

# Obstructing Progress:

## Growing Talibanisation & Poor Governance in Pakistan

Shadow Report submitted by Shirkat Gah

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شیرکت گاہ

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- Lahore Diocese- Programme for Empowerment of Women -Church of Pakistan
- Marvi Development Organization
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- Social Youth Council of Patriots
- Society for the Advancement of Education (SAHE)
- South Asia Partnership Pakistan
- Strengthening Participatory Organization
- Sudhar Development Organization
- Swaani Saanjh
- United Youth Welfare Organization

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## Introduction

Since Pakistan's combined first, second and third CEDAW report in 2006, despite some positive steps, women have experienced a further erosion of rights and freedoms. Pakistan's ranking in the Global Gender Gap Index dropped from 131 in 2011 to 134 in 2012<sup>1</sup>. The overarching obstacles to gender equality and women's rights remain unchanged from our previous submission: Talibanisation & Poor Governance Undermining CEDAW in Pakistan - Second Shadow Report, April 15, 2007. Intersecting with culture, an upsurge in religious militancy has reinforced women's subordinate position, heightened insecurity and increased violence against women; inadequate or faulty governance mechanisms and poor implementation hamper women's ability to benefit from positive measures and supportive provisions. Problems have been exacerbated by devastating natural disasters.

This Shadow Report focuses on the questions posed by the CEDAW Committee and Pakistan's responses. It highlights inconsistencies between policy and practice that create glaring disparities between de jure and de facto gender equality due to weak implementation of otherwise adequate policies. Without the political will to (a) address security challenges for women and (b) ensure effective governance, Pakistan will not only fail to eliminate gender-based discrimination but discrimination will be strengthened, especially against already marginalized women.

We call upon the CEDAW Committee to ask what steps the Government of Pakistan is taking to address these vital issues and to extract commitments to better implement the rule of law and government policies and ensure women's equality in law and practice.

Points we would like the CEDAW Committee to raise are indicated in each sub-section, referencing Committee questions and Government of Pakistan responses.

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<sup>1</sup> World Economic Forum Global Gender Gap Report 2012

## The Context of Increased Insecurity

Armed conflict pursued by Taliban extremists and military counter-operations in the Federally Administered Tribal Areas and Khyber-Pakhtunkhwa Province, military action against insurgents in Balochistan, and growing ethnic and sectarian violence have created an atmosphere of intense insecurity, negatively impacting women and girls.

The State has failed to check armed jihadi militant groups whose growing numbers and influence are alarming. This encourages bigotry and misogynist views propagated by seminaries and educational institutions such as advocating gender policing by non-state actors. Women have been attacked by the Pakistani Taliban and other conservative elements: hundreds of girls' schools have been bombed, further undermining girls' education, women were denied employment and participation in elections (Kohistan 2008); women human rights defenders and men defending women's rights as well as health workers (9 Polio Vaccinators were killed in December 2012) have been threatened, assassinated, and condemned as "anti-Islamic" and "agents of the West". The lack of effective State action in all the cases of attacks has emboldened perpetrators of violence to flaunt the law with impunity, obstructing access to education and health facilities, and negating women's legal rights and franchise. The threats to women's rights pointed out in the 2007 SG Shadow Report Talibanization and Poor Governance have become a nightmarish reality for many.

The Government has failed to address the impact

on women experiencing armed conflict who are not displaced from their homes. For example, army operations in Balochistan and ethnic conflict between Mohajirs and Pathans in Karachi have not only increased women's physical insecurity; they also experience economic loss when daily labourers are unable to go to work.

### Women in Ethnic and Sectarian Conflict

CEDAW Committee Questions Para 20  
Pakistan Response to CEDAW Committee  
Para 85

Ethnic and sectarian violence is on the rise; an estimated 502 Shia people were assassinated in 2012 alone<sup>2</sup>. The Shia ethnically distinct Hazara community has been especially targeted by Sunni extremists. The massacre of 83 Hazaras in Quetta on 1 January, 2013 led to Governor's rule in Balochistan after the victims' families and supporters spent three days and nights in sub-zero temperatures with the coffins of the deceased, demanding justice. Ethnic and sectarian rivalry in Karachi between Pathans and Mohajirs and between Sunnis and Shias across Pakistan has resulted in a colossal loss of lives and created an environment of fear and insecurity.

Women of marginalized and targeted ethnic and religious minorities suffer emotional and economic distress after losing their menfolk and having to take charge of households.

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<sup>2</sup>[http://www.dailytimes.com.pk/default.asp?page=2013%5C01%5C01%5Cstory\\_1-1-2013\\_pg12\\_3](http://www.dailytimes.com.pk/default.asp?page=2013%5C01%5C01%5Cstory_1-1-2013_pg12_3)

## Recommendations

- The Government should recognize armed conflict in Swat and ensure the application of women's rights under UN SC Resolution 1325 and related UN SC Resolutions
- The State must safeguard the life and security of ethnic and religious minorities and deal with the perpetrators of crimes against these groups in a speedy and effective manner.
- Promote awareness of the impact of conflict on women and sensitize the State and the public about the State's responsibility towards women in conflict and post-conflict situations.

## Internally Displaced Persons

CEDAW Committee Questions Para 18  
Pakistan Response to CEDAW Committee  
Paras 81-82

Devastating disasters (earthquake of 2005 and 2008, rains and floods of 2010 and 2011) exacerbated insecurity for women in affected areas. Over 5.3 million people were displaced between 2007 and 2012 because of floods and military operations against religious militants. Relief and reconstruction work with displaced populations showed the differentiated impact of armed conflict and natural disasters on women and girls. In particular, women and girls experienced increased violence, including sexual violence, trafficking, forced termination of pregnancies, forced marriages, psychological and emotional trauma and economic stress faced by women left in charge of households. Additionally, poor service for sexual and reproductive health led to an increased number of unsafe abortions and deliveries.

The government has sought to address the issues

of those displaced (referred to as "dislocated"). It has taken no steps to address the problems faced by women affected by disaster and conflict who remain in those areas. Women and girls continue to be targeted and girls' schools destroyed in Swat and other areas of KPK even after the end of Taliban rule (2007-9).

## Recommendations

- Rehabilitation and reconstruction efforts by the government should address all categories of women impacted by disaster, conflict and military operations.
- Structures for relief and reconstruction should be strengthened with the addition of women and gender sensitized staff, and be monitored for effectiveness through public processes.
- Promote the presence of women and their perspective in state institutions and national and international forums for peace.
- Establish mutually agreed upon mechanisms to regularly consult local people in conflict areas, in particular women, in developing implementing and monitoring all security measures.

## Security of Women Human Rights Defenders (WHRDs)

The Government is responsible for ensuring the life, liberty and security of all its citizens on the basis on equality and non-discrimination, including for all human rights defenders<sup>3</sup>.

Women and men defending women's rights are increasing vulnerable to targeted killings and attacks. In the past 3 years (2010-12), those killed include Farida Afridi and Zarteef Afridi in KPK, Naeem Sabir in Khuzdar, Balochistan; and seven WHRDs in Swabi, KPK on 1 January, 2013. The

<sup>3</sup>Under the UN 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms'

Tehrik-e-Taliban Pakistan publicly threatened to curb the rights and freedoms of women NGOs workers (Landi Kotal, Kohistat and Lakki Marwat); no action was taken by the government.

In Swat and other areas of KPK as well as in Balochistan, military and police check posts hinder the freedom of movement of people who feel harassed and intimidated by staff of these agencies. Human rights organizations confront increasing obstacles to their work and increased surveillance in areas affected by conflict and some areas hit by disaster (e.g. Swat and Balochistan) under the pretext of national security.

### ***Recommendations***

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- The Government should adopt holistic, comprehensive, strategic and well-resourced action to prevent violence against women and to ensure the safety and protection of women human rights defenders

### ***We call upon the Committee to ask***

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- What steps has the Government taken to protect the life and promote the security of women in ethnic and religious minorities?
- What measures has the Government put in place to ensure women's participation in all relief, reconstruction and peace forums from planning to implementation and monitoring?
- What steps is the Government taking to collect and share comprehensive data on violence against women in disaster, conflict and post disaster/conflict situations?
- What steps has the Government taken to ensure safety of WHRDs and to ensure perpetrators of crimes against them are prosecuted?
- What measures is the Government taking to apprise officials tasked with safety of WHRDs of their obligation for protection of WHRD?

## Obstacles to Good Governance

### Lack of Basic Documentation

The very basis of governance is faulty as it is based on inadequate gender disaggregated data and the absence of accurate records (of births, changes in marital status and deaths). Fewer women than men have Computerized National Identity Cards (CNICs) required for voting, inheritance and accessing Government as well as most private schemes, benefits, and resources. Equally persistent is the failure to apprise both the public at large and those responsible for implementation about laws, policies and schemes.

The National Database Registration Authority (NADRA) is responsible for issuing CNICs and managing a Civil Registration Management System to register births, marriages, divorces and deaths. It has set aside one day a week at Registration Centers exclusively for women and 11 NADRA centers with female staff to facilitate women.

However, NADRA does not have the biometric record of as many as 3.72 million women voters<sup>4</sup>. NADRA only uses fingerprints as biometric which have the effect of excluding agricultural women, whose fingers are often scratched, from registration because the fingerprint scanner does not record/register damaged skin.

The Muslim Family Laws Ordinance (MFLO) 1961 provides for liability in case of non-compliance with the provisions pertaining to registration. However, no liability is imposed on

the bride or the groom for the non-registration of the nikah (marriage) as the responsibility to register marriages is that of the person solemnizing the marriage. In practice, however there is no reported case where the person in question has been held responsible under the relevant provisions of the MFLO for non-registration. The bride and the groom may/do face legal difficulties as an un-registered marriage can raise doubts as to the status of the parties involved and there are instances where the courts have not recognized an unregistered marriage<sup>5</sup>. The non-implementation of the laws, the absence of accurate records (of death, births, and change in marital status especially at marriage or divorce) and lack of gender disaggregated data has a detrimental impact on women.

### Recommendations

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- The National Database Registration Authority (NADRA) should extend the scope of its services for registration of births, deaths and marriages, and establish close coordination with the relevant government functionaries.
- NADRA should liaise with the Secretaries of Union Councils, medical officers and midwives working at Basic Health Units and Rural Health Centers to ensure country-wide coverage.
- ID Cards for women should be standardized as bearing the name of the father.
- NADRA should provide for the recording of

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<sup>4</sup><http://dawn.com/2012/12/26/nadra-does-not-have-biometric-data-of-3-72m-women-voters/>

<sup>5</sup>Before the amendment of the zina Hudood Ordinance there were several instances where couples with unregistered marriages (especially choice marriages) got prosecuted under the said Ordinance.

any biometric that may include retina scans, fingerprints, hand measurements and even ear shape.

## **Devolution and the National Machinery for the Advancement of Women**

CEDAW Committee Questions Paras 4-5  
Pakistan Response to CEDAW Committee  
Paras 12-13

In 2010, Parliament adopted the 18th Constitutional Amendment in order to decentralize political power by transferring resources and responsibilities from the Central Government to the Provinces. This has had numerous implications for women: the Federal Ministry of Women Development (MoWD) ceased to exist; the donor-supported Inter-Provincial Ministerial Coordination Group for Women's Development around CEDAW under the MoWD is no longer active. The Amendment also entailed a structural shift in the roles and responsibilities at the Provincial level. Importantly, the Provinces now have an exclusive role in policy-making in crucial sectors such as health, education, agriculture and personal status law.

There is no integrated framework responsible for women from federal to local levels. Reporting and coordinating women's rights is now the responsibility of the Federal Ministry of Human Rights but there is no federal institution to coordinate implementation of all obligations in the Provinces under CEDAW that encompasses economic, social and cultural as well as civil and political rights. Provincial Women Development Departments (WDD) responsible for leading Provincial Committees on CEDAW have inadequate budgets and lack appropriately trained staff. No concrete plans for coordination, reporting and implementation of CEDAW commitments have been formulated and there is

no clarity as regards responsibilities.

The National Commission on the Status of Women (NCSW) has been strengthened however there are no provincial commissions in Punjab, Sindh or Balochistan. In KPK, the Provincial Commission, predating the amendment, lacks autonomy being attached to the Social Welfare Department, and is under resourced.

### ***Recommendations***

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- Capacity needs to be built of the Ministry of Human Rights staff to be gender sensitive to ensure obligations under CEDAW are met. Stronger more proactive Provincial offices of the MoHR need to be better resourced, technically competent and establish coordination and linkages with relevant provincial departments
- A dedicated unit on women's development should be established in the Planning Commission to ensure compliance with CEDAW at the federal level, and interprovincial coordination mechanisms adopted to ensure commitments are met.
- Provincial implementation committees for CEDAW need to be institutionalised in mainstream government planning, have dedicated budgets and commitment from all provincial governments.
- Parliament through the Human Rights Standing Committee should ensure that NCSW recommendations are considered within a specified period (e.g. 6 months) to enable timely attention and action.
- The NCSW should be well resourced, and at least 50% of NCSW members made full time.
- Provincial Commissions on the Status of Women should be established at the earliest in all four Provinces, and these should consider all NCSW reports and recommendations.
- Units for implementation of CEDAW

commitments should be established in WDD of all Provinces.

## Parallel Legal Systems

CEDAW Committee Questions Para 1  
Pakistan Response to CEDAW Committee  
Paras 1-3

To ensure equality before the law, all systems must be integrated within one judicial system and all non-formal dispute resolution mechanisms eliminated. Parallel systems continue to operate in Pakistan to the confusion and detriment of its citizens. This includes the Federal Shariat Court, mandated to determine whether or not any legislation is in conformity with the injunctions of Islam, and the Shariat Appellate Bench of the Supreme Court. The decentralization of legal authority to several different focal points weakens the ideal of an unbroken chain of legal hierarchy.

The Frontier Crimes Regulation (FCR) is a legal exception only applicable to FATA. Although the FCR was amended by the Government in 2011 under the FATA reform package, reforms have yet to be implemented on the ground. There is no justification for the existence of a parallel legal system that remains outside the purview of Pakistan's judiciary. Under the Constitution the tribal areas are an integral part of Pakistan and the fundamental rights therein are applicable to FATA. However, Article 247 bars the superior courts from exercising any jurisdiction in FATA, impeding the practical application of fundamental rights.

Non-formal dispute resolution mechanisms continue to encroach upon the sovereignty of the formal justice system, dispensing justice without State sanction, even after the courts have declared them illegal. The local self-governance systems undermine women's rights as decisions are not based on any codified, transparent system of legal

principles or precedence and exclude women almost entirely. Their existence does not solve the problems of a poorly resourced judiciary. These systems perpetuate women's vulnerability to physical, social and sexual exploitation.

## Musalihat Anjuman

CEDAW Committee Questions Para 3  
Pakistan Response to CEDAW Committee  
Paras 9-10

The Musalihat Anjuman (MA) (mediation forums) was introduced to address the widespread lack of access to the formal justice system and absence of a mechanism to dispense swift justice. In practice, this goal has not met and the MA further complicated the already intertwined systems of formal and informal justice. The system has been dysfunctional since the expiration of the Local Government system but even when in place the MA's proved no better than jirgas and panchayats, albeit with the former enjoying state sanction.

The lessons of this experiment must be stressed: the selection of MA committee members and many decisions were heavily influenced by the local councilor and other influential people, especially where the parties had political connections. Despite the mandatory inclusion of one woman on the committee, her participation was typically negligible and her opinion tended to be ignored. Typically, women confronted significant barriers in approaching the forums and in adequately representing their own interests. Moreover, despite official claims that legal literacy and gender sensitization trainings were provided to MA committee members, there is no evidence of these having had any effect on the decisions or the conduct of the committee; members remained gender insensitive and unaware of women's rights and issues. In some instances, the committee sent women back to an abusive domestic context in the

name of familial reconciliation, rather than adopting measures for women's protection<sup>6</sup>.

## **Participation in Political and Public Life**

CEDAW Committee Questions Para 12  
Pakistan Response to CEDAW Committee  
Paras 38-46

The local government system, introduced under the Local Government Ordinance 2001, reserving 33% seats for directly-elected women, expired on December 31st 2009. This system became a nursery for potential grassroots politicians who lacked money or clout, or both. Numerous local women councilors were subsequently elected as Members of Provincial Assemblies in 2008 and a few to the national assembly. The system needs to be revived to promoted women's representation in decision-making at the grassroots.

Despite efforts made by the Government the number of registered women voters is 36,591,359 as compared to 47,773,692 male voters. (www.ecp.gov.pk Statistical Data – 2012).

Voter turnout in the 2008 general elections was less than in 2002, especially amongst women: 39% fewer women voted compared to 18% fewer men. Women comprised 40% of the voters in 2002, but only 30% in 2008. In the Federally Administered Tribal Areas, internal displacements due to military operations against militants led to a massive decline of 96%. Women voters fell by approximately 45% in Khyber Pakhtunkhwa (from 3.92 million women voters to 2.17 million). In other provinces as well, security concerns contributed to a decline in women voters.

A mutual agreement between political parties for

the by-elections of PB-15 of the Balochistan Assembly on 11 November, 2010 negated the right of franchise of almost 95% of the registered women voters in Musakhel. The law provides penalties and legal redress for such acts but this requires the affected parties to lodge a complaint.

Problems in the 2008 elections included: 37.2 million fake votes; some 10 million voters unable to find their names in voter lists; disenfranchisement of voters whose address did not match that given in the electoral roll. To address such issues, the Election Commission of Pakistan has provided citizens with the facility to verify their electoral address and information through SMS services. But it provides no instructions on how to follow up in case of non-registration or incorrect information.

## **Recommendations**

- Restore at the earliest the Local Government System with 33% directly elected reserved seats for women, and ensure the representation of women belonging to religious minorities.
- The procedure for filing complaints in case of forced disenfranchisement should be changed so that women are not excluded from voting in the elections.

## **International Commitments**

A serious impediment to progress is the visible lack of ownership of commitments under international instruments and agreements amongst Government officials even at senior levels. It is essential to proactively and systematically promote knowledge about, and acceptance of, commitments under various national as well as international documents

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<sup>6</sup>2005 Mapping conducted by Shirkat Gah in 17 Districts of Pakistan on resources available to women to address violence against women.

relating to women amongst policy implementers and those concerned with law.

If a declaration excludes or modifies the legal effect of certain provisions of a treaty in their application to the State in question, it is considered a reservation even though its title may not change. While there is a presumption in favour of the permissibility of reservations, this may be displaced if it is contrary to the object and purpose of the treaty.

Treaties cannot operate of themselves within a State; they require the passing of enabling statutes. Consequently, individuals within a State technically cannot derive their rights or be subjected to obligations under a treaty that has not been incorporated. However, the ratification of an international treaty (where no incorporation has taken place) can give rise to legitimate expectations that the executive, in the absence of enabling legislation, will act in conformity with the treaty.

### ***Recommendations***

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- Pakistan's declaration should immediately be withdrawn.
- The Optional Protocol to the Convention should be ratified.
- CEDAW is a State commitment and the Government should follow through on it by passing enabling legislation to integrate CEDAW within the domestic laws of Pakistan.
- The Government should ensure that all Governmental tiers are aware of the State's commitment under CEDAW.

### ***We call upon the Committee to ask***

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- What is the Government doing to ensure all women have ID cards, such as mobile NADRA vans with female personnel, and

measures to ensure women whose fingerprints cannot be electronically scanned?

- What steps have been taken to ensure that the Ministry of Human Rights (MoHR) and its regional offices as well as all relevant sectors of the national, provincial and local governments fully understand their obligations under CEDAW?
- What measures ensure the capacity of the MoHR to monitor and report on CEDAW and to assess the effectiveness of the Ministry's focus on women and the girl child?
- What is the planned budgetary allocation for NCSW to ensure it can carry out its functions effectively and what measures ensure the timely consideration of NCSW recommendations by the Parliament?
- What mechanisms exist at the provincial level for implementing and coordinating efforts to give effect to CEDAW down to the lowest administrative tier?
- What is being done to integrate all systems within the judicial system; to repeal the Federal Crimes Regulation, and implement the superior courts' judgments declaring jirgas illegal, and eliminate all informal dispute resolution mechanisms?
- What steps have been taken to assess the impact of the MA on women's access to justice and to ensure that any future initiatives to guarantee justice do not perpetuate existing oppressive gender norms and abide by human rights standards?
- What specific measures is the Government taking to ensure that women are registered as voters accurately, to redress the issue of forced disenfranchisement of women, and ensure accurate records of their participation?

## Violence Against Women

### Support Structures

CEDAW Committee Questions Paras 8-9  
Pakistan Response to CEDAW Committee  
Paras 27-29, 31, 60

Support structures for survivors of violence are limited and under resourced. 45 Government-run women's shelters serve a female population of 88.2 million in which 65,316 cases of violence against women were reported in the media from 2008 to 2011<sup>7</sup>. Following devolution, 23 Federally-run crisis centers for women were to be transferred to Provincial Governments in 2010. The Government of Punjab has refused to adopt twelve functional centers and replaced them with crisis support desks that only serve as referral mechanisms<sup>8</sup>. Other provinces have adopted the centers but failed to allocate adequate and timely budgets, reflecting the low priority accorded. Burn victims face serious problems: there are only three recognized Government Burn Units in civil hospitals and three in military hospitals. Some District hospitals provide burn treatment, but ill-equipped to handle serious cases, especially those arising from acid violence.

### Recommendations

- Expand and strengthen support structures for survivors of violence (Women's Shelters, Crisis Centers and Burn Units for treatment of women victims at District level in all Provinces) with adequate human and financial resources.

- Ensure implementation of guidelines/ Standard Operational Procedures (SOPs) adopted in state-run shelters for women in Punjab, Balochistan and KPK and their adoption in Sindh.
- Improve coordination between shelters and women's crisis centers within Districts and Provinces.
- Run awareness campaign using all forms of media, including the electronic media, to educate the public about all aspects of violence against women including the procedures for prosecuting offenders and information on existing support institutions.

### Reporting and Data Collection for Cases of Violence against Women

The majority of cases of violence against women (VAW) fail to be reported to the police that is only approached for 'serious' crimes; many complaints are not entered in the police stations' daily diaries (roznamcha); if entered, enquiries are not made properly and the matter is generally shelved<sup>9</sup>. A badly worded FIR harms the prosecution case thereby obstructing women's access to effective remedies.

The Gender Crimes Cell (GCC) intended to be a central repository for data on VAW suffers from staffing capacity. In March 2012, of 25 'Gender Crime Cell' Government posts, only two were filled,<sup>10</sup> and gender sensitization training is not mandatory. First Information Reports (FIRs), the primary source of GCC data on gender-based

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<sup>7</sup>Aurat Foundation, Pakistan NGO Alternative Report on CEDAW (2004-2009)

<sup>8</sup>Ibid. para 31

<sup>9</sup>Violence Against Women in Pakistan: Constraints in Data Collection- Imran Ahmad Sajid et al.

Pakistan Journal of Criminology 93 Volume 2, No. 2, April 2010, pp. 93 -111

[http://www.academia.edu/958716/Violence\\_Against\\_Women\\_in\\_Pakistan\\_Constraints\\_in\\_Data\\_Collection](http://www.academia.edu/958716/Violence_Against_Women_in_Pakistan_Constraints_in_Data_Collection)

<sup>10</sup><http://policy-practice.oxfam.org.uk/blog/2012/03/women-leader-groups-in-pakistan>

violence are unreliable. FIRs only record VAW specified in the Pakistan Penal Code chapter on offences relating to bodily harm, injury and other physical forms. They do not address emotional, economic or psychological aspects most prevalent in domestic violence. Further, if there are multiple counts of injury/offences, the Cells only count these as a single incident. Furthermore; Provincial Police Departments have still not established Gender Crime Units to facilitate timely and adequate compilation.

Trainings for police often do not reach the lower levels of Readers/Moharrars tasked with recording cases, who remain insensitive to the needs of survivors and ignorant of laws pertaining to crimes against women.

Survivors of VAW confront serious problems due to the unavailability and insensitive attitudes of Medico-Legal Officers (first examining physicians) who fail to properly implement policies and protocols, lack specialization and formal training. Other problems include a sufficient number of trained counselors, continued practice of virginity testing, and altering of results under pressure<sup>11</sup>.

Reporting procedures pose further challenge for survivors who have to go to several offices located in different places to get help<sup>12</sup>.

## **Recommendations**

- An integrated, reliable and publicly accessible database should be made available.
- Revise classification of VAW in cases filed at the District and Sub-District (Thana) level Police Stations to include all forms of VAW.
- Enact domestic violence legislation in Islamabad Capital Territory and in all Provinces.
- Ensure access to female Medico-Legal Officers

<sup>11</sup>Research study on the medico-legal sector in Karachi- Aahung Pakistan

<sup>12</sup>Sexual Violence and the Law in Pakistan

<sup>13</sup>Section 306 (b) and (c) of the Pakistan Penal Code

at the Basic Health Unit level for immediate examination of cases of VAW and institute a one window operation providing police, medico-legal and counseling services in one place

## **Honour Crimes**

CEDAW Committee Questions Para 10  
Pakistan Response to CEDAW Committee  
Paras 33-35

Murder as well as bodily harm is treated primarily as a crime against individuals rather than as a crime against the State and governed by the legal provisions of Qisas and Diyat (retribution and compensation). The law provides a statutory right to the heirs of the deceased or injured person(s) to pardon the perpetrator, ask for compensation, or demand retribution. It exempts some relations from mandatory imprisonment sentences, although the Court has the discretion to sentence the accused to imprisonment depending upon the facts and circumstances of the case<sup>13</sup>. There is no minimum sentence mentioned in the law.

Flaws in these legal provisions become glaring in cases of 'honour' killings as the majority of such murders of women are committed by family members who may be 'forgiven' by the heirs of the deceased. Moreover there is no clarity on the scope of the application of Section 311 of the Pakistan Penal Code (PPC) related to fasad fil arz (social disorder) especially in view of provisions that exempt certain family members from mandatory punishment.

Another key concern is that a proviso added in Section 338 E of the PPC by the 2004 Amendment has weakened the discretion of the courts to pronounce punishment in cases where the parties have compromised. The core legal problems in relation to 'honour' killings remain unaddressed.

Recent court judgments have ruled that motivations of so-called 'honour' for murder is not a mitigating circumstance for awarding a lenient sentence, and stressed that 'honour' killings are murder. However, some High Court judgments show leniency in favour of the accused. Until the provisions of Qisas and Diyat are revoked, the perpetrators of 'honor killings' (943 reported cases in 2011<sup>14</sup>) will continue to enjoy impunity and Pakistan's compliance with its international obligation of combating discrimination against women remain unmet.

### ***Recommendations***

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- The availability of legal 'concessions' to some family members under Qisas and Diyat should be repealed immediately and effective sentences should be introduced irrespective of the relationship between the perpetrator and the deceased or injured.
- Uniformity in the application of the law as regards crimes committed in the name of honour must be ensured.

### **Hudood Ordinances**

CEDAW Committee Questions Paras 2, 21  
Pakistan Response to CEDAW Committee  
Para 90

The Women Protection Act of 2006 removed the worst injustices of the Hudood Ordinances (1979) pertaining to zina. Rape and fornication are now governed by the Pakistan Penal Code and procedural changes relating to complaints for zina have eliminated the jurisdiction of the police to institute such cases. However, the law still discriminates against female children for adult culpability by defining adulthood as 16 years for girls and 18 years for boys. This means that judges have the discretion to declare under-age marriages as valid. Legal discrimination against women and religious minorities continues because their

unequal status as witnesses under the Hudood Ordinances has been retained, along with the controversial punishment of stoning.

### ***Recommendations***

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- The law should be amended to ensure that all persons less than 18 years of age are considered to be children, as provided for in the Convention on the Rights of the Child to which Pakistan is a State Party.

### ***We call upon the Committee to ask***

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- What steps are being taken to retain, strengthen, and establish new women's shelters and crisis centers?
- What is the status of adoption and implementation of SOPs for Women's shelters and crisis centers in Sindh, Punjab, KPK and Balochistan?
- What rehabilitation support and training is provided to survivors to facilitate their reintegration into society in women's shelters?
- What measures have being taken to ensure gender-disaggregated data is collected by the various ministries and line departments of the Provincial Governments and what is the status of the creation of Provincial gender Crime Units?
- What mechanisms exist for gender sensitive recruitment, hiring, retention and promotion of women in the Police? How are gender sensitization trainings monitored and evaluated? Are the results shared with the public?
- What steps are being taken to eliminate impunity by amending the law to remove existing lacunae regarding crimes committed supposedly in the name of honour?
- What is the Government doing in order to sensitize members of the judiciary and ensure rigorous training?
- What is the Government doing to ensure the effective implementation of the Women Protection Act?

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<sup>14</sup>Human Rights Commission of Pakistan Report 2011

## Economic and Social Rights

### Informal Sector Workers

CEDAW Committee Questions Para 16  
Pakistan Response to CEDAW Committee  
Paras 60-69

Home-based workers, estimated to be 852 million,<sup>15</sup> and agricultural workers constituting 70% of the female labour force, fall outside the legal definition of “worker”. Neither their terms of employment nor working conditions are regulated under any legislative framework and therefore denied social safety nets..

Home Based Workers: The 18th Constitutional Amendment made labour a Provincial subject, stalling progress on a proposed National Policy on home-based workers and an implementation framework to provide guidelines for Provincial strategies and ensure alignment with ILO Convention No. 177. Only Punjab has finalized a policy draft which awaits adoption; a task force has been announced in Sindh for reviewing the draft policy for Sindh.

Rural Women: The non-recognition of women as farmers is a major concern. The Agricultural Policy specifies the inclusion of women but at the same time excludes anybody owning less than 5 acres. Few women own sufficient land to qualify; they are therefore excluded from all schemes and services intended for ‘farmers’. The formal definition of farmer in censuses also needs

to be reviewed to acknowledge women’s contribution.

### Recommendations

- Revise the definition of ‘labour’ used for data collection, planning and policy formulation to include all forms of women’s productive work (home based, domestic, agriculture and non-regularized). Revise definitions in major data collection surveys, in particular the Population Census, Labour Force Survey, and Agriculture Census, to ensure accurate tabulation of women’s labor force participation in all formal and informal sectors
- Recognize and protect home-based workers by ratifying ILO Convention No. 177.
- Adopt appropriate policies, recognizing such workers as economically productive and ensuring social security, the right to collective bargaining, protection against discrimination, and access to training for all women home-based workers.
- Ensure women’s access to and control over resources, assets (such as land ownership), credit, market oriented skills, training and remunerated employment, especially in the rural areas<sup>16</sup>.

### Formal Workers

Of the four key International Labor Organization

<sup>15</sup>HRCP Report 2011

<sup>16</sup>10th Five Year Plan: 2010-2015- Planning Commission of Pakistan Approach Paper, June 2009- An institutional framework for inclusive growth would ‘include a small and medium farmer strategy for accelerated agricultural growth through the provision of land ownership rights to the landless and institutional arrangement for yield increases’ AP Pg 32 Para 4 Point (2)

(ILO) Conventions for gender equality at work place<sup>17</sup>, Pakistan has only ratified the Equal Remuneration Convention but has not incorporated its provisions in domestic law. Effective implementation requires formulating and legislating national laws and a review of the typology of work needs to establish what constitutes 'equivalent work' in order to ensure equal pay.

### **Recommendations**

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- Ensure effective implementation of equal pay for work of equal value as required by ILO Convention No. 100.
- Extend social security and benefits to all women workers (formal/informal/home based) by facilitating and ensuring registration with the social security institution, EOBI<sup>18</sup> and other labor welfare institutions.

### **Education**

CEDAW Committee Questions Para 15  
Pakistan Response to CEDAW Committee  
Paras 50-59

Despite improvements, the gender parity index remains skewed. Almost three times as many girls as boys remain out of school. Gender parity at the higher tertiary level is better than at the primary and secondary levels due to urbanization, however, girls remain greatly disadvantaged. While girls and boys both dropout of school, more girls leave before completing primary education, the majority dropping out between grades 1 and 2. Grade 3, when gender biases become institutionalized, is the most critical. Few girls make the transition from primary to

secondary; most leave school on reaching puberty, especially in rural areas. Early marriage for girls is both a cause and consequence of this drop out.

Rural girls are at a systemic disadvantage at all levels. The lack of drinking water, electricity, boundary walls, sanitary facilities and proper infrastructure affects girls more severely than boys; schools for boys are typically better resourced. Mobility costs are a major issue for accessing primary schools in remote areas and attending middle schools and higher levels of education. Affordable and effective means of transportation are essential to ensure girls' access to schools especially in rural areas.

The National Education Policy 2009 extensively focuses on religion; socio-cultural norms are deeply impacted by a particular religious perspective in textbooks. Care should be taken to ensure that the Education Policy does not discourage of female education or promote discriminatory stereotypes.

Different departments, wings and ministries oversee education which, after the 18th Amendment is a provincial subject. Highly politicized decision-making determines the location of schools especially for girls, as well as the appointment, deployment and transfer of teachers and school administrators; the provision of teachers for different subjects; the content of teaching, the role of key stakeholders and the allocation of resources.

The education sector has been one of the primary targets of the Taliban with teachers, schools and students being attacked, and educational institutions, especially girls' schools destroyed. These security issues are widespread and need to be addressed urgently. The Government should make a proactive effort to give schools and their staff security protocols and guidelines.

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<sup>17</sup>Equal Remuneration Convention No. 100 (1951), Workers with Family Responsibilities Convention No. 156 (1981), Home Work Convention No. 177 (1996), Maternity Protection Convention No. 183 (2000)

<sup>18</sup>Employees' Old Age Benefit Insurance

## Recommendations

- The Government should incentivize secondary education for girls in order to combat the high drop-out rate of female students.
- Civil society organizations should be invited to give their input in the development of new curriculum and textbooks.
- The Government should consider integrating primary schools to equalize the resources available to female students and have only female teachers.
- Remove religious emphasis in the National Education Policy.
- Transport for school going girls and teachers i.e address the mobility issue
- Improving the quality of education with better trained female teachers

## Marriage & Minority Women

CEDAW Committee Questions Para 21  
Pakistan Response to CEDAW Committee  
Paras 89

Hindu and Christian women confront increasing discrimination and multiple social problems including abduction, forced conversion to Islam and marriages with Muslim men. This serious matter requires urgent attention. Forced conversion of Hindu women is on the rise. Despite the constitutional guarantee of freedom of belief and equal protection before the law, an average of 25 forced conversions per month is reported<sup>19</sup>. Law enforcement officers fail to cooperate with the families of abducted and forcibly converted women.

Further compounding problems, Hindu personal laws remain un-codified and Christian laws largely frozen in the 19th century. Adultery is the only ground for dissolving marriages under Christian law.

Hindu women are deprived of their right to property and other rights conferred upon a divorced or widowed woman, have difficulty in accessing health facilities and are unable to participate freely in social, economic and political processes. Hindus have been demanding legislation to register Hindu marriages for years, but the 2011 Bill presented in the National Assembly has been stalled.

For both minority and majority communities, young age marriage is a persistent problem: 40% girls are married by age 18 and 13% married by age 15. The Child Marriage Restraint Act establishes a minimum age of marriage at 16 for girls and 18 for boys despite overwhelming evidence of its negative impact on the physical, emotional and mental well-being of girls.

In the absence of efforts to inform people about women's legal rights, Muslims are unaware about the provisions of Muslim personal law. Public ignorance combined with untrained personnel commonly leads to a flouting of legal provisions to women's detriment: family men and marriage registrars frequently delete protective clauses of the marriage contract without consulting the woman. The Muslim Family Law Ordinance 1960 (MFLO) requires the registration of marriages and prescribing the procedure for registration, appointment of nikah (marriage) registrars and the penalty for not registering a marriage. Legal provisions pertaining to registration is frequently violated. Changes in law and policy are not always promptly conveyed to the implementation level.

## Health

CEDAW Committee Questions – Para 17  
Pakistan Response to CEDAW Committee  
Paras 77-80

During the MGD era Pakistan shifted its focus

<sup>19</sup>Human Rights Commission of Pakistan Report 2011

and placed greater emphasis on Institutional Delivery rather than Safe delivery. Skilled Birth Attendants are unable to provide coverage for all births and as a matter of fact Traditional Birth Attendants (TBAs) assist over 50% of deliveries, while skilled providers assist just 39%. Expanding the operation of Lady Health Workers (LHWs) to all Districts is welcomed, but LHWs fail to reach remote and under-developed districts<sup>20</sup>.

Rural women have greater difficulty accessing reproductive health services than urban women. An estimated 23% of deaths amongst rural women of reproductive age are due to pregnancy and childbirth-related complications, compared to 14% of urban women.

An estimated 6% of maternal deaths are caused by abortion-related complications, yet Pakistan's 2010 MDG Report has no information on the prevalence of abortion and access to safe abortion services. Restrictive abortion laws prevent women from acknowledging abortions in surveys. The lack of clarity and harsh impact of this law is compounded by the difficulties women face in accessing post-abortion care for often life-threatening complications after resorting to unsafe abortions. An estimated 197,000 women, more than one-third of women who induce an abortion, are admitted to public health facilities and private teaching hospitals each year for treatment of complications. The Government has recognized the "high rate of (largely unacknowledged) morbidities associated with illegal abortions," in its Report but has yet to introduce any national policy or guidelines on post-abortion care.

In 2009 the Ministries of Health and Population Welfare in Pakistan signed the Karachi Declaration, a national strategy for scaling up family planning and maternal, newborn, and child health best practices. Among other priorities, the Declaration resolves to institutionalize post-

abortion care "in policies, guidelines, protocols and standards for health facilities at national level." However, the pledge has not been translated into policies or institutional and monetary support to strengthen post-abortion care services.

According to WHO statistics, Pakistan's investment in the health sector is amongst the lowest in the world<sup>21</sup>. From 2009-2010 to 2010-2011 there was a 47% decrease in Government health expenditures. Further, the increasing trend towards privatization has led to increased exclusion of marginalized groups from access to a continuum of quality reproductive health care.

Most state surveys and planning documents place adolescent girls and young women in the category of "women of reproductive age, 15-49." Hence, their health needs are expressed exclusively in relation to their potential to bear children or spread sexually transmitted infections. There is an urgent need for adolescent-sensitive health programs and budgets. Adolescent girls must be recognized as a group with special health and empowerment needs including decision-making, leadership and self-esteem. Comprehensive reproductive health education and Life Skilled Based Education should be made part of school curriculums.

The National Population Policy 2010 has a greater focus on adolescent and male reproductive health and a comprehensive reproductive health services package for all stages in the female life cycle. However, indicating a lack of consistency and commitment, the interim Population Sector Perspective Plan 2012 fails to even refer to the life cycle approach.

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### **Recommendations**

- Adopt a comprehensive approach to ensure access to information and quality care at all

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<sup>20</sup>Finding of Research report on MDG 5 "Rising to the challenge: An Analysis of the Implementation of MDG 5 in Pakistan" - 2012, Page 20, SG Publication

<sup>21</sup><http://www.who.int>

stages of a woman's lifecycle and across location (home, community and health facilities) to overcome difficulties faced by marginalized women in accessing affordable skilled care.

- Support safe delivery for all births at home and in institutions by an effective referral system including Emergency Obstetric Care through registered trained TBAs.
- Build awareness and capacity of service providers for young people's health needs (counseling, health care etc.) by the public sector and integrate these services into general health services, and uphold confidentiality.
- Formulate adolescent-sensitive health programs with aligned budgets e.g. making Life Skills based education part of the educational curriculum.
- Adopt a coherent information dissemination policy of the Health and Population Welfare Departments so that people are aware of the services provided including contraceptive services that are targeted both towards men and women, and their caveats.
- Increase funding for Health and Population policies and programs.
- Frame appropriate awareness campaigns to counter Talibanization agenda on basic vaccinations against measles and polio.
- Conduct a maternal deaths audit to identify gaps in Continuum of Care and include it in monitoring systems and annual reporting.
- Introduce a national policy or guideline on post-abortion care.
- Ensure availability of affordable essential and non-essential drugs through mechanisms that regulate the quality, uniformity and accountability of services and pricing system of the private sector.

### ***We call upon the Committee to ask***

- What steps are being taken to ensure women enjoy equal remuneration for work of equal value?
- What national and provincial legislation and

policies protect the rights of home based workers?

- What is the status of ratification of ILO Convention 177?
- What steps are being taken to ensure universal primary education as mandated in the Constitution of Pakistan (Article 25 A), ensure 100% enrollment, and to overcome the gender disparity in enrollment and dropout rates of girls and boys?
- What plans exist to accurately track students through the primary cycle, identifying reasons for non-enrolment and drop-out, so as to rectify the situation?
- What is being done to ensure better utilization of allocated funds?
- What steps are being taken to ensure current textbooks do not promote mis-interpretations of religion, discriminatory gender stereotypes and an over-emphasis on martyrdom and war?
- What is being done to ensure the security of female staff and students?
- What is the Government doing to expedite the passage of the Child Marriage Restraint (Amendment) Act, 2009 to legislate a gender-equal minimum age of as 18 years and to remove the anomalies in the law at federal and provincial levels?
- What steps are being taken to remove social discrimination against non-Muslims with respect to their status as equal citizens?
- What steps are envisaged to review and amend existing personal status laws of religious minorities, in particular to enact legislation specifically for those minorities (Hindus and Sikhs) primarily governed by their custom rather than any statutory provisions?
- What mechanisms are in place to end forced conversions to Islam of women belonging to religious minorities and provide victims with effective redress and protection?
- What is being done to inform people of women's legal rights via media, educational curricula, trainings of NGOs and judicial

- and law enforcement officers?
- What steps are being taken to ensure that nikah (marriage) registrars are well versed in the rules they are operating under and that all Muslim marriages are registered accordingly?
  - What steps has the Government taken to address the leading causes of maternal death and morbidity including unsafe abortion, and ensure access to post-abortion care for complications and reproductive health counseling?
  - What steps have been taken to establish universal access to a full range of contraceptives, including emergency contraception, and to reduce the unmet need for contraceptives?
  - What has been done to ensure that maternal mortality and morbidity is recognized as a human rights issue both within the National and Provincial framework post the endorsement of the 2009 Human Rights Council resolution on the same?