdict not only sought reversion to provisions of the 1979 Hudood Ordinance, which were highly discriminatory to the rights of women, but also undermined the legislative authority of parliament in encroaching upon its power to translate people's demands into laws, and subverted the functioning and authority of the mainstream judiciary. The government and the civil society were urged to challenge the FSC decision to ensure that women's rights were not compromised.

The National Commission on the Status of Women (NCWS) also opposed the verdict, arguing that it only resuscitated the injustices against women that they had fought to eradicate. The NCWS called upon the government to strongly oppose the judgement as it could not only take the nation back to square one, but also exploited religion for political gains.

Violence against women

Violence against women remained a key human rights issue in Pakistan. Monitoring of human rights violations of women's right reported by the media and by HRCP activists from the field, presented a gloomy picture. The legal, preventative and protective measures needed to provide effective protection to women against violence perpetrated in the name of honour remained absent.

At least 1,790 women were murdered in the year under review. Of these, 791 were killed in incidents of so-called honour killing or *Karo Kari*. The killers were often related to the victim. Of the 1,790 women murdered, at least 452 were killed by their husbands, 225 by their brothers, 58 by their sons, 50 by their fathers, 63 by in-laws, and 228 by other close relatives. At least 18 victims of honour killing were raped and eight gang-raped before being murdered. Those killed in the name of honour by their families included 11 Christian and six Hindu women

As for the services available to women in distress, an article in Dawn dated 23rd August 2009 reads as follows:

ONE of the more neglected — both by the government and society at large — areas of public life in Pakistan is the institute of Dar ul Aman. It is supposed to be a `shelter home` for women who need security from even their own near and dear ones. In Punjab there is a Dar ul Aman in almost each of its 35 districts and almost all of them

remain overcrowded, as violence and discrimination against women is rampant in our society.

For example, Multan's Dar ul Aman is made for 30 women but there are more than 80 of them while in Sahiwal space for 15 is filled with 35 inmates. The same is the situation in Lahore and other cities. Leaving one's own home for an unknown destination must be the severest of pains and an act of last resort for any human being, particularly for a woman and that also in a society like that of ours heavily tilted against the female face.

It means when a woman leaves her home (it may be of her parents or her husband), she would be facing very hostile environment and unbearable life. And searching for more favourable and friendly environment she would reach Dar ul Aman. But alas in many cases she finds herself in a worse situation. Dar ul Aman is a 'shelter home' but mostly it would acquire the shape of a jail.

Last year the situation saw a little bit improvement when the Punjab government recruited new in charges of Dar ul Amans who are mostly women whose behaviour has started sending positive signals about the institution. But in some cases where men are still in charge, the situation resembles hell. Most of the inmates of Dar ul Aman are there through courts but it is rather unfortunate that even courts are under the influence of patriarchal society and are not fully sensitive to the emotional and environmental needs of the victims.

These hapless women are admitted in Dar ul Aman by court orders but in some emergency cases the court process proves counter-productive as the victim needs immediate protection. Also these women cannot leave Dar ul Aman on their own without court orders, and when they wish to do so sometimes, they are given in the hands of their relatives who were the primary cause of their leaving the home. And in some such cases we have heard the news of the victim being killed.

[The authorities] need to take immediate and effective measures to improve physical and environmental conditions of this institute of importance. There is immediate need to improve the hygienic condition in all Dar ul Amans. Next the quality of food should be improved. Moreover, the inmates should be provided free, proper and prompt legal aid which should be coming forth from the provincial government. Also there should be proper and pertinent arrangement for mental and physical rehabilitation and vocational training so that when a victim of domestic violation leaves this shelter home, she is an efficient and effective member of our society and not a psychiatric patient.

A bill passed by the National Assembly some time back against domestic violation is a refreshing sign on the part of the government but the real test would be its implementation as there already exist some women-friendly laws on the statute book but they are not being acted upon. Last but not the least is the role of courts, especially superior courts. Recently superior courts of the country have taken cognizance of the plight of the more vulnerable sections of society and passed very courageous and unprecedented orders for their security, welfare and rehabilitation in society.

One hopes that the same courts will take care of the interests of this most oppressed and suppressed section of womenfolk (who are already a disadvantaged part of our

population) and issue orders/guidelines for improvement and better working of the institution of Dar ul Aman.

7.2 *The Safe to Return? perspective on Government Shelters*

With these observations in mind, it is worth turning to what the *Safe to Return?* report had to say about these institutions, most especially in the light of the Tribunal's concerns that the observation on which its authors relied might be out of date and/or selective in character.

Government shelters Dar-ul-Amans (houses of peace)

"The government shelters are sub-jails; they are extremely oppressive and behave like a family patriarch in controlling women. Government shelters say they provide counselling but they are either not there or absent. Help with children is completely absent. I personally have a problem with them as the management look down on the women and in some, women say they are forced to take part in prostitution."

Dar-ul-Amans are government-run shelters for women fleeing domestic violence, funded by the provincial governments' Social Welfare and Women's Departments.

Admissions to these shelters are only accepted via the courts and police. The maximum period of stay for women is three months but in some cases women can remain at the shelter until their cases are resolved (which can be up to a year). Travel outside the shelter is restricted to court appearances or medical assistance. One of the residents interviewed said: 'We are not allowed to go out of the shelter unless we have to appear in court'. The women are expected to remain within the confines of the shelter. Food, clothing and accommodation are free. Legal representation is available to women but they have to make a small contribution for the cost of documentation, for example, getting a divorce certificate. The shelters also offer counselling and basic vocational skills, such as, sewing and embroidery.

The Dar-ul-Amans are usually situated in public areas and are sign-posted. They have security guards posted at the entrance of the main gates. The buildings tend to be old and run down with heavy metal fences restricting women's mobility. A resident, who wished to remain anonymous, said:

"We make tazbi (rosary) here and are desperate to leave the shelter. The charpai (beds) at the shelter are broken, there are big rats everywhere - they go on plates and we eat out of them and we also cook there. Women and children get ill and some are dying but no-one does anything - no one cares. The doctor has to be paid 130 rupees - no-one has that money. We are not allowed out but they could allow us to go into the garden because we need some fresh air. "

In the shelters visited as part of the research the women had a rota for cooking the meals and cleaning. There were six to eight beds in a room and sometimes up to ten or more women shared a room. Residents discussed how they were prevented for security reasons from using the grounds to relax or take exercise. They shared communal areas and spent much of their time in their rooms or sitting on the veranda. In exceptional cases the Dar-ul-Amans allowed some women to remain with them on a long-term-basis, for example, in situations where they had no family. They

also arranged marriages for the residents who had no family, because as one worker said: 'a woman needs a man to look after her'.

Different seasons also affected the conditions in the shelters. During the summer the conditions within the shelters were extremely poor because the fans or air coolers had usually broken down and were not replaced or repaired, due to lack of resources. In contrast, in winter there was no heating provided. Staff at the Dar-ul-Amans visited confirmed they were under resourced and sometimes the workers paid money out of their own pockets to support the women.

During our second fieldwork visit (May-July 2006) there had been some recent discussion between the government and NGO run shelters to share and develop policies and practices to improve service provision for the women. Unfortunately, the general ethos of the government shelters of treating women as prisoners and running the shelters as sub jails has not helped to move these initiatives forward. A recent change in policy for both government run and private shelters is that they do not admit boys over the age of five (previously boys up to the age of eleven were admitted with their mothers). As a result the boys are separated from their mothers and sent to the orphanages or madrassas in the locality.

In terms of their distribution, the shelters are mainly established in the cities and are used by women from both urban and rural areas, although workers and organisations believed that the majority of the women who use the government and private shelters are from rural areas. It is relevant to note that the government's commitment to establishing shelters in Pakistan has been slow. This is further reflected in the inadequate service provision available to women fleeing domestic violence. During our fieldtrips it was difficult to ascertain exactly how many government-run shelters existed in Pakistan. It was claimed that the government had promised to set up shelters in every District, but it was clear that this commitment has not been realised.

Several points are worth making about these observations. In the first place they are wholly in keeping with the observations set out in the *Dawn* article, as well as with relevant entries in the current COIR for Pakistan; secondly the report gives voice to the inmates themselves, and to the shocking conditions under which they find themselves living, especially in the light of the fact that maintain one's *izzat*, or in other words a sense of respectability, is a prime concern of all Pakistani women seeking to avoid being identified as *kunjri*, prostitutes; thirdly, it is also quite clear that Dar ul Amans they offer no route to rehabilitation in society at large: the only way in which they can hope to do so on a respectable basis is if they manage to 'reconcile' either with their parents, or failing that with their husbands or their in-laws.

In other words neither the Dar-ul-Amans – nor indeed the charitably funded NGOs providing for women in distress – have the capability or the resources to assist women who have been driven to the end of their tether as a result of the comprehensive breakdown of the networks of kinship reciprocity on which they would otherwise hope to rely to make their way back

into the respectable social order – or in other words back to a position where they were securely housed, and with access to an income which would allow them to support themselves and the children

7.3 The Tribunal's response to Safe on Return?'s assessment of ul Aman facilities

Although the authors of the determination in KA discuss the Dar ul Amans at considerable length, they do so in a manner which I find I can only describe as myopic, since their principal concern is not with the quality of the services available in these institutions, and still less as to whether they are in a position to significantly resolve their inmate's difficulties in the medium to longer term, but rather as to whether or not women in distress might be turned away on the grounds that they were the subject of criminal charges.

As the determination puts it in Paragraph 227, following a lengthy discussion of the legal issues

Having considered all the evidence, we find that women's shelters, whether government or private, are unlikely to turn women away if they face charges relating to adultery. As regards government shelters the evidence was indeed that they are principally designed for use by women who have been referred by the courts. Further, as we have seen, one of the main purposes of setting up shelters for women has been to respond to husbands seeking to misuse adultery laws for their own ends. There is virtually no evidence to suggest that women are turned away in respect of such charges.

Although we lack clear evidence, we also doubt that women would be turned away from shelters if they face other serious criminal charges that are raised against them in conjunction with adultery charges. Once again, workers in the shelters would be all too aware that the husbands involved in such cases seek to misuse not just the adultery laws but other laws when acting oppressively against their wives. (How workers would react to a woman facing criminal charges unrelated to a background of domestic violence/adultery is much less clear, but even here we would note that the general thrust of the background evidence is that women are not turned away.)

I am unsure as to how the Tribunal reconciled this conclusion with its observation (see paragraph 157) that Dar-ul-Amans have the formal status of sub-gaols (such that inmates can only be consigned there on the basis of a magistrates warrant), it was not until I read on to paragraph 236 that the discussion moved on to pay attention to what I would describe as more practical matters, most especially from the inmates' perspective, most especially with respect to their prospects for long-term rehabilitation:

We wish to emphasise, however, that what emerges very strongly from the Safe to Return? report is that it is not sufficient simply to consider the issue of internal relocation by reference to whether there are available and adequate centres/refuges.

Focus has to be not only on the provision but the general position women who make use of such centres will find themselves in the longer term.

One of the main conclusions of the report is that there is a lack of after-care and rehabilitation and the absence of any re-housing for women made homeless following violence. Its authors emphasise that this fact plays a major role in limiting the decisions and choices such women then go on to make (see para 11). But the report also informs us that although in several centres/refuges, women are expected to leave after a relatively short time, those who run them do sometimes allow women to stay longer and sometimes even allow them back.

So whilst we think the *Safe to Return?* report draws helpful attention to the need to look at the longer-term situation such women face, we do not find that the evidence contained in this report or the other sources helps us very much in forming a clear picture of how women victims of domestic violence who have made use of women's centres and refuges then resolve their difficulties in terms of finding places to live and work. *The Safe to Return?* report argues that the position is that in general such women end up being forced to return to their abuser husbands/families or face serious exploitation.

But there is very little empirical evidence cited in support of these broad generalisations and, given the numbers of women said to use these services, we would have expected, if the general position was that these centres/shelters routinely failed to end the cycle of oppression the women who turn to them face, that would have been evident in the form of more reported cases in the press or in the Pakistan Human Rights Commission report or in available cases studies. Nevertheless, the uncertain state of the evidence makes it imperative in our view that decision-makers pay particular regard to how they think the individual applicant/appellant will be able to manage getting on with their lives after they have left the centres/refuges.

Whilst the authors of KA have accurately identified the weak spot in all the provisions – whether public or private – currently facing women who have lost the protective support of their families, namely their lack of any capacity to reintroduce them into the respectable social order on the basis of trying to facilitate some kind of (invariably unwelcome) compromise with either their natal or affinal kinsfolk. Moreover to the extent that this is so, it is entirely reasonable that the Tribunal should pose the question, what happens then?

7.4 *Long term solutions?*

So far as I can see that question was not asked of any of the experts who appeared before the Tribunal, and even if it was, it did certainly did not elicit an answer. Nor could the Tribunal find any answers in the HRCP reports, or in the press, leading to the conclusion that there is
In the face of all this that there is an

uncertain state of the evidence as to how individual applicants/appellants will be able to manage getting on with their lives after they have left the centres/refuges [should they be returned to Pakistan].

In my opinion their likely fate is a great deal less mysterious than the Tribunal assumes. Like many other jurisdiction in the global South, Pakistan has no ‘safety net’ for the destitute, on the grounds that those who find themselves in that position should look to their kinsfolk for support. Hence there are no record of services provided to the destitute (since no such services exist) and hence no data on those who have fallen out of the bottom of the social order. How, then, do persons in this situation survive? A number of options are available, including

- Throw oneself on the mercy of one’s kinsfolk, no matter how humiliating their demands may be
- Beg
- Prostitute oneself to predatory males
- Subject oneself to the exploitative patronage of a family in need of services of some kind or another, for which one earns little more than one’s keep.

It goes without saying that none of these options is any way attractive, other than to note that they are significantly preferable to that experienced by street-dwellers, whose life expectancy is even more brutal and short than that experienced by those who manage to negotiate a degree of patronage, albeit invariably significantly exploitative in kind.

8 Risk on return for Pakistani women with no viable source of familial support

8.1 A brief review of the argument so far

There can be little doubt that from UK Immigration and Asylum perspective, the principal role of CG cases is to provide finders in the lower Tribunal, as well as Home Office decision-makers, with guidance with respect to the scale and character of the risks which various categories of asylum seeker can expect to face if they were to be returned to the jurisdiction of their birth, which in each case will be offset by a further consideration of the extent to which protection offered by the properly constituted authorities can be expected to mitigate the severity of those risks. As we have seen, the best that can be said of the current capacity of Pakistan’s properly constituted authorities to offer a sufficiency of protection to women have found themselves in a position where they have no viable source of familial support is that they have made stuttering efforts to show willing in this regard; however given the level of political hostility, further reinforced by even more widespread apathy, to those stuttering initiatives, little, if anything, has been done to implement such liberally minded aspirations.

8.2 *The Hudood Ordinances and their Implication*

Ever since they Hudood Ordinances were promulgated by General Zia ul Haq in 1979 as part of his ‘Islamisation’ program, Pakistan’s Hudood Ordinances have been the focus of intense criticism by Human Rights activists, Feminists, and liberal at large; but at the same time they have been vigorously defended by conservatives, by neo-fundamentalists, and most significantly of all by an increasingly activist Federal Shari’at Court – another component of Zia ul Haq’s Islamisation project. But although the liberals have managed to chip away at some of the sharpest edges of Ordinances, the their broad thrust of their provisions remains firmly in place, not least because key aspects of the Penal Code have been similarly Islamised.

An Internal Crisis Group Report published in 2008, entitled *Reforming the Judiciary in Pakistan* sums up the consequences for women as follows:

The ordinances prohibit theft, alcohol consumption, sexual intercourse outside of marriage termed “fornication” and, until November 2006, rape. The punishments are divided between *Hadd* (Quranic) punishments, which include amputation of limbs, flogging, stoning to death and other forms of capital punishment; and *Tazir* (non-Quranic) punishments for lesser offences, including imprisonment and whipping.

Women’s testimony is not accepted in *Hadd* cases, nor is that of non-Muslims unless the accused is also non-Muslim. Under the ordinances, the testimony of four adult male witnesses was required to prove rape. By 1986, the courts issued thirteen sentences of amputation of limbs, seven of death by stoning and six of public whipping. All except one of these sentences were overturned on appeal to the superior courts or the Federal Shari’at Court.

While the Hudood Ordinances cover a range of crimes, women have been the principal victims of these laws. Allegations of *zina* flooded the courts, primarily against young couples marrying against the wishes of their parents. Rape victims, including those impregnated by their offender but who could not prove rape according to the requirements for evidence, were also accused under the *Zina* Ordinance.

One of the more striking cases was that of Safia Bibi, a blind woman accused and convicted of *zina* after she filed rape charges against her employer and his son. In April 2002, a woman who had filed charges against her brother-in-law for rape was instead found guilty of adultery by a sessions court judge and sentenced to death by stoning. In both cases, judgments were overturned on appeal to a higher court.

Even though the most severe punishments under the Hudood Ordinances have generally not been implemented, their psychological and social impact is severe. Women sentenced to death by stoning, for example, are kept in solitary confinement under extreme conditions, expecting their sentence to be carried out, and even when

released become social outcasts. Said Majida Rizvi, a former Supreme Court justice, also the lawyer who had defended Safia Bibi: “When there are no facilities, when the state cannot take care of these women once they return to society, you simply cannot have these laws”..

The National Commission on the Status of Women found that “instead of remedying social ills, [the Hudood] Ordinances led to an increase in injustice against women and, in fact, became an instrument of oppression against women”; 80 per cent of women prisoners had been charged under the *Zina* Ordinance. The Supreme Court has failed to address these flaws and has repeatedly dismissed challenges to the Eighth Amendment.

In November 2006 parliament passed the Protection of Women Act (PWA). Although a step forward, it did not repeal the Hudood Ordinances. The PWA removes the offence of rape from the Hudood Ordinances and has returned it to the Pakistan Penal Code, separating *zina* from *zina-bil-jabr* (rape), thus preventing complaints of rape from being converted into charges of unlawful sexual intercourse. This has reduced the number of false accusations against rape victims. The act also repealed the punishment of whipping.

Although it has also made it easier for women to obtain divorce and escape forced marriage, they still cannot give evidence in *Hadd* cases. While the PWA’s initial draft called for sweeping amendments to the Hudood Ordinances, the Musharraf government watered down the draft, under pressure from its religious allies, particularly the six-party MMA. Calling the new bill “farcical”,

HRCP argued that it gave judges a significant amount of latitude to “interpret the law in the most orthodox way” and “complicated matters by creating confusion between Islamic and civil laws, as well as on questions of jurisprudence of the appropriate forum”. While the PWA transferred rape to the Penal Code, for example, the government failed to issue a notification identifying and transferring authority to the competent civil courts to handle rape cases. Until that was done, the act’s legal provisions could not be implemented, raising doubts that the government had the intention of doing so.

While discriminatory religious laws must be repealed on fundamental constitutional grounds, it is also necessary to address the political climate that has produced and perpetuated them. Indeed the laws discussed above cannot be dissociated from the absence of strong democratic institutions that effectively defend fundamental rights and constitutionalism.

Religious parties have been able to parlay military patronage into significant political gains that have compromised the delivery of justice. Widespread attacks on minorities reflect a general sentiment that the authorities lack either the political will or the ability to act.

8.3 *Procedural issues*

If the law has been reduced to a tattered rag as a result of Islamist/neo-fundamentalist pressures which no amount of critical lobbying has been able to unwind, procedural issues provide, if anything, an even greater obstacle to the delivery of justice on an equitable basis, especially at the lower end of the judicial system. As the ICG report goes on to note;

For legal reform to be effective, judicial reform is essential. Indeed, legal reform must be examined in the context of a failing judicial infrastructure. Underequipped courts and prisons deny access to justice to citizens, especially the poor who are the principal targets of the discriminatory religious laws. The limited writ of the justice system and the resulting vacuum has also enabled widespread vigilantism.

Given that 75 to 80 per cent of cases are handled in the lower courts, far much more investment is needed in expanding the capacity of the subordinate judiciary. The number of pending cases in the civil courts is estimated at 1.5 million. This huge backlog contributes to significant delays. It can take anywhere between ten to twenty years before the final judgment is given in civil cases. Successive government law commissions have recommended a substantial increase in the number of judicial officers, courts and other facilities only to have their recommendations ignored.

In criminal cases, insufficient government investment has resulted in corruption and inefficiency within both the courts and the police. Inadequate pay and resources, limited investigation and prosecution capacities and long gaps between the filing of charges and trial dates during which evidence often disappears are some of the problems that must be urgently addressed. Criminal cases can take more than five years to process, except when tried by special courts, such as accountability courts, where cases are often politically motivated and miscarriage of justice is even more likely. As a result, Pakistan has a critically low arrest and conviction rate.

Given all this, it is entirely unrealistic for women who have lost the support of their families, with little or no immediate source of funding (lawyers in Pakistan invariably demand to be paid up front), and above all with no connections through which to pull strings to expect to gain any kind of relief with respect to their problems either from either the local Police or the lower judiciary. Rather they are on their own.

8.4 *A view from the bottom up: Understanding Pakistani Women's Experiences of Domestic Violence.*

Much follows from this. At least as presently constituted, Pakistani law and its associated judicial provision offer only the most limited degree of protection to women subject to domestic violence, unilateral divorce, rape, false accusations of rape and so forth. Moreover even if such women do seek to recruit assistance from the police and the judiciary, they can

all too often find themselves out-trumped by those who have caused their distress bringing counter-charges against their victims.

To return the Tribunal's analysis of the observations and conclusions set out in *Safe to Return*, it is noteworthy that its most sustained and extensive criticisms are directed at the contents of Chapter Six, headed *Access to Services and Shelter Provisions in Pakistan*, leading to the conclusions cited above, suggesting that the authors conclusions were far too gloomy to be sustainable, most especially since the Tribunal took the view that its assumptions were not supported by concrete evidence. With all due respect to the Tribunal, I would suggest that one of the key reasons why they reached this conclusion was because their analysis was too heavily grounded in a top-down, legalistic and institutionally-focused understanding of the issues, which failed, in consequence, to take sufficient cognisance of the women's reported (and hence bottom-up) of their experiences.

With that in mind the Chapter in the *Safe to Return?* Report which I consider to be most helpful with respect to the issues which KA seeks to address is Chapter Eight, headed *Understanding Pakistani Women's Experiences of Domestic Violence*. With that in mind four sections of this Chapter are particularly illuminating:

8.4 Factors which influence Pakistani women's decisions to flee

"It is very hard for women who leave their husbands, because they will hunt them down wherever they are. Because of that the woman doesn't leave because he is beating her, she leaves because he is killing her. "

It is apparent from this quote (provided by a small Muslim women's organisation with a geographical remit across the whole of Wales) that choices and options for this group of women appear to be extremely limited and are only exercised in the most extreme circumstances. There was widespread agreement among participants that most Pakistani women do not have even a basic awareness of the option to leave the family home in the event of domestic violence, let alone to flee outside of their geographical area. The participants believed that women's lack of knowledge of other options meant that most Pakistani women simply did not confront domestic violence. In some regions, for example in the Sindh region, the notion of women leaving male and familial control was understood to be particularly sensitive (see also Chapter four). Moreover, the dominant role of families, and in particular their inter-connectedness, was described as a feature of Pakistani life by a law centre adviser:

"In Pakistan the family is the basic unit, you have to be part of it and so there is greater pressure on women to put up with things. Families are also really inter-connected and the pressure is to keep quiet and keep information to themselves, it is not surprising that they don't report incidents."

This reflects the limitations on women's autonomy to access even basic information about self-protection, compounded by high levels of poor education and illiteracy

among women. However it also provides insight into the deeply embedded 'culture' of male and familial domination over Pakistani women, a characteristic not exclusive to poorer uneducated women.

Participants generally agreed that from the point of view of the family from which a woman has fled, her reputation and honour will forever be tarnished. Yet whilst the honour of the family may be severely damaged, the harm is not irreparable and could be reinstated with action against the woman. As a result, should she ever return, or should they succeed in bringing her back, the perpetrators would become her interrogators and prosecutors in their quest to retrieve family honour. A solicitor based in the Midlands succinctly described these methods of administering justice:

"Women are expected to live and die in the same household after they get married and not leave, if they leave they will not be accepted back into the family, they can be shunned by their own families and friends and not accepted in society. The families often feel forced to redeem their honour by killing them or forcing them into marriage with another man. It's a very tribal attitude that sees the women as a chattel and if she misbehaves you have to punish her and by doing that you prove you are honourable and you value your honour. In Pakistan honour is more than your life, people take it very seriously, recognition of that is very important. "

Despite these issues some women do leave violent relationships, unfortunately the practitioners who participated in the research felt that the Home Office was likely to treat the situation with suspicion and disbelief. They believed this was not only because fleeing is held to be contrary to the 'cultural' norm, as described above, but also because of the 'culture of disbelief' which many participants believed continued to dominate Home Office practice.

8.5 Inter-connected communities, state agents and surveillance in Pakistan

The way in which information is shared between families, between communities, across regions and countries was still, in the view of many participants, little understood and underestimated by the immigration authorities in the UK. The nature of inter-familial relationships alone prevents many women from seeking help, as one participant, an adviser in a law centre explained:

"Families are also really inter-connected and the pressure is to keep quiet and keep information to themselves, it is not surprising that they don't report incidents."

This extract from an interview with a local authority support worker illustrates the difficulty of escaping these connections, and highlights how misconceptions about the nature of these can result in an inappropriate removal and return:

"She kept saying she wasn't safe there, that they had connections and would get her if she went back and she is back there now, going from one place to another, as far as I know, just to keep alive. Her sister keeps in touch with me and she says that she is very frightened and is not safe, but this wasn't taken into account by the court. She was staying with her parents but they were getting threatened so she had to move and stay with another relative but

that's not a solution because it's only a matter of time before they find her there, and they will hurt her or kill her. "

Many participants highlighted the strength and influence of male personal connections, of the passage of information by word of mouth and the active community links both across regions and transnationally. Men were described as 'adept networkers', even as 'low-level operators', quickly able to link in with a range of information sources. Families used travelling businessmen, Islamic groups (who themselves possess considerable authority and influence over communities) and corrupt elements within the police, the army and judiciary. As a result, participants found it understandable that women did not, as a rule, independently approach the police in Pakistan on domestic violence issues. A solicitor explained:

"Women find it difficult to go to the police in Pakistan, they are going in to a station to report a rape and they may well be raped by the police officer".

Moreover, participants emphasised that men who have money are able to gain ready access to this informal tracking system which is enhanced by corrupt police and judicial staff. In the words of one service provider:

" ... If you have money in Pakistan anywhere nit is no problem to hire men, big men, to work for you ... Money talks in Pakistan, and has a power to make people speak"

Whilst much of the above commentary reinforces the previous discussion on women's subjugation, it becomes evident that, when women are considering practical measures to reach safety, these interconnections can significantly impact on their ability to make decisions about leaving.

8.7 Lone women: living, travelling and working

Participants endorsed the prevailing view that Pakistani communities viewed a woman living or travelling alone in Pakistan with suspicion. A woman living independently would have a range of negative assumptions made about her based on her behaviour and lifestyle. In turn, being thought of 'badly' by wider society effectively legitimates harassment of her. Certainly her 'loneness' in itself exposes her to conjecture, as expressed by one legal practitioner in the voluntary sector:

"Just being single itself signals so many things to a community if you don't have male relatives around you it signals to them that you got yourself into trouble or there's something going on."

Many participants queried whether the UK authorities grasped how unacceptable it is amongst members of the Pakistani community (both in Pakistan and for many in the Pakistani diaspora) for women to live alone, particularly without male support. A law centre adviser explained that:

"The concept of a single woman living on her own is very alien over there, you'd have to live with family really, particularly for young women, living on their own, it doesn't happen there, it's just not acceptable."

A Pakistani woman participant described her own experiences of surveillance:

"Richer women are often associated with immorality generally and there would be resentments and their movements would be very closely watched."

There's such scrutiny of women who are living on their own, as a woman living alone there I was monitored. "

Another woman participant highlighted this form of legitimised harassment:

"If a woman does live on her own people will consider her to be a bad woman and she will have men following her about who think they can do anything with her - there is no protection for women."

Participants expressed similar concerns about the treatment of women in Pakistan who work, and the frequency with which women in all forms of employment experienced sexual harassment. Another woman participant spoke of her experiences in employment:

" ... when I worked in the pharmaceutical industry men would look at me like I was a loose woman."

The extent of surveillance of women and societal intolerance of their attempts to lead independent lives is indicated in these examples and appears to be indiscriminate, irrespective of their circumstances.

8.11 Internal relocation

Discussion on internal relocation provided valuable insight on the range of perspectives across all sectors, with one underpinning feature: the extent of the commonality of these perspectives.

All participants (apart from the Home Office) stated that it would be difficult, if not impossible, for a lone woman, with or without minor children, to live safely and independently in Pakistan. Whilst the situation of the woman might vary from case to case, the experience of legal practitioners handling the relevant evidence supported these doubts about the viability of internal relocation. Apart from the difficulty of obtaining work and accommodation in her attempts to settle into a new community, participants concluded that a lone woman would be regarded with considerable suspicion. The dangers associated with the inter-connectedness of communities, and the complicity of the police in the way in which they service individuals within communities, have been highlighted above and heighten the ensuing dangers of internal relocation.

Equally, Pakistani regulations require that all citizens carry an identity card, a rule which was identified as posing particular obstacles for women trying to relocate within Pakistan. A legal practitioner explained:

"You see when they arrive back in the country they have to get an identity card and then in order to access any government institutions you have to show that ID card and it has your husband's or father's name on it. "

Furthermore, in a context where information can be readily bought by bribe or influence, participants stated that the identity card system might compromise women's safety and even prevent them from accessing the limited services available. The practical barriers to internal relocation are summarised by the Director of an international NGO:

" ... You have to get someone to guarantee the accommodation and there is little or no accommodation, particularly in Lahore and the smaller cities."

Number one there's no rental accommodation, number two landlords are terrified of sitting tenants, number three people are terrified of anything which might be seen as 'inappropriate' and there's an assumption that a woman on her own is somehow scandalous. If a woman comes and says I want to rent your place, it's going to be lots of questions like 'why are you here, who do you know, what is your job?' and if you haven't got someone who can give a guarantee you will not get accommodation .. "

These barriers do not distinguish between wealthy and poor women who were 'on the run'. Both groups were identified as being vulnerable to arrest, ill-treatment, abduction and murder, and whilst affluent women are considered to be more 'visible' and therefore more likely to be pursued, poorer women are vulnerable to trafficking and exploitation by the sex industry and the illegal drugs trade. The director of the international NGO put it in the following terms:

"If you are upper class you cannot go and live just anywhere, you stick out like a sore thumb and it would be socially unacceptable. Automatically there would be questions asked, they would recognise what she was from her surname, her behaviour and would ask questions about why there were not 'protectors' and why she was alone and the conclusion would be that she was 'bad'. That assumption has no class differentiation and is applied to all women. For the women of the elite internal flight can be even more difficult, they are more visible and the husband will have more power, resources and connections. If her family aren't backing her then she is done for, he can just go to the police and tell them to let him know when she turns up. With a woman from a lower class it will very much depend on her husband's contacts. "

Participants portrayed the on-going struggle with the Home Office and the immigration judiciary on internal flight as a significant battle. Even when a woman's account of violence is believed, and even when her evidence on internal flight is compelling, many legal practitioners stated that the decision making authorities put up considerable resistance to accepting the evidence. Participants concluded that they are unwilling, rather than unable, to recognise the potential harm that will arise if women are required to relocate internally.

A final excerpt from the conclusion of *Safe to Return?* neatly sums up all this:

In general the women survivors and users of services interviewed for this study (and the consistency and uniformity of opinion was striking) reported the government had failed to protect their human rights. The laws did not protect women against the different forms of violence used against them and men were able to kill women without fear of punishment.

The participants further emphasised that if women leave violent relationships they have no financial support, and unable to find work and therefore cannot live on their own. This economic dependency often forces women to return to violent relationships and reinforced their dependency on men. The alternatives are scarcely better – for example forced or voluntary prostitution.

The overwhelming view of women fleeing violent relationships is that they do not receive protection from the police largely because the police treat domestic violence as a 'family matter' and fail to register FIRs against the perpetrators.

8.5 *The Tribunal's comments on Internal Relocation in the light of these remarks*

By contrast in KA the Tribunal has remarkably little to say about this section of the *Safe to Return?* report, so much so that its explicit remarks on this score are restricted to two brief paragraphs, which

158. ...Women in shelters are limited in the choices they can make about their lives: “[m]ost of them are therefore either forced to return to violent relationships or remarry...”. However, at 6.15 the authors acknowledge that:

“...if adequate provision is made available it is clearly not impossible for a woman to live on her own, although as indicated earlier she will be very visible, under suspicion as a ‘lone’ woman, and vulnerable to harassment and exploitation. If a woman’s basic needs are met (for example, accommodation, financial assistance and protection) then a woman can survive.”

159. This observation is further qualified at 8.7, where, on the topic of lone women, the authors observe:

“Participants endorsed the prevailing view that Pakistani communities viewed a woman living or travelling alone in Pakistan with suspicion. A woman living independently would have a range of negative assumptions made of her based on her behaviour and lifestyle. In turn, being thought of ‘badly’ by wider society effectively legitimates harassment of her...Many participants queried whether the UK authorities grasped how unacceptable it is amongst members of the Pakistani community...for women to live alone, particularly without male support...”.

160. At 8.11, dealing with internal relocation, it is stated:

“All participants (apart from the Home Office) stated that it would be difficult, if not impossible, for a lone woman, with or without minor children, to live safely and independently in Pakistan. Whilst the situation of the woman might vary from case to case, the experience of legal practitioners handling the relevant evidence supported these doubts about the viability of internal relocation. Apart from the difficulty of obtaining work and accommodation in her attempts to settle into a new community, participants concluded that a lone woman would be regarded with considerable suspicion. The dangers associated with the inter-connectedness of communities, and the complicity of the police in the way in which they service individuals within communities, have been highlighted above and heighten the ensuing dangers of internal relocation.”

Last but not least the point was also explicitly taken up again in the last of the headline items, which reads as follows:

- vii. *In assessing whether women victims of domestic violence have a viable internal relocation alternative, regard must be had not only to the availability of such*

shelters/centres but also to the situation women will face after they leave such centres.

9 A final commentary

In the light of all this, I am strongly tempted to suggest that despite the length and comprehensiveness of the arguments and analyses set out in *KA*, the Tribunal may well have missed the point, especially if my assessment (substantiated in considerable detail in the HRCP report, as well as commentaries which are regularly published in the Newspapers, and on which I keep an expert eye open), that the promised improvements in both the legal and judicial system – and by which the Tribunal appears to have been greatly impressed – have not only remained un-implemented, but if anything have gone into reverse – most especially at the bottom of the pile.

If that is indeed the case, such that (as I put it earlier) it is entirely unrealistic for women who have lost the support of their families, with little or no immediate source of funding (lawyers in Pakistan invariably demand to be paid up front), and above all with no connections through which to pull strings to expect to gain any kind of relief with respect to their problems either from either the local Police or the lower judiciary: rather they are on their own, the Tribunal's caveat in head-line observation cited gains immense weight.

If there is indeed the case that is no prospect of lone women being able to survive on a respectable basis without access to a male guardian (and preferably an extended family network to protect her reputation from male predators) it follows that Pakistani women who have found themselves excluded from both their in-law's and their natal families will find themselves in a position of extreme vulnerability, not so much from the state and its institutions, but rather from non-state actors from whose depredations the properly constituted authorities are either unable or unwilling to protect them.

The result, as the authors of *Safe to Return?* accurately conclude, is that Pakistani women in such a situation regularly find themselves confronted with Hobson's choice. In a Pakistani context no woman steps out of her kinship network – whether in terms of her natal family, or that of her husband and in-laws – by free choice: the costs of doing so are too great. They only do so when, for some reason life within the network becomes untenable, most usually as a result of deliberate efforts to force her out.

But the consequences of her accepting her fate in such circumstances can often be equally disastrous. As the authors of *Safe to Return?* conclude:

Participants endorsed the prevailing view that Pakistani communities viewed a woman living or travelling alone in Pakistan with suspicion. A woman living independently would have a range of negative assumptions made about her based on her behaviour and lifestyle. In turn, being thought of 'badly' by wider society effectively legitimates harassment of her. Certainly her 'loneness' in itself exposes her to conjecture, as expressed by one legal practitioner in the voluntary sector:

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The extent of surveillance of women and societal intolerance of their attempts to lead independent lives is indicated in these examples and appears to be indiscriminate, irrespective of their circumstances.

I can see no reason why these voices from below should be regarded as special pleading, let alone an intervention by feminist moaning minnies. What these observations serve to underline is that since living as a single unprotected woman is not a viable option in Pakistan, women who find that their domestic lives have been rendered untenable – a situation which can be arrived at through innumerable differing routes – are faced with a deeply uncomfortable choice: either to reconcile themselves to the untenable familial circumstances in which they find themselves, or to step outside, when the only viable options available are those which I set out in Section 7.4 above:

- Throw themselves on the mercy of their remaining kinsfolk, no matter how humiliating their demands may be

- Beg
- Prostitute themselves oneself to predatory males
- Subject themselves to the exploitative patronage of a family in need of domestic services

Given these options, it should come as no surprise that those women who can raise the funds which enable them to do make their way to the UK to seek asylum; and likewise women whose situation deteriorates in this way during the course of temporary residence in the UK regularly seek to move heaven and earth in an effort to lodge a successful asylum claim.

10 Conclusion

Insofar as KA has been designated as a Country Guidance case, its arguments and conclusions have been given the status of formal set of precedents by which the Tribunal should henceforth be guided. As such it establishes a legal yardstick which can only be revised in the context of a further consideration of these issues in the Upper Chamber of the Tribunal. So far as I am aware its status as a CG case can only be over-ruled in the Upper Chamber, and so long as that it the case proceedings in the lower Chamber are expected to be guided by its findings.

That said, as an anthropological expert in this field who regularly prepares reports for use in the course of appeals in this sphere – the overwhelming majority of which are heard in the First Tier Tribunal – I regularly find myself taking issue with various dimensions of the analyses and conclusions set out in KA, and in the course of so doing I equally routinely find myself arguing that its authors had paid far too little attention to the extra-legal difficulties with which the female victims of intolerable domestic violence in Pakistani families so regularly found themselves confronted. With this in mind I have found myself particularly critical the authors' lack of respect for the thoroughness, objectivity and academic competence of the authors of *Safe to Return*, especially since they and their researchers had had first-hand experience of the phenomena whilst they by definition had not.

Although I hesitate to criticise the insights of the Upper Tribunal, all I can say in the light of my own experience in this field, as well as of the many challenges faced by those undertaking fieldwork in the undergrowth of the contemporary Pakistani social order routinely encounter, *Safe to Return?* is in my opinion an exceptionally thorough piece of research conducted in difficult circumstances, and one whose findings are actively supported by numerous local first hand observers and commentators based in Pakistan. As a result I take the view the

document in no way deserves the scorn which the Tribunal has chosen to pour on so many of the report's conclusions.

That said, a close reading of text of KA also reveals that at many points it reveals a degree of grudging respect to many of the findings set out in *Safe to Return?*, as well as of the annual reports produced by the Human Rights Commission of Pakistan. Whilst I look forward to the day when the implications of the critical arguments, analyses and conclusions which I have set out in this paper is considered more fully in the context of citeable proceedings in the Upper Tribunal. In the meanwhile I trust that it will serve as a useful source of additional background illumination for Immigration Judges struggling with knotty issues in the First Tier Tribunal.

Roger Ballard

4th January 2012