

**BRIEFING FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 139<sup>TH</sup> SESSION (9 OCTOBER 2023 - 3 NOVEMBER 2023), WITH RESPECT TO VIOLENCE AGAINST WOMEN IN: PAKISTAN**

*Submitted by Strategic Advocacy for Human Rights (SAHR), August 2023*



Strategic Advocacy  
Human Rights

**This thematic report<sup>1</sup> considers the legality of violence against women in Pakistan, in particular in relation to sexual violence. In light of the obligation under international human rights treaties to prohibit all violence against women, the global commitment to ending violence against women and girls in the public and private spheres in the context of the 2030 Agenda for Sustainable Development, previous recommendations of the Committee to Pakistan, the recommendations of the UN Secretary General’s Study on Ending Violence Against Women, and those made to Pakistan during the Universal Periodic Review in 2023, it is our hope that the Committee will:**

- **raise the issue of violence against women in its List of Issues Prior to Reporting for Pakistan, in particular asking what progress is being made on drafting and enacting legislation to prohibit all violence against women in all settings, in particular by reference to the UN Model Rape Law; and**
- **in its concluding observations on Pakistan’s State Party Report, recommend that legislation is drafted and enacted as a matter of priority to prohibit all violence against women in all settings, in particular by reference to the UN Model Rape Law.**

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<sup>1</sup> This report was compiled based on information that was publicly available in the English language only. It may not be complete and does not constitute legal advice.

## 1. INTRODUCTION

Strategic Advocacy for Human Rights (SAHR)<sup>2</sup>, is a peer-led non-governmental organization by and for human right defenders, working to equip a movement of human rights defenders with knowledge and tools to end gender-based violence through litigation, policy, and law reform.

We submit this written contribution for State parties under review for consideration by the Committee, reporting before the 139<sup>th</sup> Session (9 October 2023 - 3 November 2023).

This report highlights key legal inequalities that women face in Pakistan (the “**State party**”) in relation to violence against them, along with suggested questions to be posed to the State party. Our analysis benchmarks the legislation and practices in Pakistan against the UN Model Law on Rape<sup>3</sup>, published by the former UN Special Rapporteur on Violence against Women, Ms. Dubravka Šimonović, to harmonise national criminal justice responses with accepted international standards.

The aim of this report is to aid and encourage the UN Human Rights Committee (the “**Committee**”), the State party and stakeholders, to review national criminal laws and systems and practice with international standards on rape and sexual violence, particularly the UN Model Law on Rape that updates best practices based on the lived realities and recommendations of civil society and survivors.

We hope that the Committee will utilize this report as a key resource in the course of developing its list of issues for Pakistan.

## 2. KEY ISSUES OF CONCERN

### 2.1 Honour Killings (2017 Concluding Observations, paragraph 13)

#### (a) Background

- (i) In its 2017 Concluding Observations, the Committee expressed concern that “so-called honour killings continue to occur; that the *qisas* (equal retaliation) and *diyat* (financial compensation) laws are reportedly applied to some of these cases, and that some tribal councils in remote areas continue to exercise jurisdiction over these cases”<sup>4</sup>. The *qisas* laws under Islamic customs effectively condone honour killings, as the principle of “equal retribution” it expounds emboldens perpetrators of honour killings to impose such “death penalty” as just retribution for the victim’s “offence” of dishonouring her family<sup>5</sup>. Meanwhile, the *diyat* laws dictate that the perpetrator of the honour killing may offer monetary compensation to the next-of-kin of the victim in exchange for forgiveness<sup>6</sup>. Together, the application of *qisas* and *diyat* laws legitimise the practice of honour killings and free perpetrators from having to face any legal consequences.
- (ii) The Committee thus recommended that Pakistan should (a) effectively enforce the anti-honour killings and other relevant laws criminalising violence against

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<sup>2</sup> Website: <https://www.sa-hr.org/>. Email: connect@sa-hr.org

<sup>3</sup> United Nations General Assembly, *A framework for legislation on rape (model rape law)*, 15 June 2021, available at <https://digitallibrary.un.org/record/3929055?ln=en>

<sup>4</sup> Human Rights Committee, *Concluding Observations of the Human Rights Committee*, 23 August 2017

<sup>5</sup> Stephanie Palo, *A Charade of Change: Qisas and Diyat Ordinance Allow Honor Killings To Go Unpunished in Pakistan*, 2 July 2009, available at <https://jilp.law.ucdavis.edu/issues/volume-15-1/Palo.pdf> [accessed 17 July 2023]

<sup>6</sup> *Ibid.*

women and domestic violence and monitor their enforcement throughout the territory; and (b) enforce the prohibition of the application of *qisas* and *diyat* laws to honour-related crimes, while continuing to regulate and supervise the tribal councils<sup>7</sup>.

(b) *State party's response*

- (i) In the Second Periodic Report, the State party noted its efforts at introducing legislative amendments to certain criminal laws in the territory, such as the Pakistan Penal Code 1860, Code of Criminal Procedure 1898, and Qanun-e-Shahadat Order 1984, and the enactment of the Criminal Law (Amendment) (Offences in the Name or on Pretext of Honour) Act<sup>8</sup>. Following such amendments, crimes committed in the name of honour are now subsumed under the list of crimes punishable under the principle of *fasad-fil-arz*. The implication of such designation is that the loophole which originally allowed family members of the victim to legally pardon the perpetrators of honour killings is now closed. In addition, stricter punishments are now imposed on perpetrators of honour killings, with these perpetrators now subject to a mandatory prison term if convicted of committing a crime on the pretext of honour.
- (ii) The State party also highlighted that police stations, helplines, women complaint centres and designated women desks at police stations have been established to aid in the monitoring and implementation of these laws, including the laws related to honour killings<sup>9</sup>.
- (iii) Further, the State party detailed its efforts at improving data collection on crimes against women (including honour killings) through the Gender Crime Cell unit of the National Police Bureau. Law enforcement agencies within the region also rely on this statistical data gathered by the Gender Crime Cell in crafting the relevant policies for the protection of women's rights, and in monitoring the implementation and enforcement of these policies<sup>10</sup>.
- (iv) Finally, the State party also expounded on the supervisory mechanisms in place. The National Commission on the Status of Women ("NCSW") serves as a key supervisory body, responsible for monitoring, examining and analysing the relevant government policies relating to the women's rights in the country. Separately, a Public Safety Commission has been established under the powers of the Police Act 2017 to serve as an independent monitoring body comprising elected public representatives<sup>11</sup>.
- (v) However, notably, the State party's response does not mention the practical impact of the above measures and fails to offer any concrete statistics that reveal any demonstrable impact. The State party has also remained silent on the measures it has adopted, if any, to regulate and supervise the tribal councils' jurisdiction over honour killings.

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<sup>7</sup> *Ibid.*

<sup>8</sup> Human Rights Committee, *Second Periodic Report submitted by Pakistan under article 40 of the Covenant*, due in 2020, 7 December 2022

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

(c) *Analysis of State party's legislation*

- (i) Honour killings are a violation of Article 6 of the International Covenant on Civil and Political Rights (the “**Covenant**”)<sup>12</sup>, which recognises and protects the right to life of all human beings. The Committee’s general comment on Article 6 of the Covenant dictates that State parties must enact a protective legislative framework that includes effective criminal prohibitions on all manifestations of violence that are likely to result in deprivation of life, such as honour killings<sup>13</sup>. The Committee also further prescribes that the criminal sanctions attached to such crimes must be commensurate with their gravity<sup>14</sup>.
- (ii) On the above basis, the legislative reform that the State party has undertaken represents a step in the right direction. However, examining its application in practice reveals its shortcomings. While perpetrators are no longer able to rely on the victim’s family members’ forgiveness to avoid punishment and now also face stricter punishment when convicted, the precursor for such an outcome is that the judge has to first decide that the murder was committed on the pretext of honour in the first place. However, it is easy for perpetrators to proffer an alternative motive to their crimes and deny all honour-related motives for such behaviour<sup>15</sup>. While the ultimate determination of whether the murder was a crime of “honour” is left entirely to the presiding judge’s discretion, this proves to be especially problematic when evaluated against the backdrop of the patriarchal mindset that pervades Pakistani society, including the members of the judiciary<sup>16</sup>. Legal scholars have thus alluded to honour killings as but “myths” in the courtroom for this very reason<sup>17</sup>. Accordingly, despite the legal reforms, the perpetrators of the crime are still in principle able to exploit the existing legislative loopholes to escape commensurate legal punishment.
- (iii) The statistics on honour killings in Pakistan lay bare this reality. Despite the range of legislative amendments introduced, honour killings are still prevalent in the territory. It is most striking that despite a rise in the number of cases of honour killings reported since the new laws have been introduced<sup>18</sup>, there has been no known corresponding increase in convictions for honour killings<sup>19</sup>. In fact, the Peshawar High Court in Pakistan has been found to acquit perpetrators of honour crimes multiple times since the introduction of the new laws<sup>20</sup> -- suggesting no material shifts in the patriarchal mindset or dated stance adopted

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<sup>12</sup> United Nations (General Assembly), *International Covenant on Civil and Political Rights*, 1966

<sup>13</sup> Human Rights Committee, *General Comment No. 36*, 3 September 2019

<sup>14</sup> Human Rights Committee, *General Comment No. 36*, 3 September 2019

<sup>15</sup> Hania Riffat, *Decoding the Anti-Honour Killing Law in Pakistan*, September 2022, available at [https://www.bsolpk.org/decoding-the-anti-honour-killing-law-in-pakistan#\\_ftn17](https://www.bsolpk.org/decoding-the-anti-honour-killing-law-in-pakistan#_ftn17) [accessed 3 July 2023]

<sup>16</sup> Aleena Khan, “‘Honour’ Killings in Pakistan: Judicial and Legal Treatment of the Crime: A Feminist Perspective”, available at [https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/lumslj7&id=107&men\\_tab=src\\_hresults](https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/lumslj7&id=107&men_tab=src_hresults) [accessed 3 July 2023]

<sup>17</sup> *Ibid.*

<sup>18</sup> Muhammad Shahzad, *20% rise in ‘honour’ killings recorded*, 10 December 2021, available at <https://tribune.com.pk/story/2333205/20-rise-in-honour-killings-recorded> [accessed 17 July 2023]

<sup>19</sup> Hania Riffat, *Decoding the Anti-Honour Killing Law in Pakistan*, September 2022, available at [https://www.bsolpk.org/decoding-the-anti-honour-killing-law-in-pakistan#\\_ftn17](https://www.bsolpk.org/decoding-the-anti-honour-killing-law-in-pakistan#_ftn17) [accessed 17 July 2023]

<sup>20</sup> *Ibid.*

by the judiciary. The Human Rights Commission of Pakistan reported 470 cases of honour killings in 2021 alone, with human rights organisations estimating that this number stands at close to 1,000 in reality<sup>21</sup>. According to a survey undertaken by a women’s rights organisation in Pakistan, 176 persons were victims of honour killings in the Sindh province in 2021 alone. It can be gleaned from these statistics that the practice of honour killings remains unabated in Pakistan.

- (iv) A parallel judicial system also exists in the rural areas of Pakistan in the form of *Jirga*, or tribal councils. These male-dominated tribal councils decide all the affairs of the region, with its executive decisions taking *de facto* primacy over state legislation. The *jirga* arbitrates on the basis of tribal consensus, which is steeped in antiquated notions of justice that sanction the practice of honour killings, or *Badal-e-Sulah* (the giving of young women or little girls in compensation for blood disputes among men)<sup>22</sup>. Despite Pakistan’s courts declaring such tribal councils unconstitutional, there are still multiple known incidents of women being murdered by their relatives under honour killing decrees issued by the tribal *jirga* in the two decades since<sup>23</sup>. The State party must bolster its efforts at regulating and supervising the tribal councils’ jurisdiction over honour killings if it wishes to meaningfully address honour killings within the territory.

**Suggested List of Questions for the State Party**

- Please report on the steps the State party is taking to effectively enforce the anti-honour killings laws.
- Please indicate any steps taken towards ensuring that judges, prosecutors, and law enforcement authorities continue to receive appropriate training that equips them to deal with honour killings effectively and free of prejudice.
- Please describe the measures taken to regulate and supervise the tribal councils.

**2.2 Lack of Access to Justice for Rape and Domestic Violence Victims (2017 Concluding Observations, paragraph 13)**

(a) *Background*

- (i) In its 2017 Concluding Observations, the Committee expressed concern that “*effective access to justice for victims of rape has reportedly not been enhanced as expected, as no mechanisms have been put in place to implement the special procedures for court hearings*”<sup>24</sup>. Further, the Committee also highlighted its concerns surrounding “*the very low level of reporting of violence against women, including domestic violence; the lack of prompt and effective*

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<sup>21</sup> *Ibid.*

<sup>22</sup> Robina, Allah Nawaz, *Jirga and Panchayat as the Precursor to Honour Killing in Pakistan*, available at [https://www.qurtuba.edu.pk/thedialogue/The%20Dialogue/15\\_1/15\\_1\\_12.pdf](https://www.qurtuba.edu.pk/thedialogue/The%20Dialogue/15_1/15_1_12.pdf) [accessed 4 July 2023]

<sup>23</sup> *Ibid.*

<sup>24</sup> Human Rights Committee, *Concluding observations on the initial report of Pakistan*, 23 August 2017.

*investigation of such cases; the low level of prosecution and conviction of perpetrators; and the insufficient level of assistance for victims*<sup>25</sup>.

- (ii) The Committee recommended that Pakistan should (a) encourage the reporting of violence against women, inter alia by informing women of their rights as well as the legal and other services that exist through which they can receive protection and compensation; (b) ensure that cases of violence against women and domestic violence are promptly and thoroughly investigated and that perpetrators are prosecuted and punished accordingly; and (c) ensure that judges, prosecutors and law enforcement officials continue to receive appropriate training that equips them to deal with such cases effectively and in a gender-sensitive manner<sup>26</sup>.

(b) *State party's response*

Encouraging the reporting of violence against women:

- (i) In its Second Periodic Report, the State party noted that it has made extensive efforts to ensure women across the country are aware of their rights, freedoms, and legal remedies available in case of violation of their rights. The Ministry of Human Rights (“**MoHR**”), National Commission for Human Rights (“**NCHR**”), National Commission on the Status of Women (“**NCSW**”) and provincial CSWs have collectively worked to ensure the implementation of the Convention on the Elimination of all Forms of Discrimination against Women (“**CEDAW**”) through legislative measures, policies, research, awareness campaigns and other projects.<sup>27</sup>
- (ii) To raise awareness about women’s rights, International Women Day, Rural Women’s Day, Girl Child Day, International Human Rights Day, 16 Days of Activism against Gender Based Violence and National Working Women Day are commemorated at a national level. MoHR also hosts trainings at schools and universities on topics including the right to inheritance, early marriage, child labour and child sexual abuse. Messages on issues of child and forced marriages, women rights, birth registration processes and sexual harassment at workplace have also been telecast on public and private media channels. The national television channel, Pakistan Television (“**PTV**”), has dedicated 30% of its time to gender-based advocacy through advertisements, sitcoms/dramas and talk shows<sup>28</sup>.
- (iii) An extensive training programme and awareness campaign targeted at colleges has also been established in Punjab, with some 40,000 students from 96 colleges to date provided with Information, Education and Communication (“**IEC**”) trainings about the issue of violence against women. NCSW has also actively engaged with the corporate sector, with a total of 310 corporate organisations, including the First Women Bank, being provided with the

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<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020*, 7 December 2022.

<sup>28</sup> *Ibid.*

relevant material and training at their premises in an effort to eradicate the workplace harassment experienced by working women<sup>29</sup>.

Ensuring prompt and thorough investigations and prosecutions of cases of violence against women:

- (iv) In the Second Periodic Report, the State party also noted that a number of laws and amendments have been promulgated to provide effective protection for women and to safeguard their fundamental human rights, including the Protection Against Harassment of Women at Workplace Act, 2010, the Criminal Law (Second Amendment) Act, 2011 (Acid Control and Acid Crime Act), the Criminal Law (Third Amendment) Act, 2011 (Anti Women Practices Act), the Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016, the Criminal Laws Amendment (offences related to Honor Killing) Act, 2016, the Enforcement of Women's Property Rights Act, 2020, the Provincial Domestic Violence Acts and the Protection Against Harassment of Women at Workplace (Amendment) Act, 2022. The focus has now shifted towards ensuring the effective implementation of the aforementioned laws<sup>30</sup>.
- (v) Cases against women are to be immediately reported to the Inspector General of Police, KP and they are pursued in courts through District Public Prosecutors. Provisions of the Pakistan Penal Code (“PPC”) now form part of the Basic and Service Training Courses for Police Officers and the School of Investigation, with each Police Station and District Police Office now also introducing a dedicated female Police Officer's Desk to attend to female complainants. Seminars and Special Training Courses have been designed for police officials to equip them with the skills necessary to conduct investigations of cases relating to women. These enforcement officials also organise frequent visits to academic institutions to create awareness and educate people about how and where to report cases of violence against women<sup>31</sup>.

Ensuring that judges, prosecutors, and law enforcement officials are equipped to deal with cases of violence against women effectively, and in a gender-sensitive manner:

- (vi) In its Second Periodic Report, the State party further noted that at both the federal and provincial levels, various initiatives helmed by the Federal Judicial Academy (“FJA”) are in place to educate judges, lawyers, and other judicial officers about human rights. The MoHR has also launched a campaign in 2018 (“*Huqooq-e-Pakistan*”) to educate prosecutors and court officials about the laws enacted for protection of rights of women, children, and other vulnerable segments of the society<sup>32</sup>.
- (vii) From 2016 to 2019, Punjab has conducted some 22 training programs for 1,168 judges and judicial staff on the laws related to gender and discrimination. The Khyber Pakhtunkhwa Judicial Academy (“KPJA”) has also organized various training sessions on women's rights, gender mainstreaming, empowerment,

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<sup>29</sup> *Ibid.*

<sup>30</sup> Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020*, 7 December 2022.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

and the right to inheritance<sup>33</sup>. Additionally, the Balochistan Judicial Academy (“BJA”) has carried out several sessions of training with judges, prosecutors, commissioners, magistrates, investigation officers, and newly enrolled lawyers of the Balochistan Bar Council on various topics including the Juvenile Justice System, Women and Children’s Rights, Inheritance Laws, Harassment of Women, Child Rights, and the prevention of early marriages<sup>34</sup>.

(c) *Analysis of State party’s legislation*

- (i) Rape, domestic violence, and gender-based violence are a violation of Article 6 of the Covenant, which recognises and protects the right to life of all human beings. The Committee’s general comment on Article 6 of the Covenant dictates that State parties must take special measures of protection towards persons in vulnerable situations, such as victims of domestic and gender-based violence<sup>35</sup>.
- (ii) Violence against women and domestic violence are also violations of Article 9 of the Covenant, which recognises and protects the right to liberty and security of the person. The Committee’s general comment on Article 9 of the Covenant dictates that State parties must respond appropriately to patterns of violence against categories of victims such as violence against women, including domestic violence<sup>36</sup>.
- (iii) On the above basis, the legislative reform, and public policies that the State party has implemented represents a step in the right direction. However, examining the effectiveness of these policies and implementation of legislation reveals that there is still room for improvement. According to UN Women, although Pakistan has a comprehensive legal framework in place relating to violence against women, 34% of married women in Pakistan still experience domestic violence by their spouse and 56% of such women who have experienced physical or sexual violence do not seek any help<sup>37</sup>. Additionally, more than 80% of women reported facing harassment in public places, yet 90.3% do not consider sexual harassment to be a crime<sup>38</sup>.
- (iv) Separately, the recently implemented Protection against Harassment of Women at the Workplace (Amendment) Bill 2022 (“PHWWA”) is a welcome step in strengthening the protections for women in the workplace against violence and harassment. The PHWWA expands the definition of workplaces to encompass both formal and informal workplaces, bringing it closer to the definition set out in the 2019 International Labour Organization (“ILO”) Violence and Harassment Convention (“C190”). However, we note that Pakistan has not yet

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<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> Human Rights Committee, *General Comment No. 36*, 3 September 2019

<sup>36</sup> *Ibid.*

<sup>37</sup> National Institute of Population Studies, Pakistan Demographic and Health Survey, available at <https://dhsprogram.com/pubs/pdf/FR354/FR354.pdf> [accessed 4 July 2023]

<sup>38</sup> United Nations Women, *Women’s Safety Audit in Public Places*, 2021, available at <https://asiapacific.unwomen.org/en/digital-library/publications/2021/03/womens-safety-audit-in-public-places> [accessed 4 July 2023]



officially ratified the ILO C190<sup>39</sup>. The practical effectiveness of such legislation and policies also remains to be seen.

- (v) Additionally, according to the United Nations Population Fund, despite the various legislative frameworks passed by the State party to prevent violence against women, and in spite of the alarming statistics that some 32% of women experience physical violence and 40% of married women have suffered abuse by their spouse, the conviction rate for crimes of violence against women sits at only between 1 - 2.5%<sup>40</sup>. This huge disparity in numbers reveals that there is still much room for improvement in relation to ensuring that instances of domestic violence against women are properly reported and adequately prosecuted.

#### **Suggested List of Questions for the State Party**

- Please report generally on the practical application of the various gender-based legislation at the community level, in particular on the conviction rate under these laws.
- Please report if there are any additional policies or practical steps to be taken to promote and encourage the reporting of violence against women at the state and provincial level.
- Please report generally on the effectiveness of existing policies or measures taken to improve training of judges, prosecutors, and law enforcement officials to equip them to deal with gender-based violence cases effectively and in a gender-sensitive manner.

### **3. LEGISLATIVE PROTECTION AGAINST SEXUAL VIOLENCE**

#### **3.1 Background context**

##### *(a) Rape and Sexual and Gender Based Violence in Pakistan*

Sexual crimes top the list of the most committed felonies in Pakistan. According to the Human Rights Commission of Pakistan, 11 rape cases were reported daily in Pakistan for the year 2021, with a total of 22,000 cases reported between 2015 and 2021<sup>41</sup>. In Pakistan, 32% of women randomly selected from health facilities in Karachi have reported experiencing physical violence, while between 70-90% of married women in Pakistan are estimated to experience abuse from their spouses in their lifetime<sup>42</sup>. These statistics speak volumes about the prevalence of incidences of rape and violence against women in Pakistan. These figures are all the more concerning, when evaluated in light

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<sup>39</sup> Saroop Ijaz, *Pakistan's New Law Aims to Protect Women in Workplace*, available at <https://www.hrw.org/news/2022/01/20/pakistans-new-law-aims-protect-women-workplace> [accessed 4 July 2023]

<sup>40</sup> United Nations Population Fund, *Gender-based violence (Pakistan)*, available at <https://pakistan.unfpa.org/en/topics/gender-based-violence-6> [accessed 4 July 2023]

<sup>41</sup> Abida Khaliq, Hammad Sultan, *Critical Analysis of Rape Laws in Pakistan: Still Long Road to Seek Justice*, 2022, available at <https://journal.rais.education/index.php/raiss/article/view/170/137> [accessed 7 July 2023]

<sup>42</sup> Sarfraz et al, *Gender-based violence in Pakistan and public health measures: a call to action*, 1 July 2022, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9243683/#R3> [accessed 7 July 2023]

of the known fact that these cases tend to be grossly under-reported in Pakistan due to various cultural pressures<sup>43</sup>.

(b) *Legislation relating to rape and sexual and gender-based violence in Pakistan.*

Pakistan has undertaken a number of legislative reforms in an endeavour to reduce the incidence of rape and sexual and gender-based violence in the country. Notable legislation passed include the Protection of Women (Criminal Laws Amendment) Act 2006, which amended the heavily criticised 1979 Hudood Ordinance<sup>44</sup>. Under this new act, the need for victims to procure four witnesses to prove rape cases were removed. The definition of rape was also amended to bring it closer in line with the UN Model Rape Law. This was followed by the Criminal Law (Amendment) (Offense of Rape) Act 2016, which imposed harsher punishments on the perpetrators of the crimes of rape and honour killings<sup>45</sup>. This new law also includes various provisions which enhance the safeguards for victims of rape and improves access to justice.

### **3.2 Material deviations in Pakistan's current laws against UN Model Rape Law**

Pakistan has made great strides in its anti-rape legislative efforts, with the then UN Women Executive Director Phumzile Mlambo-Ngcuka even lauding the State party for its passage of the watershed Criminal Law (Amendment) (Offense of Rape) bill in 2016<sup>46</sup>. Such developments have significantly narrowed the gaps between the State party's laws and the UN Model Rape Law.

However, material deviations still remain. Notably, there are no legislative provisions which specifically seek to safeguard the interests of child victims and witnesses of rape. Article 12 of the UN Model Rape Law sets out a number of guiding principles and safeguards which should be put in place for the treatment and justice process of child victims or witnesses of rape. However, no corresponding legislative provisions exist, and no plans of action have been adopted in relation to the protection of child victims or witnesses of rape. As one of the countries with the highest incidence of child sexual abuse in the world, with around 550,000 children estimated to be raped annually<sup>47</sup>, the State party should direct its efforts to filling this legislative lacuna.

Further, the State party should ensure that its noteworthy legislative efforts are not rendered in vain due to poor implementation. For instance, despite there being rape shield provisions in place which track the recommendations in Article 16 of the Model Rape Law and which prevent judges and defense lawyers from exposing a women's sexual history during trial, judges have

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<sup>43</sup> Umer Khan, *Gender-Based Violence in Pakistan – a Critical Analysis*, 2020, available at [https://dash.harvard.edu/bitstream/handle/1/37365403/Khan,%20Umer\\_2020-March.pdf?sequence=4](https://dash.harvard.edu/bitstream/handle/1/37365403/Khan,%20Umer_2020-March.pdf?sequence=4) [accessed 7 July 2023]

<sup>44</sup> *Ibid*

<sup>45</sup> *Ibid*.

<sup>46</sup> UN Women, *Statement by UN Women Executive Director Phumzile Mlambo-Ngcuka congratulating the Government of Pakistan on passage of anti-honour and anti-rape bills*, 11 October 2016, available at <https://www.unwomen.org/en/news/stories/2016/10/ed-statement-on-pakistan-anti-honour-killings-anti-rape-bill> [accessed 7 July 2023]

<sup>47</sup> M. Bhatti, *Over half a million children raped in Pakistan annually but most cases go unnoticed: experts*, 1 November 2022, available at <https://www.thenews.com.pk/print/1005427-over-half-a-million-children-raped-in-pakistan-annually-but-most-cases-go-unnoticed-experts> [accessed 7 July 2023]

been found to continue to allow evidence of the victim’s sexual history to stand in courts<sup>48</sup>, with a judge in a 2017 case even going as far as to rely on such evidence to characterise the victim as “a lady of easy virtue”<sup>49</sup> whose “statements have to be corroborated” as a result.

**Suggested List of Questions for the State Party**

- Please indicate what procedures are in place for the implementation of laws and initiatives to safeguard the rights and interests of child victims and witnesses of rape.
- Please describe the measures taken to ensure the proper implementation of the relevant legislative provisions.

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<sup>48</sup> Fatima Yasmin Bokhari, *Accountability for Rape: A Case Study of Lodhran*, 2018, available at <https://cfhr.com.pk/wp-content/uploads/2022/01/Accountability-for-Rape-A-case-study-of-Lodhran.pdf> [accessed 7 July 2023]

<sup>49</sup> Sessions Case No. 124/OSC of 2017 (Para 23), Case FIR No. 195/2017

## ANNEX - COMPARISON TABLE OF UN MODEL RAPE LAW AND STATE LEGISLATION

In addition to the above observations, we annex a table comparing the State's law on rape and sexual violence with the UN Model Law on Rape.

| UN Model Rape Law   | Corresponding Legislative Provisions of State  | Included in below report issues list? |
|---|--|---------------------------------------|
| <b>A. Criminalization of rape</b>   |  |                                       |
| <p><b>Article 1. Definition of rape</b></p> <p>16. A person (the perpetrator) commits rape when they:</p> <p>(a) engage in non-consensual vaginal, anal, or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by any bodily part or object; or</p> <p>(b) cause non-consensual vaginal, anal, or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by a third person; or</p> <p>(c) cause the victim to engage in the non-consensual vaginal, anal, or oral penetration of a sexual nature, however slight, of the body of the perpetrator or another person.</p> | <p><b><u>Section 375 of the Pakistan Penal Code 1860</u></b></p> <p>“A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:</p> <p>i) Against her will;</p> <p>ii) Without her consent;</p> <p>iii) With her consent, when the consent has been obtained by putting fear of death or of hurt;</p> <p>iv) With her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or</p> <p>v) With or without her consent when she is under the age of 16.”</p> | NO                                    |
| <p><b>Article 2. On consent</b></p> <p>17. Consent must be given voluntarily and must be genuine and result from the person’s free will, assessed in the context of the surrounding circumstances, and can be withdrawn at any moment. While consent need not be explicit in all cases, it cannot be inferred from:</p>   | <i>See above.</i>  | NO                                    |

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| <p>(a) silence by the victim;</p> <p>(b) non-resistance, verbal or physical, by the victim;</p> <p>(c) the victim's past sexual behavior; or</p> <p>(d) the victim's status, occupation, or relationship to the accused.</p>   |                   |    |
| <p><b>Article 3. Age of consent</b></p> <p>(a) A person is considered incapable of giving genuine consent when they are a person below the age of 16.</p> <p>(b) Consensual sexual relations between children younger than 16, or between a child younger than 18 years old and a child older than 14 and younger than 16 should not be criminalized.</p>  | <i>See above.</i> | NO |
| <p><b>Article 4. On the incapability of giving genuine consent</b></p> <p>A person is considered incapable of giving genuine consent:</p> <p>(a) when they are unconscious, asleep, or seriously intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily, or unknowingly;</p> <p>(b) when the perpetrator is an adult, 18 years old or older and the victim is a child related to the perpetrator by blood, marriage, adoption, fostering or other analogous familial affiliation.</p> | <i>See above.</i> | NO |
| <p><b>Article 5. Use of force, threat, or coercion</b></p> <p>Lack of consent is presumed where penetration was committed by force, or by threat of force or coercion. There is a broad range of coercive circumstances, including, but not limited to, circumstances in which:</p> <p>(a) the victim was subject to abuse, violence, duress, deceit, detention or psychological oppression or intimidation that contributed to the victim's subjugation or acquiescence; or</p>                               | <i>See above.</i> | NO |

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| <p>(b) the victim was subject to a threat (expressed or implied) of present or future physical or non-physical harm to the victim or a third person.</p>   |                          |           |
| <p><b>Article 6. On presumed lack of consent</b></p> <p>Lack of consent is presumed when:</p> <p>(a) The victim was intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily, or unknowingly;</p> <p>(b) When an illness, bodily injury, or other particular vulnerability has an impact of the victim’s ability to consent; or</p> <p>(c) When the perpetrator is in a position of power, trust, influence, or dependency over the victim and may have taken advantage of that position to force participation.</p> <p>Lack of consent is also presumed when the perpetrator abuses a relationship or position of power or authority over the victim. The positions and relationships listed below include, but are not limited to, situations in which the perpetrator is in a position of power or authority, influence, or dominance over the victim:</p> <p>(a) in a school, hospital, religious, correctional or care facility setting;</p> <p>(b) in a professional or occupational setting;</p> <p>(c) in a residential care facility, community home, voluntary home, children’s home, or orphanage;</p> <p>(d) in the context of providing the victim medical, psychological, or psycho-social support or treatment;</p> <p>(e) in a guardian-ward relationship;</p> <p>(f) by acting as a member of law enforcement, worker, probation officer, sports coach, instructor, minister of religion, babysitter, child-minder or in any other position of welfare in relation to the victim; or</p> | <p><i>See above.</i></p> | <p>NO</p> |

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| (g) by otherwise being generally involved and responsible for the care, training, or supervision of the victim.   |  |    |
| <b>B. Sentencing, aggravating and mitigating circumstances</b>  |  |    |
| <p><b>Article 7. Sentencing</b></p> <p>(a) States should ensure that sanctions for offences of rape are effective, proportionate, dissuasive, and commensurate with the gravity of the crimes.</p> <p>(b) States should develop sentencing guidelines to ensure consistency in sentencing outcomes.</p> <p>(c) States should not allow conditional sentences and/or community service or fines alone as sanctions.</p> <p>(d) The death penalty should never be imposed for rape.</p> | <p><b><u>Section 376 of the Pakistan Penal Code 1860</u></b></p> <p>“(1) Whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than 10 years and more than 25 years and shall also be liable to a fine.</p> <p>(1A) Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of this section, section 377 or section 377B, and in the course of such commission causes any hurt punishable as an offence under section 333, section 335, clauses (iv), (v) and (vi) of sub-section (3) of section 337, section 337C, clauses (v) and (vi) of section 337F, shall be punished with death or imprisonment for life and fine.</p> <p>(2) When rape is committed by two or more persons in furtherance of common intention of all, each of such persons shall be punished with death or imprisonment for life.</p> <p>(3) Whoever commits rape of a minor or a person with mental or physical disability, shall be punished with death or imprisonment for life and fine.</p> <p>(4) Whoever being a public servant, including a police officer, medical officer, or jailor, taking advantage of his official position commits rape shall be punished with death or imprisonment for life and fine</p> | NO |

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|   | <p><b>Section 55 of the Pakistan Penal Code 1860</b><br/>         Provided further that in a case in which the sentence for life imprisonment has been passed against an offender for an offence punishable under sections 354A, 376A, 377, or 377B, or where the principle of fasad-fil-arz is attracted, such punishment shall not be commuted.”</p> |           |
| <p><b>Article 8. Aggravating circumstances</b></p> <p>The presence of aggravating factors increase the gravity and severity of rape and States should ensure that aggravating circumstances are taken into account and factored into penalties.</p> <p>The following non-exhaustive list of circumstances should be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offence of rape:</p> <p>(a) the relationship between victim and perpetrator, when there is a power imbalance that makes the victim particularly vulnerable:</p> <ul style="list-style-type: none"> <li>(i.) the offence was committed against a former or current spouse or partner;</li> <li>(ii.) the offence was committed by a member of the family or a person cohabiting with the victim;</li> <li>(iii.) the perpetrator took advantage of any kind of relationship of trust, kinship, authority, or other unequal power relationship with the victim;</li> <li>(iv.) the perpetrator is an agent or contractor of the State, or has authorization, support, or acquiescence from one or more agents or contractors of the State;</li> </ul> <p>(b) conditions of the victim or context that make them particularly vulnerable to sexual violence:</p> <ul style="list-style-type: none"> <li>(i.) the offence was committed against a victim who for any reason is imprisoned or detained;</li> </ul> | <p><i>See above.</i></p>   | <p>NO</p> |



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| <p>(ii.) the offence was committed against a child or against an older person;</p> <p>(iii.) the offence was committed against or in the presence of relatives of the victim or any child;</p> <p>(iv.) the perpetrator took advantage of a person in a position of particular vulnerability, including but not limited to in times of armed conflict, political violence, or other social disturbance, during human trafficking or migration, labour exploitation, sexual exploitation, or natural disasters;</p> <p>(v.) the offence was committed with an additional discriminatory motive against a victim because of their race, caste, ethnicity, sexual orientation, gender identity, disability, age, migrant or refugee or other status;</p> <p>(vi.) the offence was committed against a pregnant person;</p> <p>(c) the ways in which the offence is carried out:</p> <p>(i.) the offence was committed by two or more people acting together;</p> <p>(ii.) the offence, or related offences, were committed repeatedly;</p> <p>(iii.) the offence was preceded or accompanied by extreme levels of violence or threats of or attempts to cause extreme levels of violence;</p> <p>(iv.) the offence was committed with the use or threat of use of a weapon;</p> <p>(v.) the offence was committed including by causing the victim to take, use or be affected by drugs, alcohol, or other intoxicating substances to maintain control over the victim;</p> <p>(vi.) the perpetrator had previously been convicted of offences of a similar nature;</p> <p>(vii.) the offense was filmed or photographed by the perpetrator;</p> <p>(d) the consequences of rape to the victim:</p> |  |  |
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| <p>(i.) the offence resulted in severe physical or psychological harm or disability for the victim;</p> <p>(ii.) the offence resulted in death, pregnancy or the communication of a sexually transmitted infection or disease.</p>  |   |            |
| <p><b>Article 9. Mitigating circumstances</b></p> <p>States should not permit in rape cases the use of extenuating and mitigating circumstances that are based on culture, religion, customs, traditions, or so-called honour that are contrary to international human rights law in cases of rape.</p> <p>(a) States should ensure that the perpetrator cannot be exempt from punishment or subjected to reduced punishment by reaching any form of settlement (financial or otherwise) with the victim or the victim’s family;</p> <p>(b) States should ensure that the perpetrator cannot be exempt from punishment or subjected to reduced punishment for subsequently marrying the victim and the law should not provide that the perpetrator is required to marry the victim.</p> <p>Mitigating circumstances that should be prohibited include, but are not limited to:</p> <p>(a) if the perpetrator marries or desires to or attempts to reconcile with the victim.</p> <p>(b) the wish of the perpetrator, or the perpetrator’s family or community, to compensate for the harm.</p> <p>(c) character or reputation of the perpetrator;</p> <p>(d) prior history of behaviour to insinuate blame on the part of the victim.</p> | <p>Based on research conducted for this report, Pakistani legislation does not specifically make provisions for mitigating circumstances for the crime of rape.</p> | <p>NO.</p> |
| <p><b>Article 10. Withdrawal of parental rights</b></p> <p>States should take legislative measures to allow for the withdrawal of parental rights of perpetrators in relation to the children conceived as a result of rape, taking into consideration their best interests:</p>  | <p>Based on research conducted for this report, Pakistani legislation does not have such provisions in place.</p>   | <p>NO</p>  |

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| <p>(a) Where a person is subject to a criminal proceeding for the crime of rape, parental rights to the child conceived as a result of the alleged rape will be suspended until a final decision is determined in the criminal process.</p> <p>(b) Where a person is convicted of the crime of rape, there should be a presumption against parental rights to a child conceived as a result of rape, taking into consideration the best interest of the child, while alimony and compensation should be granted irrespective of such withdrawal of parental rights. Incidents of violence against women should be taken into account when deciding on parental rights.</p> <p>(c) Where a person is convicted of the crime of rape, there should be a presumption against parental rights to any child conceived by that person, taking into consideration the best interest of the child, while alimony and compensation should be granted irrespective of such withdrawal of parental rights. These provisions are without prejudice to the child’s right to enjoy any benefit accruing from their paternity.</p> |   |           |
| <p><b>C. Investigation, prosecution, and trial</b></p>  |   |           |
| <p><b>Article 11. Victim-centred approach</b></p> <p>(a) A victim-centred approach places the victim at the centre of all responses, including by ensuring that they are kept informed about their rights, the legal process and progress of the case and are supported throughout the process, and free legal aid is available where appropriate;</p> <p>(b) The number of interviews of the victim should be kept to a minimum and interviews carried out only where strictly necessary for the purposes of the criminal investigation;</p> <p>(c) Examinations to collect medico-legal evidence are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings;</p> <p>(d) Victims should be able to be accompanied by their legal representative(s) and support persons of their choice unless a reasoned decision has been made to the contrary.</p>   | <p><b><u>Section 161A of the Code of Criminal Procedure 1898</u></b></p> <p>“(1) Where an offence under section 354A, section 376, section 377, or section 377B of the Pakistan Penal Code, 1860, has been committed or attempted to be committed, the police officer, after recording the information under section 154, shall inform the victim against whom such offences have been committed or attempted to be committed of his or her right to legal representation.</p> <p>(2) If the victim requires free legal aid the police officer shall provide the list of lawyers maintained by the Provincial Bar Councils for this purpose.”</p> <p><b><u>Section 53A of the Code of Criminal Procedure 1898</u></b></p> | <p>NO</p> |

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|  | <p>“(1) When a person is arrested on a charge of committing an offence of rape, unnatural offence or sexual abuse or an attempt to commit rape, unnatural offence or sexual abuse under section 376, section 377 and section 377B respectively and there are reasonable grounds for believing that an examination of this person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.</p> <p>(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely: - a) the name and address of the accused and of the person by whom he was brought; b) the age of the accused; c) the description of material taken from the person of accused for DNA profiling; and d) other material particulars in reasonable detail.</p> <p>(3) The report shall precisely state the reasons for each conclusion arrived at. The exact time of commencement and completion of the examination shall also be noted in the report. The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate through Public Prosecutor referred to in section 173 2 as part of the report referred to in that section.”</p> |  |
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**Section 164A of the Code of Criminal Procedure 1898**

“(1) Where an offence of committing rape, unnatural offence or sexual abuse or attempt to commit rape, unnatural offence or sexual abuse under section 376, section 377 or section 377B respectively of the Pakistan Penal Code, 1860, is under investigation, the victim shall be examined by a registered medical practitioner, in the case of female victim by a female registered medical practitioner, immediately after the commission of such an offence: Provided that in all cases, where possible, the female victim shall be escorted by a female police officer or a family member from a place of her convenience to the medical examination.

(2) The registered medical practitioner, to whom such victim is sent shall without delay examine him or her and prepare a report of the examination giving the following particulars, namely: a) the name and address of the victim and of the person by whom she was escorted; b) the age of the victim; c) the description of the material taken from the body of the victim for DNA profiling d) marks of injury, if any, on the body of the victim; e) general mental condition of the victim; and f) other material particulars in reasonable detail.

(3) The report shall precisely state the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the victim, or his or her natural legal guardian, to such examination had been obtained.

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|  | <p>(5) The exact time of commencement and completion of the examination shall also be noted in the report.</p> <p>(6) The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate along with other requirements as specified under clause (a) of sub-section (1) of section 173.</p> <p>(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the victim or of any person authorized under subsection (4).”</p> |            |
| <p><b>Article 12 – Child victims and witnesses of rape</b></p> <p>(a) Every child victim or witness of rape has the right to have his or her best interests given primary consideration.</p> <p>(b) Every child victim or witness of rape shall be treated according to the following general principles:</p> <p>(i.) A child victim or witness of crime shall be treated in a caring and sensitive manner that is respectful of his or her dignity throughout the legal proceedings, taking into account his or her personal situation and immediate and special needs, age, gender, disabilities if any and level of maturity.</p> <p>(ii.) Interference in the child’s private life shall be limited to the minimum necessary as defined by law in order to ensure high standards of evidence and a fair and equitable outcome of the proceedings.</p> <p>(iii.) The privacy of a child victim or witness shall be protected.</p> <p>(iv.) Information that would tend to identify a child as a witness or victim shall not be published without the express permission of the court.</p> | <p>Based on research conducted for this report, Pakistani legislation does not have such provisions in place.</p>   | <p>YES</p> |

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| <p>(v.) A child victim or witness shall have the right to express his or her views, opinions, and beliefs freely, in his or her own words, and shall have the right to contribute to decisions affecting his or her life, including those taken in the course of the justice process.</p> <p>(c) A child victim or witness shall be assigned a lawyer by the State free of charge throughout the justice process in the following instances:</p> <ul style="list-style-type: none"><li>(i.) At his or her request;</li><li>(ii.) At the request of his or her parents or guardian;</li><li>(iii.) At the request of the support person, if one has been designated;</li><li>(iv.) Pursuant to an order of the court on its own motion, if the court considers the assignment of a lawyer to be in the best interests of the child.</li></ul> <p>(d) If at any stage in the justice process the safety of a child victim or witness is deemed to be at risk, the competent authority shall arrange to have protective measures put in place for the child. Those measures may include the following:</p> <ul style="list-style-type: none"><li>(i.) Avoiding direct contact between a child victim or witness and the accused at any point in the justice process;</li><li>(ii.) Requesting restraining orders from a competent court;</li><li>(iii.) Requesting a pretrial detention order for the accused from a competent court, with “no contact” bail conditions;</li><li>(iv.) Requesting an order from a competent court to place the accused under house arrest;</li><li>(v.) Requesting protection for a child victim or witness by the police or other relevant agencies;</li><li>(vi.) Making or requesting from competent authorities’ other protective measures that may be deemed appropriate</li></ul> |  |  |
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| <p><b>Article 13. Investigation</b></p> <p>(a) Investigators/police officers should not delay investigation nor refuse to record the crime or initiate an investigation solely based on delayed reporting of the crime;</p> <p>(b) Investigators/police officers should promptly give the victim written acknowledgement of receipt of their complaint;</p> <p>(c) Investigators/police officers should promptly and effectively record and investigate all allegations/reports made by the victim or other witnesses/organizations and ensure that the official report of the complaint is filed in all cases;</p> <p>(d) Investigators/police officers should promptly respond to requests for assistance and protection, advise the victim of their rights, and support the victim in filing a complaint and in accessing relevant services;</p> <p>(e) Investigators/police officers should conduct initial interviews in a gender-sensitive and trauma-informed manner and with due respect for the right to privacy.</p> <p>(f) Investigators/police officers should conduct interviews of victims without unjustified delay after the rape complaint has been made to the competent investigative authority, in a language understood by the victim and with the support of an interpreter, if necessary;</p> <p>(g) Investigators should conduct risk assessments, considering the seriousness of the situation and the risk of repeated rape or lethal violence, including possession of firearms by the perpetrator and issue effective protection orders including ex parte protection orders or other measures to protect the victim and their family as necessary;</p> <p>(h) There should be a complaint mechanism accessible to victims who were mistreated by the police or if their case was mishandled.</p> | <p><b><u>Section 166(2) of the Pakistan Penal Code 1860</u></b></p> <p>“Whoever being a public servant, entrusted with the investigation of a case, fails to carry out the investigation properly or diligently or fails to pursue the case in any court of law properly and in breach of his duties, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”</p> <p><b><u>Section 166(2) of the Pakistan Penal Code 1860</u></b></p> <p>“Whoever, intentionally hampers, misleads, jeopardizes or defeats an investigation, inquiry or prosecution, or issues a false or defective report in a case under any law for the time being in force, shall be punished with imprisonment for a term which may extend to three years; or with fine, or with both.”</p> | <p>NO</p> |
| <p><b>Article 14. Ex officio prosecution</b></p> <p>(a) The investigation and prosecution of rape should be conducted ex officio. The State has the obligation to carry out an effective investigation and prosecute the crime, which should not be wholly dependent on a report or accusation made by the victim and may continue even if the victim has withdrawn their statement;</p>  | <p>As rape is not mentioned under the list of compoundable offences at Section 320 of the Code of Criminal Procedure 1898, it is deemed to be a non-compoundable offence. Rape is thus to be investigated and prosecuted ex officio.</p>  | <p>NO</p> |



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| <p>(b) Any prosecutor who discontinues a rape case should provide a formal and timely written explanation to the victim of the reasons why the case was dropped.</p>  |  |            |
| <p><b>Article 15. Timely and without undue delay</b></p> <p>(a) Investigations and judicial proceedings should be carried out in a timely manner without undue delay, while taking into consideration the rights of the victim during all stages of the criminal proceedings;</p> <p>(b) All reports of rape should be taken seriously and investigated promptly, thoroughly, and impartially;</p> <p>(c) All evidence properly collected and decision on cases that should be prosecuted without any prejudicial stereotypical views of the victim or any other reason which would deny effective access to justice to victims.</p>  | <p><b><u>Section 344A of the Code of Criminal Procedure 1898</u></b></p> <p>“The Court shall, upon taking cognizance of a case under sections 354A, 376, 377, and 377B of the Pakistan Penal Code, 1860, decide the case within 3 months failing which the matter shall be brought by the court to the notice of the Chief Justice of the High Court concerned for appropriate directions.”</p> <p><b><u>Section 417(5) of the Code of Criminal Procedure 1898</u></b></p> <p>“An appeal against an order of conviction or acquittal under sections 354A, 376, 376A, 377 or 377B of the Pakistan Penal Code, 1860 shall be decided within 6 months.”</p> | <p>NO</p>  |
| <p><b>Article 16. Evidentiary requirements, rape shield provisions</b></p> <p>States should ensure an objective, gender-sensitive assessment of the evidence in rape cases:</p> <p>(a) Introduction of evidence regarding the victim’s past sexual history or behaviour should be generally prohibited at all stages of the legal process, including cross-examination; and should be permitted only when relevant and necessary;</p> <p>(b) There should never be an absolute requirement that any specific piece of evidence be available for a prosecution to go ahead, such as medical evidence, which may not be available, particularly after a delay in reporting, or if there is a delay in starting the investigation;</p> | <p>The Qanun-e-Shahadat Order was amended by the Criminal Law Amendment (Offences Relating to Rape) Act 2016, with Article 151(4), which explicitly allowed the accused to show that the woman levying charges of rape has a sexual history (either in the form adultery or fornication and/or being habitual to sexual intercourse before marriage) now omitted.</p>  | <p>YES</p> |

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| <p>(c) There should be no requirement for the testimony of the victim to be otherwise corroborated in order for that testimony to be considered credible, reliable, and sufficient as a basis for conviction, considered in the context of the particular case;</p> <p>(d) Lack of evidence of resistance such as physical injuries to the body must never, in and of itself, be taken as proof of consent to the sexual act.</p> <p>(e) No adverse inference shall be drawn from a delay of any length between the alleged commission of rape and the reporting thereof.</p>                   |   |           |
| <p><b>Article 17. Statutory Limitations</b></p> <p>(a) The prosecution of rape should not be subject to any period of limitation in any circumstances, whether carried out in times of peace or conflict;</p> <p>(b) If statutes of limitation are in place, in the case of child victims, statutes should allow sufficient time for the initiation of proceedings after the victim has reached the age of majority.</p>  | <p>There are no statutory limitations in relation to the prosecution of rape.</p>                                 | <p>NO</p> |
| <p><b>Article 18. Jurisdiction and Cooperation between States</b></p> <p>States should:</p> <ul style="list-style-type: none"> <li>i. Establish jurisdiction over offences of rape when the offence is committed:</li> <li>ii. in their territory; or</li> <li>iii. on board a ship flying their flag; or</li> <li>iv. on board an aircraft registered under their laws; or</li> <li>v. by one of their nationals.</li> </ul> <p>(a) Ensure that their jurisdiction is not subordinated to the condition that the acts of rape are criminalised in the territory where they were committed.</p> | <p>Based on research conducted for this report, Pakistani legislation does not have such provisions in place.</p> | <p>NO</p> |

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| <p>(b) Establish jurisdiction over offences of rape when the offence is committed in the context of conflict, war crimes, crimes against humanity, genocide, widespread or systematic attack, national disturbances, or humanitarian crises.</p> <p>(c) States should endeavour to co-operate with each other, to the widest extent possible, for the purpose of preventing, investigating, and prosecuting all rape cases, protecting, and providing assistance to victims and providing mutual legal and other necessary assistance in criminal matters, extradition and enforcement of relevant civil and criminal judgments by judicial authorities of other States, including protection orders.</p>  |  |           |
| <p><b>Article 19. Prohibition of mandatory reconciliation or mediation</b></p> <p>The law should expressly prohibit any form of mandatory conciliation or mediation in cases of rape, both before and during legal proceedings.</p> <p>(a) Cases of violence against women, and particularly of rape and sexual violence, should not be referred to mandatory alternative dispute resolution procedures.</p> <p>(b) Plea bargains should be strongly discouraged in cases of rape and especially when the offence was committed against a victim who was a child at the time of the crime.</p>   | <p>As rape is not mentioned under the list of compoundable offences at Section 320 of the Code of Criminal Procedure 1898, it is deemed to be a non-compoundable offence. On this basis, mandatory conciliation, or mediation in cases of rape are effectively prohibited.</p>   | <p>NO</p> |
| <p><b>Article 20. Victim-centred protection measures</b></p> <p>States should take all necessary legislative measures to ensure that the rights and interests of victims are protected at all stages of the investigation and judicial proceedings, in particular by:</p> <p>(a) Providing for the protection of victims, their family members, and witnesses from intimidation, retaliation, and secondary victimization, including through physical protection of victims and their family members where necessary;</p> <p>(b) Ensuring avoidance of contact between a victim and the alleged perpetrator(s) within premises where criminal investigations or trials are conducted, including by providing separate waiting areas, entrances and exits and staggered arrival and departure times; by permitting victims to give evidence remotely or through the use of communication technology in a place the victim deems safe; or by utilizing witness</p> | <p><b><u>Section 376A (1) of the Pakistan Penal Code 1860</u></b></p> <p>“Whoever prints or publishes the name or any matter which may make known the identity of the victim, against whom an offence under sections 354A, 376, 376A, 377 and 377B is alleged or found to have been committed, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to a fine.”</p> <p><b><u>Section 352(2) of the Code of Criminal Procedure 1898</u></b></p> <p>“(2) Notwithstanding anything contained in subsection (1), the trial of offences under sections</p> | <p>NO</p> |

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| <p>protection boxes or screens in courtrooms to avoid visual contact between the victim and the alleged perpetrator(s);</p> <p>(c) Protecting the privacy of victims and preventing public dissemination of any information that could lead to the identification of the victim including by prohibiting the media from identifying victims of rape before conclusion of the trial and without the victims’ consent afterwards, privacy when reporting to the police, closure of the courtroom during proceedings and the like;</p> <p>(d) Providing victims with adequate and timely information, in a language they understand throughout the criminal justice process, on their rights and available support services, the progress of the investigation and legal proceedings, their role therein and the outcome of the case;</p> <p>(e) Enabling victims to exercise their right to legal aid, interpretation, and court support, including the right to be accompanied and represented in court by a specialized service or by any other independent support persons chosen by the victim.</p> <p>(f) Assessing the victim’s specific needs to enable their effective participation in the criminal proceedings; and ensuring that child victims and victims with specific needs are afforded special support and protection measures to ensure they are able to participate as fully as possible in the proceedings at the same time as protecting their best interests. Such special measures may include but are not limited to:</p> <ul style="list-style-type: none"> <li>(i.) ensuring that interviews with the victim are conducted in their home or residence or in premises specially designed or adapted for that purpose by an interviewer of the same sex without undue delay;</li> <li>(ii.) ensuring the presence of parents or a person trusted by the child while recording a child’s testimony, which could include representatives from specialist civil society organizations working to address or support victims of rape; and</li> <li>(iii.) in the case of victims with physical, psychological, mental, or intellectual impairment or disabilities, obtaining the assistance of a special educator, psychologist, or other person familiar with appropriate communication techniques for example braille, sign language or other</li> </ul> | <p>354A, 376, 376A, 377 and 377B of the Pakistan Penal Code, 1860 shall be conducted in camera. Provided that the Presiding Officer, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the court.</p> <p>(3) Where any proceedings are held under subsection (2), the Government may adopt appropriate measures, including holding of the trial through video link or usage of screens, for the protection of the victim and witnesses. (4) Where any proceedings are held under subsection (2), it shall not be lawful for any person to print or publish or broadcast any matter in relation to any such proceedings, except with the permission of the Court.”</p> <p><b><u>Section 161A of the Code of Criminal Procedure 1898</u></b></p> <p>“(1) Where an offence under section 354A, section 376, section 377, or section 377B of the Pakistan Penal Code, 1860, has been committed or attempted to be committed, the police officer, after recording the information under section 154, shall inform the victim against whom such offences have been committed or attempted to be committed of his or her right to legal representation.</p> <p>(2) If the victim requires free legal aid the police officer shall provide the list of lawyers maintained by the Provincial Bar Councils for this purpose.”</p> <p><b><u>Section 154 of the Code of Criminal Procedure 1898</u></b></p> |  |
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| <p>electronic and information technology accessible to people with specific needs, before interviewing or recording the statement of the victim;</p> <p>(iv.) ensuring that interviews with the victim are carried out by or through professionals trained for that purpose;</p> <p>(v) ensuring interpretation and or translation services;</p> <p>(vi) ensuring psycho-social and legal support and covering travel expenses incurred.</p> <p>(g) Ensuring that protection orders are efficient, available, and easily accessible, could be issued ex parte and that victims are not subjected to undue delays in their applications for protection orders and other protective measures and that all allegations of rape are heard in a timely and impartial manner.</p> | <p>“Provided that if the information is given by the woman against whom an offence under section 336 B, section 354, section 354A, section 376 or section 509 of the Pakistan Penal Code, 1860, is alleged to have been committed or attempted, then such information shall be recorded, by an investigating officer in the presence of a female police officer or a female family member or any other person with the consent of the complainant, as the case may be: Provided further that if the information is given by the woman against whom an offence under section 336B, section 354, section 354A, section 376 or section 509 of the Pakistan Penal Code, 1860, is alleged to have been committed or attempted, is distressed, such information shall be recorded by an investigating Officer, at the residence of the complainant or at a convenient place of the complainants choice, in the presence of a police officer, or family member or any other person with the consent of the complainant, as the case may be.”</p> <p><b><u>Section 161 of the Code of Criminal Procedure 1898</u></b></p> <p>“Provided that a statement of a woman against whom an offence under section 336B, section 354, section 354A, section 376, or section 509 of the Pakistan Penal Code is alleged to have been committed or attempted, shall be recorded by an investigating officer, in the presence of a female police officer, or a female family member or other person of her choice.”</p> |  |
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