

# PAKISTAN

## No progress on women's rights

In March 1996, Pakistan ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women (hereafter the UN Women's Convention) thereby committing itself to amend or repeal laws inconsistent with the Convention and to ensure that discriminatory practices against women are brought to an end. In March 1997, Amnesty International issued a report, "Pakistan: Women's human rights remain a dead letter" (AI Index: ASA 33/07/97), which concluded that one year after ratification, no effective steps had been taken to end discrimination against women and to safeguard and protect their human rights. Another year has gone by and Amnesty International must again repeat its call to the Government of Pakistan: To take the commitments made two years ago seriously and to bring about the changes in law and practice promised then.

Moreover, under Article 18 of the UN Women's Convention, state parties are to submit within a year of ratification and thereafter at least every four years, reports "on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect". Pakistan has not so far submitted its country report to the Committee on the Elimination of Discrimination against Women which was due on 11 April 1997, nor has it informed the Committee about the reason for the delay or when it will be submitted. The organization urges the Government of Pakistan to comply with this obligation.

Under Article 5(a) of the UN Women's Convention, "State Parties shall take all appropriate measures ... to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". This obligation has been ignored by the Government of Pakistan which, for instance in programs on the state-run television, has in fact contributed to reinforcing an already widespread bias against women. This bias pervades many sectors of society including law enforcement and judicial personnel rendering it unlikely that they would view women's issues objectively and fully protect and promote women's rights.

### **1. Developments relating to the status of women**

Since publishing its report in March 1997, Amnesty International has monitored important developments affecting the human rights of women in Pakistan. In August 1997 the Report of the Commission of Inquiry for Women was made public; it analysed law and practice affecting women in Pakistan and set out a list of recommendations that would secure the full enjoyment of rights to women. However, despite this perceptive report highlighting major areas in need of improvement, the human rights of women continued to be routinely ignored and violated. Discrimination against women in law and practice persisted; violence against women, in custody, in the family and in the wider

community was believed to have increased; and institutions intended to protect women, police and the judiciary, continued to fail them.

Social and economic rights of women have not improved over the last year. In fact, on the United Nations Development Programme's gender related development index, Pakistan slid back to 120th out of 146 places in the 1997 index (107 out of 137 in 1996) and occupied 92nd of 94 places with regard to women's empowerment as no progress was made by women in the domestic, economic and social spheres. This slide may get worse: Some women in Pakistan have recently spoken up about the "repercussions of the nuclearization upon Pakistani women", emphasising that the commitment of scarce resources away from the social to the military sector and subsequent sanctions may adversely affect the most vulnerable sections of society, women and children, both at the material and the ideational level, relating to the "shrinking public space for women, their ideas and their rights".<sup>1</sup>

The 15th constitutional amendment bill, introduced to parliament on 28 August 1998 and currently under debate in the National Assembly, may also adversely affect fundamental rights of women. It envisages authorizing the federal government "to issue directives for the implementation of the provisions set out in clauses (1) and (2)"; according to clause (1), *Shariah* shall "be the supreme law of Pakistan" and clause (2) obliges the federal government "to take steps to enforce the *Shariah*, ... to enforce *amr bil ma'roof and nahi anil munkar* (to prescribe what is right and to forbid what is wrong)". Clause (5) further states that the "provisions of this Article shall have effect notwithstanding anything contained in the Constitution, any law or judgment of any Court". The protection of women's rights may become arbitrary, as constitutionally secured rights and freedoms may be superseded by the executive's directives, dependent only on the executive's interpretation of *Shariah* and their assessment of what is "right" for women. A joint statement issued by 16 human rights and women's rights organizations on 29 August said that the constitutional amendment if passed would "irretrievably harm the interests of the state and society, especially of women, working people and minorities".

### **(i) The Commission of Inquiry for Women**

The Commission of Inquiry for Women, set up by the government in 1994, consisted of human rights lawyers, Islamic scholars and legislators and was headed by a Supreme Court judge. It was mandated to "review all the existing laws which are discriminatory to women or affect their rights being equal citizens of Pakistan" and to recommend amendments to bring laws and rules "in accordance with the injunctions of Islam as

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<sup>1</sup>Saba Khattak, Sustainable Development Policy Institute, in *Dawn*, 4 August 1998.

enshrined in the Holy Quran and Sunnah” as well as other remedial measures. It examined family laws, labour and service laws, criminal laws, various social practices which involve violence against women, developmental rights of which women are deprived and lack of suitable institutions to protect women's rights. The Commission sent a questionnaire to women's organizations and published it in newspapers. It visited relevant institutions, including women's prisons, women's police stations and women's shelters.

The report presents a comprehensive picture of the deprivation of rights suffered by women, through discriminatory legislation and endemic practices affecting women at all social levels and in all parts of the country. It recommends inter alia:

- removal of discriminatory clauses in the Constitution of Pakistan,
- legislative measures to increase political participation of women,
- changes in family laws, relating to marriage, divorce, maintenance, inheritance, dowry, guardianship and child marriage which currently disadvantage women
- changes in labour laws relating to conditions of employment, pay and provisions of child care;
- amendment of criminal laws, including
  - identifying honour-killings as a criminal offence;
  - the repeal of the Hadd laws as they contravene the injunctions of Islam, constitutional provisions of equality before the law and the UN Women's Convention besides leading to the proliferation of false complaints intended to harass women;
  - repeal of the Qanun-e-Shahadat (Evidence Act) as it discriminates against women;
  - strengthening of legislation on domestic violence and monitoring of its implementation;
- improvement of institutional protection, including better facilities relating to custody, health, including reproductive health care, shelter and education.

The report concludes: “The Commission urges decision makers, including political party leadership, the legislators and the judiciary, to give the issue of women's rights the critical priority it deserves, not as a favour or protective gesture, but as their fundamental inalienable right”.

Amnesty International welcomes the Commission's report and efforts put into research and recommendations, many of which correspond to recommendations made by Amnesty International to the Government of Pakistan (see: Women in Pakistan: disadvantaged and denied their rights, AI Index: ASA 33/23/95). Unfortunately, to Amnesty International's knowledge, there has been no official acknowledgement of the importance of this report; parliament has not discussed it nor have any steps been taken to implement any of these recommendations. Amnesty International shared the disappointment expressed by women's and human rights organizations in Pakistan in this

respect and calls on the Government of Pakistan to urgently consider and adopt its recommendations, i.e. to repeal discriminatory laws, adopt and implement provisions protecting women against custodial, domestic and societal violence and to ensure that women finally enjoy their rights and live in dignity, on the basis of equality with men.

In September 1998, the cell set up in the Ministry of Women's Development to follow up on the 4th World Conference on Women held in Beijing in September 1995, released a set of recommendations to the Government of Pakistan; these included the recommendation that the report of the Commission of Inquiry for Women be translated, published and widely circulated and that an intensive program of lobbying for its implementation be launched by the end of 1999.

### **(ii) Political participation**

Political participation of women in the law-making bodies of Pakistan has remained marginal. The National Assembly has five women legislators out of a total of 207 and there are two women senators out of 83. In the four provinces, there is only one woman among 483 male provincial legislators. The disregard for gender issues and the political role of women was apparent in the fact that the census conducted in March 1998 failed to reflect gender concerns. It did not require men to list the name or names of his wife or wives, and children were not required to provide their mothers' names.

Affirmative action to ensure greater participation of women in public life has not been taken despite the ruling Pakistan Muslim League's (PML) stated commitment to it in its election manifesto. A private member's bill seeking the restoration of reserved parliamentary seats for women, which lapsed in 1990<sup>2</sup>, was defeated on 7 May 1997 by the PML parliamentary majority on the grounds that the provision of 20 reserved seats would be contained in comprehensive "constitutional reform package" to be presented "soon". Following protests by women's groups, Minister for Parliamentary Affairs, Yaseen Wattoo, in March 1998 assured representatives of women's organizations that he would take up immediately with the prime minister the women's demand of delinking the issue of reservation of women's seats from the constitutional reform package (which itself has not been made public). No concrete steps appear to have been taken since then.

On 1 April 1998, the federal cabinet announced its decision to increase women's representation in local councils by 100%. Arguing that, given the low level of women's representation, a doubling would fall far short of adequate representation, women's and

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<sup>2</sup>The constitution of 1973 had provided for the reservation of seats for women in the National Assembly and the provincial assemblies for the period of three elections or 10 years, whichever came later, on the assumption that positive discrimination would not be necessary thereafter.

human rights groups have insisted that for a limited number of years, 33% of seats in all elected bodies should be reserved for women, i.e. in local government bodies, the lower and upper houses of the federal parliament as well as the provincial assemblies. Moreover, they argue that the mode of election should not, as in the past, be indirect, i.e. by appointments made by elected male representatives but direct, constituency based and by a joint electorate of men and women. However, as the cabinet decision to double women's seats in local bodies was not notified to the election authorities nor any corresponding legislative steps taken, it has not had any practical consequences.

### **(iii) Women in employment and education**

A seminar organized by the Pakistan National Federation of Trade Unions in December 1997 pointed out that Pakistan which had ratified six ILO conventions<sup>3</sup>, had failed to ratify another 17 ILO conventions relating to equality in pay for women, social security benefits, awarding working women equal responsibility for running the household and protection against environmentally hazardous occupations, including the handling of toxic substances.

Instead, the government announced several measures likely to limit women's access to and participation in educational and cultural activities. In October 1997, the Punjab government announced a ban on cultural activities in girls schools and colleges and directed students and teachers to abide by an Islamic dress code and wear the veil. Earlier, in May 1997, the Council of Islamic Ideology had in its annual report on the Islamization of Law recommended to the government that to promote Islamic values in society, the government should make it obligatory for women to wear the veil and to dismiss all government servants who did not offer prayers regularly and that "appointments to government departments should be made conditional on offering of prayers". In October 1997, the government announced that women should not appear in commercials, dramas and other broadcasts in close proximity with men. In January 1998, the government of Punjab said that dances performed by women would be banned on Punjab TV programmes; at the same time assurances were given that male dancing would not be stopped. However, none of these executive announcements appear to have been backed up by official notification or legislative measures. This makes it difficult for activists to respond adequately and effectively to such instructions of unclear legal status.

## **2. Abuses of women's rights**

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<sup>3</sup>relating to equal access of women to employment, maternity benefits, women's facilities at the workplace, protection against night work and in work underground etc.

In the period under review, rape and other forms of violence against women in the custody of the state or by private individuals in the domestic sphere or in the wider societal context remained widespread but grossly under reported, either out of ignorance, fear of social stigma or of retribution by the perpetrators. Poor women, who were neither aware of their rights nor possessed the wherewithal to seek their enforcement, constituted the majority of victims of abuse. These abuses are also under prosecuted and under punished, due to connivance or indifference by police and judiciary and inadequacies in the law. Describing the high level of violence against women in Pakistan, the non-governmental Human Rights Commission of Pakistan (HRCP) in its report "State of Human Rights in 1997" concluded, "worst of all was an attitude, largely, of resignation, of an unspoken social acceptance of the routineness of the condition".

The present report will first describe abuses which women suffer in the custody of the state, in the family and in the wider society before looking more closely at the ways in which the state fails to protect women from abuse or to secure justice to women once they have suffered abuse, thorough different degrees of inaction, acquiescence or connivance with the perpetrators of abuse.

### **2.i. Torture of women, including rape in the custody of the state**

Police torture and sexually abuse women detainees with virtual impunity; human rights activists in Pakistan state that "cases of assault in custody, for obvious reasons, almost never got reported but the informed assumption was that rarely a woman or girl who fell in police hands went unassaulted"<sup>4</sup>. Often a reprimand or disciplinary measure is considered an appropriate punishment for torture of women rather than criminal prosecution and a punishment imposed by a competent court.

Hidayat Bibi had surrendered to police of police station Gulbahar in Peshawar in March 1997 where she confessed to having shot dead her husband and a police officer after her husband forced her to have sex with the police officer. Upon arrest, Hidayat Bibi was reportedly beaten in police custody, according to observers in order to avenge the killing of the police officer. She was also forced to record her statement according to the police officers' wishes. Following a departmental inquiry, a head constable was dismissed for torturing Hidayat Bibi, salary increments of a sub-inspector were delayed as he had failed to protect her against torture, and two other police officers were censured for not maintaining due procedures.

Reports of police or locally influential people stripping women naked and parading them in public continue to be received. Only in the rarest cases are those

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<sup>4</sup>State of Human Rights in 1997, HRCP

responsible held to account. In September 1997, five police officers in Alipur Chattha, district Gujranwala, were found guilty by the senior Superintendent Police in a departmental inquiry of having stripped naked several women in Kot Phato village when they resisted the arrest of a male family member. Criminal charges were brought against them but it is not known if any further action was taken.

## **2.ii Abuses of women by private actors**

Domestic violence continued to be viewed as a domestic affair; and only in cases of particular cruelty did the media report it and the police take action. Many women in Pakistan became victims of criminal violence, particularly rape; some were killed on the mere allegation of harming the family's or tribe's honour. Others were harassed and sometimes criminally prosecuted and/or killed for choosing their own marriage partners. Abusive practices including the trafficking of women, women bonded labourers and the exchange of women to settle disputes also continued to be reported.

### **a. Domestic violence**

According to findings by women's groups in Pakistan, some 70% of women are subjected to violence in their homes. Such cases reported during the last year included a man near Gujar Khan, Punjab province, chopping off his wife's nose in a fit of anger over the fact that one of the daughters did not work. Nusrat, three months pregnant, after the violent attack on 19 September 1997 and further threats signed a compromise with her husband Nazir declaring that he was mentally disturbed and should not be prosecuted. With the help of an Islamabad-based women's group, the Progressive Women's Association, the compromise was declared void and at the end of September, police in Jatli which had initially refused to take any action, registered a complaint against the husband under sections 324 and 336 Pakistan Penal Code, for causing hurt and endangering life.

"Bride-burning" every year accounts for the violent deaths of dozens of women, perpetrated most often by the victims' husbands or husbands' families to punish young women for failure to obey, to bear sons or to bring a larger dowry. Lahore newspapers reported over four cases of women supposedly injured per week when cooking stoves burst; of these nearly three died per week.

### **b. Rape and other forms of violence**

The non-governmental organization War Against Rape (WAR) reported that in the last three months of 1997, 58 women approached the police surgeon's office in Karachi with allegations of rape. The victims included girls as young as eight years old and in the majority of cases, the victims were subjected to gang-rape. The HRCP, monitoring

Lahore-based newspapers, recorded the rape of 717 women in Lahore and its hinterland in 1997; 65% of the victims were minor girls, almost 30% were victims of gang-rape. The situation in other parts of the country is similar: On International Women's Day 1998, the HRCP office for South Punjab reported an alarming rise of violence against women. Between January 1997 and February 1998, some 1,130 women had been murdered, raped, abducted or subjected to severe forms of violence, compared to 75 such cases the corresponding earlier period. These figures included an average of more than 10 women raped every month in the city of Multan alone. The HRCP concluded that the country-wide incidence of rape, including unreported cases was in 1997, "at least eight women ... criminally raped every 24 hours, more than two of them by gangs and more than five of them were minor".

Rape is frequently associated with a high level of violence, leading to injury or even murder; victims of rape sometimes resort to suicide when they feel unable to face the humiliation and family rejection that the victims, not the perpetrators, have to endure.

### **c. Killing of women for alleged damage to family or tribal honour**

In tribal society in Sindh and Balochistan, men and women suspected of illicit sexual relations are denounced as *karo* and *kari* and killed by those intent on restoring tribal *ghairat* or honour; such killings are morally sanctioned and rarely lead to criminal prosecution. The tradition which is also reported from other parts of the country, is often abused to cover up personal vendettas, unrelated murders or to obtain the victim's property. The annual report of the HRCP lists over 300 *karo-kari* killings in 1997, to which a large number of unreported cases may have to be added. Criminal prosecution of *karo-kari* killings very rarely lead to convictions; as wide sectors of tribal society approve of the custom, witnesses usually do not come forward, and family members do not testify against alleged murderers. Moreover under the law of Qisas and Diyat (*qisas* is punishment equal to the offence, *diyat* is the financial compensation paid to the victims of an offence or to their families), the victim's family may accept compensation and drop the charges.

Given the controlled environment in which women in rural societies grow up, men would appear to bear a greater burden of responsibility for alleged illicit sexual relationships; however, since tribal honour rests primarily on women's "purity", women were as a rule singled out for punishment. Men appear to have more facilities than women to extricate themselves from accusations or to physically flee. For instance, in Larkana district of Sindh, of 86 reported honour killings in 1997, 53 were women victims. The merest hint or rumour of illicit relations was apparently sufficient to unleash the wish to avenge and restore "damaged honour". The accused are not given an opportunity to explain supposedly compromising situations or allegedly intimate words

or gestures. The killings sometimes lead to further bloodshed as clans or tribes engage in further revenge killings.

To cite but a few recent examples of women killed on suspicion of “immoral behaviour”, reported in the national newspapers: In November 1997, a young married woman was killed by an angry mob, which included her husband, in Chehal Khurd village, Punjab province, who suspected her of an illicit affair. On 11 January 1998, a man in Ramke Sandwa village, Gujranwala district, shot dead his daughter and the man she was alleged to have a relation with. On 11 February 1998, Ghulam Nabi killed his daughter in a village near Sukkur, Sindh and threw her body in a river. He believed that she had “dishonoured” him by some “immoral” activity. It is not known if any of the perpetrators were charged with murder and arrested.

#### **d. Women killed or threatened for marrying partners of their own choice**

Several judgments over the last few years have stated that adult Muslim women have the right to marry men of their own choice irrespective of their fathers' consent. The case of Saima Waheed in early 1997<sup>5</sup> (see: Pakistan: Women's human rights remain a dead letter) was widely disseminated and discussed in the media. Nonetheless, public opinion appears to change only slowly, as evidenced by the many instances of young women running away to marry men of their choice and living in hiding in fear of their male relatives' revenge for the women's perceived disobedience and “dishonouring” the family. In many instance, the independently married women's relatives threaten, kill or threaten to kill the women and their husbands. Sometimes, meetings or councils of tribal elders are called, the so-called *jirgas*, which have no official authority to try and convict members of the tribe in criminal matters, to decide the fate of women who marry men of their choice; in some instances, *jirgas* have handed down death sentences which members of the tribe have then carried out. The *zina* law (see below) facilitates the persecution of women who choose their marriage partners. A women's rights activist told Amnesty International in April 1998, that over 90% of couples married without the consent of the women' fathers face false criminal charges of abduction and/or *zina*, fornication. Despite court judgments entitling women to marry men of their choice, police continued to register complaints by fathers whose adult daughters had exercised their right to marry a man of their choice.

In March 1998, an Amnesty International delegation was present when a couple, an 18-year-old woman, S, and a 19-year-old man, T, sought the assistance of a human rights organization to get married despite the bride's male relatives' disagreement with

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<sup>5</sup>The appeal against the Lahore High Court judgement is still pending in the Supreme Court of Pakistan.

the marriage. The case aptly illustrates the dilemma in which the students S and T, from different tribes and of different social status found themselves. S was taken to family members in Peshawar when her family learned of her desire to marry T; from there she fled to Lahore where T joined her; together they travelled to a smaller town in the Punjab to stay with friends of T's family. Here the registrar refused to solemnize the marriage as this is not the couple's regular place of residence; he may have been afraid to do so in the face of S's family's threats. S's male relatives meanwhile registered a complaint of abduction against T and threatened to kill both bride and bridegroom and were searching for them. In these circumstances, the couple could not return to their original town to have their marriage registered. S's family moreover have threatened to bring false criminal charges against women of T's family if he failed to appear in court in the context of the abduction charge.

Staff of the human rights organization said they would again seek a registrar willing to perform and register the marriage; S could then request a senior superintendent of police to drop the abduction charge against T as she had not been abducted and had married of her own free choice. If the police accepted this statement, the human rights organization would seek to bring about a reconciliation between the families. Till then and a concurrent withdrawal of death threats, the couple would need to live in hiding. In practice, police and courts do not always accept a young woman's verbal or written statement but allege that such statement is forcibly extracted. But if the woman's statement is not accepted and the abduction charge is not dropped, any hiding place can be searched and the woman restored to her family, with possibly fatal consequences.

"Disobedient" women who choose their marriage partners are sometimes killed by individual or several male family members or following a collective decision of the clan or tribe, expressed by a "council" or *jirga*. Police, as the case study above shows, do not effectively protect women from such abuse and ensure the exercise of the right to marry a partner of their choice which the UN Women's Convention lays down in Article 16.

#### **d.1 Killings by family members**

- In October 1997, a newly married couple, Rehana Kausar and Sajid Mahmood, and their friend Sardar Ali who had assisted them, were shot dead by the bride's brother, a village constable from Roopwal, near Chakwal in Punjab province on their way back from the wedding. The bride's father had earlier filed a complaint under the Hadood laws against the couple. It is not known if criminal charges were brought.

- On 26 May 1998, 18-year-old Samreen was killed by her father Alauddin in Karachi for marrying a man of her choice, a mechanic who had been working in Samreen's father's workshop. Efforts of the couple to obtain the father's forgiveness

failed to lead to a reconciliation; Alauddin on the pretext of a family function called his daughter to his flat and stabbed her to death.

-- in August 1997, a man shot dead his sister Sher Bano, who had eloped with the man she had married of her choice. Both were arrested on charges of *zina*, fornication, brought by her father. The Peshawar sessions court accepted Sher Bano's bail application on 7 August 1997, but on leaving the court room, still in police custody, Sher Bano was shot dead by her brother. It is not known if criminal charges were brought.

In a similar case, male relatives of a woman who had married a man of her choice, succeeded in hunting down the couple 18 months after their wedding and in critically injuring her husband and killing his uncle. Following Rahana and Sajid's marriage without her family's consent in early 1997 in Faisalabad, Rahana's father Chaudhry Niaz filed a complaint of kidnapping against Sajid; the couple obtained bail but Chaudhry Niaz applied to the Lahore High Court to have bail cancelled. On 22 June 1998, Rehana was to appear in the court to record her statement. Rehana, her husband and his male relatives Chaudhry Munir and Sadiq were attacked in front of the Lahore High Court by Rehana's father, her brothers and accomplices; while the couple could escape Munir was stabbed to death and Sadiq was critically injured but survived. Charges of murder were brought against all the attackers but it is not known if they were arrested.

In some cases, young women are disfigured by acid thrown in their faces by angry male relatives; occasionally this also happens to men. On 28 June 1998, five men entered into a veranda in Multan, emptied a bottle of acid on the face of Mushtaq sleeping there. There had reportedly been a rift between the attackers and Mushtaq over marrying a girl of the former's family.

#### **d.2. Killings sanctioned by tribal jirgas**

-- In Hyderabad, a tribal council of the Manzai tribe, convened by an elder of the tribe, Agha Jan, found a newly married couple guilty of unlawful sexual relations, resolved to impose the death sentence and on 17 September 1997 shot them dead in broad daylight in the streets of Hyderabad, Sindh province. The couple, Fahimuddin and Hajira, had got married without Hajira's father's consent. The father then filed a complaint against Fahimuddin for abducting Hajira and another man filed a case of *zina* against both partners, claiming that Hajira was married to him. Following their wedding in Sukkur in April, they were arrested in Khairpur. Hajira later stated in court that she had married Fahimuddin of her own free will, that this was the only marriage she had contracted and that she had not been abducted. At her own request, Hajira was lodged on court orders in the state-run women's shelter, the Darul Aman. Fahimuddin, after obtaining bail, moved the Sindh High Court to obtain custody of his wife which was granted. Hajira was

granted bail before arrest by the court as well. On 17 September the couple appeared in court in a hearing to confirm Hajira's bail before arrest. When they emerged from the court, Hajira's family surrounded and threatened them. The couple fled but was hunted down a few streets away; apparently police present near the court made no effort to protect the couple. Hajira's male relatives reportedly shot the couple dead at point blank range. Police later registered complaints of murder. To Amnesty International's knowledge, criminal prosecution was subsequently dropped as both families agreed to a compromise under the Qisas and Diyat law.

-- On 1 December 1997, a couple was convicted of adultery by a tribal Islamic council, sentenced to death and executed in the presence of some 15,000 people assembled in Bara in the Khyber Agency which, like other designated tribal areas of Pakistan, has its independent judicial system. The council had found Azam Khan and his divorced mother-in-law, Shino, guilty of *zina*, unlawful sexual relations as it believed Shino's former husband that Shino had not been divorced from him when she left her home and got married to Azam Khan. The couple had reportedly lived in hiding for some three years and had two children. The tribal council ordered the punishment of stoning to death, but the families objected and were allowed to shoot the couple. Shino was then shot dead by her former husband and her brother while Azam Khan was shot dead by his brother.

At the time of writing this report, another woman who had taken the initiative to marry a partner of her choice was in hiding in Pakistan, fearful that she would either be detained under the Zina law or killed by her tribe whom she had "dishonoured" by her marriage. Riffat Afridi, 18, of the Pashtun minority in Karachi, on 2 February 1998 left her family in North Nazimabad, Karachi, and on 9 February got married to Kunwar Ahsan, 30, of the Mohajir community, people who migrated to Pakistan at the time of the partition of the Indian subcontinent, and their descendants. Due to their different ethnic background Riffat's family did not agree to the union. The girl's father brought charges of abduction against Kunwar Ahsan and of *zina*, fornication, against both. At the same time, a *jirga* or tribal council of the Pashtun family declared that both Riffat Bibi and her husband are to be killed for defying the will of her father and dishonouring the family. Riffat's father agreed with the verdict. He was reported as saying, "this is a matter of our honour. We don't allow our women to be taken away or to go away. Whether she has eloped or was kidnapped, we will kill her."

In early February, the tribal *jirga* (Pakhtoon Amn Jirga) of Riffat's family appealed to the people of Karachi to observe a peaceful strike to denounce the non-recovery of the "abducted" woman by police. A spokesman said, "the recovery of the girl has become a matter of life and death for us". In the event, the strike on 11 February turned out to be quite bloody and led to the death of two police officers and to several people being injured in battles between participants. Sindh Chief minister Liaquat

Ali Jatoi on 20 February assured the tribal *jirga* that the government would spare no effort to recover the girl and return her to her family.

The tribe further claims that Riffat had already been married in August 1997 to her cousin Nesbitt Khan Afridi in the presence of tribal elders. Responding to the criticism that there is no documentary evidence that the marriage had been contracted, whereas Riffat Afridi and Kunwar Ahsan have a valid marriage certificate, Malik Gul Waris Afridi said, "in tribal areas, people do not prepare nikah (marriage) papers. We solemnize nikah in accordance with tribal customs" (Dawn, 21 February 1998). On 17 February, Kunwar Ahsan was arrested in Rawalpindi and brought to police custody in Karachi, whereas Riffat was reportedly arrested in Rawalpindi as well and placed in "protective custody" in Karachi from 24 February. Both were brought before a judicial magistrate on 27 February where Riffat Afridi categorically denied that Ahsan had abducted her: They were legally married to each other. Riffat was then allowed to leave with Ahsan's relatives while Ahsan remained in police custody. On 28 February the North Nazimabad police registered a new case under section 10/2 Zina Ordinance against the couple, just days before International Women's Day.

On 4 March 1998, Kunwar Ahsan was shot at and critically injured as he was being brought under police guard and in iron chains before a judicial magistrate as his remand was about to lapse. The District Magistrate Karachi South issued the following press note:

*"Today on March 4, the Range Investigation Cell of Karachi Police had brought Kunwar Ahsan before the Judicial Magistrate III, Karachi Central for obtaining remand. Adequate police was available en route in order to avoid any untoward incident. At about 12.35 pm when the police party was taking Kunwar Ahsan upstairs to the 2nd floor where the court was located, some persons all of a sudden fired upon Kunwar causing injuries to him. The police party present on the spot immediately encircled the court and the building and apprehended the persons responsible for this firing. ... Abdul Qudoos Afridi, brother of Riffat Afridi and Nazbat Khan who claims to be her husband are also included in the 10 persons arrested on the spot.... From the evidence on the record it appears that this incident took place on the basis of personal enmity between the accused persons and Kunwar Ahsan on the issue of the alleged kidnapping incident which occurred recently. A case vide FIR No. 10/98 u/s 324 Q&D and 333/353/34 PPC has been registered ..."*

Three further complaints were registered against nine people, including the father, brother and assumed husband of Riffat, in City Courts police station on 6 March in FIR No 16/98 under sections 324/34 PPC and 333 Qisas and Diyat Ordinance, and FIRs 17/98 and 18/98 under section 13-D Arms Ordinance against Nesbitt Afridi and

Abul Qudoos Afridi, Riffat's brother. Local human rights activists dispute that police protection was adequate. Given the repeatedly and openly voiced threats to the life of Riffat and Ahsan, clearly action should have been taken against those involved in such criminal intimidation and a more thorough search of the court premises would have been called for. The Pakhtoon Amn Jirga subsequently pointed out that the authorities had been warned of such an incident but had not adequately responded. The government, the Jirga said, had erred in treating the episode as an ordinary criminal offence rather than seeking a solution that would "restore Pakhtoon honour" (Dawn, 5 March 1998). Ahsan underwent operations and was eventually released from hospital on 15 March; however, physiotherapy necessary to relieve some of the damage to the nervous system caused by the shooting could not be administered on account of persisting security concerns. The couple have been living in hiding, shifting from one hiding place to another every few days. Riffat's father, Abdul Jabbar Afridi, was released on bail on 31 March against payment of surety. The other co-accused were subsequently reportedly released as well. Relatives of Ahsan said, "we fear for their lives all the time.... we would like them to live like any other couple but that is impossible here".

### **3. Legal, institutional and societal hurdles in the path of women seeking justice**

#### **3.1. The law**

The law makes it difficult for women in Pakistan to pursue rape charges, irrespective of whether rape occurred in a marriage, in a purely criminal context or in custody. Marital rape is not a criminal offence in Pakistan; the Zina Ordinance, promulgated in 1979, defined rape, *zina-bil-jabr*, as sexual intercourse without consent of the victim between a man and a woman who are not validly married to each other. While non-marital rape is an offence under the Zina law of Pakistan, women run the risk of being charged with *zina*, fornication, if they cannot prove absence of consent. The maximum punishment for the offence of *zina* is public stoning to death or public flogging. The danger for a victim of rape to become accused of *zina* is a powerful deterrent to filing a complaint of rape.

The Zina law is itself a source of abuse of women's rights. It continued to be used in the period under review to detain women when male relatives or former husbands arbitrarily accused them of *zina* (for a detailed analysis see Women in Pakistan: Disadvantaged and denied their rights, AI Index: ASA 33/23/95). More than one third of all women detainees in Pakistan are reportedly held under this law. For instance, of some 77 women held in Lahore Central Jail in 1997, 29 women were charged with *zina*. Surveys conducted by the HRCP indicate that the majority of such detainees are eventually acquitted in the trial or appeal stage, often after years of detention which alienate the accused women from their families and children and for which they receive no redress or compensation.

There is no law making domestic violence a criminal offence unless serious physical injury or death are inflicted. Domestic violence could be dealt with under sections 299 to 338 of the Pakistan Penal Code which deal with offences "affecting the human body". However, the women's organization War Against Rape pointed out in May 1998, there has been no single case in Pakistan in the 1990s in which a man was criminally prosecuted under any of these sections for domestic violence.

Societal attitudes also militate against prosecution of men for domestic violence. The subordination of women to men is widely accepted and presumed to have the sanction of religion. Abuses are often silently borne by women as the fate of their gender, indeed women often feel responsible for the inhuman treatment they are subjected to in the domestic sphere. Moreover, the social and economic disadvantage suffered by women also entails their lack of awareness of rights and their inability to stand up to social censure.

The rights of women experienced a doubtful boost when in March 1997, the National Assembly and the Senate passed a law extending the death penalty to gang-rape by introducing a new sub-section into the Zina Ordinance. It reads:

"10(4) When *zina-bil-jabr* [rape], liable to *tazir* [discretionary punishment] is committed by two or more persons in furtherance of the common intention of all, each of such persons shall be punished with death".

The punishment had earlier been a maximum of 25 years' imprisonment. Prime Minister Nawaz Sharif announced that he would ensure that gang rapists would hang from lamp posts close to their victims' houses to deter others from committing the offence. While urging strong action against rape, Amnesty International opposes the death penalty in all circumstances and calls on the Government of Pakistan to abolish the death penalty for gang-rape. Since March 1997, at least a dozen people have been sentenced to death for gang-rape in Pakistan. To Amnesty International's knowledge, none of these prisoners has been executed.

In one of the cases of gang-rape leading to the death sentence for two of the accused, detailed media coverage revealed that the victim, a young woman in Mardan, and her family were willing to compromise with the accused as they could not afford enmity with them. Among the measures considered were the handing over in marriage of women of the families of the accused to the victim's family.

### **3.2. Institutional hurdles**

Both the police and the judiciary as institutions tasked to uphold fundamental rights and ensure redress have failed women subjected to abuse. For instance, the Progressive

Women's Association (PWA) documented the lack of concern shown by police and judiciary about cases of "bride burning" which are almost always dismissed as domestic affairs or as punishments which women "deserve". Of 60 cases which the PWA assisted in the courts over the years, only two led to convictions.

### **3.2.1. Police failure to ensure justice to women**

Amnesty International is aware of dozens of cases of police refusing to register complaints of rape, domestic violence and honour killings; at the same time, despite judgments of the higher judiciary stating that adult women may contract marriage without the consent of their male guardians, police continued to register complaints of abduction and *zina* brought by fathers who opposed their daughters' independent choice of marriage partner. Police were also known to have actively connived in covering up offences against women or to have ignored their duty to protect women or their families: Perpetrators of violence, rape or murder of women in alleged stove-burnings were reported to have effectively stopped police registration of complaint and investigation by paying bribes to police or by threatening victims and victims' families into giving up criminal prosecution.

Whereas over 200 cases of women burned by supposedly exploded cooking stoves were recorded in the Lahore press in 1997, police registered only some 30 complaints but only six men were arrested. Similarly, media reports indicate that out of some 100 cases of rape reported in the city of Lahore in the first ten months of 1997, a First Information Report [the police complaint which sets in motion the investigative process] was registered in only 38 cases.

Police inaction not only prevents redress, it also sometimes cost lives. On 23 May 1998, four men raped a married woman in her home in Sihala near Rawalpindi during her husband's absence. The victim unsuccessfully tried to register her complaint with police and then told her husband, Shabbir Hussain, a brick kiln worker about the incident. Outraged, he confronted the alleged rapists saying he was going to make sure the complaint was registered. The four men threatened him and when Shabbir persisted, set him on fire. He died of his burn injuries on 25 May 1998.

Even when police take note of a reported abuse of women they sometimes only initiate disciplinary measures instead of criminal prosecution. In August 1997, the Station House Officer (SHO) [the officer in charge of a police station] of Hafizabad Sadar police station was dismissed from service for stripping a man suspected of theft and his 12-year-old daughter and making the naked girl sit in her father's lap. An inquiry found the SHO responsible for the degrading treatment of the detainees but no charges were brought.

Police connivance in criminal offences against women sometimes takes the form of concealing evidence; this rarely comes to light. However, in November 1997, a court set up under the Anti-Terrorism Act of 1997 framed charges against two police officials, a police surgeon and two women doctors of the local hospital for deliberately concealing facts in a rape case. A thirteen-year-old girl had been subjected to rape by two men; the girl's brother, Mohammad Ramzan Zaunr, filed a complaint of rape in a police station in Tando Jam, Sindh province. A medical report, signed by the two gynaecologists, submitted to the court stated that the girl had not been raped and police submitted the girl's statement denying rape. The investigating police officer recommended that the case be closed, which was allowed. Police then sought the release of the two alleged perpetrators. However, the court asked all concerned to appear before it on 18 November; on this occasion the girl broke down and said she had indeed been sexually assaulted and police had made her put her thumb impression on a blank paper. The court on 22 November framed criminal charges against the doctors and police officers involved in concealing the truth from the court, ordered their arrest but allowed their release on bail the same day. The case is still pending.

Even once a criminal complaint is registered by police, a woman cannot be sure that justice will be done. In August 1997, five men, including the bodyguard of a local MNA (Member of National Assembly) allegedly abducted and gang-raped an 11-year-old girl near Faisalabad, Punjab province. The girl's father subsequently got a complaint registered at police station Dijkot but was reportedly threatened by the respondents to withdraw the complaint. When police arrested the men, angry villagers reportedly surrounded them, blackened their faces and paraded them through the village. The accused then reportedly publicly admitted having committed the offence and begged the villagers to forgive them. Police rescued the accused and took them away to the police station. However, a few days later, the accused were released, allegedly at the intervention of a local MNA and went into hiding.

Particularly when the rapist is a socially influential person or holds an official position, the victim is likely to be subjected to intense pressure, including threats, harassment as well as promises, not to pursue the case. The case of Naumana Tabbasum documents the combination of threats and lure by which influential people can deflect the course of justice and the unwillingness of police to protect the victim.

On 6 March 1998, a 14-year old school girl, Naumana Tabbasum, was found injured on the grounds of a government building in Peshawar. After she initially said she had wanted to commit suicide by jumping from the building, she later claimed to have been rendered unconscious and sexually "molested" by unknown persons. Police obtained her statement and had a medical examination performed, yet an FIR was not registered till 17 March after Naumana's father filed a writ petition in the high court to have the complaint registered.

On 26 March, Naumana retracted the earlier statements and declared before a judicial magistrate that she had been gang-raped in the building by the section officer of the local government department, and three of his colleagues who had threatened to kill her parents if she revealed the truth. She said she had initially wanted to leave her home due to the prevailing tension there and had asked a rickshaw to take her to a women's shelter, the Darul Aman; instead she had been dropped in front of the government building where officials apparently exploiting her distress sexually abused her.

Viewing an identification parade on 27 March, she identified all four assailants. They were arrested but all except the main accused obtained bail. On 6 April, Naumana's father, Bashir Ahmad, was arrested on a complaint by the principal accused who claimed that Bashir had threatened to kill him; however, he was released on the next day when his lawyer argued that the family was undergoing a traumatic process and that the arrest of Bashir was against the norms of justice. Meanwhile, a judicial inquiry under a high court judge had been set up; it submitted its report to the provincial government which did not make it public.

Ten days later, on 17 April, Naumana's father, Bashir Ahmad and the main accused, the government section officer, reached an agreement after friends of both sides had met repeatedly to reach a compromise. Naumana's father and brothers of the accused met in Peshawar central Jail where the accused swore on the Qur'an that he was innocent. Naumana's father then declared himself satisfied and agreed not to press for the name of the accused to be included in the complaint at the bail or trial stage. Naumana's change of allegation was construed as indicative of her unreliability and unstable mental condition. The accused also denied that he had earlier complained to police that Naumana's father had threatened him and that on the basis of this complaint Bashir Ahmad had been held in custody for a day. On 22 April, the accused was released on bail even though gang-rape is a non-bailable offence after her counsel had declared that the girl's testimony could not be relied on. To Amnesty International's knowledge, the trial of the case has not begun; a reprimand by the provincial chief minister that police had failed to elicit the truth of this case did not seem to have had any effect.

### **3.2.2. Structural shortcomings of police**

Women's police stations set up under former Prime Minister Benazir Bhutto have been extensively criticized as under equipped, ineffective and virtually inoperative. For instance, the women's police station in Rawalpindi, set up in 1994, was in the summer of 1998 without a police lock-up and staff accommodation, transport and basic communication equipment such as a telephone or wireless system. It was unable to perform basic police functions. Though intended as a police station where women complainants would feel more confident to lodge complaints related to gender, only two

cases of rape were registered there in the first ten months of 1997 against a total number of 37 rape and gang rape cases registered in Rawalpindi district in 1997. Women suspects are now held in women's cells in regular police stations, frequently overnight and interrogated without a women police officer or a male relative present to prevent abuse, despite legal changes in 1996 which were intended to prevent such opportunities for abuse.

Recruitment, training and promotion of women police officers were inadequate, too, in the period under review, as reflected inter alia in the slow pace of promotion of women to senior positions. In December 1997, seven women police inspectors were promoted to deputy superintendent of police (DSP) in the Sindh police force following a Sindh High Court decision in October 1997 which said that withholding promotion from deserving women police officers on grounds of gender violated Article 25 of the Constitution of Pakistan: "There shall be no discrimination on grounds of sex ...". While police inspectors are usually promoted to rank of DSP after some five to seven years' service, the seven women promoted in December 1997 had all served as inspectors for around 20 years.

Appointment of additional police staff, though frequently cited an urgent requirement, was slow as well. It merited media coverage when in July 1998, the Punjab police appointed eight women police officers as additional station house officers in different police stations of Lahore, to "improve the environment in which women might file their complaints with confidence". The situation in rural areas for women detainees is incomparably worse than in the cities with virtually no female staff and no separate detention facilities in police and judicial lockups.

### **3.3. Judicial indifference to women's rights**

Redress for abuses suffered by women is hampered not only by disregard of police towards women's rights and their connivance with perpetrators of abuse; judicial decisions sometimes reflect insensitivity to women's concerns and contribute to a climate in which women's rights are violated with impunity. In 1997, the Rawalpindi bench of the Lahore High Court reduced a sentence imposed on a man, Qari Sharif, from 30 to 10 years' imprisonment. Qari Sharif had in July 1994 been convicted of having permanently damaged internal organs of his wife, Zainab Noor, when he inserted an electric rod into her vagina. In January 1998, a petition was filed on Zainab Noor's behalf in the Supreme Court of Pakistan by a women's organization seeking to set aside the Lahore High Court decision reducing the punishment. To Amnesty International's knowledge it has not been decided yet.

Male judges sometimes appear disinclined to accept women's testimony: In September 1997, a man accused of setting his wife on fire resulting in serious burn

injuries was acquitted by a magistrate's court in Peshawar which gave the accused the benefit of doubt. Nabeela testified that on 6 December 1995, her husband Mathiur Rehman quarrelled with her about some money supposedly promised by her family, then sprinkled kerosene all over her and set her on fire and left the house. Nabeela shouted for help till neighbours took her to hospital. Her husband took her home after three days to hide the incident; her parents persuaded her to lodge a complaint in March 1996. The accused discounted his wife's version of events and said her clothes had caught fire accidentally and that her parents had instigated her to implicate him. Nabeela's face and the upper part of her body remain permanently disfigured.

The Lahore High Court in July 1997 overturned an earlier sentence of life imprisonment of a man convicted of murdering two persons and awarded a five year sentence instead. It argued that the man had been "gravely provoked" and humiliated when he believed his wife to have had an affair. Human Rights Commission of Pakistan's chairperson Asma Jahangir commented that courts by institutionalizing "honour killings" encourage murderous assaults on people on the pretext of being humiliated; instead they "should deliver their judgements in accordance with the law rather than their perceived sense of morality. By allowing people to take the law into their own hands, the honourable courts will only promote disrespect for the law. Honour and dishonour are relative terms."

The AGHS Legal Aid Cell in May 1998 in its resolution stated that "the situation of women has seen a series of setbacks as Pakistan's judiciary remains insensitive to their rights. News of females being murdered in the name of so-called 'honour' ... are reported daily. Such concepts find recognition in judicial pronouncements. Such distortion of the law not only encourages murder of women with impunity but also impinges upon their political rights of liberty and movement".

Courts have not always been very understanding in cases of women marrying partners of their choice despite judgments by the higher judiciary that adult women can contract marriages without seeking the consent of their male guardians. For instance, in some cases courts have not allowed adult women to live with the husband they have chosen despite valid marriage certificates. A civil judge in Rawalpindi in July 1998 sent a married woman instead to the state-run women's shelter, Darul Aman.

Courts do not always ensure the implementation of their orders, yet do not initiate contempt of court proceedings when their orders are ignored. Zakia Parveen married Zafar Hussain against her father's wishes; her father then filed a complaint alleging that Zafar had kidnapped his daughter. The couple went into hiding for 45 days but then appeared before the Multan bench of the Lahore High Court and submitted their affidavit and their valid marriage certificate. The court stated that they could live as a married couple and asked them to contact the police in relation with the abduction charge. Despite obtaining pre-arrest bail, Zakia Parveen and Abdul Hakim were arrested by police in

early April 1998 and held in police custody for over a month till they succeeded in informing the Superintendent of Police in Khanewal who ordered their release and suspended the sub-inspector of police who had ignored court orders. No criminal charges for arbitrary arrest and detention nor contempt of court proceedings were brought against the police officer.

Apart from specific judgements, judicial indifference to gender issues is also apparent in the way courts habitually fail to exhaust relief for women, such as release on bail, parole and probation, despite the overcrowding of prisons. Of 930 women prisoners in 27 jails in Punjab in 1997, male co-accused of 115 women had obtained bail while the women continued to be detained; over 80 % of women detainees were under trial and bail petitions of some 479 women detainees were pending. Women do not ordinarily have independent means to provide as surety, nor do they often have a relative who will stand surety for them "to the satisfaction of the court" as the law prescribes. The scarcity of women prisons also contributes to the problems women face in obtaining bail on surety. Surety should be provided by a person living within the jurisdiction of the trial court but women detainees may be transferred to women's jails far away from trial courts or places of residence. In fact, as human rights organizations have pointed out, families are often not aware of where their female accused are held.

Women in custody often do not have access to a lawyer to assist them, because they lack both independent financial means and the knowledge of how to go about obtaining legal services. Of 930 women prisoners in Punjab jails in 1997, almost one third, namely 299 had no legal counsel. The report of the Commission of Inquiry for Women summed up its findings: "For women, prisons are places of especially great suffering. During this commission's visits to jails, and its meetings with their female inmates, it became clear that women face all of the hardships of being incarcerated in Pakistan that men do, and more."

Often practical difficulties make it difficult for women in judicial custody to pursue their cases. Jazeeba, alias Naseem, accused of murder and lodged in the women's jail in Larkana, was taken to the trial court in Kandhkot only 10 times in a year whereas 60 hearings were to take place. The women's jail lacks adequate transport facilities while Kandhkot has no provision for housing women detainees. In October 1997, the Chief Justice of the Sindh High Court ordered the case transferred to the sessions court at Larkana to facilitate Jazeeba's court attendance.

Many women detainees are not aware of the judicial process. The "ticket" which is meant to list charges, date and place of the next hearing is often not kept updated; for illiterate women such schedules are useless, even if well-maintained. Moreover, some women have different charges pending against them in different courts making them all the more dependent on being kept informed of schedules by prison staff.

Women who had contracted marriages with partners of their choice were often referred by courts to the state-run women's shelters, Darul Aman, pending a final court decision on the charges of abduction against their husbands. These institutions have been severely criticized; not only are they too few in number to shelter women in distress<sup>6</sup>, but they lack legal aid and medical services, funds to maintain and train women and staff to ensure their security without permanently confining them indoors. Shelter thus turns for many women to virtual confinement which some seek to flee. In November 1997, 11 women made an unsuccessful attempt to break out of the Darul Aman in Karachi. Access to a Darul Aman is only by orders of a judicial magistrate - a measure intended to ensure that no women are unlawfully held there but which also keeps the Darul Aman out of immediate reach of victims of domestic violence or women forced or about to be forced into unwanted marriages. There are only a handful of privately run women's shelters with a very limited number of places. Non-governmental organizations have not been able to fill the gap and provide safe houses for women. Two state-run Women Crisis Centres in Rawalpindi and Vehari were recently set up as pilot projects to shelter distressed women; depending on the experience gained the government said it may consider setting up further such centres in other parts of the country.

#### **4. Recommendations to the Government of Pakistan**

Amnesty International calls on the Government of Pakistan to seriously consider the recommendations the organization has persistently made, as well as the comprehensive recommendations set out in the Report of the Commission of Inquiry for Women. These recommendations include:

- abolish the Zina Ordinance because it discriminates against women and effectively permits their imprisonment on grounds of gender; it prescribes cruel, inhuman and degrading punishments, it discriminates against girls; and it permits rape victims to be prosecuted for the offence of illicit sexual relations;
- ensure that all legal safeguards available under the law to women in custody are fully and meticulously adhered to, that all those who fail to implement these safeguards are held to account and that these legal safeguards fully comply with relevant international standards;
- ensure that girls as the most vulnerable members of society are suitably protected against discriminatory laws and practices by abolishing the Zina Ordinance and putting in place safeguards corresponding to recommendations contained in the UN Women's Convention;

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<sup>6</sup>For instance, in the province of Sindh there are only four Darul Amans, in Karachi, Hyderabad, Sukkur and Larkana.

- ensure that police and the judiciary adequately protect women against unlawful practices like honour killings and widespread domestic violence and facilitate full redress;
- fully and speedily implement all the provisions of the Convention on the Elimination of All Forms of Discrimination against Women and other relevant international standards on women's rights, including the UN Declaration on Violence against Women as also to submit a full report to the Committee on the Elimination of All Forms of Discrimination against Women as required by Article 18 of the Convention.
- ratify other international human rights treaties including the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights, to internationally and nationally commit itself to promoting and safeguarding all human rights.