



CEDAW Secretariat
Office of the High Commissioner for Human Rights (OHCHR)
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By e-mail and post: cedaw@ohchr.org

28 January 2013

Re: Information on Pakistan for consideration by the Committee on the Elimination of Discrimination against Women at its 54th Session

Dear Distinguished Committee Members,

We respectfully submit this letter to supplement the fourth periodic report submitted by Pakistan, scheduled for review by the Committee on the Elimination of Discrimination Against Women (the Committee) during its 54th session taking place 11 February – 1 March, 2013. Equality Now, an international women's rights organization with ECOSOC status, and our partners, Blue Veins, Nasreen Welfare Trust Legal Aid Services, Society for the Protection of the Rights of the Child (SPARC) and War Against Rape, Lahore are writing to express our concern about the discrimination and inequality faced by women in Pakistan. This letter focuses on the Government of Pakistan's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to address incest and domestic trafficking and to protect human rights defenders working for the rights of women and girls in Pakistan.

A. Need for a law on incest and procedural reform to provide victims of incest and sexual violence with access to justice

Incest is one of the most invisible forms of sexual violence and young girls are the most common victims. Families generally keep the matter under wraps with devastating psychological, emotional and physical consequences for the victim as the perpetrator is most often a male family member and there is a strong tendency to protect the "honour" of the family. While Pakistan has laws against rape and sexual assault, it does not specifically make incest a crime which has serious implications for victims of incest, who are deterred from coming forward and disbelieved by police, prosecutors and judges.

According to UNICEF, 40-60% of known sexual assaults within the family are committed against girls aged 15 years and younger, regardless of region and culture. NGOs working on the ground in Pakistan confirm that incest is a frequent occurrence and stigma surrounding the topic as well as disbelieving attitudes of police, prosecutors and judiciary make it very difficult to address these cases and secure punishment for perpetrators.

In 2009, Equality Now in coordination with Nasreen Welfare Trust Legal Aid Services (NWT) and War Against rape, Lahore, a women's rights organization in Pakistan, took on the case of Mariam (all the names of living minor girls in this submission have been changed), a 15-year-old Pakistani girl who was raped by her father. The girl faced significant hurdles in accessing justice as the police disbelieved her and tried to dissuade her from bringing her case; the medico-legal examiner who examined her were completely unfamiliar with incest and looked only for bruises as signs of rape; the prosecutor was completely unfamiliar with standards applicable to rape victims; and the judicial process was cumbersome with many delays that re-victimitized the survivor. Following intense advocacy on the part of her lawyers, the judge allowed screens to be used during the victim's testimony and penalized the defense attorney for delays. The case ultimately resulted in the highest penalty for the perpetrator but only after significant efforts of international and national NGO and pro bono legal service providers. In 2011, Equality Now and its partners published the first report on incest (attached hereto) based on research conducted nationally and internationally and based on experiences from Mariam's case. The report clearly shows the barriers faced by victims in accessing justice and recommends the addition of a provision on incest in Pakistan's Penal Code as well as reforms to ensure access to justice for victims of sexual violence.

According to the Committee's General Recommendation 12, Articles 2, 5, 11, 12 and 16 of CEDAW require Pakistan "to act to protect women against violence of any kind occurring within the family."¹ Pakistan also ratified the Convention on the Rights of the Child (CRC), which obligates States Parties in Article 19 to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."² The Committee in its general recommendation No. 19, states that "within family relationships women of all ages are subjected to violence of all kinds . . . perpetuated by traditional attitudes" and advises that "laws against family violence and abuse, rape, sexual assault and other gender based violence give adequate protection to all women, and respect their integrity and dignity."³

In its examination of Pakistan's report in 2007, the Committee expressed concern at the persistence of violence against women and girls including domestic violence, rape and crimes committed in the name of honour. While it did not specifically address incest, the Committee called on Pakistan to "ensure that women and girls who are victims of violence have access to protection and effective redress, and that perpetrators of such acts are effectively prosecuted and punished."⁴ While Pakistan's latest submission discusses the positive introductions of police gender sensitivity trainings and Standard Operating Procedures for police in violence against women cases, the report also indicated an increase in reported violence against women.⁵ This information, combined with Equality Now's experience from working in Pakistan, indicates that there is still a need for changes in how the justice system handles incest and other sexual violence cases. Equality Now held a workshop in Lahore in 2010 where the following recommendations were adopted by the activists, lawyers and service providers who attended the conference. We strongly encourage the Committee to adopt them as well:

1. Amend all relevant laws including the rape law:

The rape law needs specific provisions on (i) sexual assault and molestation, (ii) incest, (iii) sexual abuse by penetration with any object, and (iv) sexual abuse by person in position of trust or duty-bearers.

2. Institute victim-friendly procedures in court:

To protect victims from unnecessary harassment and re-victimization through the legal process, it is necessary to institute certain procedures including: (i) placing of screens in courtrooms so that a victim does not have to confront her rapist again if this would prove too traumatic; (ii) giving the victim the option of having in camera proceedings; (iii) preventing harassment of victims during cross examination as well as the use of obscene/vulgar language; (iv) expediting trials in sexual violence cases so that the case is finalized within 6 months; and (v) having specially trained judges from within the existing pool to address cases of sexual violence.

3. Police training

Ensure that all police personnel (especially those manning police stations) are properly trained to address, register and investigate cases of sexual violence, including by ensuring that such training is a key part of the police academy curriculum.

4. Medical examination

Given that many victims of sexual violence are in urgent need of medical attention, the Health Department should issue a directive to all government hospitals to examine the victims without need of a police docket or court order.

B. Need for laws on internal trafficking to protect women and girls from being trafficked for sex or domestic servitude within Pakistan

Although Article 11 of the Constitution prohibits all forms of forced labor and trafficking, Pakistan lacks penal and other laws against domestic trafficking. This impacts women and girls who are trafficked for sex or domestic servitude within Pakistan.

Research shows that there are about 264,000 child domestic servants in Pakistan, most of whom are girls.⁶ According to the International Labour Organization (ILO) these ‘invisible’ children, are trapped in their employers’ homes where they are given very little or no pay, are deprived of the chance to have a childhood or receive an education, and are at risk of being subjected to verbal, physical, emotional and sexual abuse.⁷ UNICEF reports that millions of girls who work as domestic servants are especially vulnerable to exploitation, abuse and trafficking within and across borders. Trafficking in children both internally and across borders is especially prevalent in South Asia with a high incidence of domestic child trafficking.⁸

Equality Now’s partners have monitored abuse of domestic servants in Pakistan, and Equality Now has led a campaign on behalf of four girls killed by their employers in 2010: 12-year-old Shazia Masih who was allegedly tortured to death by her employers in Lahore; 15-year-old Yasmin who was allegedly burnt to death by her employers in Okara; 16-year-old Kausar who was allegedly tortured and poisoned by her employers in Lahore and died after vomiting blood; and 12-year-old Tehmina who was taken to the hospital in Islamabad with a fractured backbone after her employers allegedly pushed her off the roof in an attempt to kill her. These girls’ deaths illustrate how vulnerable girls in domestic servitude are to their employer’s abuse.

Pakistan is obligated under Article 6 of CEDAW to take measures to suppress all forms of trafficking.⁹ Additionally, Article 19 of the CRC requires States to protect children from all forms of exploitation and Article 32 states that States Parties should “recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental,

spiritual, moral or social development.”¹⁰ The CRC further directs States Parties to set a minimum age for admission to employment, regulation of employment hours and conditions as well as penalties to ensure enforcement. The Committee on the Rights of the Child, which monitors State compliance with the CRC, in its examination of Pakistan’s October 2009 report expressed concern at the high prevalence of child labor in Pakistan and at the “growing number of children trafficked internally, sometimes sold by their own parents or forced into marriage, sexual exploitation or domestic servitude.”¹¹

The Government of Pakistan claims to have taken many steps to eliminate trafficking in its fourth submission, including adopting a National Plan of Action to combat both domestic and international trafficking.¹² Yet, two key bills that would address the trafficking of children into domestic servitude have been waiting before the National Assembly to become laws for several years. The first is the Child Protection (Criminal Law Amendment Bill) 2009, which amends section 369 of the Pakistan Penal Code to penalize trafficking; and the second is the Prevention and Control of Human Trafficking Act 2010, which amends the Prevention and Control of Human Trafficking Ordinance of 2002 to include provisions against domestic trafficking.¹³ However, the two bills are stalled before the National Assembly, which indicates that the Government of Pakistan must still take major steps to end the trafficking of children into domestic servitude.¹⁴ The Committee should encourage the government to facilitate the adoption of the Child Protection (Criminal Law Amendment Bill) 2009 and Prevention and Control of Women Trafficking Act 2010. Additionally, Article 142 of the Constitution of Pakistan provides that either Parliament or the provincial governments can legislate on criminal matters.¹⁵ As such, the Committee should also recommend that the government ensure the provinces adopt legislation against domestic trafficking both for sex and for labor and take additional steps including implementing free and compulsory education as required under Article 25a of the Constitution to prevent the trafficking of children into domestic servitude.

As far as labor laws are concerned, following the adoption of the 18th Constitutional Amendment, labor and child rights now come under provincial jurisdiction, giving provincial governments the responsibility to take the lead in introducing improved laws.¹⁶ However, the national Employment of Children Act, which fails to outlaw child domestic servitude, remains in force until such time as provincial governments enact similar laws at the provincial level. No province has acted to ban child domestic servitude.¹⁷ The legal status of child domestic servitude therefore remains the same and child domestic servitude remains rampant in Pakistan, with a large proportion of domestic servants being girls. The Committee should therefore recommend the enactment of the Employment of Children Act of 1991 in each province with the inclusion of domestic work in the list of banned occupations.

C. Protection of human rights defenders

Equality Now has monitored violence against human rights defenders in Pakistan. Threats and violence against those defending human rights, and in particular women’s rights, have escalated since 2012, particularly in the Khyber Pakhtunkwa province. The government has failed to take adequate measures to protect these defenders or investigate and prosecute the offenders.

The year 2012 and the beginning of the year 2013 were particularly egregious with the brutal killing of women’s rights activist Farida Afridi and the murder or serious injury of twenty additional human rights defenders in the past four months in five separate incidents:

- January 2013 – gunmen shot dead six women and a man working for a health, education and water sanitation NGO in the Swabi district of Khyber-Pakhtunkhwa (KP) province.

According to media reports, five of the women were teachers, while the sixth woman and the man were health workers.

- January 2013 – gunmen shot dead two charity workers in Charsadda working for an organization involved with education and welfare work in the district. That same weekend, the director of a well-known NGO in KP was targeted by a bomb.
- December 2012 – nine polio field workers – mostly women – were shot dead in a string of attacks in Karachi, Charsadda and Peshawar, prompting UN agencies to temporarily suspend their polio vaccination campaigns throughout Pakistan.
- December 2012 – a female Swedish NGO worker was shot dead in Lahore, a male British Muslim Red Cross worker was kidnapped and beheaded in Quetta and a U.S. development worker has been missing since being kidnapped from his home in Lahore in August 2011.
- October 2012 – 15-year-old Malala Yousafzai, an activist advocating for access to education for girls, was shot and seriously injured by Pakistani Taliban gunmen in the Swat district of KP. Two of her classmates were also injured in the attack. According to local NGOs, threats against schools, especially girls' schools, and NGOs are continuing and several government schools have been bombed in recent months.

Equality Now's partner in Pakistan, Blue Veins, also reports that polio vaccination centers and women and children's health organizations are currently under severe threat as a bomb was recently placed with a threatening letter at one community dispensary. Human rights defenders in Pakistan are routinely criticized for their work to further the rights of women and accused of promoting a "western agenda." This rash of violence has led to fear amongst human rights defenders, particularly women and neither the provincial nor federal governments have taken any steps to prevent or punish these murders and attacks. Discouraging women's rights defenders to operate in the area has severe implications for progress on gender equality.

General Recommendation 12, Articles 2, 5, 11, 12 and 16 of CEDAW require Pakistan "to act to protect women against violence of any kind occurring . . . at the work place or in any other area of social life."¹⁸ The UN Special Rapporteur on violence against women, Rashida Manjoo, paid particular attention to Afridi's murder and called on the Government of Pakistan to promptly ensure that perpetrators are held accountable. She stated that women human rights defenders "are commonly perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes about femininity and the role and status of women in society, while reclaiming their rights or the rights of their communities."¹⁹ Manjoo also stated that the killing of women is indeed a State crime when tolerated by public institutions and officials.²⁰ In the June 2008 report of the Working Group on the Universal Periodic Review of Pakistan, Pakistan was called upon to "combat impunity for attacks on human rights defenders by effectively investigating allegations and by prosecuting those responsible."²¹

Pakistan does not mention the violence against human rights defenders, many of whom are women, in its fourth periodic report, even though it has an obligation under CEDAW to protect these women's lives and hold the perpetrators accountable. The Committee should therefore inquire into the issue and ask the Government of Pakistan what it is doing to address the violence and protect these women. Additionally, the Committee should recommend that the Government of Pakistan: amend the penal code to make it a criminal offence to intimidate, harass, threaten, attack or injure any individual because of their human rights work; take immediate measures to end the culture of impunity for crimes against women; and address the culture of silence and victim-blaming that increases the vulnerability of women to violence, results in the violation of their rights and impedes their enjoyment of full and equal citizenship.

Suggested Questions to the State Party

We would respectfully urge the Committee to raise with the Government of Pakistan during its review the following questions:

- 1) What steps is the government taking to legislate against incest?
- 2) What steps is the government taking to reform legal procedures to ensure that women and girls in incest and other sexual violence cases have access to justice and are not deterred from bringing their cases forward?
- 3) What measures is the government adopting to enact laws against internal trafficking for sex and domestic servitude?
- 4) What actions is the government taking to protect human rights defenders and ensure that they can continue to carry on their work? What urgent measures is the government taking to hold perpetrators of threats and violence against human rights defenders accountable?

Proposed Recommendations

We also urge the Committee to consider the following recommendations to the Government of Pakistan:

- 1) The government should ensure access to justice in sexual violence cases by:
 - a. Amending all applicable laws including the rape law to contain provisions on (i) sexual assault and molestation, (ii) incest, (iii) sexual abuse by penetration with any object, and (iv) sexual abuse by person in position of trust or duty-bearers.
 - b. Instituting victim-friendly procedures in court to protect victims from unnecessary harassment and re-victimization through the legal process, including: (i) placing of screens in courtrooms so that a victim does not have to confront her rapist again if this would prove too traumatic; (ii) giving the victim the option of having in camera proceedings; (iii) preventing harassment of victims during cross examination as well as the use of obscene/vulgar language; (iv) expediting trials in sexual violence cases so that the case is finalized within 6 months; and (v) having specially trained judges from within the existing pool to address cases of sexual violence.
 - c. Training police (especially those manning police stations) to address, register and investigate cases of sexual violence and ensuring that such training is a key part of the police academy curriculum.
 - d. Providing urgent medical attention in government hospitals to victims of sexual violence without waiting for a police docket or court order.
- 2) The government should address domestic servitude and domestic trafficking by:
 - a. Enacting a law (and have provincial governments enact laws) against internal trafficking for sex and labor and taking urgent measures including implementing free and compulsory education as required under Article 25a of the Constitution to prevent and address the trafficking of children into domestic servitude.
 - b. Ensuring the enactment of the Employment of Children Act of 1991 in each province with the inclusion of domestic work in the list of banned occupations.

- 3) The government should take immediate measures to address the growing attacks against human rights defenders by making it a criminal offence to intimidate, harass, threaten, attack or injure any individual because of their human rights work; and taking urgent measures to investigate, prosecute and punish those responsible for the threats and attacks.

Thank you very much for your kind attention, and please do not hesitate to contact us if we can provide further information.

Sincerely,


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Sponsoring Organizations

Equality Now is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organizations in over 160 countries.

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Blue Veins is an activist women's organization that works to empower women and improve their status which is essential to realizing the full potential of social, political and economic development.

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Nasreen Welfare Trust Legal Aid Services is a pro-bono legal initiative committed to providing high quality legal services to the down-trodden segment of the society.

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SPARC, founded in 1992, is a Pakistani child rights organization with ECOSOC status working on a broad range of child rights issues and its work is guided by international human rights principles and standards, including the UNCRC and relevant ILO Conventions.

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War Against Rape, Lahore (WAR) is a group of women and men committed to building a society free of gender-based oppression, discrimination, exploitation and violence. WAR helps the survivors of sexual abuse through moral, social, legal, psychological and medical help.

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- ¹ Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation No. 12: Violence against Women*, U.N. Doc. A/44/38 (1989). *See also* CEDAW Committee, *General Recommendation No. 19: Violence against Women*, paras. 23 & 24, U.N. Doc. A/47/38 (1992).
- ² Convention on the Rights of the Child, art. 19.
- ³ CEDAW Committee, *General Recommendation No. 19: Violence against Women*, *supra* n. 1 at paras. 23 & 24(b).
- ⁴ CEDAW Committee, *Concluding Comments: Pakistan*, paras. 22, 26-27, U.N. Doc. CEDAW/C/PAK/CO/3 (2007).
- ⁵ Government of Pakistan, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, fourth periodic report of States parties* (Fourth Periodic Report), paras. 123-24, 132 & 143 and p. 83, U.N. Doc CEDAW/C/PAK/4 (2011).
- ⁶ International Labour Office, *Helping hands or shackled lives? Understanding child domestic labour and responses to it*, 127 (2004).
- ⁷ *Id.* at iii.
- ⁸ *Id.* at 19 n. 22
- ⁹ CEDAW Committee, *General Recommendation No. 19: Violence against Women*, *supra* n. 1 at para. 13.
- ¹⁰ Convention on the Rights of the Child, art. 32.
- ¹¹ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Pakistan*, para. 95, U.N. Doc. CRC/C/PAK/CO/3-4 (2009).
- ¹² Government of Pakistan, Fourth Periodic Report, *supra* n. 5 at para. 20.
- ¹³ *Id.* at paras. 30-31 & 186.
- ¹⁴ Government of Pakistan, *Replies of Pakistan to the list of issues to be taken up in connection with the consideration of its fourth periodic report*, paras. 36-37, U.N. Doc. CEDAW/C/PAK/Q/4/Add.1 (2012).
- ¹⁵ Constitution of the Islamic Republic of Pakistan, modified 31 July 2004, article 142.
- ¹⁶ *Id.* at amendment 18.
- ¹⁷ The Punjab government has moved to pass its own legislation but it has incorporated the existing national law without the addition of child domestic servitude in its schedule of banned occupations.
- ¹⁸ CEDAW Committee, *General Recommendation No. 12: Violence against Women*, *supra* n. 1. *See also* CEDAW Committee, *General Recommendation No. 19: Violence against Women*, *supra* n. 1 at paras.6, 9, 11, 24(a), (b) & (i).
- ¹⁹ Rashida Manjoo, Special Rapporteur on Violence against women, Office of the High Commissioner for Human Rights, United Nations, 18 July 2012.
- ²⁰ *Id.*
- ²¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Pakistan*, para. 106(19), U.N. Doc. A/HRC/8/42 (2008).