



AR

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

SA (Divorced woman – illegitimate child) Bangladesh CG [2011] UKUT 00254(IAC)

THE IMMIGRATION ACTS

**Heard at Field House
on 29th & 30th September 2010**

Determination Promulgated

11 July 2011

Before

**SENIOR IMMIGRATION JUDGE SPENCER
SENIOR IMMIGRATION JUDGE WARD
MS S E SINGER (Non Legal Member)**

Between

SA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Walsh, Counsel, instructed by IAS (Tribunal Unit)
For the Respondent: Mr K Kyriacou, Home Office Presenting Officer

(1) There is a high level of domestic violence in Bangladesh. Despite the efforts of the government to improve the situation, due to the disinclination of the police to act upon

complaints, women subjected to domestic violence may not be able to obtain an effective measure of state protection by reason of the fact that they are women and may be able to show a risk of serious harm for a Refugee Convention reason. Each case, however, must be determined on its own facts.

- (2) Under Muslim law, as applicable in Bangladesh, the mother, or in her absence her own family members, has the right to custody of an illegitimate child.*
- (3) In custody and contact disputes the decisions of the superior courts in Bangladesh indicate a fairly consistent trend to invoke the principle of the welfare of the child as an overriding factor, permitting departure from the applicable personal law but a mother may be disqualified from custody or contact by established allegations of immorality.*
- (4) The mother of an illegitimate child may face social prejudice and discrimination if her circumstances and the fact of her having had an illegitimate child become known but she is not likely to be at a real risk of serious harm in urban centres by reason of that fact alone.*
- (5) The divorced mother of an illegitimate child without family support on return to Bangladesh would be likely to have to endure a significant degree of hardship but she may well be able to obtain employment in the garment trade and obtain some sort of accommodation, albeit of a low standard. Some degree of rudimentary state aid would be available to her and she would be able to enrol her child in a state school. If in need of urgent assistance she would be able to seek temporary accommodation in a woman's shelter. The conditions which she would have to endure in re-establishing herself in Bangladesh would not as a general matter amount to persecution or a breach of her rights under article 3 of the ECHR. Each case, however, must be decided its own facts having regard to the particular circumstances and disabilities, if any, of the woman and the child concerned. Of course if such a woman were fleeing persecution in her own home area the test for internal relocation would be that of undue harshness and not a breach of her article 3 rights.*

DETERMINATION AND REASONS

1. This is the determination of a panel of the Tribunal which all of the members have agreed. Unfortunately Senior Immigration Judge Ward died before the determination could be put into its final form but before her illness she made a substantial contribution to the writing of the determination and agreed with all of its conclusions both in terms of the outcome of the appeal and the country guidance given.

The background

2. The appellant is a citizen of Bangladesh, born on 10 December 1981. She arrived in the United Kingdom on 2 November 2002 and was granted leave to enter as a dependent of her student husband in 2004. Further leave was granted in the same capacity on 3 November 2006 but in December 2006 she left her husband. She returned to Bangladesh in about August 2007. On 13 September 2007 whilst in

Bangladesh she made a student visa application to the UK which was refused. She was informed on arrival back in the UK in September 2007 that her status as a student dependent had been cancelled because the couple had separated. She was granted temporary admission to the UK although that temporary admission expired in 2007. She unsuccessfully appealed her student visa application refusal and the cancellation of her leave in October 2007. She thereafter claimed asylum and her application was refused on 23 July 2009.

3. Thereafter the appellant appealed to the former Asylum and Immigration Tribunal and her appeal was heard on 15 September 2009 by Immigration Judge Kanagaratnam who dismissed the appeal. The appellant sought and was granted an order for reconsideration and by the decision of a senior immigration judge made on 20 January 2010 the decision of the immigration judge was set aside and the appeal was adjourned for a second stage reconsideration. The reasons given by the senior immigration judge were as follows:

1. *Reconsideration was ordered on both grounds for review. In relation to the second ground for review the order stated that the issue of how the appellant would be treated by society as a result of her younger illegitimate child had been inadequately dealt with. It was arguable that the immigration judge did not give sufficient reasons for his findings given the country information before him.*
2. *It is true, as Ms Ramachandran argued, that the immigration judge set out the correct factual basis for his findings in paragraph 12 of his determination, in which he said he bore in mind that the appellant was a single divorced female who had a dependent child born out of wedlock but after her divorce from her husband. It is also true that he made a general reference to the background material to which his attention had been drawn. In drawing a distinction between how the appellant might be dealt with in Dhaka, her own home area of Bangladesh, and how she might be dealt with in a rural area, however, the immigration judge in my view misstated the effect of that evidence. He said that according to the US State Department report laws existed in Bangladesh to protect women from forms of discrimination although enforcement of those laws was weak in rural areas. In fact in section 5 of the report stated that enforcement of these laws was weak. The Refworld report dated 25 June 2001 and entitled "Bangladesh: Information on the Situation of Women Who Have Children Who Are Born Out of Wedlock", a copy of which was in the appellant's bundle before the immigration judge, stated that enforcement of the anti-discrimination laws was weak, particularly in rural areas. The conclusion that enforcement of anti-discrimination laws in favour of women was effective in urban areas could not be reasonably drawn from the background material before the immigration judge.*
3. *Furthermore, as Mr Walsh argued, the immigration judge failed to have regard to the background material in the Refworld report which stated that the status of women in Bangladesh was very low and having children out of wedlock was against Islamic law and might result in such a woman and her child being treated as social outcasts. If the woman was Muslim, as the appellant is, the very existence of the child proved her adultery and how she would fare would depend upon her immediate family and her class background. Returning to Bangladesh with a child born out of wedlock would be "an enormous physical and social risk for a woman to take". Moreover it was crucial that the immigration judge should have made a finding, which he failed to do, on*

whether the appellant's account of having been rejected by her immediate family on account of having had an illegitimate child was true.

4. *In these circumstances I am satisfied that the immigration judge made a material error of law in determining the appellant's asylum grounds of appeal and her human rights grounds of appeal under article 3 of the ECHR.*
5. *Ms Ramachandram, conceded, and I am satisfied that the immigration judge made a material error of law in finding that as the appellant had the benefit of contact rights to have her daughter, her child by her former husband, with her between Fridays and Sundays, she would be able to maintain contact from abroad "as expected" and therefore there would not be a breach of her article 8 rights. The immigration judge failed to analyse the effect of the appellant's removal on her relationship with her daughter.*
6. *Therefore I adjourn the appeal for a second stage reconsideration hearing in which the appellant's appeal is to be determined completely afresh save that the positive finding of the immigration judge as to the appellant's credibility in relation to the incidents she related mentioned in paragraph 11 of the determination is to be preserved.*

4. Subsequent to the promulgation of the reasons of the senior immigration judge, the Asylum and Immigration Tribunal was abolished and this appeal was transferred to the Upper Tribunal (Immigration and Asylum Chamber) to be continued as an appeal to this Tribunal. Thus the matter came before us.
5. The hearing proceeded on the basis that the immigration judge had made certain findings of fact that which were not affected by the material error of law made by her. The following facts are therefore not in dispute in this appeal.
6. The appellant is a Bangladeshi woman born 10 December 1981. In May 2001 she married OFK in Bangladesh and they lived together in her family's home. In September 2002 the appellant's husband went to the United Kingdom as a student sponsored by the appellant's father. In November 2002 the appellant entered the United Kingdom as a dependent of her husband and lived in the United Kingdom with her husband and other relatives. While in the United Kingdom, on 18 June 2005, she gave birth to a daughter, ZK, a child by her husband. She experienced domestic violence at the hands of her husband and they separated in December 2006 when the appellant left the matrimonial home. The child remained with her father but the appellant enjoyed daily contact until the end of January 2007 when there was an incident which resulted in the police being called and the appellant being advised not to visit the, by then, former matrimonial home. Contact arrangements elsewhere broke down as a result of which contact ceased. After about 18 months, the appellant secured a contact order from the Family Court. That contact continued and has now been enlarged to contact every weekend from each Friday after school to 10 am on Sunday morning. Z and her father had leave to remain in the United Kingdom until January 2010 and now have leave to remain in the United Kingdom until 10 August 2011. The father is the primary carer of Z and co-operates with the contact arrangements Z enjoys with the appellant. The appellant obtained a decree absolute of divorce from her husband 23 January 2008. The appellant gave birth to a second

child, SK, by a different father, whose surname is similar but not identical to that of the appellant's former husband, in April 2009, of whom she is the primary carer. This second child was born out of wedlock.

7. Most helpfully the parties were able to produce to the Tribunal an agreed bundle of country specific information which we refer to as the "Country Bundle". A further bundle was produced by the appellant entitled " Supplementary Bundle" which contained the following documents: a supplementary statement by the appellant, a report by Ms Sara Hossain, a report by Dr Dina Siddiqi, a report by Ms Nina Goswami (Ain o Salish Kenda), copies of contact orders obtained by the appellant, documents relating to the appellant's divorce, a copy of an e-mail from the respondent regarding the immigration status of the appellant's former husband, a copy of the respondent's bundle which was before the immigration judge and copies of various Tribunal documents relating to the proceedings which have taken place in the course of this appeal.

The evidence of the appellant

8. The appellant gave oral evidence, initially with the assistance of a Bengali interpreter. However it soon became apparent that the appellant, not surprisingly, spoke good English and was at times responding in English to questions which had been put to her and translated into Bengali. In the circumstances, therefore we invited the appellant to consider whether she wished to give her evidence in English. She replied that she would do so, but she wished the interpreter to be available should she be unable to find the relevant English word herself. The proceedings therefore continued on that basis that the evidence would be given in English, but with occasional assistance from the interpreter.
9. The appellant gave some brief initial evidence relating to her current circumstances, where she was living and working and her income. She also gave evidence regarding her family in Bangladesh and in particular regarding the divorce of her parents which she said occurred in late 2001. She also told the Tribunal how her mother had a new partner in Bangladesh and had given birth to three further children, all boys, by her new partner. She said that her mother and her new partner had undergone a Muslim marriage, but this had not been registered under Bangladeshi law. She said that her father had also married again and that he had a child, also a boy, with his new wife. She explained that she had not disclosed these circumstances of her parents until recently because she was shy to speak about them and embarrassed that her parents had children about the same age as her daughter. She had been advised, she said, to reveal the truth to the Tribunal.
10. She was cross examined by Mr Kyriacou and the Tribunal also had some questions to ask. We do not propose to set out in detail the appellant's oral evidence here but we shall refer to it as relevant in the course of our determination.

The expert evidence

11. The appellant relied upon the expert evidence of three witnesses, only one of whom gave oral evidence before the Tribunal. This was Ms Sara Hossain, Advocate of the Supreme Court of Bangladesh and a partner in the law firm of Dr Kamal Hossain & Associates in Dhaka. Ms Hossain obtained an MA (Hons) in Jurisprudence from Wadham College, Oxford in 1988. She was called to the Bar at the Middle Temple in 1989. She was admitted to practice before the High Court Division of the Supreme Court of Bangladesh in 1992 as a member of the Dhaka Bar Association and admitted to practice before the Appellate Division, the Apex court as she termed it, in 2008. She practises mainly in the area of constitutional and administrative law but also advises on family law matters including child custody, child abduction and forced marriage, as well as other matters. We had Ms Hossain's report dated 20th September 2010.
12. The second expert relied upon was Dr Dina Mahnaz Siddiqi who describes herself in her report, dated 19th September 2010, as an independent scholar and research consultant. Dr Siddiqi has a BA in Anthropology and Economics from Wellesley College, Massachusetts from which she graduated *magna cum lauda* and also has a PhD in Anthropology at the University of Michigan. She says that she has extensive research experience in the areas of gender, Islam and human rights, informal justice systems and the politics of sexuality in Bangladesh. In her report she set out her numerous academic positions and publications.
13. The third report was from Ms Nina Goswami, an Advocate of the Supreme Court of Bangladesh and the Senior Deputy Director of Ain O Salish Kendra (ASK). Her undated report shows that she obtained an LLB (Hons) from Rajshahi University in 1989 and an LLM from the same university in 1990. She describes herself as the author of many reports published by ASK, such as Sex Workers Rights in Bangladesh and the annual report of Asset Survivors Foundation (ASF) 2009. She says that she has had experience of working for more than sixteen years for government shelter homes and other organisations' shelter homes.
14. Mr Kyriacou conceded the expertise of these witnesses and therefore it is not necessary for us to undertake an assessment of their qualifications and experience in order to determine whether they are persons who can properly be regarded as expert witnesses.
15. As Mr Walsh conceded in his skeleton argument, much of what Ms Sara Hossain said in her report is no longer of direct relevance to the appellant's case because her former husband now has leave to remain in the United Kingdom as a student until 10th August 2011 and the appellant's daughter Zara has leave to remain as his dependant until the same date. There is no prospect therefore of them being returned together with the appellant to Bangladesh. The result of this is that the questions whether or not the appellant would be denied custody or contact with her daughter in Bangladesh, whether the contact order that the appellant currently has in the United Kingdom could be enforced in Bangladesh, whether in divorce cases children remain with their father or their mother or whether the fact that the appellant has an

illegitimate child would affect her right of access to her daughter Z, which are all matters which Ms Hossain dealt with at length in her report, no longer have any direct relevance to the appellant's case.

16. It seems to us that it would be convenient to set out a description of the experts' reports in Annex A.

Ms Hossain's oral evidence

17. In her oral evidence Ms Hossain was asked by Mr Walsh how relevant was the fact that, as the appellant had recently disclosed, her mother had divorced her father and had set up an independent household with a second husband. She said it would not necessarily improve the chances of the appellant getting support as divorce had a stigma attached to it and that would be a reason not to add to the stigma by accepting a grandchild born out of wedlock. She pointed to the fact that the appellant herself indicated that the views of her mother's second husband would be relevant. It was also of relevance that they themselves had young children.
18. Mr Walsh asked Ms Hossain how plausible it was that the appellant would be able to keep the existence of her illegitimate child a secret. Ms Hossain said it was likely to come out because there was not a premium on privacy in Bangladesh. She gave by way of an example an anecdote that the Attorney General had indicated it would be very difficult for terrorists to hide out in Bangladesh. She said the appellant would be questioned as to where she and her family were from. They would ask where the child's father was and she said it was not 100% certain but there was a good chance that the illegitimacy of her child would come out. She said Dhaka was a large city but not an anonymous one. With finance one could be more anonymous. She said that as a young woman with a child most private landlords would question her as to whether she was married and whether her father or brother would stand surety. She would be asked questions intended to ensure the respectability of any potential tenant. She gave an example of the difficulties that young academic staff females had in obtaining accommodation unless it was shared housing.
19. She repeated that the welfare principle based on the Guardians and Wards Act of 1890 applied to custody cases and overrode the personal law applicable to the parties.
20. When asked about whether domestic violence was a discrete offence in Bangladesh, she said in her report that it was not and there were no protective orders. She said that offences such as causing actual bodily harm could be complained about but if complaint was made to the police they would not take any notice as they treated domestic violence as a private matter. She said formally it was possible to have protective orders but they were not available in practice. She did not know of anyone obtaining an injunction except for cases where a demand had been made for payment of a dowry.

21. In cross-examination by Mr Kyriacou, Ms Hossain repeated that there was no prospect of the appellant losing the custody of her illegitimate child to her former husband's family. She agreed that it had happened that despite allegations having been made, custody had been awarded to the mother, but said that the birth of a child out of wedlock would prove immorality. Mr Kyriacou pointed out that Ms Hossain had indicated that there were no precedents involving the mother of an illegitimate child being refused custody of that child, so she could not say that she would be refused. She said she would put it a bit stronger than that. She would not advise any woman in that position to even apply. Mr Kyriacou pointed out that she had conceded that visitation rights could be granted to the other parent. She said that was so but it could be limited to a few hours and to supervised contact. He suggested that there was a discrepancy between what she had said about the enforceability of contact orders and her statement in paragraph 62 of her report that the order allowing access/visits to the child by the appellant might not be complied with by her ex-husband's family. Ms Hossain said that there was no inconsistency because if the order was an interim order there was no procedure for enforcement except for contempt if it was in the High Court and non-compliance would need to be shown over a period of time.
22. She agreed that the appellant's fear of extra-judicial punishment for having an illegitimate child was not well-founded.
23. Mr Kyriacou asked Ms Hossain about the proposal for legislation on sexual harassment in educational institutions and work places mentioned in paragraph 68 of her report. She said that draft legislation had been approved by the Cabinet which did criminalise such conduct. She said it might take three or four months before the legislation was passed and there would then be a question of when it would be enacted. It had been suggested that time would be needed to allow sufficient training to be undertaken. Ms Hossain was asked how effective it was likely to be. She said it would take time to see an impact. She hoped it would be effective but she said that they had previously seen that it took time for legislation to bed down.
24. Mr Kyriacou referred Ms Hossain to reports of the decision of the High Court in Bangladesh ruling against all extra-judicial punishments. He asked her why she had not made more of this and she said she made it clear that it was not likely to be relevant in an urban area. She said the text of the judgment was not available. She said there had been further incidents of so-called *fatwas* and referred to another article on forced veiling. She said that ten years ago there was a judgment given as to what needed to be done when a person was arrested but the requirements were still not routinely carried out. She said there was a disparity between what was required by the law and what happened in practice.
25. She was asked what the non-registration of the appellant's mother's second marriage meant. She said that in Bangladeshi law there were penalties for not registering a marriage but such a marriage would be valid under Islamic law. She said that in the late 90s there was still a high percentage of unregistered marriages particularly in rural areas and it was not uncommon for a marriage not to be registered. She said

usually the registrar would be present at the wedding ceremony but if not the necessary documents could be taken to the registry by witnesses and the marriage registered.

The background material

26. We set out items of background material that were relied upon by Mr Walsh and referred to in his skeleton argument in relation to specific topics and adopt his system of headings and also refer to items of background material relied upon by the respondent in Annex B.

The submissions made on behalf of the respondent

27. Mr Kyriacou relied upon his written skeleton argument. He conceded that Bangladesh had a long way to go before it could be said there were equal rights as far as gender equality was concerned but the objective evidence painted an increasingly positive picture. He submitted there was very little evidence to show that as a woman with a child born out of wedlock the appellant would face persecution in Bangladesh. There was significant evidence which showed that there would be a sufficiency of protection in the *Horvath* sense. He conceded that the COIR on Bangladesh noted a number of negative points but also positive ones. The picture of a predominantly male dominated society was changing. There were opportunities for women in government at the highest level and also in employment. He submitted the starting point had to be the Tribunal's determination in RA and Others (Particular social group - women) Bangladesh [2005] UKIAT 00070 in which the Tribunal found that the objective evidence did not establish that women in Bangladesh were a particular social group. He conceded that the decision was five years old but if anything the position had improved since then. The COIR dealing with violence against women said that there were laws relating to violence against women, although he conceded that there were no specific offences relating to domestic violence. The fact that the Domestic Violence (Prevention and Protection) Bill had recently been approved by the cabinet, as indicated by Miss Hossain, and might be enacted during the course of 2010 was a relevant factor showing an improvement in the situation of women in Bangladesh. He pointed to the efforts that had been made to deal with acid attacks and the evidence which showed a decrease in the number of such attacks. He also pointed to the fact that the government and NGOs assisted victims of domestic violence. He pointed to the five year family savings certificates which the government had reintroduced, the improvement in the education of girls, the signs of the government's commitment to assisting women as well as the statement by Dr Dipu Moni, the Foreign Minister, that women empowerment was one of the top priorities of the present government. It was significant that the High Court had recently ruled that wearing a veil by Muslim women was a matter of personal choice. The position of women was not so draconian and medieval as had been made out. He submitted that the increase in the number of women in parliament was a sign that the position of women was improving although he also conceded that there were a number of problems for women in Bangladesh.

28. Mr Kyriacou also submitted that the appellant could avail herself of internal flight and it would not be unreasonable for her to relocate within Bangladesh. She had shown herself to be a resourceful woman under difficult circumstances and it was unlikely that she would be traced by relatives of her former husband. There was no reason why the appellant should not be able to support herself on return to Bangladesh as she had a reasonable level of education, speaks English well enough to have been employed as a large store in the United Kingdom and therefore had transferable skills. It was submitted that she was resourceful enough to find a job and sort out somewhere to live in England and this would assist her on her return to her own country which was more familiar to her. There was also evidence of the Bangladeshi authorities' willingness to assist working women and there were a large number of non-governmental organisations which assisted women in Bangladesh. There was evidence that certain members of the appellant's family would support her, the appellant's mother in particular.
29. A new issue had arisen at this very late stage, namely the divorce of the appellant's parents. Mr Kyriacou submitted that this was the first time the appellant had raised this even though the proceedings had been in the Tribunal and its predecessor for sometime. The appellant's evidence was not credible that she was without support in Bangladesh. Credibility was impacted by the fact that she had concealed the divorce of her parents until now. The true nature of the circumstances had in fact been hidden. He submitted that the appellant could look to her mother for support upon return. Her mother was a divorced woman but she had managed to find alternative accommodation when she had left her husband and also found a new partner. They had entered into an Islamic marriage albeit one that it was not registered. It was significant that the appellant referred to her mother's new partner as a partner rather than husband. Even if the appellant was frightened of her father, her mother lived three hours away from her father, and mother and father were not in contact with each other. She could find assistance from her mother in obtaining accommodation employment and obtain access to the legal system should that be required.
30. It was also his submission that the appellant lived with a Bangladeshi lady here in the United Kingdom whom she referred to as a sister and it was very likely that she would be able to call upon this lady to help her. It was to be noted that the evidence was that this lady had family herself in Bangladesh and there was no reason to believe that these persons could not assist the appellant on her return. The father of the appellant's second child was in the United Kingdom but was without status here and he could return with the appellant to Bangladesh, together with their son.
31. Mr Kyriacou conceded that Bangladesh had a long way to go to arrive at true gender equality but the objective evidence was increasingly positive. There was little evidence of actual persecution and there was evidence of protection. He referred particularly to evidence in the Country of Origin report at section 23 to show that Bangladesh had made real efforts to address the problem of inequality for women. He took us to various other items of background material.

32. He then took the Tribunal to the various expert reports which had been produced on behalf of the appellant. With regard to the report of Ms Goswami he commented on her opinion that conditions in shelters were not all right for middle-class people. He submitted that this could not be taken to mean that middle-class people could not take advantage of them and clearly they would not be ideal conditions. Nevertheless the appellant could have access to a shelter and could stay there for three to six months which could on occasions be extended to a year.
33. With regard to the report of Dr Siddiqui, he submitted that she had noted therein that there had been little sustained research on single women or women with illegitimate children. He highlighted parts of the report where it was said that it was unlikely that the appellant would come to any direct harm and that there were the possibilities for divorced women to live in the urban areas. He also highlighted her comment that it was unlikely that the fact of her child being illegitimate would be made public by a middle-class family.
34. Mr Kyriacou also took the Tribunal to various other items of evidence which were in the country background bundle including a report in the New York Times regarding the employment opportunities available to women in the garment industry and the possibility of women sharing accommodation in Bangladesh. Incomes in the garment industry were shown by the country specific evidence to be good. He also pointed to a report in the Independent newspaper which showed that *fatwa* as a punishment had now been outlawed. With regard to the appellant's illegitimate child, he pointed to the amendment which had been made to the citizenship laws of Bangladesh in 2009, the Citizenship (Amendment Act) 2009 where a child could now obtain citizenship by descent through his mother and not simply through his father. He also invited the Tribunal to consider the amount of research being carried out regarding the conditions of women in Bangladesh.
35. The government of Bangladesh had demonstrated a commitment to improving the lot of women and there was a rising level of protection for them. Legislation had been brought into place to assist with this and the evidence showed a lowering of violence against women in the form of acid attacks. It was far from perfect but the state did offer protection. With regard to article 3, Mr Kyriacou submitted that there was a very high threshold to be met and that the appellant had not shown and that that she would face conditions which reached this threshold.
36. Turning to article 8, Mr Kyriacou submitted that the appellant would be returned to Bangladesh with her son and that, although her daughter would remain here with her ex-husband, she would be able to continue her family life through modern methods of communication. At the current time she only had limited contact with the child anyway and that limited contact could be continued. In any event, he submitted, her ex-husband and her daughter only had leave to remain on a temporary basis until the middle of 2011. It was impossible to speculate on what the future would hold for her ex-husband and her daughter and it could indeed be the case that the daughter would return with her father to Bangladesh next year and the appellant would be able to get a contact order

in that event. He submitted that there would be no breach of article 8 in returning the appellant to Bangladesh.

The submissions made on behalf of the appellant

37. Mr Walsh submitted that the appellant feared return to Bangladesh, Dhaka in particular, where the circumstances facing her there would be such as to be persecutory and amount to inhuman and degrading treatment. As a result of her having given birth to a child outside of wedlock, the appellant's father had cut her off. He had warned her that she would be treated as if she did not exist. Other members of the appellant's family, the appellant's mother in particular, would not go against her father's wishes by openly associating with the appellant if she returned to Dhaka. She would be returning to Bangladesh as a single mother with her son, SK.
38. Mr Walsh relied upon the report of Ms Hossain showing that the appellant's son would face rejection by her own family, social prejudice and social discrimination from the wider community. Ms Hossain suggested that gender based violence was widespread in Bangladesh and there were real concerns over the appellant's ability to access legal protection against discrimination due to resource issues and social stigma. Enforcement of anti-discrimination and domestic violence laws was weak. He submitted that the report was directed first of all to the issue of contact between the appellant and Z in Bangladesh. While that issue was no longer so central, in view of the fact that it was now known that Z enjoyed leave to remain in line with her father until August 2011, the issue retained some significance in assessing article 8. The father had been in the country with leave it seems since 2002. The report reached the following conclusions:
- i. While it was possible that that the appellant would be able to gain access to Z (para.38), it was likely in practice that she would be denied contact or access (para.7), in view of the proven 'immorality' engaged in by the appellant (by having a child out of wedlock-para.38), the expenses involved in applying for such access, the prevalence of corruption and prolonged delays (paras.39,41) and distinction between a court order and its enforcement (paras. 48ff).
 - ii. The fact that the appellant had an illegitimate child was likely to affect adversely her rights of access and custody and ensuring compliance with any court order (para.58, 62).
 - iii. The appellant's child, her son, SK, might face threats of violence from her own family, and certainly would face rejection by them (para.64), social prejudice and social discrimination from the wider community (para.66,67).
 - iv. Gender based violence was widespread in Bangladesh (para.75(b)).
 - v. There were 'real concerns' over the appellant's ability to access legal protection against discrimination (para.71) due to resources issues and social stigma (para.72). Enforcement of anti-discrimination and domestic violence laws was weak.

39. Dr Siddiqi's opinion was that the appellant and her son would be treated as social outcasts if returned to Bangladesh. Women in the position of the appellant were highly vulnerable to discrimination and ostracism. Sanctions for transgressing social norms depended for their effect on the social and economic background of the woman involved. There was much greater stigma associated with having an illegitimate child than being divorced. Single women without male guardianship were particularly vulnerable to violence and a woman without a male guardian was considered socially suspect and sexually available. The prospects facing the appellant without family support or pre-existence would make it very difficult for her to access support of any kind. Her conclusions were as follows:

- i. The appellant and her son would be treated as social outcasts if returned to Bangladesh (para.1.1).
- ii. There was a significant premium on marriage which meant that women in the position of the appellant were highly vulnerable to discrimination and ostracisation (para.1.2; para.1.8).
- iii. The sanctions for transgressing social norms depended for their effect on the social and economic background of the woman involved (1.5).
- iv. There was much greater stigma associated with having an illegitimate child than divorce.
- v. Domestic violence was widespread while conviction rates for the same were low.
- vi. Single women, without male guardianship were particularly vulnerable to violence; 'A woman without a male guardian was considered socially suspect and sexually available' (para.1.1).
- vii. The economic prospects facing the appellant without family support or pre-existing contacts would make it very difficult for her to access support of any kind.

40. Mr Walsh relied upon the background material to which we have made reference. In paragraph 17 of his skeleton argument which he adopted during the course of his address Mr Walsh asserted that the conditions facing the appellant and her son on removal to Bangladesh were matters that fell within Article 3. He relied upon the decision of the Court of Appeal in Limbuela v Secretary of State for the Home Department [2003] EWCA Civ 364 for the proposition that conditions imposed on a destitute immigrant (within the United Kingdom) could engage article 3. There were no considerations of proportionality involved in relation to engagement of article 3. Mr Walsh relied upon the decision of the ECtHR in Pretty v United Kingdom - 2346/02 [2002] ECHR 427. He relied upon paragraph 52 which said that where treatment humiliated or debased an individual, showing a lack of respect for, or diminishing, his or her human dignity, or aroused feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it might be characterised as degrading and also fall within the prohibition of article 3. The suffering which flowed

from naturally occurring illness, physical or mental, might be covered by article 3, where it was, or risked being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities could be held responsible.

41. Mr Walsh also relied upon the decision of the House of Lords in Hoxha and Anor v Secretary of State for the Home Department [2003] UKHL 19. He relied in particular upon paragraphs 33 to 38 of the opinion of Baroness Hale, in which she made it plain that discrimination, visited upon a woman who previously had been the victim of rape as a weapon of war, if sufficiently severe, was capable of amounting to persecution. He submitted that the approach of Baroness Hale was significant as it was intended to put a gloss on Islam v Secretary of State for the Home Department, R v Immigration Appeal Tribunal and Another, Ex parte Shah [1999] UKHL 20 (Shah and Islam) since in Hoxha there was no consideration of any discriminatory laws in Kosovo. Baroness Hale was more concerned about the impact of the woman having previously been raped and the effect that that would have, coupled with her rejection by society, if returned there.
42. In relation to article 3 of the ECHR he submitted that the position of the appellant and her child on return to Bangladesh would be so precarious that her circumstances would reach such a level as to involve the infringement of her rights under article 3. While laws protecting women were in place, nonetheless there was evidence of an unwillingness or inability to enforce those laws on the part of the police and discrimination. He submitted that to refuse to give consideration to someone because of their moral standing amounted to discrimination and she could not look to the legal system to protect her from discriminatory acts. In paragraph 18 of his skeleton argument Mr Walsh suggested that the situation facing the appellant and her son on return to Dhaka without the support of her family and without real prospects of support from government or non-government agencies would reach the article 3 threshold. Discrimination, ostracism and the prospect of violence coupled with a lack of basic needs would follow her removal to Dhaka. She and her son would be in a very vulnerable position. The act of removing her there would be treatment within the meaning of article 3 that would be proscribed. It would be inhuman and/or degrading treatment and persecution within the meaning of the Refugee Convention. He identified the membership of a particular social group that the appellant would form part of, as single women with children born out of wedlock.
43. Mr Walsh also submitted that there was no internal flight option for this appellant. The appellant would have with her a one year old child and there was no suggestion of relatives or other sources of help being available in the provinces outside Dhaka. He referred us to the relevant tests set out in Januzi v Secretary of State for the Home Department [2006] 2 AC 426, (as clarified in AH v SSHD [2007] UKHL 49) namely:

“The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so” (per Lord Bingham at para 21).

44. Turning to article 8, Mr Walsh submitted that the practical impact of the appellant's removal would be frustration of the present contact order and access to the daughter. While the duty imposed by article 8 on the State does not extend to permitting family members to choose the place of residence for the family (in the absence of a free standing right to reside in the place of choice), family members are entitled to exercise the essence of the right: to enjoy one another's company and support. There was a fundamental obstacle to the continuing of the family life between the appellant and her daughter other than in the UK in that while the appellant could live in Bangladesh (subject to what is said above) the daughter resided with her father in the UK who had displayed a constant desire to remain in the United Kingdom, and showed no intention of returning with his daughter to Bangladesh. Indeed, Z could not be removed from the UK without the leave to the Court. Both the daughter and her father had leave to remain to August 2011 and the only reasonable inference that could be drawn from that was that the father intended to remain in the UK until then and possibly afterwards. The decision to remove the appellant in the meantime was an interference with the right to respect for the family life of the appellant and the daughter. The impact of the removal of the appellant would on any proper understanding of what engages article 8(1) compel the conclusion that it was engaged in the instant case.
45. Mr Walsh referred us to the case of Keegan v Ireland 18 EHRR 342 where the court concluded that the failure to consult a natural father (who had been party to a relationship within family life with the mother) before placing his child for adoption did not respect his family life. While the court held that there was no automatic right to joint custody by both parents, it did emphasise the continuing rights of the separate parent to involvement in important decisions about the child. The ECtHR in Ciliz v Netherlands [2001] ECHR 365 found that the exclusion of a father of a child, now divorced, from the Netherlands where he was pursuing contact proceedings was unlawful.
46. Mr Walsh also referred us to section 55 of the Borders, Citizenship and Immigration Act 2009, which placed upon the Secretary of State a duty regarding the welfare of children. He submitted that the respondent had a heavy burden to justify the removal of one of the parents of a child (namely, the child Z) who otherwise has leave to remain in the country. The impact of the removal would be manifestly substantial as it would have draconian effects on the family life of the appellant and her daughter. The physical distance between the appellant and her child would stand as a metaphor of the strain on their family life.
47. The prospects of the appellant and her daughter being able, at some undefined date in the future, to re-constitute their family life were so remote as to amount to no prospect at all. From the report of Sara Hossain, it was clear that the appellant would have little prospect of gaining access to her daughter if at some future date she (the daughter) returned to Bangladesh. The steps the appellant had to go to achieve contact in the UK did not augur well for the facilitation of even remote contact by the appellant with her daughter from Bangladesh. Leave to remain in line with her child would be a less onerous measure than removal and a proportionate one to adopt.

Our conclusions

The legal framework

48. The Tribunal must consider whether there are substantial grounds for believing that the appellant satisfies the requirements of the Refugee or Person in Need of international Protection (Qualification) Regulations 2006 and so is eligible for refugee protection, in other words whether if returned to Bangladesh there would be a real risk that the appellant would suffer persecution for a Refugee Convention reason, or, alternatively, whether she is eligible for humanitarian protection. The appellant also claims that returning her to Bangladesh would cause the United Kingdom to breach her protected human rights under articles 3 and 8 of the 1950 European Convention on Human Rights and Fundamental Freedoms (ECHR). In this regard the Tribunal must consider whether there are substantial grounds for believing that the removal of the appellant to Bangladesh would cause the United Kingdom to breach the ECHR.
49. We refer to the guidance given by the Court of Appeal in the case of SR (Iran) v Secretary of State for the Home Department [2007] EWCA Civ 460. The question whether the appellant would be at a real risk on return is to be answered at the very end of the fact-finding process. The fact finder will have more or less certainty about each fact that he finds but an overall assessment of risk must be based upon the facts taken as a whole. The establishment of each fact is not to be done by asking whether there is a real risk that the proposed fact is true.
50. In that case the Court of Appeal considered whether the AIT had erred in its approach to the evidence. In paragraphs 8, 9 and 10 of his judgement Sedley LJ said:
- “8. ...it was the AIT’s task, first, to discard any evidence judged to be of no value at all: here, for example, the account which, for better or for worse had been disbelieved on an earlier hearing. For the rest, the AIT had to take each element of evidence into account for what it was worth...
9. There is nothing wrong with the differential levels of proof or disproof of primary facts found by the Tribunal ...The law does not demand, at least in this field, that each finding of fact, whatever its degree of certainty or uncertainty, be fitted into a single matrix of risk. The fact-finder's task is, to the extent made possible by the evidence, to find facts and some facts are more certain than others. It would have been as unjust to the appellant to treat as mere possibilities things which, on the AIT's findings were highly likely as it would have been to the respondent to treat possibilities of hardship as probabilities.
10. The critical task is to assemble these findings into an evaluation which answers the questions posed by law. In asylum and human rights claims, that is the question of real risk and it is at the point of decision, and not sooner, that it arises...”
51. In paragraph 52 of their decision in Pretty the Court said this:
- ‘As regards the types of “treatment” which fall within the scope of Article 3 of the Convention, the Court’s case-law refers to “ill-treatment” that attains a minimum level of severity and involves actual bodily injury or intense physical or mental suffering (see *Ireland v the United Kingdom*, cited above, p.66, §167; *V. v. the United Kingdom* (GC),

no. 24888/94, §71, ECHR 1999-IX.). Where treatment humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see amongst recent authorities, *Price v. the United Kingdom* no. 33394/96, §§ 24-30, ECHR 2001-VII, and *Valašinas v. Lithuania* no. 44558/98, § 117, ECHR 2001-VIII). The suffering which flows from naturally occurring illness, physical or mental, may be covered by Article 3, where it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible (see *D. v. the United Kingdom* and *Keenan*, both cited above, and *Bensaid v. the United Kingdom*, no. 44599/98, ECHR 2001-I)."

52. It would be well to note that in the case of Valašinas v Lithuania and in Price v United Kingdom the Court was concerned with the conditions in which the applicant was detained and over which necessarily the state in question had control.
53. The Tribunal accepted that in principle a claim on behalf of an appellant that she would be returned to destitution can amount to persecution and attract the operation of the Refugee Convention in AM and AM (Armed conflict - risk categories) Somalia CG [2008] UKAIT 00091. In paragraph 79 of its determination the Tribunal said given that persecution must be seen as harm in the form of severe violations of basic human rights it could not be right "as a matter of principle" to exclude claims based on forced subsistence in an IDP camp unless human rights law precluded it. Albeit claims for protection based on dire socio-economic circumstances were normally not decisive when considering article 3 ill-treatment, the Strasbourg Court had not excluded that in certain extreme circumstances, such circumstances could give rise to a violation of a non-derogable right, as had been made clear by the Court on many occasions, for example, in Kalashnikov v Russia [2002] ECHR 596. The Tribunal did go on to say, however, that there would always be heavy factual obstacles in the way of a finding that socio-economic circumstances could constitute persecution. The case of Kalashnikov v Russia was an instance where complaint was made as to the conditions in which the applicant had been detained.
54. In his opinion in Shah and Islam Lord Steyn said that generalisations about the position of women in particular countries were out of place in regard to issues of refugee status. Everything depended on the evidence of findings of fact in the particular case. There it had been found that the appellants would be persecuted if they were returned to Pakistan. There was a finding that the authorities in Pakistan would be unable and unwilling to protect the appellants. The issue to be determined was whether the appellants formed part of a particular social group. In RA and Others (Particular Social Group - Women) Bangladesh [2005] UKIAT 00070 the Tribunal, on the evidence before it, was not satisfied that women in Bangladesh were a particular social group.

The position of women in Bangladesh generally

55. We can readily agree with the opinion of Dr Saddiqi, that the situation of Bangladeshi women must be located in the context of a rapidly shifting society and economy in

which social transformation and instability had produced contradictory effects. She pointed to progress in gender parity and primary education, reductions in fertility and female mortality and the entry of women into the wage labour force on the one hand but on the other high mortality rates, the risk of serious violence in the home and public places and enduring economic and socio-cultural discrimination.

56. The COIR shows that the Constitution affirmed gender equality. According to the Constitution women enjoyed the same status and rights as men in terms of education, health, political process, employment, development processes and social welfare. Bangladesh had acceded to the Convention on the Elimination of All Forms of Discrimination against Women many years ago on 6 December 1984. There were 64 women serving in Parliament, 19 of whom were directly elected. Women were eligible, to contest any number of the 345 seats, of which 45 were reserved for women. Six women including the Prime Minister held the status of Cabinet Minister, including the Ministers of Home Affairs, Foreign Affairs and Agriculture. The Leader of the Opposition and the Deputy Leader of Parliament were women. Two women were appointed as State Ministers and a third was serving as a Whip in Parliament with the status of a State Minister. Six of the 89 Supreme Court Judges were women.
57. The Foreign Minister Dr Dipu Moni has been reported as saying that women empowerment was one of the top priorities of the present government and the government wanted to ensure a social, economic and political empowerment of women. Dr Moni said that there was no restriction for women in Bangladesh in joining any profession. At present women were involved in all professions including defence services. The government had plans to introduce free education for girls up to degree level, (New Nation, 16th May 2010). Bangladesh has made enormous reductions in maternal mortality by improving girls' education. The maternal mortality rate had more than halved in less than a decade from 724 deaths per 100,000 live births in 1990 to 338 per 100,000 in 2008 according to a recent study published in The Lancet. The report said that in 2001 the Bangladesh government began offering free education for girls up to the twelfth grade with additional incentives like food for education. Girls' enrolment in secondary schools jumped from 1.1 million in 1991 to 3.9 million in 2005.
58. Bangladesh has achieved one of its millennium development goals ahead of time, which was gender parity in education. Participation in waged employment in the non-agricultural sector rose from 40.7 in 1992 to 58.6 in 2003. Nearly 2 million women worked in ready made garment factories, the country's top export earning sector and 60% of the more than 35,000 government registered primary school teachers were now women, (IRIN report, 21st January 2009).
59. The High Court in Bangladesh has outlawed punishments handed down by Islamic edicts or *fatwas* after a series of cases of women being beaten, caned and whipped for "offences" they were judged to have committed by village elders (the Independent, 11th July 2010) and the High Court has ruled that wearing a veil by Muslim women holding public office was a personal choice, (Big Message report, 12th April 2010). The penal code provides for sanctions against all forms of psychological violence and threats of physical injury and there are special laws designed to protect women, such as the Dowry

Prohibition Act 1980, Women and Children Repression Prevention Act 2000 amended in 2003, the Acid Crime Prevention Act 2002 and the Acid Control Act 2002. The Domestic Violence (Prevention and Protection) Bill has recently been approved by the Cabinet and was enacted in October 2010.

60. The government does take the issue of violence against women seriously and has participated in a number of initiatives aimed at reducing it. These include a project involving the Department of Women's Affairs (DWA) and the MWCA (Ministry of Women and Children's Affairs) with assistance from UNFPA to mobilise communities against violence and to change male family members' and in-laws' attitudes about violence, mentioned in the World Bank Report, dated 13th March 2008. Another initiative in the series of steps taken by the government was the "Multi-Sectoral Programme on Violence against Women". This project was a joint initiative of the GOB and Denmark under the MWCA, whose objectives were improved public services such as health, police assistance, criminal justice and social services and increased public awareness of all forms of violence against women. The MWCA had also initiated One-Stop Crisis Centres (OSCC) in Divisional level Medical College Hospitals, mainly to deal with acid and rape victims so as to facilitate quick investigation and medical and legal services. The OSCC provided health care, police assistance, social services, legal assistance, psychological counselling and shelter services. Two OSCCs had been established in Dhaka and Rajshahi Medical College Hospitals during the pilot phase of the project.
61. Nevertheless despite these positive factors the COIR shows that state legislation and institutions frequently disregarded women's rights and as a matter of practice women did not enjoy fundamental rights and freedom to the extent that men did. This is largely due to women having unequal status in the family and generally being of lower socio-economic status, having lower literacy and less mobility. Bangladesh has entered a reservation against the requirement of the Convention to ensure equal rights for women and men. Despite the representation of women in government and in Parliament, nevertheless women still have a long way to go in terms of gender equality. Illiteracy, early and forced marriage, high maternal mortality, social and religious restrictions coupled with instances of torture, abandonment and limited job opportunities all contribute to the plight of women according to women's groups, (IRIN report, 27th January 2009).
62. Moreover domestic violence has only recently been criminalised. Although the Domestic Violence (Prevention and Protection) Bill was passed by the Bangladeshi Parliament after the hearing on 5th October 2010 Ms Hossain was of the opinion that it would not have an immediate effect and gave an example of legislation relating to suspects' rights which was passed some time ago but which was still disregarded by the police.
63. Dr Siddiqi said that according to a World Health Organisation multi-country study on women's health and domestic violence against women, Bangladesh had one of the highest rates of spousal violence in the world. The study found that the percentage of women who experienced violence by an intimate partner, among partnered women

aged 15 to 49 years was 53% in Dhaka city and 62% in an adjacent rural area. Similarly the International Centre for Research on Women (ICRW) reported in 2009 that intimate partner violence against women was highly prevalent with 61% having experienced sexual violence in their lifetime. According to the WHO multi-country study 10% of pregnant women in Dhaka were physically abused during at least one pregnancy. In her view these figures were extra ordinarily high, especially given that family violence against women was likely to be under reported.

64. According to women's rights groups, domestic violence is widespread and increased during 2009. At least 50% of women experience domestic violence at least once in their lives. Most efforts to combat it are funded by NGOs with little assistance from the government. There was an increase in the number of dowry related killings during 2009. Acid attacks remain a serious problem, despite the existence of special tribunals to deal with those accused, which according to the Acid Survivors Foundation, are not entirely effective. Lack of awareness of the law and poor enforcement limits the effect of the Women and Child Repression Control Act, (US State Department Report on Human Rights Bangladesh 2009, 11th March 2010).
65. The serious manifestation of violence against poor women in Dhaka, which included physical and psychological violence inflicted by the husband or the husband's family, burning of wives, acid attack, suicide as a result of physical and psychological torture as well as violence against women in the work place and on the way to and from work was noted in the survey by the World Bank and reported its report entitled "Improving Living Conditions for the Urban, Poor Bangladesh Development Series Paper No. 17", dated 2007. Of the total sample of 50% female respondents, 30% were said to have been a victim of domestic violence in the previous twelve months, which was the highest reported incidence of crime or violence reported in the survey. These findings reflected what was known about violence against women in Bangladesh. According to the UNFPA (2000) Bangladesh had the second highest incidence of violence against women in the world. A survey carried out in 1997 by the Ministry of Women and Children's Affairs, with the assistance of the government of Denmark, found that not only was violence against women widespread, it was also widely accepted: 50% of the women interviewed thought it was the husband's right to beat his wife; 80% felt it was right to hit the wife if she was disobedient; 80% of the women respondents felt that if a man raped a woman the woman should marry the rapist.
66. So far as the issue of state protection against domestic violence is concerned, despite legislation providing sanctions against all forms of physical violence, some forms of psychological violence and threats of physical injury, in practice if a husband committed violence against his wife, it was not considered as an offence punishable in the same way. The very special laws to protect women from abuse have not proved as effective as they were designed to be and their deterrent value has been diminished by low conviction rates. Owing to the prevalent patriarchal attitude towards women, in most cases complaints are not recorded properly by the police, evidence is hard to produce or establish, there is a very slim chance of the perpetrator being punished and a study by the Family Court in Dhaka showed that husbands rarely appeared and thus suits were dismissed and wives were denied justice. (Dr Nusrat Ameen, quoted in the COIR).

67. According to Dr Saddiqi deeply entrenched patriarchal attitudes which do not take women's concerns seriously produces procedural and administrative indifference or bias. Police are especially reluctant to become involved in marital disputes. The police are over burdened and therefore few cases get proper attention. Overworked and underpaid, the police are open to various forms of corruption. Women may be unwilling to report abuse because the police force is overwhelmingly male and few women will feel comfortable confiding in male police officers, especially if the crime is of a sexual nature. The general public's faith in the police justice system is low. Further instances of violence tend to be hidden in middle and upper class families for fear of social stigma. Class privilege provides a degree of protection for women and girls so that the most visible victims of violence tend to be women from poor underprivileged backgrounds. Access to justice is especially difficult for poor people, especially women with little or no formal education who find the system intimidating and impenetrable as well as costly and time-consuming. The large cultural emphasis, especially in disputes between couples, is on compromise through mediation and arbitration out of court. Moreover the political system in place offers the most protection to those with requisite political and socio-economic ties which simultaneously promotes a culture of impunity and lack of accountability for perpetrators, including law enforcement agencies. Those without political protection have limited access to justice. Cultures of impunity thrive, no matter which political party is in power.
68. Moreover political and bureaucratic interference are the most significant impediments to police efficiency and have resulted in the worst forms of abuse including illegal detention, death in custody, torture and pervasive corruption. The result is almost universal public disdain for the police force. All governments, including the current one, have used the police to crush political enemies while many politicians have used them to advance their personal interests. Low police salaries and government control of promotions and transfers all but ensure that the police are dependent on the political leadership, which prevents investigation of serious issues of corruption, organised crime or other matters that some political leaders would prefer remain untouched. The police are often complicit in the crimes of government officials. Corruption in the police is rampant and systemic. It will be nearly impossible to eliminate until the poor salaries and working conditions are improved, particularly for officers at and below the rank of sub-inspector. Many police posts are bought and sold (International Crisis Group, 11th December 2009).
69. Although the RAB (Rapid Action Battalion) has received human rights training sponsored by foreign governments, the UN Development Programme, and a local NGO, the Bangladesh Society for Enforcement of Human Rights (BSEHR) and the number of incidents involving it has dropped from the year 2008, nonetheless the RAB continues to commit serious human rights violations. Although the government has taken steps to address widespread police corruption and a severe lack of training and discipline, and the Inspector General of Police continues to implement a new strategy, partially funded by international donors, for training police, addressing corruption and creating a more responsible police force, defendants rarely accuse police in criminal cases due to lengthy trial procedures and the fear of retribution. Reluctance to confront police perpetuates a climate of impunity (US State Department report, 11th March 2010).

70. The background material clearly shows that a very high proportion of women in Bangladesh experience domestic violence and the police routinely fail to report and investigate complaints of domestic violence. Dr Ameen makes it plain that there are several agencies which assist women who are the victims of domestic violence. An agency is able to serve on the husband a notice to attend the premises of the agency for mediation following a written complaint by the wife. If he does not attend the agency has a right to issue a warrant and seek help from the police. Given the high incidence of domestic violence and the limited number of agencies dealing with domestic violence, however, we feel that the use of this procedure must be the exception rather than the rule.

Domestic violence and the adequacy of state protection

71. In this appeal the Tribunal has identified the issue of return to Bangladesh upon women who have been divorced, with a child born outside marriage, as being worthy of country guidance. Although we have not been asked to determine the issue of the return of women who have been subjected to domestic violence, in view of the up-to-date evidence which has been adduced before us it may be helpful if we were to express our view about that as well.
72. In Bagdanavicius & Anor, R (On the Application of) v Secretary of State for the Home Department [2003] EWCA Civ 1605 the Court of Appeal held that sufficiency of state protection, whether from state agents or non-state actors, meant a willingness and ability on the part of the receiving state to provide through its legal system a reasonable level of protection from ill-treatment of which the claimant for asylum had a well founded fear and the effectiveness of the system provided was to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there was a risk, not just punishment of it after the event.
73. Since the determination of the Tribunal in RA and Others there has been further guidance from the House of Lords as to the meaning of a particular social group. In Secretary of State for the Home Department v K [2006] UKHL 46 Lord Bingham quoted the UNHCR *Guidelines on International Protection* dated 7 May 2002 and said it appeared to him that the *UNHCR Guidelines*, clearly based on a careful reading of the international authorities, provided a very accurate and helpful distillation of their effect. The Guidelines defined a particular social group as a group of persons who shared a common characteristic other than their risk of being persecuted, or who were perceived as a group by society. The characteristic would often be one which was innate, unchangeable, or which was otherwise fundamental to identity, conscience or the exercise of one's human rights. Lord Hope said that Miss Fornah's case raised again the point that was discussed but did not have to be decided in Shah and Islam as to how precise the definition must be to satisfy the requirements of Article 1A(2) of the Refugee Convention. The Secretary of State argued that a group which consisted of females in Sierra Leone generally was too widely drawn because many of its members no longer feared female genital mutilation as they had already been initiated and a group which was defined more precisely so as to include only those females who were still at risk resulted in the group being defined by the fact of persecution alone. He, in common

with the other members of the Appellate Committee, said that it was well settled that not all members of the group need be at risk. Lord Hope went on to say that it was well established that the persecution which was feared could not be used to define a particular social group but that simply meant that there must be some characteristic other than the persecution itself, or the fear of persecution, that set the group apart from the rest of society. That may be because its members shared a common characteristic other than their risk of being persecuted, or because they were perceived as a group by society.

74. Applying these principles to the circumstances of women in Bangladesh who are subjected to domestic violence, we are of the view that a woman who was able to show that she was at a real risk of domestic violence on return to Bangladesh (to which there was no viable internal relocation alternative) may well be able to demonstrate on the evidence which was adduced before us, that despite the efforts of the government to improve the situation of such women, on account of the disinclination of the police to act upon complaints of domestic violence, she would not be able to obtain an effective measure of state protection by reason of the fact that she was a woman. If so, in these circumstances, the persecution to which she would fear being subjected would be domestic violence against which she would have no protection on account of the fact that she was a woman. Therefore she may be able to show a risk of serious harm for a Refugee Convention reason, i.e. membership of a particular social group, namely women in Bangladesh. Each case, however, must be determined on its own facts.

The mother's right to custody of her illegitimate child

75. In relation to the issue whether the mother of an illegitimate child would risk losing the right to custody, according to the evidence of Ms Hossain, which we accept, under Muslim law, as applicable in Bangladesh, the mother, or in her absence her relations has the right to custody of an illegitimate child.

The rights of the mother of an illegitimate child to custody of/contact with a child of a marriage or former marriage

76. So far as the question of the rights of the mother of an illegitimate child to custody of the child of a marriage or former marriage or contact with him/her is concerned, Ms Hossain said that the Family Courts in Bangladesh in such matters apply the provisions of the Guardians and Wards Act 1890 read together with the personal law of the parties. Under the Hanafi school of Muslim law, which would apply to Sunni Muslims, the father, if alive, is considered to be the natural and legal guardian of the person and property of his minor child while the mother is entitled to the custody (*hizanat*) of her male child until he has completed the age of 7 years and for a female child until she has attained puberty, unless she was otherwise disqualified. Ms Hossain said, however, that a review of reported decisions of the superior courts in Bangladesh on custody matters indicated a fairly consistent trend to invoke the principle of the welfare of the child as an overriding factor, permitting departure from the applicable personal law.

77. It is clear from the evidence of Ms Hossain that that while a mother who was otherwise entitled to the custody of her child would lose the right to such custody under Muslim law if she remarried a stranger, went and lived at a distance from the father, was leading an immoral life as where she was a prostitute or if she neglected to take proper care of the child, the overriding principle of the welfare of the child in custody disputes is applied by the Family Courts by virtue of the operation of the Guardians and Wards Act. Ms Hossain quoted a commentator, Fyzee, stating that loss of custody did not necessarily follow merely because the wife was divorced or separated. Further, Syed Ameer Ali noted that the right to *hizanat* belonged to the mother "*qua mother and nothing can take it away from her except her own misconduct*". He also stated that not all cases of misconduct necessarily destroyed the right to *hizanat* and that the question was whether such misconduct was "*detrimental to the child*" i.e. "*is it likely to injure the child?*", with such injury being physical or moral and finally that "*unchastity ... disqualifies [the woman] from exercising the right of hizanat*".
78. According to the authors of "The Guardians and Wards and Majority Act", Shaukat Mahmood and Nadeem Shaukat, quoted by Ms Hossain, where the mother was leading an immoral life or living in open adultery she should not be appointed guardian of her minor son. This was so even where the immorality was proved from indirect evidence. The mere fact, however, that a mother gave birth to an illegitimate child two years after the death of her husband was not sufficient reason for not appointing her guardian of her son's person and property. Furthermore the decisions of the appellate division of Supreme Court of Bangladesh, quoted by Ms Hossain in her report suggest that there are cases where on proof of the unfitness of the father to have custody of a male child over the age of seven years, the courts exercise discretion in departing from the Hanafi rule. It would therefore appear that the Family Courts in Bangladesh take an enlightened view of the situation in custody disputes.
79. Whether a Family Court in Bangladesh would deprive the appellant of custody of or access to her daughter solely on the basis of the fact that she had given birth to an illegitimate child after her divorce, is open to question. On the basis of what has been said above it would seem unlikely, although Ms Hossain said that she would not even advise the appellant to apply, as her illegitimate child would be evidence of immorality. She said this in the context of the expression of an opinion that the appellant would face real difficulties in obtaining an order for custody of the older child if (our underlining) the court considered her 'immoral' conduct and disregard for prevailing social norms regarding her sexual conduct, (as evidenced by her illegitimate son and her strained relations with her parents and her lack of financial means to maintain the child) to be factors relevant to the welfare of the child. She had to concede, however, that the Bangladesh courts as yet had not refused custody to a mother in any case on grounds of 'immorality' and that the courts had allowed the mother to retain custody/contact, even where there were allegations of her 'immoral behaviour' as long as it appeared that the welfare of the child was best served by placing him/in the mother's custody. She qualified this, however, by stating that such decisions had been made in the context of allegations which had not been made out.

The risk of persecution of and/or serious harm to the divorced mother of an illegitimate child

80. So far as the question of risk of harm to a divorced woman with an illegitimate child is concerned Ms Hossain discounted any risk to the appellant from her own family or other persons. Dr Siddiqi also discounted any such risk on the grounds that her family might simply want to maintain a social distance from her.
81. In relation to the question of risk of harm generally, Dr Siddiqi indicated in her report that there was little research on single or divorced women. Her opinion was that the situation of Bangladeshi women must be located in the context of a rapidly shifting society and economy in which social transformation and instability had produced contradictory effects, examples of which we have outlined above.
82. It is important in our view to make a distinction between a woman with an illegitimate child who is married and one, like the appellant, who is divorced. The report by the United States Bureau of Citizenship and Immigration Services on the situation of women who have children who were born out of wedlock, dated 25th June 2001, referred to in the Refworld report which was relied on before the immigration judge but not referred to before us, quoted a research fellow at Harvard University stating that the safety of a woman in Bangladesh who had a child out of wedlock depended primarily on the woman's religion and secondarily on her economic status. If the woman was Muslim the very existence of the child proved the mother's adultery. In contrast to other countries, such as Saudi Arabia and Pakistan, where such a woman would be imprisoned and ostracised, in Bangladesh the situation depended on the woman's immediate family and on her class background. In the case of a married woman who bore a child out of wedlock there was the possibility of sanctuary for herself and her child if her own family was supportive and able to offer her protection against the danger of reprisal by her husband and her husband's family. The opinions expressed in that report were postulated on the basis that the woman had a husband rather than the woman having already been divorced. An ASK representative is reported as saying that a woman in Bangladesh who had an illegitimate child would most probably be treated as a social outcast depending on her social status or monetary condition. She would be worse off if she came from a middle or lower middle income group as they were the most vulnerable to societal pressure and bore the brunt of failing to keep up a social façade.
83. Ms Hossain's opinion was that the appellant might (our underlining) face social prejudice and discrimination from her own family members as well as other members of the wider community if her circumstances and the fact of her having had an illegitimate child became known. Given the prevailing conservative social attitudes and prejudices, if the fact of the appellant's having a child out of wedlock were to be known she might find it difficult to obtain any appropriate (our underlining) employment. In the absence of any financial means or source of livelihood outside her family or of any state social security system she might face extreme financial hardship. It would also likely to be difficult, in her opinion, to obtain adequate housing, given the absence of any state facilities or support in this regard and the fact that her parents and her extended family

were unlikely to give her any support and the expense of private accommodation. The fact of her having an illegitimate child and the resulting lack of family support meant that she might qualify for emergency shelter from an NGO, but such shelter might not be available for a long period and was unlikely to be suitable for her and her son given the conditions prevailing in most institutions, including restrictions on movement. In her oral evidence Ms Hossain expressed the view that having regard to the natural inquisitiveness of Bangladeshi society it would be difficult for her to keep the existence of her illegitimate child a secret.

84. We are not persuaded that this would be the case, however, since the appellant could truthfully say that she was separated from the child's father in the United Kingdom and there would be no reason why anyone should discover that he was illegitimate. Dr Siddiqi indicated abandoned women usually continued to claim marital status.
85. Although Dr Siddiqi was also of the opinion that the appellant and her son would be treated as social outcasts, in our view it does not inevitably follow that a divorced woman who has had a child conceived and born after a divorce would become a social outcast. The evidence, taken as a whole, indicates that factors such as social class, level of education and urban location are relevant. A good example of a person who escaped such a fate is the appellant's mother who, on the appellant's account, notwithstanding that she was divorced, married again and has three young children as a result of her second marriage. We do not know the circumstances in which the appellant's mother came to be divorced. In answer to the third question Dr Siddiqi said that in urban areas there were now increasing numbers of divorced women from the middle classes, many of whom had the support of their families. The families were less likely to reject divorced daughters if the marriage in question was arranged by them since they might feel partially responsible for the outcome. For Muslim women divorce was allowed under specific and limited conditions; it might be frowned upon but it could not be wholly rejected. She said that sex outside marriage, on the other hand, was a moral transgression of a higher order. In Dhaka city, it was unlikely that pregnancy out of wedlock would be allowed to become public in a middle or upper class family.
86. Dr Siddiqi expressed the view that a woman without the protection of marriage or at least the shelter of her family would be subjected to considerable social stigma. At the same time, however, on a number of occasions in the course of her report she said that little research existed on single or divorced women. She said that divorce rates were low in Bangladesh as a whole although rates of abandonment and desertion were high. Dr Siddiqi said that natal families, especially in impoverished households, tended to look on divorced daughters as economic if not symbolic burdens. For her to be able to express such an opinion necessarily means that the concept of a divorced daughter must be a fairly familiar one in Bangladesh despite the social stigma that it may bring. It also follows from what she said that there must be a high number of single women who have been abandoned/deserted by their husbands.
87. In our view the expert evidence and the background material show that whether a female returnee who has been divorced and who has a child born out of wedlock runs the risk of falling into the category of being abandoned will depend on the attitude

towards her of her family and the likelihood of family support, which in turn will depend upon the facts of the particular case.

88. It is right, therefore that we should examine the issue of the risk of serious harm to a single woman with an illegitimate child on return to Bangladesh on the basis of the worst possible scenario, namely that she would not have the benefit of any family support.
89. As already stated, Dr Siddiqi's view was that a woman without a male guardian was considered as socially suspect and sexually available. Without symbolic male shelter or family or practical family protection she would face a host of subtle discriminatory actions that in effect would make her a social outcast. Her resourcefulness would be extremely limited. Without her family and social connections, it would be extremely difficult for her to find appropriate employment, housing and a proper school for her child. Moreover she would be perceived as sexually suspect and available and therefore have to contend with the kind of sexual harassment faced by women perceived to be morally lax.
90. The background material paints a grim picture of conditions in parts of the major urban areas of Bangladesh. Tens of thousands of people lived in overcrowded slums or public spaces that lack basic facilities, such as safe water, sanitation and health services. In Dhaka city an estimated 37% of the total population live in slums. Dhaka continues to grow as a mega-city with approximately 320,000 migrants arriving annually. More than three-quarters of migrants find shelter in urban slums or do not find shelter at all. Employment, shelter and accessibility to basic services for the growing urban poor populations, those who lived in informal settlements and those who are homeless, are critical issues yet to be fully addressed by policy-makers in Bangladesh. Studies in Dhaka city have found an increase in the number and proportion of people living on the streets and in urban public places due to the increasing pressures of internal immigration and rapid urbanisation. The floating population of street dwellers consists of thousands of people with no fixed dwelling in the major towns and cities of Bangladesh. They are likely to be amongst the most deprived in urban areas in terms of basic facilities and health indicators. In Bangladesh while a few non-government organisations are providing health related services for the urban homeless, there is no comprehensive programme and little coordination of activities between agencies to address health needs. Street dwellers report extremely high levels of illness and disease. Access to maternal health care and family planning is poor and most street dwellers are not aware of the government services available to them and do not use any health care facilities. 83% of the female street dwellers have been assaulted by their husbands and/or by other men while they were staying in the street and more than nine in ten street males have used some kind of drugs during the previous year. Homeless women are far less in number than men but the difficulties they face in meeting sanitation and shelter needs are severe, because the facilities simply do not exist for them (Right Vision News, 8th April 2010).
91. Urban slums have the worst performance regarding women's and children's well-being and access to basic services compared to rural and non-slum urban areas. The results of

the 2009 Multiple Indicator Cluster Survey showed that urban slums were generally worse off than most of the low performing rural areas (United Nations International Children's Emergency Fund Report, 23rd June 2010).

92. The intense process of urbanisation has led to a rapid increase in absolute terms of the poor population in urban areas, especially in urban slums. Problems of people living in poverty in urban areas, including their lack of access to water and sanitation, have received limited attention. There are slums where raw sewage runs through the streets. The people who live there have no legal access to water which means that they pay ten to twenty times more for it and in some cases they have to walk great distances to collect water. The lack of access to safe drinking water and sanitation in slums is directly related to the lack of secure tenure of slum dwellers (OHCHR, 22nd July 2010).
93. Inhabitants of fast expanding slums in the urban areas are exposed to various preventable diseases and threat of premature death due to lack of safe drinking water, sanitation and health care facilities. Of the total population 30% live in urban areas, and if the current trend continues the figure will be 40% by 2020. Of the total urban population, 35% live in slums where basic health facilities are missing. According to the Bangladesh Urban Health Survey Study 27% of women and 35% men were under-nourished in slums, while the number was 30% and 90% respectively in non-slum areas. Skilled care delivery is significantly high, around 36% in urban non-slum areas while it is only 11% in slums (Right Vision News, 8th April 2010).
94. A report from the Journal of Health Population and Nutrition, dated 1st August 2009, says that a 1997 study found that 47% of the homeless in Dhaka lived on footpaths, 23% in the city's transport stations and 12% in front of major market centres.
95. For the estimated 28% of the city's poor, earning a living sufficient to meet the basic needs for themselves, and their families is a continual struggle. Low wages, under-employment, unemployment and low skills levels are all challenges faced by the poor in the labour market. Many migrants coming to Dhaka ended up in slums where living conditions are particularly grim. Despite these conditions Dhaka is regarded as a city of opportunity for many. Migrants flock to the city in search of jobs and better lives. The appeal of the capital city is strong with prospects for employment in a range of sectors, particularly services and industry. The labour market is dynamic, with entrepreneurs arriving every day hoping to carve out a decent living for themselves and their families. In spite of the negative factors, migrants do not express a desire to go back to their villages in most surveys. In fact, evidence shows that on average after migration monthly household expenditure of migrant households increases by 40%. This substantial increase in earnings seemed to compensate for most of the drawbacks of life in Dhaka. As long as job prospects in cities looked promising to the rural poor, many of those who can will continue to migrate (World Bank, June 2007).
96. The background material shows that there are opportunities of employment for women in the garment trade. The US State Department Report of 2009 noted that employment opportunities increased at a greater rate for women than for men in the last decade, largely due to the growth of the export garment industry. Women constituted

approximately 80% of garment factory workers. There were some disparities in pay in the overall economy between men and women but in the garment sector they were roughly comparable.

97. According to the author of an article in the New York Times, by giving women an independent source of livelihood Bangladesh's garment industry had changed the conservative Muslim country's society in immeasurable ways. The government was struggling to improve the quality of hard infrastructure, such as highways, ports and electricity and soft infrastructure such as schools, courts and basic governance, but private forces unleashed by nascent economic reforms and globalisation were changing the society and the economy. More than 80% of the 3 million people who worked in the industry were women. Mr Ahmed Mushfiq Mobarak, an economist at the Yale School of Management who had conducted research found that girls who lived in villages with garment factories tended to marry later and have children later than girls who grow up in villages without factories. Though wages in Bangladesh's garment industry were among the lowest in the world hundreds of thousands of women flocked to Dhaka and other garment hubs in Bangladesh every year because factories paid more than the women could earn in villages (The New York Times, 21st July 2010).
98. The author of the report in the New York Times gave the example of a woman worker in Dhaka who was single and lived with three other girls in a two bedroom apartment. She sent home 3,000 taka every couple of months to help support her parents. She said she wanted to wait for two or three years before she got married and had children because she wanted to save up some money first. Although it may have been the case that in 1992 a Bangladeshi anthropologist said that from a cultural point of view ideally unmarried women should remain at home under male protection and control until they were able to marry, the position in 2010 seems to be different.
99. Research by Professor Kathryn Ward of Southern Illinois University Carbondale found that garment workers and some groups of sex-workers, those based in hotels or houses, rather than in brothels or on the streets, had more control over the circumstances of their lives than other Bangladeshi women did. They usually had more education. They had more income. Garment workers made about twice what maids did and sex workers made five or six times what garment workers did. Garment workers had better access to health care and education for their children. They were more independent and more mobile, able to go out by themselves in society. Garment workers (though not sex-workers) were less likely to be abused by husbands or in-laws and they took a more equal part in household decisions. They were, to use a buzz word, more empowered. Despite its shortcomings factory work allowed Bangladeshi women to make inroads into the mainstream of society in a country where women were often secluded in the household (Marilyn Davis, "Made in Bangladesh" 2005).
100. It is apparent from the article by Marylin Davies that micro-credit, advertised as a solution to the problem of women's poverty in the Third World, enabling poor women to borrow money to start their own businesses, has become readily available in Bangladesh. Moreover, according to the BD News 24 report, dated 23rd June 2010, the government has decided to reintroduce five-year family savings certificates to make

women financially self-reliant project is mainly geared towards destitute, widowed and divorced women though economically well-off women would also be allowed to buy the certificates.

101. Dr Siddiqi was asked the question whether the appellant would be able to provide for herself, her son and her daughter. It is clear that a more appropriate question would have been whether the appellant would be able to provide for herself and her son. Her view was that secure and decent employment was a difficult prospect for anyone without pre-existing system social economic protection as in the city. We note that she did not use the word "impossible". Secondly employment prospects were much more limited for women than for men because of gender norms and institutionalised discrimination. While it was true that employment rates increased at a greater rate for women rather than men in the last decade, this growth was concentrated in the garment export industry where over his 70% of the work force was female. She said the appellant would be over qualified for most garment work and even if she were able to get a job at a supervisor level she would barely earn enough to support herself and her two children without a steep fall in her standard of living. Bangladeshi garment workers were the lowest paid in the world and most had difficulty in meeting the basic needs on their monthly income. Most garment workers lived in the many slums and squatter settlements scattered across Dhaka. She said that the World Bank noted that secure shelter was a major challenge for Dhaka's earning poor, most of whom ended up in illegal settlements on precarious land. The appellant's profile, single, divorced, with a child of out wedlock and disowned by her father, would work against her in obtaining any decent housing even if she could afford it. Most landlords, drawing on long-standing assumptions about single women's lax sexuality, refused to rent to women who did not have male guardians even when money was not at issue.
102. In relation to the question whether returning the appellant to Bangladesh will result in a real risk of persecution and/or infringement of her rights under article 3 of the ECHR the question, of course, is not whether a woman might have to take employment for which she was over qualified or whether she would barely earn enough to support herself and her child without a steep fall in her standard of living.
103. In her report in answer to the ninth question posed, namely what were the typical backgrounds of women who lived in shelters, Ms Goswami said that very poor women were given priority in shelter homes in Bangladesh. She said in an emergency middle class women might also live in the shelter homes for a short period. The tenth question was whether the appellant's background (i.e. she was from a middle class family, she was educated and lived in the United Kingdom since 2002) would prevent her from being given accommodation by NGOs in Dhaka. Ms Goswami said that these conditions would not entitle her to accommodation in NGO shelters in Dhaka unless she was in a much direr situation. If the appellant would be entitled to accommodation in a NGO shelter if she were in a dire situation, it could hardly be said that returning her to Bangladesh would amount to a breach of her rights under article 3 of the ECHR. In answer to the eleventh question is to what kind of financial support would be available to the appellant and her children Ms Goswami said that Bangladesh did not provide quality free education and health care services nor did it provide any kind of welfare

support for women in the appellant's position. She did indicate, however, that some minimal financial support might be available for women who were completely destitute. This suggests that she was making a comparison between what would be available for the appellant in the United Kingdom if she was otherwise without support with what would be available for her in Bangladesh in similar circumstances. That is not a proper comparison, see Januzi v Secretary of State for the Home Department & Ors [2006] UKHL 5 and Secretary of State for the Home Department v AH (Sudan) & Ors [2007] UKHL 49 in connection with the issue of the reasonableness of internal relocation. Dr Siddiqi's evidence suffered from the same fault. In answer to the first question she said that without her family and social connections it would be extremely difficult for the appellant to find appropriate employment, housing and a proper school for her child. That that might well be the case but the real issue is whether of the appellant would be unable to obtain any employment, housing or education for her child so that she would be in a situation which would fall so far below acceptable standards that it would amount to persecution or a breach of her rights under article 3 of the ECHR.

104. The OHCHR report, dated 22 July 2010, said that certain programmes such as cash and assets transfers and micro-credit specifically targeted women. Other programmes directed at women included the Allowances Programme for widowed, deserted and destitute women and the Vulnerable Group Development programme for "ultra-poor" women, which had relatively limited coverage, reaching 920,000 and 80,000 women respectively. The level of transfers under the latter programme was TK 400 per month over two years, which was significantly more than the usual level of benefits.
105. The report in Right Vision News dated 23rd of January 2010 mentioned that most street dwellers were not aware of the government services available to them and did not use any health care facilities. This suggests that government services and health care facilities are available, even if to a limited extent.
106. In relation to the question of discrimination against children born out of wedlock Dr Siddiqi said that it was widespread and such discrimination was institutionalised. She said, by way of example, that orphanages run by the Department of Social Services barred children who could not produce a father's name, which many illegitimate children could not do. In this particular case it is apparent that the name of the appellant's son's father does appear on his birth certificate. She said until recently children of sex workers were not allowed to enrol in public schools because they could not produce their father's name. In our view the fact that that was done until recently does demonstrate a change in attitude. If it is the case that now children of sex workers can enrolled in public schools without producing their father's name, it is very likely that the child of a woman in the appellant's position, having a birth certificate naming the father, would be able to do so as well.
107. Dr Siddiqi also said that the appellant would be perceived as "sexually suspect and available" and therefore would have to contend with the kind of sexual harassment faced by women perceived to be morally lax. On her account women's heightened mobility and visibility had challenged culturally dominated ideals of the male as breadwinner, producing a backlash in the form of increased sexual harassment and

public violence. She said that according to the human rights organisation Odhikar 450 women and girls were raped in 2009. The Odhikar report dated 1 July 2010, dealing with the period from January to June 2010, said that it had been reported that a total of 291 females were raped, of which 124 were adults and 167 were children. A strong cultural presumption which worked to legitimate harassment was that unescorted women who appeared in public spaces, especially after dark, were socially and sexually suspect. In recent years the sexual stalking of working women and college and school-going girls, in both rural and urban areas had become an acute problem. According to the Right Vision News report, dated 23rd January 2010 83% of the female street dwellers had been assaulted by their husbands and/or by other men while they were staying in the street.

108. It goes without saying that a single woman with an illegitimate child who would be returning to Bangladesh without family support would not be going into a domestic situation and therefore would not run the risk of domestic violence. Although the incidence of sexual harassment and violence against women in the street are extremely reprehensible, nevertheless we take the view that in the light of the population of Bangladesh as a whole, namely 130.5 million and the population of Dhaka, in particular, namely 9.7 million, it cannot be said that the appellant would run a real risk of being subjected to such harassment and/or violence on return to Bangladesh.
109. We have had regard to the evidence as a whole and the submissions made on behalf of the parties. We take the view that the divorced mother of an illegitimate child without family support on return to Bangladesh would be likely to have to endure a significant degree of hardship. We take the view, however, that she may well be able to obtain employment in the garment trade and obtain some sort of accommodation, albeit of a low standard. Some degree of rudimentary state aid would be available to her and she would be able to enrol her child in a state school. If in need of urgent assistance she would be able to seek temporary accommodation in a woman's shelter. We are not satisfied that the conditions which she would have to endure in re-establishing herself in Bangladesh would amount to persecution or a breach of her rights under article 3 of the ECHR. Each case, however, must be decided its own facts having regard to the particular circumstances and disabilities, if any of the woman and her child concerned.

Country guidance conclusions

110. Our conclusions on the country situation in Bangladesh may be summarised as follows:
- (a) There is a high level of domestic violence in Bangladesh. Despite the efforts of the government to improve the situation, due to the disinclination of the police to act upon complaints, women subjected to domestic violence may not be able to obtain an effective measure of state protection by reason of the fact that they are women and may be able to show a risk of serious harm for a Refugee Convention reason. Each case, however, must be determined on its own facts.
- (b) Under Muslim law, as applicable in Bangladesh, the mother, or in her absence her own family members, has the right to custody of an illegitimate child.

(c) In custody and contact disputes the decisions of the superior courts in Bangladesh indicate a fairly consistent trend to invoke the principle of the welfare of the child as an overriding factor, permitting departure from the applicable personal law but a mother may be disqualified from custody or contact by established allegations of immorality.

(d) The mother of an illegitimate child may face social prejudice and discrimination if her circumstances and the fact of her having had an illegitimate child become known but she is not likely to be at a real risk of physical harm in urban centres by reason of that fact alone.

(e) The divorced mother of an illegitimate child without family support on return to Bangladesh would be likely to have to endure a significant degree of hardship but she may well be able to obtain employment in the garment trade and obtain some sort of accommodation, albeit of a low standard. Some degree of rudimentary state aid would be available to her and she would be able to enrol her child in a state school. If in need of urgent assistance she would be able to seek temporary accommodation in a woman's shelter. The conditions which she would have to endure in re-establishing herself in Bangladesh would not as a general matter amount to persecution or a breach of her rights under article 3 of the ECHR. Each case, however, must be decided its own facts having regard to the particular circumstances and disabilities, if any of the woman and the child concerned. Of course if such a woman were fleeing persecution in her own home area the test for internal relocation would be that of undue harshness and not a breach of her article 3 rights.

The position of the appellant

111. Applying those general conclusions to the situation of this particular appellant, we must begin with an assessment of the credibility of the appellant. We note the finding of the immigration judge as set out in paragraph 11 of her determination as follows:

“...Having heard the evidence of the appellant and having considered the birth certificates of the appellant's children... and the contact order of the Epsom County Court produced a hearing today, I am able to accept the appellant's account of the incidents which I find credible.”

112. Clearly the immigration judge accepted and found credible the appellant's account of her marriage and the incidents leading up to her separation from her husband and indeed the birth of her son. Since that hearing, however, some further evidence has come to light which in our view casts something of a shadow on the appellant's credibility. This is the evidence of the appellant regarding the divorce of her parents. The appellant has made two written statements in the course of these proceedings, the first dated 1 September 2009 and the second dated 21 September 2010 and yet in neither of these documents has the appellant made mention of the fact that her parents had separated and divorced. As recently as in her latest statement she said that when she returned to Bangladesh in August 2007, she stayed in her family home, where she told her father and mother about her problems with her husband. Furthermore the appellant was not truthful at interview when asked about where the family lived. The interview

took place in June 2009 and, when asked where her parents lived at question 4 of the interview, she gave one address of namely 284 Elephant Road. Furthermore when asked at question 45 whom she lived with in Bangladesh, the appellant replied "My parents". When asked at question 50 whom she had stayed with when she returned to Bangladesh in 2007, again the appellant replied "My parents". She told us in oral evidence, however, that her parents had separated in 2001 and had divorced in late 2001. When asked to explain why she had had not been candid about her parents' situation the appellant said that she was shy and this prevented her saying so. She also said she was embarrassed because her parents had now children the same age as her daughter. She disclosed the information to the Tribunal after having been advised by her representative that she needed to be candid with the Tribunal.

113. We do not find the appellant's explanation for this to be credible. This is a lady who has been educated to tertiary education level. She did not appear to us to have been particularly shy in terms of reporting her matrimonial problems to the police nor did she appear particularly shy in giving her evidence to us. This appellant struck us as a lady who was prepared to stand up for what she wanted. She has actively pursued Family Court proceedings to gain access to her daughter and she has pursued appeals firstly against the refusal of entry clearance as a student and also against the cancellation of her entry clearance, both in the event unsuccessful. She must have been aware from the questions that were asked of her and the case she put forward in claiming asylum that the circumstances of her parents in Bangladesh were particularly pertinent to the question of whether or not she could return there. We have no doubt that she was aware of the relevance of her parents' situation and we do not accept that she was too shy to mention their divorce. The appellant also said that she was embarrassed by the fact that her parents had young children the same age as her daughter. This may be the case but we do not accept that any such embarrassment was the cause of the failure to mention her parents' divorce to the Tribunal. The appellant has been fairly forthcoming with details of her marital problems, details which are no doubt equally embarrassing to her. However she has been able to give a lucid and articulate evidence of these problems and we do not believe that any embarrassment regarding her parents' situation would have been such as to prevent her giving evidence to the Tribunal of it. Although we accept that her parents are divorced we take the view that it is much more likely that the appellant did not disclose the situation of her parents to the Tribunal because she wished to conceal the true circumstances of her family in Bangladesh and that her parents' divorce was something which had not created problems for them, rather than because she was embarrassed about it.

114. We also have some concerns regarding the appellant's oral evidence of her recent contacts with her mother. She said that she had telephoned her mother on Eid recently and she had had one further call beforehand, but she found her mother did not seem interested in talking. Until this time the appellant has always stated that she has had no contact with her parents since she told them about the birth of her son. She was asked whether her mother would help her if she were to return to Bangladesh and she replied that she did not think so as her mother's partner would not allow it. She said that the partner would not want his wife's divorced daughter becoming a burden upon them.

115. When cross-examined about the reasons why her mother would not help her, she also said that her mother feared her father might not give her the due share of the profits from the business and also because her mother's current partner's position had to be taken into account. She said that she did not think he would accept her and that she had no relationship with him. She also added that her mother was having problems with her partner, who also had another wife and four children. She added that she did not know the reasons for their problem but she found out from an old school friend that they argued a lot. When asked about the school friend the appellant said that she had had no contact with her for the last five years but she had telephoned her to send Eid greetings and it was then that her friend had told her. She confirmed that this was the first time she had spoken with her friend in five years and, when asked, she said that she did not tell her friend anything about her illegitimate child. She had told her that she had a daughter and was married but she had not told her about her son. She denied having seen this friend when she returned to Bangladesh in 2007.
116. We do not find it credible that the appellant would have telephoned a friend in Bangladesh out of the blue in order to send Eid greetings, and, even if she did, it is highly unlikely that the conversation would have turned to discussing the appellant's mother's marital problems when the appellant had not seen this friend for five years, had not made contact with her in 2007 when she returned to Bangladesh, and had not in that telephone conversation even told her friend about the birth of her own son.
117. It seems to us that the appellant's evidence of her mother having her own recent marital problems is unreliable and that the appellant has not been truthful about the telephone conversation with her friend in Bangladesh which has been put forward to explain how she would have such knowledge, given that her evidence had been that she had had no contact with her mother since she told her father of the birth of her son in April 2009, other than telephone calls when her mother did not appear interested in talking.
118. We also find the appellant's evidence somewhat inconsistent regarding when and how her parents found out about her son. At question 61 of her interview the appellant was asked what happened when her parents found out about her son. In response she said "They came to know about my pregnancy after the birth of my son. When I told them I was pregnant they told me not to go back to them". She was then asked in the next question when she told them and her reply was "last year maybe July or August". She was asked how she had told them and she replied "By phone. That was the last time I spoke to them". As her interview occurred on 6 May 2009, the appellant's answer would therefore place the last conversation which she had with her parents as having occurred in July or August 2008. Her son was born on 2 April 2009.
119. We find this evidence not to be entirely consistent. It is clear that at question 71, the appellant stated that her parents came to know about her pregnancy after the birth of her son; however if she spoke to them in July or August 2008 she could have been only barely pregnant with him at the time. Furthermore, we note that earlier in the interview at question 8, when asked when she last spoke to her parents, she replied that it was more than a year, and when asked to remember the date, she replied that it was around March or February 2008.

120. There is now an increasing number of divorced women from the middle classes in urban centres so that the appellant would not be unique as a divorced woman. We take the view that the appellant does not come from a particularly strict family so far as the question of divorce and new relationships is concerned. The appellant, herself, rather surprisingly has been prepared to embark upon a relationship outside marriage as a result of which she conceived a child. It is significant that she was divorced from her husband when the child was conceived so that there is no question of her having committed adultery. In all the circumstances we do not believe that her father has disowned her or she would lack the support of her parents if she were to be returned to Bangladesh.
121. Under Muslim law, which is the appellant's personal law, she would have the right to custody of her illegitimate child. Ms Hossain discounted any risk of serious harm to the appellant from her own family or other persons. Dr Siddiqi also at discounted any such risk on the grounds that her family might simply want to maintain a social distance from her. So that even if we were wrong in our conclusions about the availability of support from her father and mother we would not be satisfied that the appellant would be at a real risk of serious harm at their hands. We also take the view that since the appellant is now divorced from her husband, he has custody of their child and there is no evidence of him making threats or seeking to harm her in the United Kingdom since their separation, there is no basis for thinking that the appellant would be at a real risk of serious harm at the hands of her former husband's family, even if they were to become aware of her return to Bangladesh.
122. As pointed out earlier, in relation to the appellant's son, the appellant could truthfully say that she was separated from the child's father in the United Kingdom and there would be no reason why anyone should discover that he was illegitimate. His father's name appears on his birth certificate. In our view it is unlikely that the child's illegitimacy would be discovered and this would make it more likely that the appellant's parents would be prepared to assist her. By the same token she would avoid the general social discrimination shown towards women with illegitimate children in Bangladesh.
123. The worst case scenario for the appellant would be to be returned without the support of her parents. We do not underestimate the difficulties which this would present to a young woman from a middle-class background. The purpose of the Refugee Convention and that of the ECHR, however, is not to assist persons to live at the economic level to which they have become accustomed. As pointed out earlier, the real issue is whether the appellant would be unable to obtain any employment, housing or education for her child, so that she would be in a situation which would fall so far below acceptable standards that it would amount to persecution or a breach of her rights under article 3 of the ECHR. At the hearing the appellant demonstrated her ability in English, which would give her an advantage in the employment market in Bangladesh. We think that at the very least she would be likely to be able to obtain employment in the garment trade, and obtain some sort of accommodation, albeit of a low standard. Some degree of rudimentary state aid would be available to her and she would be able to enrol her child in a state school. In the second of her Annexes Ms Goswami set out two shelters for which she said that the appellant and her son satisfied the criteria, the Ain o Salish

Kendra and the SSP, in the latter of which a prolonged would be possible. In addition we note that the shelter provided by the Bangladesh National Women Lawyers Association (BNWLA) is said to be for any destitute children and women, notwithstanding that the criteria for staying are said to be specifically for trafficking victims and other special cases. If in need of urgent assistance the appellant and her son would be able to seek accommodation in a woman's shelter. We are not satisfied that the conditions which the appellant would have to endure in re-establishing herself in Bangladesh would amount to persecution or a breach of her rights under article 3 of the ECHR.

124. There remains the question of whether the appellant's return to Bangladesh would amount to a disproportionate interference with her right to respect for her private and family life under article 8 of the ECHR. In paragraph 7 of his opinion in EB (Kosovo) v Secretary of State for the Home Department [2008] UKHL 41 Lord Bingham said:

"In R (Razgar) v Secretary of State for the Home Department [2004] UKHL 27, [2004] 2 AC 368, para 17, the House summarised, in terms to which all members of the committee assented and which are not understood to be controversial, the questions to be asked by an adjudicator hearing an appeal against removal on article 8 grounds. It said:

"In a case where removal is resisted in reliance on article 8, these questions are likely to be: (1) will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life? (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8? (3) If so, is such interference in accordance with the law? (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others? (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?"

In practice the fourth and fifth questions are usually, and unobjectionably, taken together, but as expressed they reflect the approach of the Strasbourg court which is (see Boultif v Switzerland (2001) 33 EHRR 50, para 46; Mokrani v France (2005) 40 EHRR 5, para 27; Sezen v Netherlands (2006) 43 EHRR 621, para 41) that

"decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued."

He went on to quote from the decision of the House of Lords in Huang v Secretary of State for the Home Department [2007] UKHL 11 and in paragraph 12 said:

"Thus the appellate immigration authority must make its own judgment and that judgment will be strongly influenced by the particular facts and circumstances of the particular case. The authority will, of course, take note of factors which have, or have not, weighed with the Strasbourg court. It will, for example, recognise that it will rarely be proportionate to uphold an order for removal of a spouse if there is a

close and genuine bond with the other spouse and that spouse cannot reasonably be expected to follow the removed spouse to the country of removal, or if the effect of the order is to sever a genuine and subsisting relationship between parent and child. But cases will not ordinarily raise such stark choices, and there is in general no alternative to making a careful and informed evaluation of the facts of the particular case. The search for a hard-edged or bright-line rule to be applied to the generality of cases is incompatible with the difficult evaluative exercise which article 8 requires”.

125. We bear these considerations in mind in reaching our decision. It goes without saying that the decision of the House of Lords in Beoku-Betts v Secretary of State for the Home Department [2008] UKHL 39 obliges us to consider the article 8 rights of each and all of the family members, which in this case particularly involve those of Z. We note that the appellant has been in the United Kingdom for more than 8 years. Her daughter, who was born in the United Kingdom, on 18 June 2005, is now more than five and a half years of age. She is in the custody of the appellant’s former husband and has leave to remain in the United Kingdom with him until 10 August 2011. Therefore it would be impossible for her to return with the appellant. The appellant has contact with the child every weekend from Friday after school to 10 am on Sunday morning. We observe that in her latest witness statement the appellant said that Z had been diagnosed with Global Developmental Delay and a communication disorder. This has been confirmed by a report which had been included in the Supplementary Bundle. It is plain in our view that the appellant has established private and family life in the United Kingdom in circumstances where her removal would interfere with her right to respect for it with consequences of such gravity as to potentially engage the operation of article 8. Her removal would be in accordance with the law.
126. We take the issues of whether it would be necessary and proportionate together. In LD (Article 8 – best interests of child) Zimbabwe [2010] UKUT 278 (IAC) the Tribunal said that family life consisted in the inter-dependent bonds between spouses and stable partners and between parents and children with particular strength being placed upon the interests and welfare of minor children. In this case it is clearly in the child’s best interests to have close contact and regular contact with her mother, particularly since the normal situation of a child so young being with its mother does not obtain. In LD the Tribunal said that it was not normal for family life to be enjoyed by correspondence and occasional visits (even assuming that there were no obstacles to such visits following the immigration decision).
127. In paragraph 46 of his judgment in the recent decision of the Supreme Court in ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4 Lord Kerr said:

“It is a universal theme of the various international and domestic instruments to which Lady Hale has referred that, in reaching decisions that will affect a child, a primacy of importance must be accorded to his or her best interests. This is not, it is agreed, a factor of limitless importance in the sense that it will prevail over all other considerations. It is a factor, however, that must rank higher than any other. It is not merely one consideration that weighs in the balance alongside other competing factors. Where the best interests of the child clearly favour a certain course, that course should

be followed unless countervailing reasons of considerable force displace them. It is not necessary to express this in terms of a presumption but the primacy of this consideration needs to be made clear in emphatic terms. What is determined to be in a child's best interests should customarily dictate the outcome of cases such as the present, therefore, and it will require considerations of substantial moment to permit a different result."

128. The legitimate aim here in favour of removal is the public interest in preserving the economic well-being of the country by controlling immigration. It is the case, however, that appellant would have a right under the paragraph 246 of HC 395, as amended, to seek entry clearance to the United Kingdom for the purpose of exercising rights of access to her daughter. There is no reason to believe that she would be unsuccessful in such an application. In Chikwamba v Secretary of State for the Home Department [2008] UKHL 40 Lord Brown said that it was only comparatively rarely, certainly in family cases involving children, that an article 8 appeal should be dismissed on the basis that it would be proportionate and more appropriate for the appellant to apply for leave from abroad.
129. In these circumstances we take the view that to remove the appellant from the United Kingdom at the present time would amount to a disproportionate interference with her right to respect for her private and family life under article 8 of the ECHR. It will be a matter for the respondent to determine the length of leave which should follow this finding. We would expect it to be coterminous with that of Z.
130. Accordingly, for the reasons which we have given, we set aside the determination of the appeal by the immigration judge. We remake the decision by dismissing the appeal on asylum, humanitarian protection and human rights grounds under article 3 of the ECHR but we allow the appeal on human rights grounds under article 8 of the ECHR.

Signed

Date

Senior Immigration Judge Spencer
Judge of the Upper Tribunal

Annex A

The report of Ms Hossain

1. The form of Ms Hossain's report involved a summary of the facts taken from the documents with which she had been supplied followed by her opinion in answer to a number of questions which she had been invited to answer by the appellant's representatives.
2. The first question was whether, assuming the appellant, her ex-husband and their daughter returned to Bangladesh, it was likely that the appellant would be denied custody of or contact with her daughter. It is not necessary to deal with her opinion at length as it is not relevant to the issues which we have to decide save to say that she said that rather than attempting to enforce the judgment of the County Court in England in Bangladesh it would be more likely that the appellant's husband would take legal action to establish his guardianship or custody of the child and for the appellant to claim custody or contact with the child by starting proceedings before the Family Court in Bangladesh, with the order of the United Kingdom court being adduced in evidence.
3. The second question was whether, as the appellant and the father of her son were no longer in a relationship, the appellant could lose the right to full custody of her illegitimate son to her husband's family if they were returned to Bangladesh. Ms Hossain's opinion was that under Muslim law as applicable in Bangladesh the mother, or in her absence her relations, had the right to custody of an illegitimate child. While there was no reported Bangladesh judgment on this issue, the Supreme Court of India had affirmed that under Muslim law a mother would have custody of an illegitimate child in the case of Gohar Begum v Suggi alias Nazma [1960] AIR SC 93, Manupatra Manu/SC/0026/1959.
4. The third question was whether, if the appellant was denied custody of or contact with either of her children she could pursue a legal remedy in Bangladesh and whether it would be difficult for her to pursue a legal remedy if she did not have the necessary finances to pay a lawyer/court fees. She was also asked whether she was likely to have a fair hearing. The answer to this question is of only indirect relevance to the appeal but it is helpful to consider her evidence as it casts light on the position of women in Bangladesh. Ms Hossain's opinion was that there were three ways in which the appellant could pursue a legal remedy. First she could make an application before the Family Court under the Family Courts Act 1985 read with the Guardians and Wards Act of 1890. Secondly she could make an application before the High Court Division of the Supreme Court of Bangladesh under either Article 102 of the Constitution or Section 491 of the Code of Criminal Procedure of 1898. Thirdly she could or lodge a First Information Report (FIR) with the police or make a complaint before a magistrate.
5. She went on to say that the Family Courts in Bangladesh had exclusive jurisdiction to settle disputes regarding, inter alia, guardianship and custody and a Family Court might make orders for guardianship or custody of a minor child applying the provisions of the Guardians and Wards Act read together with the personal law of the parties. She said that the court might consider the provisions of the applicable or personal law, Muslim law in this case, given that both parties and the children in question were Muslim. She said that under the Hanafi school of Muslim law, which would apply, as it did to the majority of the Sunni Muslims of Bangladesh, the father, if alive, was considered to be the natural and legal guardian of the person and property of his minor child while the mother was entitled to the custody (*hizanat*) of her male child until he had completed the age of 7 years and for a female child until she had attained puberty, unless she was otherwise disqualified. If the mother was unable, being disqualified for any reason, or willing to take custody of the child, the maternal relatives would take custody and only then the father or paternal relatives.

6. Under Muslim law a mother who was otherwise entitled to the custody of her child would lose the right to such custody on among other things the following grounds:
- (1) if she married a person not related to the child within the prohibited degrees e.g. a stranger, but the right revived on the dissolution of the marriage by death or divorce;
 - (2) if she went and resided, during the subsistence of the marriage, at a distance from the father's place of residence;
 - (3) if she was leading an immoral life, as where she was a prostitute; or
 - (4) if she neglected to take proper care of the child."
7. She said that one commentator, Fyzee, made it clear that loss of custody did not necessarily follow merely because the wife was divorced or separated. Further, Syed Ameer Ali noted that the right to *hizanat* belonged to the mother "*qua mother and nothing can take it away from her except her own misconduct*". He also stated that not all cases of misconduct necessarily destroyed the right to *hizanat* and that the question was whether such misconduct was "*detrimental to the child*" i.e. "*is it likely to injure the child?*", with such injury being physical or moral and finally that "*unchastity ... disqualifies [the woman] from exercising the right of hizanat*".
8. Ms Hossain said that other commentators took the view that a mother lost her right to the custody of her child where immoral character and conduct was proved against her, taking evidence of adultery or 'unchastity' as proof of 'immorality'. She quoted from a work entitled "The Guardians and Wards and Majority Act" by Shaukat Mahmood and Nadeem Shaukat, published in Lahore in 2006, to the effect that where the mother was leading an immoral life or living in open adultery she should not be appointed guardian of her minor son. This was so even where the immorality was proved from indirect evidence. The mere fact, however, that a mother gave birth to an illegitimate child two years after the death of her husband was not sufficient reason for not appointing her guardian of her son's person and property. Even if the child had been taken out of her custody because she was leading an irregular life, she did not permanently forfeit all her natural rights to the custody of the child.
9. Ms Hossain went on to say that a review of reported decisions of the superior courts in Bangladesh on custody matters indicated a fairly consistent trend to invoke the principle of welfare as an overriding factor, permitting departure from the applicable personal law. She quoted from one of the leading cases of the highest court in Bangladesh, namely the Appellate Division of the Supreme Court of Bangladesh, where custody was granted to the divorced mother of a severely ill 8 year old boy whom she had looked after for years and who had expressed a preference for living with her, Md. Abu Baker Siddique v SMA Bakar 38 DLR (AD) (1986) 107. One of the passages from that decision which she quoted made it clear that although according to the Hanafi school the father was entitled to *hizanat* or custody of a son over 7 years of age this rule did not have any claim to immutability such that it could not be departed from even if circumstances justified such a departure. This means that on proof of the unfitness of the father to the custody of such a child, courts were seen to exercise discretion against this entitlement according to the Hanafi rule.
10. She also quoted the decision in the case of Abdul Jalil v Sharon Laily Begum Jalil (no reference given) where the same court said it was settled that the term 'welfare' must be read in the largest possible sense as meaning that every circumstance must be taken into consideration and the court must do what under the circumstances a wise parent acting for the true interests of the child would or ought to do. The moral and religious welfare of the child must be considered as well as its well-being and ties of affection could not be disregarded. Ms Hossain said that taking this approach the courts had awarded custody to a mother against whom allegations of immorality had been levelled, although not made out, but had observed that the situation might be reviewed if the mother remarried or was otherwise

disqualified. She said recent decisions held the fact of remarriage would simply take away the mother's preferential right to *hizanat* but not remove her right to custody altogether and that the ultimate decision regarding custody would be determined on overall consideration of the welfare principle. She said that applying the same welfare criterion the courts had denied custody to a divorced mother citing her 'past conduct' among others, particularly where she had not been looking after the child continuously. In one case the court referred both to the mother's remarriage and her evidence that she had not in fact taken care of the child, which had been in the custody and care of the father for some time. In another case the court denied custody to a mother on finding that the children in question had been settled with their father for over a year. In yet another the court referring to the mother's character, conduct and way of life on which her own mother and brother had deposed her, noting in particular her failure to take care of the child.

11. Ms Hossain pointed to the fact that there was no similar disqualification regarding fathers remarrying and becoming thereby unfit for the guardianship of the child. Nonetheless she said that superior courts in both Bangladesh and Pakistan in awarding custody of a child to a mother had taken into account the factor of the father having remarried, particularly where the mother herself had not remarried and could otherwise prove that the welfare of the child lay in her care and there was nothing on record to establish that she had failed to look after her son.
12. Ms Hossain went on to say there was little information or data available on decisions in the trial courts for custody disputes, that was to say the Family Courts. She said one of the few commentaries available which reviewed selected trial courts judgments on custody, that by Taslima Monsoor, noted:

"The judiciary in Bangladesh is not giving enlightened judgments on guardianship. They are mainly following the conservative line of interpretation of not recognising a woman as the natural guardian of her children. But the cases on custody in Bangladesh protect women more, as they exhibit the mother's right to custody of young children as almost an absolute right. Enlightened pronouncements in the cases of custody of young children have encouraged mothers to claim custody beyond the conventional limitations relying on arguments about the welfare of the child."

13. Ms Hossain went on to mention another quotation from a statement by Taslima Monsoor:

"... the situation seems favourable in the lower courts as reflected in four unreported custody cases collected from the Family Courts of Dhaka city. A mother is usually given custody of the child during his or her infancy or tender age in accordance with the Muslim law. Moreover in the lower court i.e. the Family Court, there is a case where the mother is also given custody of minors even above their tender years. This seems to reflect a sensitisation of the judiciary to give greater rights to women."

14. It is unnecessary to deal with what Ms Hossain said about applications to the High Court or FIRs alleging kidnapping or abduction
15. Ms Hossain dealt with the question of the difficulty pursuing legal remedies and in the absence of funds. She said the actual cost of pursuing remedies before the Family Court or High Court would not be particularly high, but these varied greatly and would be quite extensive if the proceedings were protracted, as they were likely to be. She said that the National Legal Services Organisation (NLSO) a statutory body established pursuant to the Legal Aid Services Act 2000, and its District Legal Aid Committees (DLAC) had powers and functions including establishing guidelines for determining the eligibility for legal aid for persons who were "economically disadvantaged or destitute" and to consider applications for legal assistance in civil and criminal matters and to undertake ADR or provide legal representation at every tier of the court system. She said that this government scheme, however, was still very much in its infancy and there were concerns regarding the extent to which it was able to effectively provide legal aid and the quality of the service provision. She

said she had not been able to access any information about the extent, if any, to which it had provided legal aid for custody matters before the Family Courts.

16. She said that in the absence of effective state legal aid services several NGOs provided legal services to women in Dhaka such as ASK, the Bangladesh Legal Aid and Services Trust and the Bangladesh National Women Lawyers Association. She said women's organisations also provided additional legal advice, or made referrals, such as the Bangladesh Mohila Porishod (Bangladesh Women's Council) or Naripokkho (For Women). She said that while all such organisations had assisted women in relation to custody matters, their ability to sustain such support over a protracted period, and to ensure consistent and effective legal advice and representation, was a real concern, particularly where the individual concerned had no family or other social support of their own and no means. Her opinion was that the absence of legal aid, combined with the absence of any social security, and the limited scope for other means of livelihood, meant that family support could be critical to enabling litigants, particularly women, to pursue legal action.
17. Ms Hossain went on to deal with the likelihood of a fair hearing. She said that under Muslim law different and discriminatory legal standards applied with respect to determining the rights of the mother and father to custody and access to or visitation of their children. In particular a mother may be disqualified from obtaining custody or contact if there was evidence of her 'immorality' but a father was not subject to any similar disqualification. Within the Family Court the applicable procedure was summary in nature and intended to strike a balance between efficiency and fairness in order to minimise the scope for protracted proceedings. She said in her opinion while these procedures would not in themselves result in the appellant being denied a fair hearing, in practice, there was a real risk that she might be prejudiced when the court came to learn of her having an illegitimate child, given that it may take this into consideration as a relevant factor (evidencing 'immorality' or 'bad character') in determining the issue of custody/contact, in applying 'the welfare checklist'. She said although the Family Courts had a wide discretion not to submit questions which were 'indecent' or 'intended to insult' in practice there was considerable divergence in traditional attitudes and there was every possibility that many judges would reflect conservative social attitudes and prejudices in which extra-marital relations were considered to be evidence of 'immorality' and that such attitudes would affect the nature of the hearing given to the appellant.
18. The fourth question which Ms Hossain was asked concerned whether there were equivalent orders to the contact order issued by the County Court which the appellant currently had in the United Kingdom in Bangladesh and whether they would be enforceable. Ms Hossain said that both the Family Court and the High Court frequently issued directions that the non-custodial parent might have access or visitation rights to the child and frequently did so in pending custody proceedings or upon their disposal. The orders were similar to contact orders although they might be quite restrictive in particular circumstances, allowing only supervised access for a very limited period. She said if an order of access or visitation was made as part of the judgment in the suit before the Family Court, a separate execution proceeding would have to be instituted to ensure enforcement of the decree. If an interim order for access/visitation was made by the Family Court, no separate process for enforcement was envisaged. She said exceptionally, if an application by the High Court for access/visitation needed to be enforced, an application might be made for directions upon the police to produce the child in question before the court. She said if any party was in breach of an interim order or a final decree made by the Family Court or the High Court, then a notice might be issued on the party in breach to show cause as to why he should not be held in contempt of court. If found in contempt the party in breach may be liable to pay a fine or to imprisonment for such a period as the court directed.
19. The fifth question that Ms Hossain was asked was whether it was common for men in Bangladesh to deny their ex-wives access to their children. She said as far as she was

aware there was no research available to analyse whether it was common for them to do so. She said on the limited basis of her review of reported decisions of the superior courts and experience in advising on custody disputes it was her opinion that it was not uncommon for men to try to deny their ex-wives access to their children in some cases by removing them from their mother's custody without her knowledge/consent, with the mother then being compelled to apply to the court and endure protracted lengthy proceedings in an attempt to recover custody of their children.

20. The sixth question was whether in divorce cases children normally remain with their fathers and what was the normal practice in Bangladesh. She said as far as she was aware there was no research available on whether in divorce cases children normally remained with their fathers. It should be noted that under Muslim law applicable in Bangladesh divorce was usually affected extra-judicially, that was without any legal proceedings or case as such. Even where a divorce was effected through legal proceedings, such proceedings were separate from those relating to custody.
21. The seventh question was what the usual arrangements in divorce cases were where the children remained with the father. What was the normal practice with regard to contact with the children by the mother in these cases. Ms Hossain said again as far as she was aware there was no research available regarding these topics. In the absence of any such information it was her opinion based on her experience that the arrangements would vary depending on the socio-economic background of the family, including their religion, ethnicity and location, as well as their class and educational background.
22. The eighth question was whether the fact that the appellant had an illegitimate child could affect her right of access to her older child. Her opinion was that the fact that the appellant had an illegitimate child was likely to affect her rights of access both to custody of and contact with her older child not only in terms of them obtaining the necessary legal remedies from the court but also in ensuring compliance with any such order by her ex-husband or his family. She said that the courts in considering whether to grant her contact with her older child might consider the fact of her having an illegitimate child from the subsequent relationship to be a relevant criterion in relation to her character, also in terms of establishing her immorality, a specific disqualification under Muslim personal law. She said that while the Bangladesh courts had not as yet refused custody to the mother in any case on grounds of 'immorality' they had done so in cases where the mother had remarried and noted with respect to her conduct that she was 'undeserving' and 'had failed to establish that as the mother of the child she had reared up from birth, gave her love and affection and in all respects cared for him throughout'. She also said that the courts had allowed the mother to retain custody/contact, even where there were allegations of her 'immoral behaviour' as long as it appeared that the welfare of the child would be best served by placing him/her in the mother's custody. She said such decisions, however, had been made in the context of allegations which had not been made out. In her opinion the appellant would face real difficulties in obtaining an order for custody of the older child if the court considered her 'immoral' conduct and disregard for prevailing social norms regarding her sexual conduct, as evidenced by her illegitimate son, her strained relations with her parents and her lack of financial means to maintain the child, to be factors relevant to the welfare of the child. She said it was very likely that any order allowing access/visits to the child by the appellant might not be complied with by her ex-husband's family, given that the fact of her having an illegitimate child would be perceived as a serious stigma on the entire family and they would be likely to seek to prevent contact with the child.
23. The ninth question was an invitation to address any other legal issues arising from the case that she believed to be relevant. She said that in relation to domestic violence there was very little empirical research available and the risk of violence faced by women in the appellant's particular situation, (i.e. women who had had children out of wedlock), but there was increasing research on the pervasiveness of domestic violence and on the issue of the

lack of response of the law enforcing agencies in such cases, with one study showing that 60% of women facing domestic violence received no help or response.

24. In relation to the apprehension of the appellant being exposed to any form of extra-judicial punishment by her own family or other persons, in her opinion such an apprehension was not well-founded as such incidents were usually reported as occurring in rural areas, in the course of traditional dispute resolution (*shalish*) processes. While various forms of *shalish* in the form of alternative dispute resolution involving the extended family or community were also used to resolve domestic and other disputes in urban areas including among middle class families, she was not aware of any such extrajudicial penalties being imposed in this context. She referred to the most recent pronouncement of the High Court Division in writ petition no. 5863 of 2009 declaring all kinds of extra-judicial punishment issued in the name of *fatwa* to be illegal and persons meting out such punishment liable to criminal prosecution.
25. She went on to say, however, that there was a risk that the appellant might face social prejudice and discrimination from her own family members as well as other members of the wider community if her circumstances and the fact of her having had an illegitimate child became known. Given the prevailing conservative social attitudes and prejudices, if the fact of the appellant's having a child out of wedlock were to be known she might find it difficult to obtain any appropriate employment. In the absence of any financial means or source of livelihood outside her family or of any state social security system she might face extreme financial hardship. It would also be likely to be difficult, in her opinion, to obtain adequate housing, given the absence of any state facilities or support in this regard and the fact that her parents and her extended family were unlikely to give her any support and the expense of private accommodation. The fact of her having an illegitimate child and the resulting lack of family support meant that she might qualify for emergency shelter from an NGO, but such shelter might not be available for a long period and was unlikely to be suitable for her and her son given the conditions prevailing in most institutions, including restrictions on movement.
26. She said that under Bangladesh law various forms of violence against women were penalised both under the Penal Code of 1860 and other special laws such as the Suppression of Violence Against Women and Children Act 2000, as amended in 2003, provided for prosecution for acid attacks, rape, trafficking, outraging modesty (sexual harassment) and dowry-related violence, among others. She said domestic violence, however, was not criminalised as such and there were no protective orders that could be invoked in such cases. Although remedies such as injunctions and declarations could arguably be sought to protect the appellant from the threat of violence, these were not easily available in practice and were rarely sought from the courts in such cases. She said that although there was an ongoing government initiative to address violence against women, the existing mechanisms were limited in scope and unable to address the level of need due to issues of capacity.
27. The tenth question was an invitation to address any relevant points relating to the background material and give her opinion of the respondent's analysis. It is not necessary to give a summary of her comments except in one or two instances. In relation to the US State Department Human Rights Report 2009, which stated that the law prohibited discrimination but the government did not strongly enforce laws aimed at eliminating discrimination, she said the report failed to mention there was no express legal protection (other than broad constitutional provisions prohibiting discrimination 'by the state and in public life' in the Constitution of Bangladesh 1972) against discrimination by private actors, in terms of employment, housing, or rights within the family. She reiterated that the continuation of discriminatory personal laws, together with prevailing laws on sexual behaviour, and the lack of any comprehensive programme to change such attitudes and norms meant that a woman who had a child out of wedlock would be particularly vulnerable to facing discrimination within the community, and also to family violence.

28. In her comments on the Refworld report entitled “Bangladesh: Information on the Situation of Women Who Have Children Born Out of Wedlock” (25 June 2001) she said the discussion on extra-judicial penalties imposed and executed upon women in the course of *shalish* following pre- or extra-marital relationships or incidents of rape, where the woman’s pregnancy was considered to be proof of her ‘immoral acts’, were all with reference to incidents affecting poor women and occurring in rural areas and therefore not in her opinion of particular relevance to the situation under consideration in this appeal, which related to a woman from a middle class background in an urban area, in the capital city Dhaka, in which context incidents of such violence had not been reported to date. She said the reference to the weak enforcement of laws to protect women from certain forms of discrimination and to spousal abuse being widespread, was supported by other reports including an influential study by the World Health Organisation on the prevalence of domestic violence and the absence of effective remedies, which indicated that 60% of urban and 51% of rural abused women never received any help from others and another related study by the same author, both of which drew from empirical research and surveys of women facing domestic violence. She said with respect to the statement by a Harvard Research Fellow that the safety of a woman in Bangladesh who had a child out of wedlock, depended on her ‘religion and secondarily on her economic status’, a woman’s economic and social status would be the determinative factors. She agreed with the statement by ASK that a woman in Bangladesh with an illegitimate child could face both legal and social problems, being faced with losing custody of her child, and being treated as a social outcast or being subject to societal pressures to differing degrees, depending on her own social or economic status for the reasons that she had set out.

The report of Dr Siddiqi

29. In her report Dr Siddiqi prefaced her findings by saying that there was little sustained research, whether academic or human rights reporting on single women, especially with regard to the lives of divorced women or women who bore children out of wedlock in urban areas. She said in the absence of other sources she had drawn to a great extent on her own expertise, as someone who had researched the lives of Bangladeshi women for almost twenty years, to write the report. It also relied on anthropological scholarship on marriage and sexuality in Bangladeshi society. She said in recent years the entry of large numbers of young women into the urban industrial labour force had produced a significant body of literature on these garment workers, about half of whom were single.
30. Dr Siddiqi said the situation of Bangladeshi women, across classes, religions and ethnicities, must be located in the context of a rapidly shifting society and economy, one in which social transformations and instabilities had produced contradictory effects. She said on the one hand, statistics showed progress in certain social and economic indicators, such as gender parity in primary education, reductions in fertility and female mortality and the entry of women into the wage labour force. On the other, most women’s lives were systemically undervalued in practice as indicated by persistently high maternal mortality rates, the risk of serious violence in the home and public places and enduring economic and socio-cultural discrimination. She said that while a number of women had gained access to high political office, women’s voices were generally weak in decision-making processes in either the public or private domains. Income generation did not necessarily translate into greater autonomy within the family; as symbolic heads of households, husbands and fathers often retained control over wages and major decision-making. She said women’s heightened mobility and visibility had challenged culturally dominated ideals of the male as breadwinner, producing a backlash in the form of increased sexual harassment and public violence. Although not well documented, rates of desertion and abandonment appeared to be increasing. She said it was also important not to exaggerate the differences between urban and rural environments. Urbanisation was a fairly new process in Bangladesh and many urban areas, such as the slums that made up a third of Dhaka city, reproduced social relations and norms found in the countryside. Slums were densely populated and slum environments afforded little

anonymity. The difference in slums was that rather than elders, it was mostly young males, usually associated with criminal gangs or political parties who yielded the most influence. She said that a World Bank study on perceptions of gender and safety found that women, especially younger women, in urban areas were half as likely as those in rural areas to feel safe in their community at any time.

31. Dr Siddiqi's report consisted of a series of answers to questions she was invited to reply to. The first was whether it was likely that the appellant and her illegitimate child would be treated as 'social outcasts' and be subjected to discrimination and/or harm if they returned to Bangladesh. Dr Siddiqi's view was that it was highly likely that they would be treated as social outcasts. The first important factor was the near universality of marriage in Bangladeshi society which held across class and rural –urban divides. For women marriage was a cultural imperative, an essential step required to achieve the status of full social adulthood. A woman without the protection of marriage – or at least the shelter of her family – was subject to considerable social stigma. A woman without a male guardian was considered as socially suspect and sexually available. She said little research existed on single or divorced women. The premium placed on marriage, and the social protection it conferred on women, meant that abandoned women usually continued to claim marital status. Hence the difficulty in acquiring information on abandonment through surveys. She thought that the appellant would be in an extremely vulnerable position if she returned because she had transgressed multiple social/ sexual norms.
32. Rural communities had social mechanisms to sanction women who did not conform to established moral codes. She said they were by no means absent in urban areas. Two key considerations were the economic and social status of the woman/family and the support extended by family and close relations. She concurred with the opinion of the Harvard Research Fellow who stated that the situation depended on the woman's "immediate family and on her class background" (as quoted in the 2001 United States Bureau Citizenship and Immigration Services Report). She said that for different reasons the extreme poor and very rich might well escape social censure. In urban areas, it was the lower middle and middle classes for whom social strictures were the most constraining. In fact it was rare to find middle class women who were in the appellant's situation, that is a woman who had openly had a child out of wedlock. It was simply not socially acceptable.
33. Dr Siddiqi said that since the appellant had neither 'symbolic' male shelter nor practical family protection she would face a host of subtle discriminatory actions that in effect would make her a social outcast. Her opinion was based on the proposition that her mother had indicated she would not go against the wishes of her husband, the appellant's father. The fact that the appellant's mother was divorced already placed her in a precarious social position and one that presumably she did not want to compromise further by supporting the actions of her divorced and "fallen" daughter. Further, the appellant could not expect to inherit any of her father's property. The fear of being "tainted by association" would discourage friends and extended relatives from mixing with her. Her "resourcefulness" would be extremely limited in the circumstances. Without her family and social connections, it would be extremely difficult for her to find appropriate employment, housing and a proper school for her child. Moreover she would be perceived as "sexually suspect and available" and therefore would have to contend with the kind of sexual harassment faced by women perceived to be morally lax.
34. She said discrimination against children born out of wedlock was widespread, though rarely documented and such discrimination was also institutionalised. For instance orphanages run by the Department of Social Services barred children who could not produce a father's name, which many "illegitimate" children could not do. The law was meant to keep out the children of sex workers, thought to be socially undesirable and not deserving of public assistance. Until recently, children of sex-workers were not allowed to enrol in public schools because they could not produce their father's name. She said given that her ex-husband's family were settled in Dhaka it seemed unlikely that the appellant would be able to hide the fact that

her child was born out of wedlock. Once his origins became public he would almost certainly face social rejection from peers and relatives.

35. The second question was whether a woman in the appellant's position would be at risk of harm in Bangladesh as a result of her perceived adultery. Dr Siddiqi said that the most obvious harm she would be at risk of was persistent social and economic exclusion and she would most certainly be perceived to be sexually lax/available and therefore subject to constant unwanted sexual advances/harassment/abuse in her social transactions with landlords, employers, shopkeepers etc. She said it was unlikely she would face any great harm from her family which might simply want to maintain a social distance from her. Should there be a tussle over custody of her daughter, if she were forced to return she might risk harm from her ex-husband or his family who would consider her daughter as their property and insist on wresting her from her mother should she be granted custody of her daughter in Bangladesh. The fact that her ex-husband refused to allow the appellant to see her daughter for eighteen months suggested that he felt quite proprietary about his daughter and he might resort to intimidation/violence if his daughter were taken to Bangladesh to be with her mother.
36. The third question was whether it was common for families in Bangladesh to reject women who were divorced/had illegitimate children. She said that divorce rates were low in Bangladesh as a whole although rates of abandonment and desertion were high. Neither divorce nor desertion was well-documented. For both social and economic reasons, the pressure on women to remain married was great, regardless of the conditions of married life. Natal families, especially in impoverished households, tended to look on divorced daughters as economic if not symbolic burdens. Although families may not always reject divorced daughters, the latter were not embraced either. The situation was changing somewhat. In urban areas there were now increasing numbers of divorced women from the middle classes, many of whom had the support of their families. The families were less likely to reject divorced daughters if the marriage in question was arranged by them since they might feel partially responsible for the outcome. If the marriage was one of choice, especially if the parents actively disapproved of the match originally, as happened with the appellant, family support was much less likely to be forthcoming. Across classes and communities there was much greater stigma associated with having an illegitimate child than in being divorced. For Muslim women divorce was allowed under specific and limited conditions; it might be frowned upon but it could not be wholly rejected. Sex outside marriage, on the other hand, was a moral transgression of a higher order. She said that in Dhaka city, it was unlikely that pregnancy out of wedlock would be allowed to become public in a middle or upper class family.
37. The fourth question related to violence against women. Dr Siddiqi said that the pervasiveness of violence against women and girls in both the public and private domains was well-documented and reflected gender inequality which was entrenched in social, legal and institutional cultures. In recent years reports of public and community violence including rapes, acid attacks, extra-judicial punishments and the rampant social harassment-stalking against women in public places, had increased considerably. In spite of a host of laws, including specialised criminal laws for the protection of women, instances of violence had remained fairly constant. Spousal and other violence within the family was generally condoned as part of the maintenance of social/gender hierarchy. According to a World Health Organisation (WHO) multi-country study on women's health and domestic violence against women, Bangladesh had one of the highest rates of spousal violence in the world. The study found that the percentage of women who experienced violence by an intimate partner, among partnered women aged 15 to 49 years, was 53% in Dhaka city and 62% in an adjacent rural area. Similarly the International Centre for Research on Women (ICRW) reported in 2009 that intimate partner violence against women was highly prevalent with 61% having experienced sexual violence in their lifetime. According to the WHO multi-country

study 10% of pregnant women in Dhaka were physically abused during at least one pregnancy.

38. Dr Siddiqi said that these figures were extraordinarily high, especially given that family violence against women was likely to be under reported. The reasons for under reporting included women's overall social and economic dependence on the men of families that abused them, the fear of reprisal, a general lack of access to justice and the widespread acceptance of physical violence as a means of disciplining women who transgressed their, "appropriate" roles. Dowry demands were a relatively recent phenomenon in Bangladeshi society but dowry-related domestic violence incidences were also on the rise.
39. Dr Siddiqi said that it was not likely that a *fatwa* would be issued against a woman who had a child out of wedlock in urban areas.
40. In relation to the attitude of police towards allegations of violence she said, as mentioned in the COIR of 2010, the Constitution affirmed female gender equality in the public sphere and the Bangladeshi state had acceded to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 1984 and ratified the optional protocol on the Convention in 2000. She said, however, that reservations against specific CEDAW articles allowed discriminatory "personal laws" that governed the realms of marriage, divorce, inheritance, maintenance and accommodation and child custody to persist. In response to feminist demands successive governments had passed legislation to deal with violence against women. These included the Women and Children Repression Prevention Act 2000, amended in 2003, the 1980 Dowry Prohibition Act and the 2002 Acid Crime Control Act. She said that a Domestic Violence Prevention Bill was under consideration by Parliament.
41. Dr Siddiqi quoted from the US State Department Country Report on Human Rights Practices of 2009 which said that the enforcement of laws specifically prohibiting certain forms of discrimination against women were weak. She said there were many reasons why that was so. In the first place deeply entrenched patriarchal attitudes which did not take women's concerns seriously produced procedural and administrative indifference or bias. Police were especially reluctant to become involved in marital disputes. Second the police were overburdened and therefore few cases got proper attention. Overworked and underpaid, the police were open to various forms of corruption. Thirdly, women might be unwilling to report abuse because the police force was overwhelmingly male and few women would feel comfortable confiding in male police officers, especially if the crime was of a sexual nature. The general public's faith in the police justice system was low. Further instances of violence tended to be hidden in middle and upper class families for fear of social stigma. Class privilege provided a degree of protection for women and girls so that the most visible victims of violence tended to be women from poor underprivileged backgrounds. Access to justice was especially difficult for poor people, especially women with little or no formal education who found the system intimidating and impenetrable as well as costly and time-consuming. Finally the large cultural emphasis, especially in disputes between couples, was on compromise through mediation and arbitration out of court.
42. She said there were other significant factors. The political system in place offered the most protection to those with requisite political and socio-economic ties which simultaneously promoted the culture of impunity and lack of accountability for perpetrators, including law enforcement agencies. Those without political protection had limited access to justice. Cultures of impunity thrived, no matter which political party was in power. According to the human rights organisation Odhikar, 450 women and girls were raped in 2009, a significant number of which were "politically sheltered" instances of rape in which the perpetrators were protection from prosecution because of influence.
43. The fifth question was whether the appellant would be able to provide for herself and son and daughter. Dr Siddiqi said she would have a difficult time providing adequately for herself and

two children. Secure and decent employment was a difficult prospect for anyone without pre-existing social or economic protection as in the city. Secondly employment prospects were much more limited for women than for men because of gender norms and institutionalised discrimination. While it was true that employment rates increased at a greater rate for women rather than men in the last decade, this growth was concentrated in the garment export industry where over 70% of the workforce was female. She would be over qualified for most garment work and even if she were able to get a job at a supervisor level she would barely earn enough to support herself and her two children without a steep fall in her standard of living. Bangladeshi garment workers were the lowest paid in the world and most had difficulty in meeting the basic needs on their monthly income. Most garment workers lived in the many slums and squatter settlements scattered across Dhaka. The World Bank noted that secure shelter was a major challenge for Dhaka's earning poor, most of whom ended up in illegal settlements on precarious land. The appellant's profile, single, divorced, with a child of out wedlock and disowned by her father, would work against her in obtaining any decent housing even if she could afford it. Most landlords, drawing on long-standing assumptions about single women's lax sexuality, refused to rent to women who did not have male guardians even when money was not at issue. A strong cultural presumption which worked to legitimate harassment was that unescorted women who appeared in public spaces, especially after dark, were socially and sexually suspect. In recent years the sexual stalking of working women and college and school-going girls, in both rural and urban areas had become an acute problem.

The report of Ms Goswami

44. The third report, that of Ms Goswami, also took the form for answers to questions which had been asked of her. She was asked whether if the appellant's family refused to help her she would be able to live in a women's shelter in Dhaka. She said shelter homes in Bangladesh were used to meet women's emergency needs for shelter and it would be difficult to arrange for a long term stay for the appellant and her children. It would be difficult for her to find shelter because her situation did not meet the criteria used by shelter homes in Bangladesh. She set out the criteria used by Ain o Salish Kendra (ASK) and Shishu Polli Plus (SPP) in relation to their facilities. Those of ASK were for women victims of violence or women in need of shelter during a court trial, whose sons were allowed to stay if under five years old. She said the conditions were not suitable for a person from a middle class background. The criteria for SSP were that the appellant and her son could stay for their safety if they were referred by other organisations but the conditions were not suitable for a middle class person and the shelter was not in the city.
45. In answer to the question what were the criteria for acceptance into a shelter, she said shelter homes in Bangladesh run by NGOs usually met the emergency needs of women for security during a transition period, for example women and children rescued from trafficking stayed there upon release. Rape victims, female victims of acid attacks or other forms of violence could stay in these shelters until the conclusion of the trial. Those running the shelters tried to re-integrate them with their families, which could take several weeks. Unfortunately these social attitudes were an obstacle to their re-integration. In these cases the shelter home authorities might use family and social counselling methods to rehabilitate them with their family and society. She said that the government-run shelter homes acted upon court order to provide safe shelter to meet the emergency needs of women victims. These homes were also used as "safe custody" for the victims of violence, rehabilitation for sex workers and homes for vagrants.
46. Ms Goswami very helpfully appended to her report an Annex, which contained a list of shelters and information relating to them. She said that the sources of information were from some organisations (not published in any form) as well as from the publication *Directory of Shelter Homes* compiled by SPP.

47. The third question was how many shelters there were in Dhaka. She said that there were two government shelter homes, one was managed by the Department of Women's Affairs and the other by the Department of Social Services. She said there were thirteen NGO shelter homes and referred to the Annex for further details.
48. The fourth question was whether the appellant would be able to live in a shelter with her two children. Ms Goswami said it would be difficult for the appellant to find a shelter home that would keep her since priority was always given to poor women and her socio-economic background suggested she was fairly well off. She said shelter homes did not have communication facilities (i.e. phone, internet, etc.). Her child might have difficulty with his education as shelter homes maintained strict security and restricted movements of all residents. The child would not be able to attend school regularly as he would not be able to leave the shelter at different times. Some shelter homes were strictly for women and male children over the age of 7 years were not allowed to live there.
49. The fifth question was whether the fact that the appellant had an illegitimate child affected her ability to live in a shelter or in other accommodation. She said the social stigma attached to an illegitimate child in Bangladesh would probably make it difficult for her to be accepted in a shelter or to find other accommodation.
50. The sixth question was what the shelters were like and she referred to Annexes (A & B) to her report for detailed information.
51. The seventh question was how long could the appellant stay in a shelter and whether there was a time limit. She said that residents of shelter homes could remain at any shelter for up to three to six months and exceptionally their stay might be extended to one year on the basis of need.
52. The eighth question was what other accommodation would be available. The answer was that the appellant would have to arrange private accommodation by renting an apartment or sharing an apartment or living in a guest house. In Dhaka house rents were very high. She gave the example of a middle class area where the rent of a one bedroom apartment without all facilities would be approximately USD300 per month. With one or two children and no child care it would be quite difficult for the appellant to seek or continue in a job. There was very limited scope for getting a part-time job in Bangladesh.
53. The ninth question was what were the typical backgrounds of women who lived in shelters. The answer was that very poor women were given priority in shelter homes in Bangladesh. Most of them had fathers or husbands who were rickshaw pullers and earned under TK.3,000 (\$50) per month. In the case of an emergency such as a security threat, attacks etc. middle class women might also live in the shelter homes for a short period.
54. The tenth question was whether the appellant's background (i.e. she was from a middle class family, educated and had lived in the UK since 2002) would prevent her from being given accommodation by NGOs etc. in Dhaka. Ms Goswami said that these conditions would not entitle her to accommodation in NGO shelters in Dhaka unless she was in a much direr situation, for example, if she was under threat, attack etc. Even if she were accepted in an NGO shelter this would be for a short period and not for the length of time she required. She said the fact was there was no shelter home in Bangladesh where women could stay for a long period.
55. The eleventh question was what kind of financial support would be available to the appellant and her children. The answer was that Bangladesh did not provide quality free education and health care services nor did it provide any kind of welfare support for women in the appellant's position. Whilst some minimal financial support might be available for women who were completely destitute, in her opinion the appellant would not be able to obtain any financial support for herself or her two children from the government or NGOs.

Annex B

Violence against women

1. Mr Walsh referred to a passage in a report by Odhikar (Bangladesh) entitled “Human Rights Monitoring Report” January, 01 - June 30, 2010, which was dated 1st July 2010. It said that during January to June 2010 many women and children were raped, were victims of acid attacks and dowry demands were made, often resulting in violence. During a period of six months it had been reported that a total of 291 females were raped, of which 124 were adults and 167 were children. Of the adult females 31 were killed after being raped and 59 were gang raped. Of the 167 female children who were raped fourteen of them were killed after being raped and 49 were victims of gang rape. Of these women and children it was alleged that a housewife from Chuadanga was raped by an Assistant Sub-Inspector of Police, a housewife from Jessore was raped by an Ansar member, a housewife was raped by an Assistant Sub-Inspector at Jhenaidah, a housewife was raped by an SI at Bagerhat while an 8 year old girl from Joypurhat was raped by a member of the village police. The extract said that during the last six months 63 persons were victims of acid violence of which 38 were women, seventeen were men, three were boys and five were girls.
2. We were referred to a report by Amnesty International on Bangladesh, dated 27th May 2010, which said that newspapers reported at least 21 cases where a husband had killed his wife because her family could not afford to give them dowry money. The report said that they received at least 3,413 complaints of beating and other abuse of women over dowry disputes between January and October. In many of the known cases, prosecution led to conviction, but the authorities failed to develop, fund and implement an action programme to actively prevent violence against women. Several human rights groups said that many case of violence against women, such as the alleged rape of sex workers in police custody, were not reported for fear of reprisal and lack of protection.
3. The US State Department Report on Human Rights Bangladesh 2009, dated 11th March 2010, said that domestic violence was not criminalised. According to women’s rights groups it was widespread and increased during the year, although data quantifying was difficult to obtain. The 2000 study by the UN Population Fund indicated that at least 50% of women experienced domestic violence at least once in their lives. The Bangladesh National Women Lawyers Association (BNWLA) reported 3,502 incidents of domestic violence and received 3,495 complaints related to domestic violence issues. Domestic violence was not criminalised in the country and most efforts to combat it were funded by NGOs with little assistance from the government. There was an increase in the number of dowry related killings during the year. Acid attacks remained a serious problem. Assailants threw acid in the faces of victims, usually women, which left them disfigured and often blind. Acid attacks often related to allegations of spousal infidelity. The law provided for speedy prosecution of acid throwing cases and special tribunals and generally did not allow bail. The Women and Child Repression Control Act sought to control the availability of acid and reduce acid related violence directed towards women, but lack of awareness of the law and poor enforcement limited the law’s effect. According to the Acid Survivors Foundation, the special tribunals were not entirely effective, but prosecutors were able to obtain an unspecified number of convictions during the year.
4. An excerpt from the Odhikar (Bangladesh) Human Rights Report 2009 dated 1st January 2010 said that the most common reasons for domestic violence in Bangladesh occurred due to dowry demands. A total of 319 reportedly became victims of dowry demands during this reporting period. Odhikar believe that the actual number was greater as there were a lot of incidents which were not taken into account and many women did not talk about dowry-related abuse. Women in Bangladesh had to live with dowry-related violence due to socio-

political pressure and a lack of legal support. Due to dowry-related violence, a total of 227 women were reportedly killed, 81 were tortured and eleven allegedly committed suicide after failing to tolerate the dowry-related torture. A number of incidents of rape took place under “political shelter” during this reporting period. Rape was another form of violence perpetrated against women in Bangladesh. In most cases the victims or their family members remained silent due to the social stigma or in fear of the rapist. The report said one of the most dangerous forms of violence against women was acid attack. In most cases the perpetrator threw acid on women when they did not agree to marry the perpetrator or refused to have sexual or illicit relations with him. According to a Report of the Ministry of Women and Children Affairs 172 women became victims of acid violence in 2009. Acid violence continued due to lack of implementation of the Acid Control Act of 2002 and the Acid Crime Control Act of 2002. Acid was frequently sold, ignoring the law and without a licence.

5. A report from the World Bank Office, Dhaka entitled “Improving Living Conditions for the Urban, Poor Bangladesh Development Series Paper No. 17”, dated 2007, said that violence against women was repeatedly raised during focus group discussions (FGDs) and the qualitative field work, as one of the most serious manifestations of violence affecting poor women in Dhaka, which included physical and psychological violence inflicted by the husband or the husband's family, burning of wives, acid attack, suicide as a result of physical and psychological torture as well as violence against women in the work place and on the way to and from work. Of the total sample of 50% female respondents, 30% were said to have been a victim of domestic violence in the past twelve months, which was the highest reported incidence of crime or violence reported in the survey. These findings reflected what was known about violence against women in Bangladesh. According to the UNFPA (2000) Bangladesh had the second highest incidence of violence against women in the world. A survey carried out in 1997 by the Ministry of Women and Children's Affairs, with the assistance of the government of Denmark, found that not only was violence against women widespread, it was also widely accepted: 50% of the women interviewed thought it was the husband's right to beat his wife; 80% felt it was right to hit the wife if she was disobedient; 80% of the women respondents felt that if a man raped a woman the woman should marry the rapist.
6. A passage from the International Crisis Group, Bangladesh report entitled “Getting Police Reform on Track” dated 11th December 2009 said that violence against women was one of the common forms of human rights abuses in Bangladesh. Women and girls faced manifold problems within the domestic setting as well as in the community. Molestation, abductions followed by rape and forced marriage were widespread. Deaths of wives due to the failure of their families in making dowry payments to the husband's and their in-laws were also numerous.

The inferior status of women and access to greater material benefits

7. We were referred to a joint report of two experts published by the Office of the United Nations High Commissioner for Human Rights (OHCHR) relating to a mission to Bangladesh from 3-10 December 2009, dated 22nd July 2010, in which it was said that women and girls, who were disproportionately represented among the poor, were negatively affected by the lack of access to sanitation and safe drinking water, further exposing them to the likelihood of continued poverty. Although the Constitution guaranteed women equal rights, discriminatory social norms often prevailed, denying them the effective enjoyment of their rights and perpetuating their experience of poverty. Adverse cultural patterns related to violence against women, property rights, inheritance law, dowry and early marriages prevented women from fully participating in society and enjoying their human rights.
8. Reference was also made to the US State Department Human Rights Report, dated 11th March 2010, which said that the law prohibited discrimination, but the government did not

strongly enforce laws aimed at eliminating discrimination. Women, children, minority groups and persons with disabilities often confronted social and economic disadvantages.

Urbanisation and poverty in Bangladesh

9. We were referred to the report of the OHCHR, dated 22nd July 2010, which said that the intense process of urbanisation had led to a rapid increase in absolute terms of the poor population in urban areas, especially in urban slums. Problems of people living in poverty in urban areas, including their lack of access to water and sanitation, had received limited attention. The experts urged the government to adopt a comprehensive urban strategy, with special attention paid to vulnerable groups and full regard for human rights. A further passage in the same report said that the situation of access to water and sanitation in urban slums in Bangladesh, particularly in Dhaka, was a special concern. The independent expert visited slums where raw sewage ran through the streets. The people who live there had no legal access to water which meant that they paid ten to twenty times more for it and in some cases they had to walk great distances to collect water. The lack of access to safe drinking water and sanitation in slums was directly related to the lack of secure tenure of slum dwellers.
10. A news release of the United Nations International Children's Emergency Fund Report reported by Targeted News Service dated 23rd June 2010 said that urban slums had the worst performance regarding women's and children's well-being and access to basic services compared to rural and non-slum urban areas. The results of the 2009 Multiple Indicator Cluster Survey showed that urban slums were generally worse off than most of the low performing rural areas.
11. A report in Right Vision News dated 8th April 2010 said that rapid and uncontrolled urbanisation was not only causing concern among the urban planners but also among experts in the field of public health. Inhabitants of fast expanding slums in the urban areas were exposed to various preventable diseases and threat of premature death due to lack of safe drinking water, sanitation and health care facilities. Of the total population 30% live in urban areas, and if the current trend continues the figure will be 40% by 2020. Of the total urban population, 35% lived in slums where basic health facilities were missing. According to the Bangladesh Urban Health Survey Study 27% of women and 35% men were under-nourished in slums, while the number was 30% and 90% respectively in non-slum areas. Skilled care delivery was significantly high, around 36% in urban non-slum areas while it was only 11% in slums.
12. The report in Right Vision News, dated 23rd January 2010, said that in almost every major urban centre of Bangladesh, tens of thousands of people lived in overcrowded slums or public spaces that lacked basic facilities, such as safe water, sanitation and health services. In Dhaka city an estimated 37% of the total population lived in slums. Dhaka continued to grow as a mega-city with approximately 320,000 migrants arriving annually. More than three-quarters of migrants found shelter in urban slums or did not find shelter at all. Employment, shelter and accessibility to basic services for the growing urban poor populations, those who lived in informal settlements and those who were homeless, were critical issues yet to be fully addressed by policy-makers in Bangladesh. Studies in Dhaka city had found an increase in the number and proportion of people living on the streets and in urban public places due to the increasing pressures of internal immigration and rapid urbanisation. The floating population of street dwellers consisted of thousands of people with no fixed dwelling in the major towns and cities of Bangladesh. They were likely to be amongst the most deprived in urban areas in terms of basic facilities and health indicators. In Bangladesh while a few non-government organisations were providing health related services for the urban homeless, there was no comprehensive programme and little coordination of activities between agencies to address health needs. Street dwellers reported extremely high levels of illness and disease. Access to maternal health care and family planning was poor and most

street dwellers were not aware of the government services available to them and did not use any health care facilities. 83% of the female street dwellers had been assaulted by their husbands and/or by other men while they were staying in the street and more than nine in ten street dwelling males had used some kind of drugs during the previous year. Homeless women were far less in number than men but the difficulties they faced in meeting sanitation and shelter needs were severe, because the facilities simply did not exist for them. Sexual harassment was the common experience of the women, including unwanted physical contact, sexual flirtations, touching, being solicited, leering, rude gestures and rape.

13. A report from the Journal of Health Population and Nutrition, dated 1st August 2009, repeated information given above and went on to say that the 1997 census count of the homeless population of Dhaka was 14,999, with an additional 17,082 in other metropolitan areas of Bangladesh. A 1997 study found that 47% of the homeless in Dhaka lived on footpaths, 23% in the city's transport stations and 12% in front of major market centres.
14. The report from the World Bank Office, dated June 2007, said that secure shelter was a major challenge for Dhaka's urban poor. The slums were located throughout the city with few services offered at high prices through middle men, also called muscle men or mastaans, using illegal methods. Slum evictions took place periodically with no resettlement plans. The report said that Dhaka was a city of opportunity for many. Migrants flocked to the city in search of jobs and better lives. The appeal of the capital city was strong with prospects for employment in a range of sectors, particularly services and industry. The labour market was dynamic, with entrepreneurs arriving every day hoping to carve out a decent living for themselves and their families. Yet for the estimated 28% of the city's poor, earning a living sufficient to meet the basic needs for themselves, and their families was a continual struggle. Low wages, under-employment, unemployment and low skills levels were all challenges faced by the poor in the labour market. Many migrants coming to Dhaka ended up in slums where living conditions were particularly grim. However, in spite of these negative factors, migrants did not express a desire to go back to their villages in most surveys. In fact, evidence showed that on average after migration monthly household expenditure of migrant households increased by 40%. This substantial increase in earnings seemed to compensate for most of the drawbacks of life in Dhaka. As long as job prospects in cities looked promising to the rural poor, many of these who could would continue to migrate.

Steps taken to ameliorate the worst effects of poverty

15. We were referred to a passage in the OHCHR report, dated 22nd July 2010, which said that certain programmes, such as cash and assets transfers and micro-credit specifically targeted women. Other programmes directed at women included the Allowances Programme for Widowed, Deserted and Destitute Women and the Vulnerable Group Development Programme for "ultra-poor" women, which had relatively limited coverage, reaching 920,000 and 80,000 women respectively. The level of transfers under the latter programme was TK400 per month over two years which was significantly more than the usual level of benefits. The independent expert was concerned about the programme's sustainability. The independent expert welcomed the fact that several programmes targeted women; nonetheless, she encouraged the government to refine the gender approach and evaluate comprehensively the impact of programmes on the enjoyment of human rights by women living in extreme poverty. Bangladesh had developed models for micro-finance that had been replicated around the world. The independent expert recognised that micro-credit also greatly benefited women but called upon the government to ensure that micro-finance programmes reached the poorest.

Police corruption and impunity

16. We were referred to a passage in the US State Department report, dated 11th March 2010, which said that under recent governments police were generally ineffective and reluctant to

investigate persons affiliated with the ruling party. The government ended its use of the joint forces security structure formed in 2007 under the state of emergency and composed of police, the RAB (Rapid Action Battalion), members of the military and other security agencies. Unlike the previous year, the military intelligence agency, the Directorate General Forces Intelligence (DGFI) did not take the lead in maintaining law and order as it had under the state of emergency. The RAB received human rights training sponsored by foreign governments, the UN Development Programme, and a local NGO, the Bangladesh Society for Enforcement of Human Rights (BSEHR). Although the RAB continued to commit serious human rights violations, the number of incidents involving the RAB dropped from the previous year. The government took steps to address widespread police corruption and a severe lack of training and discipline. The Inspector General of Police continued to implement a new strategy, partially funded by international donors, for training police, addressing corruption and creating a more responsible police force. Plaintiffs rarely accused police in criminal cases due to lengthy trial procedures and the fear of retribution. Reluctance to confront police perpetuated a climate of impunity.

17. The report said that in September 2008 the Appellate Division resumed the practice of overturning politically charged decisions, by the High Court Division, usually to the benefit of the current AL (Awami League) government. Corruption and the substantive backlog of cases hindered the court system, and trials were typically marked by extended continuance, effectively preventing many from obtaining a fair trial due to witness tampering, victim intimidation and missing evidence. The law provided criminal penalties for official corruption but the government did not implement the law effectively and officials frequently engaged in corrupt practices with impunity. The report said that government corruption greatly facilitated the process of trafficking. Police and local government officials often ignored trafficking in women and children for commercial sexual exploitation and accepted bribes from brothel owners and pimps.
18. The report of the International Crisis Group, dated 11th December 2009, said that political and bureaucratic interference were the most significant impediments to police efficiency and have resulted in the worst forms of abuse including illegal detention, death in custody, torture and pervasive corruption. The result was almost universal public disdain for the police force. All governments, including the current one, had used the police to crush political enemies while many politicians had used them to advance their personal interests. Low police salaries and government control of promotions and transfers all but ensured that the police were dependent on the political leadership, which prevented investigation of serious issues of corruption, organised crime or other matters that some political leaders would prefer remain untouched. The police were often complicit in the crimes of government officials. Corruption in the police was rampant and systemic. It would be nearly impossible to eliminate until the poor salaries and working conditions were improved, particularly for officers at and below the rank of sub-inspector. Many police posts were bought and sold.
19. A report of the Asian Human Rights Commission, dated 12th November 2008, referred to a scandalous incident where a 13 year old girl had been subjected to sexual abuse and confinement in a hotel which had the reputation for providing sexual services. It said the episode brought to light a scandal of large magnitude which involved the second wife of the father of the girl, police officers at Pijachaa who had made strenuous efforts to fabricate charges against innocent persons, including a well-known human rights activist and also extracted heavy bribes from the families of those concerned. Innocent suspects had also been tortured.
20. The report from the Asian Human Rights Commission, dated 24th October 2008, reported upon a case where it was alleged a police officer raped a woman on 7th October 2008 but due to tardy action by police authorities the officer was able to escape arrest and a colleague of the accused had been assigned as the investigating officer.

Limited assistance to destitute persons in Dhaka and steps to address violence against women

21. We were referred to the Right Vision News report, dated 23rd January 2010, referred to in paragraph 12 above. We were also referred to an excerpt from the World Bank Report, dated 13th March 2008, which said that through its implementing agency the Department of Women's Affairs (DWA) and the MWCA (Ministry of Women and Children's Affairs) with assistance from UNFPA had launched a project to mobilise communities against violence and to change male family members' and in-laws' attitudes about violence. Another initiative in the series of steps taken by GOB (Government of Bangladesh) was the "Multi-Sectoral Programme on Violence against Women". This project was a joint initiative of the GOB and Denmark under the MWCA. The programme was then in its first phase and would continue until December 2007. The objectives of the programme were improved public services such as health, police assistance, criminal justice and social services and increased public awareness of all forms of violence against women. The MWCA had also initiated One-Stop Crisis Centres (OSCC) in Divisional level Medical College Hospitals, mainly to deal with acid and rape victims so as to facilitate quick investigation and medical and legal services. The OSCC provided health care, police assistance, social services, legal assistance, psychological counselling and shelter services. Two OSCCs had been established in Dhaka and Rajshahi Medical College Hospitals during the pilot phase of the project.
22. Both parties relied upon the Country of Origin Information Report on Bangladesh dated 20th August 2010. The respondent relied upon a passage at 23.01 which said that Bangladesh had acceded to the Convention on the Elimination of All Forms of Discrimination against Women on 6th December 1984 and ratified the Optional Protocol on the Convention on 22nd December 2000 while the appellant pointed to a passage at 23.04 quoting the Human Rights Watch World Report 2010 issued on 20th January 2010 stating that while women occupied several key positions in the government, discrimination against women was common in both the public and private spheres. Bangladesh's reservations against the requirement in the Convention on the Elimination of All Forms of Discrimination against Women to ensure equal rights for women and men remained in effect. The appellant also relied upon a passage at 23.01 which said that according to the Constitution women enjoyed the same status and rights as men in terms of education, health, political process, employment, development processes and social welfare but in practice they did not enjoy fundamental rights and freedom to the extent that men did. The unequal status of women in society and in public life was largely due to the fact of having an unequal status in the family. Women's lower socio-economic status, lower literacy, and lesser mobility were some of the practical obstacles to the establishment of their fundamental rights. The appellant relied upon a passage at 23.02 which stated that the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) expressed concern over the unequal status of Bangladeshi women within the family and the fact that personal laws, derived from religious precepts which were discriminatory to women, continue to exist in the country. The appellant also relied upon 23.03 which quoted the Organisation for Economic Co-operation and Development Social Institutions and Gender Index Profile of Bangladesh accessed on 11th June 2010 stating that Bangladesh was a highly patriarchal society and gender discrimination was evident across all levels. Women were dependent on men throughout their lives, from their fathers through to husbands, brothers or sons. The Constitution affirmed gender equality, but state legislation and institutions frequently disregarded women's rights. For example, women and young girls were more disadvantaged than men in their access to education, healthcare and financial assets. The respondent relied upon a quotation from the same source due to increased poverty and demand for labour, female employment had risen since the mid-1980s.
23. The appellant relied upon quotations from a book entitled "Wife abuse in Bangladesh" published in 2005 by Dr Nusrat Ameen, quoted in the COIR, who argued that both substantive and procedural law were not gender-neutral and the laws governing women's private lives were discriminatory, for example there was differential treatment of women in

divorce proceedings. There was also discrimination against women from different religious groups, since there were different sets of family laws in place for the Muslim, Hindu and Christian communities. Legal solutions made available to women were often constrained by practical factors, such as the weak economic situation of women, the reluctance of the police to become involved in marital disputes, the difficulty of enforcing and sometimes obtaining injunctions, the emphasis on mediation, arbitration and *shalish* by legal aid workers and professionals, as well as illiteracy and family pressures.

24. The respondent relied upon a passage at 23.07 which said that there were 64 women serving in parliament, nineteen of them were directly elected. According to the law women were eligible to contest any number of seats among the 345 members of parliament but 45 seats were reserved for women. Six women including the Prime Minister held the status of Cabinet Minister including the Ministers of Home Affairs, Foreign Affairs and Agriculture. The leader of the opposition and the deputy leader of parliament were women. Two women were appointed as state ministers and a third was serving as a whip in parliament with the status of a state minister. Six of the 89 Supreme Court Judges were women. The respondent relied upon a passage at 23.09 which reported the US State Department Report of 2009 noting that employment opportunities increased at a greater rate for women than for men in the last decade, largely due to the growth of the export garment industry. Women constituted approximately 80% of garment factory workers. There were some disparities in pay in the overall economy between men and women but in the garment sector they were roughly comparable.
25. The respondent relied on a passage at 23.13 which quoted from Dr Nusrat Ameen saying that there was no specific law on wife abuse although there were several special laws to deal with violence against women. She said that the penal code provided sanctions against all forms of physical violence, some forms of psychological violence and threats of physical injury. The appellant relied upon a passage from Dr Ameen's report in which she said in practice, however, when such an event was committed against his wife, it was not considered as an offence punishable in the same way.
26. The appellant relied upon a passage at 23.14 which said the very special laws to protect women from abuse had not proved as effective as they were designed to be and their deterrent value had been diminished by low conviction rates. Dr Ameen said that owing to the prevalent patriarchal attitude towards women, in most cases complaints were not recorded properly by the police, evidence was hard to produce or establish, there was a very slim chance of the perpetrator being punished and a study by the Family Court in Dhaka showed that husbands rarely appeared and thus suits were dismissed and wives were denied justice.
27. The respondent relied upon a passage at 23.32 which quoted from Dr Ameen's book to the effect that there were several agencies to assist women in abuse situations. Particularly an agency would serve a notice to the husband to appear at the agency for mediation following a written complaint made by the wife. If he did not attend the agency had a right to issue a warrant and seek help from the police. If mediation failed to work the case could be taken up in court by family lawyers provided by the agency who normally handled the case free of charge. At 23.33 it was said that the US State Department Report of 2006 recorded that the Women Affairs Department ran six shelters, one each in the six divisional headquarters for abused women and children. NGOs such as Bangladesh National Women Lawyers (BNWLA) ran facilities to provide shelter to destitute persons and distressed women and children. According to the Bangladesh National Women Lawyers Association (BSEHR) persons in safe custody were no longer housed in prisons. Courts sent most of them to shelter homes. In a few cases they were sent to prison as a transit for short periods.
28. The respondent relied upon the section of the report dealing with acid attacks at 23.23 to 23.30 from which it appears that two laws were introduced in 2002, the Acid Crime

Prevention Act 2002 and the Acid Control Act 2002 to restrict the import and sale of acid in open markets, allow for trials in acid-throwing cases by a special tribunal (with a right of appeal to a higher court) to make the maximum punishment for acid-throwing offences the death penalty and to provide for the treatment and rehabilitation of victims. Statistics provided by the Acid Survivors Foundation (ASF) on its website accessed on 15th June 2009 showed that the number of recorded attacks peaked in 2002 and then declined. In its Human Rights Report 2008 Odhika recorded 133 acid attacks: 73 women; 34 men; 15 girls and 11 boys.

29. The respondent relied upon an article from the New York Times of 21st July 2010 entitled “Garment factories, change in women’s roles in poor countries” which suggested that by giving women an independent source of livelihood Bangladesh’s garment industry had changed the conservative Muslim country society in immeasurable ways. The government was struggling to improve the quality of hard infrastructure, such as highways, ports and electricity and soft infrastructure such as schools, courts and basic governance, but private forces unleashed by nascent economic reforms and globalisation were changing society and the economy. More than 80% of the 3 million people who worked in the industry were women. Mr Ahmed Mushfiq Mobarak, an economist at the Yale School of Management who had conducted research found that girls who lived in villages with garment factories tended to marry later and have children later than girls who grow up in villages without factories. Though wages in Bangladesh’s garment industry were among the lowest in the world hundreds of thousands of women flocked to Dhaka and other garment hubs in Bangladesh every year because factories paid more than the women could earn in villages. An example of a woman worker in Dhaka who was single and lived with three other girls in a two bedroom apartment was mentioned. She sent home 3,000 taka every couple of months to help support her parents. She said she wanted to wait for two or three years before she got married and had children because she wanted to save up some money first.
30. The respondent also relied upon a report in the Independent dated 11th July 2010 which reported that the High Court in Bangladesh had outlawed punishments handed down by Islamic edicts or *fatwas* after a series of cases of women being beaten, caned and whipped for “offences” they were judged to have committed by village elders.
31. The respondent relied upon a BD News 24 report dated 23rd June 2010 which said that the government had decided to reintroduce five-year family savings certificates to make women financially self-reliant. The project was mainly geared towards destitute, widowed and divorced women though economically well-off women would also be allowed to buy the certificates.
32. The respondent relied upon an Integrated Regional Information Networks (IRIN) news report on Bangladesh dated 11th June 2010 which said that Bangladesh had made enormous reductions in maternal mortality by improving girls’ education. The maternal mortality rate had more than halved in less than a decade from 724 deaths per 100,000 live births in 1990 to 338 per 100,000 in 2008 according to a recent study published in the British medical journal The Lancet. The report said in 2001 the Bangladesh government began offering free education for girls up to the twelfth grade with additional incentives like food for education. Girls’ enrolment in secondary schools jumped from 1.1 million in 1991 to 3.9 million in 2005. The respondent relied upon the report in the New Nation dated 16th May 2010 which reported Foreign Minister Dr Dipu Moni saying that women empowerment was one of the top priorities of the present government and the government wanted to ensure a social, economic and political empowerment of women. Dr Moni said that there was no restriction for women in Bangladesh in joining any profession. At present women were involved in all professions including defence services. The government had plans to introduce free education for girls up to degree level.

33. The respondent also relied upon a passage in a Big Message report dated 12th April 2010 entitled “Yessir, Wearing a Veil (Hijab) is a Muslim Woman’s Personal Choice”. It noted a ruling of the High Court in Bangladesh that wearing a veil by Muslim women holding public office was a personal choice. This was as a result of a High Court writ filed by a headmistress of a school as a result of being insulted by an education officer for not wearing a veil.
34. The respondent relied upon an IRIN report dated 27th January 2009 which said that women in Bangladesh had taken a significant step towards greater equality, chalking up a parliamentary milestone as nearly 20% of seats were to be filled by women. Nevertheless women still had a long way to go in terms of gender equality. Illiteracy, early and forced marriage, high maternal mortality, social and religious restrictions coupled with instances of torture, abandonment and limited job opportunities all contributed to the plight of women according to women’s groups. Bangladesh had achieved one of its millennium development goals ahead of time, which was gender parity in education. Participation in waged employment in the non-agricultural sector rose from 40.7 in 1992 to 58.6 in 2003. Nearly 2 million women worked in ready made garment factories, the country’s top export earning sector and 60% of the more than 35,000 government registered primary school teachers were now women.
35. The respondent relied upon an article from Marilyn Davis entitled “Made in Bangladesh” 2005 which said that sociology professor Kathryn Ward had undertaken research into Bangladesh’s garment manufacturing which brought in three-quarters of the nation’s export earnings. The project, housed at the Independent University of Bangladesh, found that garment workers and some groups of sex-workers, those based in hotels or houses, rather than in brothels or on the streets, had more control over the circumstances of their lives than other Bangladeshi women did. They usually had more education. They had more income. Garment workers made about twice what maids did and sex workers made five or six times what garment workers did. Garment workers had better access to health care and education for their children. They were more independent and more mobile, able to go out by themselves in society. Garment workers (though not sex-workers) were less likely to be abused by husbands or in-laws and they took a more equal part in household decisions. They were, to use a buzz word, more empowered. Despite its shortcomings factory work allowed Bangladeshi women to make inroads into the mainstream of society in a country where women were often secluded in the household. When a factory closed women lost more than just income. Micro-credit, the making of small loans that allowed poor women to start their own businesses, such as tea stalls, tailoring shops or rickshaw rentals had been widely touted as a solution to the problem of women’s poverty in the third world and had become a big business in Bangladesh. Professor Ward of Southern Illinois University Carbondale, the leader of the project, was a critic of NGOs that had gone into the micro-credit business. Women did not want to be indebted. They would prefer to have a job.

SCHEDULE OF BACKGROUND MATERIAL

1	Undated	SIGI (Social Institutions and Gender Index), <i>Gender Equality and Social Institutions in Bangladesh</i>
2	Undated	LexisNexis Source Information, Right Vision News, accessed 9 September 2010
3	Undated	International Crisis Group website (accessed 9 September 2010)
4	Undated	IRIN website (accessed 9 September 2010)
5	Undated	South Illinois University Carbondale, Nari Jibon School, undated (accessed 20.9.2010)
6	Undated	Govt of The People's Republic of Bangladesh, <i>Grant No. 25 30 - Ministry of Women and Children Affairs Medium Term Expenditure [accessed: 20.0.2010]</i>
7	Undated	Social Institutions and Gender Index, <i>Gender Equality and Social Institutions in Bangladesh (accessed 2 June 2010)</i>
8	Undated	The Social Sciences, Women's Empowerment through the Development of Micro Entrepreneurship in Rural Bangladesh, 2010, Vol. 5 Issue 1
9	13 April 1951	Pakistan Citizenship Act 1951, (Bangladesh)
10	25 June 2001	Refworld: United States Bureau of citizenship and Immigration Services, <i>Bangladesh: Information on the situation of women who have children who are born out of wedlock</i>
11	1 November 2003	Journal of International Women's Studies, <i>In search of Equality: marriage related laws for Muslim Women in Bangladesh</i>
12	27 June 2004	Adhunika, <i>Women's Housing Needs and Rights</i>
13	2005	Hurights Osaka Violence Against: Bangladesh Context
14	11-14 April 2005	UN Division for the Advancement of Women. Expert paper on <i>Violence against women: A statistical over view, challenges and gaps in data collection and methodology and approaches for overcoming them.</i>
15	8 May 2005	WSWS, <i>An eye for sale: Poverty forces Bangladeshi woman to turn to organ trade</i>
16	Autumn 2005	Marilyn Davis, ed. South Illinois University Carbondale, <i>Made in Bangladesh</i>
17	June 2007	The World Bank Office, Dhaka Dhaka: <i>Improving Living Conditions for the Urban Poor Bangladesh Development Series Paper No. 17</i>
18	20 October 2007	The New Nation: <i>40 pc women fall victim to domestic violence: Bangladesh ranks 4th highest in violence against women</i>
19	21 October 2007	The New Nation: <i>Women and domestic violence</i>
20	22 October 2007	HJT Research: <i>Violence against women in Bangladesh ranked 4th highest in world</i>
21	7 March 2008	Global Human Rights defence (Netherlands), Bangladesh: <i>Women's rights in Bangladesh</i>
22	13 March 2008	World Bank: <i>Whispers to Voices: Gender and Social Transformation in Bangladesh</i>
23	16 May 2008	The New Nation, <i>Govt for social, economic, political empowerment of women: Dipu Mon:</i>

24	20 June 2008	International Federation for Human Rights (FIDH), Bangladesh: <i>Labour Rights in the Supply Chain and Corporate Social Responsibility</i>
25	15 July 2008	IRIN, Bangladesh: <i>Moving towards universal birth registration</i>
26	24 October 2008	Asian Human Rights Commission, Bangladesh : <i>Investigating officer of a rape case is colleague of the accused</i>
27	12 November 2008	Asian Human Rights Commission, Bangladesh: <i>the second wife of the father sends a 13 year old girl to a hotel where sex services are provided and files a complaint about others with the collaboration of the police</i>
28	19 November 2008	IRIN News: Children and women suffer severe malnutrition
29	26 November 2008	Safeen (blog): <i>The Urban Women in Dhaka City</i>
30	2009	Table showing Social Institutions and Gender Index (SIGI) ranking
31	24 January 2009	The Daily Star Magazine, <i>Human rights: Laws of Discrimination</i>
32	27 January 2009	IRIN, Bangladesh: <i>Women move forward but challenges remain</i>
33	3 February 2009	OneWorld South Asia, <i>Long road ahead for Bangladesh</i>
34	6 February 2009	UKBA Operational Guidance Note (OGN) Bangladesh
35	25 February 2009	US Department of State, 2008 Human Rights Report : Bangladesh
36	5 March 2009	The Citizenship (Amendment) Act, 2009 [Bangladesh]
37	13 March 2009	International Centre for Research on Women (ICRW)/United National Population Fund (UNFPAS), <i>Intimate Partner Violence: High Costs to Household and Communities</i>
38	1 June 2009	Odhikar (Bangladesh) <i>Human Rights Monitoring Report</i>
39	1 June 2009	Asian Legal Resource Centre, Bangladesh: <i>Extra-judicial killings, torture, violence against women, media freedoms and the lack of an independent judiciary</i>
40	8 June 2009	Asian Human Rights Commission, Bangladesh: <i>Rights groups urged the government to probe human rights abuses and reform institutions</i>
41	1 July 2009	Odhikar (Bangladesh), Half-Yearly Report of Odhikar (January-June) 2009
42	1 August 2009	Journal of Health Population and nutrition: <i>Koehlmoos, Tascey Perez; Uddin, Jasim; Ashraf, Ali; Rashid, Mashida, Homeless in Dhaka: violence, sexual harassment, and drug-abuse</i>
43	3 August 2009	JAMA, <i>Violence against mothers in Bangladesh associated with health problems in young children</i>
44	11 September 2009	Integrated Regional Information Networks News (IRIN), <i>Bangladesh: Dowry violence continues unabated</i>
45	3 December 2009	Integrated Regional Information Networks News (IRIN, <i>Bangladesh: Over half of all children living in poverty</i>)
46	11 December 2009	International Crisis Group <i>Bangladesh: Getting Police Reform on Track</i>
47	1 January 2010	Odhikar (Bangladesh), <i>Human Rights Report 2009</i>
48	23 January 2010	Right Vision News, Bangladesh : <i>Dhaka's Floating Population</i>
49	27 January 2010	CNS News, Bangladesh: <i>16 year old girl raped, pregnant, flogged 101 times. High Court now order protection.</i>
50	11 March 2010	US Department of State, 2009 Human Rights Report: <i>Bangladesh</i>
51	8 April 2010	Right Vision News Bangladesh: <i>Urbanisation driven diseases get focus on Health Day today</i>

52	12 April 2010	A Big Message: <i>Yessir, Wearing a Veil (Hijab) is a Muslim's Woman's Personal Choice</i>
53	27 May 2010	Amnesty International, Amnesty International Report 2010: <i>Bangladesh</i>
54	11 June 2010	Integrated Regional Information Networks (IRIN), Bangladesh: <i>Educating girls lowers maternal death rate</i>
55	23 June 2010	Targeted News, <i>Children and Women in Urban Slums Worse off than Rest of the Country, Reveals BBS-UNICEF Survey</i>
56	23 June 2010	BD News 24: <i>Government reintroduces 5 yr women's savings</i>
57	1 July 2010	Odhikar (Bangladesh) <i>Human Rights Monitoring Report</i>
58	9 July 2010	Daily Star: <i>Fatwa illegal</i>
59	11 July 2010	The Independent: <i>Bangladeshi court outlaws fatwa punishment</i>
60	16 July 2010	Deutsche Welle: <i>Programs in Bangladesh offer women the chance at a decent day's work</i>
61	21 July 2010	The New York Times: <i>Garment Factories, Changing Women's Roles in Poor Countries</i>
62	22 July 2010	Office of the United Nations High Commissioner for Human Rights (OHCHR): <i>Joint report of the independent expert on the question of human rights and extreme poverty and the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation: Mission to Bangladesh</i>
63	20 August 2010	UK Home Office Country of Origin Information Service, Bangladesh <i>COI Report August 2010</i>
64	4 September 2010	Foreign Policy Blogs, Faheem Haider, <i>PM Reiterates Promise for Free Higher Education for Children with Needs (year assumed from URL)</i>
65	9 September 2010	Odhikar website