

Mandates of the Special Rapporteur on violence against women and girls, its causes and consequences; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Working Group on discrimination against women and girls

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19 July 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on violence against women and girls, its causes and consequences; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 50/L.7, 42/16 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the Domestic Violence (Prevention and Protection) Bill, 2021 that has been tabled before Parliament and is now under consideration of the Council of Islamic Ideology.**

The bill, introduced by the Government on 19 April 2021, was passed by the National Assembly on the same day. On 21 June 2021, the bill was passed by the Senate, after the Senate Committee on Human Rights recommended its approval with minor amendments. It was then referred to the National Assembly for final approval before presidential sanction.

On 5 July 2021, in a letter to the National Assembly, the Prime Minister's adviser on parliamentary affairs recommended that the bill be submitted for review by the Council of Islamic Ideology, a constitutional body responsible for assessing the compatibility of proposed legislation with Sharia.

We welcome the steps taken to introduce legislation on domestic violence, a very important measure to protect women and girls from gender-based violence in the country and overcome a significant gap in Pakistan's current legal framework. While we urge your Excellency's Government to adopt legislation on the issue, we recommend that amendments be made to the current version of the bill before it is passed to ensure that it is fully aligned with Pakistan's international human rights obligations.

A number of provisions contained in the bill relate to Pakistan's obligation to eliminate gender-based violence against women and girls, as a most serious manifestation of discrimination against women, as set out by the Convention on the Elimination of Discrimination against Women, to which your Excellency's Government acceded on 12 March 1996. In that regard, we wish to recall Article 1 of the Convention as reaffirmed by the Committee on the Elimination of Discrimination against Women (CEDAW) in its General Recommendation No. 19 (1992) and the following update by the General Recommendation No. 35 (2017), in which the Committee defined gender-based violence against women as discrimination that impair or nullify the enjoyment of human rights by women, irrespective of the perpetrating entity. The bill concerns Pakistan's obligations related to the prohibition of torture and or other ill treatment, laid out in articles 7 (prohibition or torture or ill

treatment) and article 24 (protection of children) of the International Covenant on Civil and Political Rights, ratified by your Excellency's Government on 23 June 2010.¹ Finally, the bill relates to the obligations enshrined in the Convention on the Rights of the Child, particularly article 19 (on the protection of children from violence or mistreatment) and article 37(a) (prohibition of torture or ill treatment), which was ratified by your Excellency's Government on 12 November 1990.

Definition and scope of domestic violence

We welcome the broad-ranging definition of domestic violence provided in articles 2 and 3 of the bill, which encompasses different manifestations of violence, namely physical, emotional, psychological, sexual and economic abuse. However, we regret the non-inclusion of dowry or bride price-related violence in the bill, and the lack of mention of coercive control. It is also of concern that marital rape, a most serious manifestation of domestic violence, is not criminalized in Pakistan. There needs to be a recognition that leading forms of domestic violence, including “honour killings” and impunity for these crimes, are linked to deeply embedded structural discrimination and harmful gender stereotypes.

We would like to bring to your attention the guidance laid out by the former Special Rapporteur on violence against women in her framework for model legislation on domestic violence (E/CN.4/1996/53/Add.2). The Rapporteur recommended States to adopt the broadest possible definitions of acts of domestic violence and relationships within which domestic violence occurs. According to the framework, legislation should include as domestic violence “all acts of gender-based physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to aggravated physical battery, kidnapping, threats, intimidation, coercion, stalking, humiliating verbal abuse, forcible or unlawful entry, arson, destruction of property, sexual violence, marital rape, dowry or bride-price related violence, female genital mutilation, violence related to exploitation through prostitution, violence against household workers and attempts to commit such acts”.

Likewise, the UN Declaration on the Elimination of Violence against Women establishes, in its article 2 (a), that “violence against women shall be understood to encompass, but not be limited to (...) physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation”.

In addition, the Working Group on discrimination against women and girls, in its report on family and cultural life (A/HRC/29/40) recalled that in a number of countries, husbands have the right to punish their wives for disobedience, including physically. Wives can be deemed disobedient for withholding or denying sex to their husbands, and marital rape is not prohibited. The Working Group found it regrettable that only few countries explicitly criminalize marital rape. The Working Group further recommended Member States to prohibit and punish domestic violence, including incest and marital rape, and provide measures to protect women and girls who are victims of such violence, such as protection orders and shelters.

¹ See, for example, Human Rights Committee General Comment No. 28 (2000), para. 11.

The Committee on the Elimination of Discrimination against Women, in its General Recommendation No. 35 (2017), has made it clear that marital rape should be criminalized. In that sense, the Special Rapporteur on violence against women, in her report on the criminalization and prosecution of rape (A/HRC/47/26), recommended that “The criminalization of rape should include rape between spouses or intimate partners. All States that exclude the criminalization of marital rape, contrary to international human rights standards, should urgently repeal those provisions”.

In its Concluding Observations (CEDAW/C/PAK/CO/5) issued in 2020, the Committee on the Elimination of Discrimination against Women noted with concern that marital rape was not recognized as criminal offence in Pakistan and recommended that the State adopt legislation to criminalize all forms of gender-based violence against women, including domestic violence and marital rape, without exemptions.

We are also concerned that the bill is not sufficiently comprehensive of some manifestations of domestic violence and types of relationship between victim and perpetrator. In particular, we are concerned that the bill limits its scope to violence that occurs when perpetrator and victim live in the same household, excluding for example current or former intimate-partners who do not or did not reside together. Additionally, the bill does not protect domestic workers in the household. International standards describe a broad range of relationships within the family or domestic unit that should be encompassed in domestic violence legislation. As proposed by the Special Rapporteur on violence against women in her framework for model legislation on domestic violence (E/CN.4/1996/53/Add.2), legislation should encompass violence committed against “wives, live-in partners, former wives or partners, girlfriends (including girlfriends not living in the same house), female relatives (including but not restricted to sisters, daughters, mothers) and female household workers”.

Finally, we welcome the fact that, while being gender neutral and recognizing that any person may be a victim of domestic violence, the bill is gender-sensitive and recognizes the particular vulnerability of women, girls and older women to domestic violence. In that sense, it should be noted that the CEDAW Committee, in its General Recommendation No. 35 (2017), highlighted that other factors affecting women’s lives, including being lesbian, bisexual, transgender or intersex, may lead to intersecting forms of discrimination and an increased vulnerability to violence, requiring appropriate legal and policy responses. We would like to also bring to your attention the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on the impact of violence on the right to health where she underlines the criticality of adopting a non-binary approach to gender and gender-based violence under the right to health where “[she] underscores the need to expand the scope of the definition of gender-based violence on sexuality, sexual orientation, gender identity and sex characteristics, thereby including all cisgender, queer, intersex and transgender women and feminine presenting people” (A/HRC/50/28, paras. 23, 27 and 86). The bill would benefit from greater clarity in its implementation if the definition of “aggrieved person” in article 2 (i) would exemplify factors that lead to increased vulnerability, and particularly by including sexual orientation and gender orientation as such factors.

Access to justice for victims

We welcome the fact that the bill allows for third party petitions to Courts on cases of domestic violence, as per article 5. As the Special Rapporteur on violence against women noted (A/HRC/35/30), “while ensuring that the agency of the complainant/survivor is respected, other actors, such as State actors, family members and relevant professionals, should be allowed to have standing to seek such applications. Jurisprudence on this issue has established that the request for an order should lie not only lie with the woman at risk”.

However, we are concerned that in said article the bill allows for complaints to be filed by the victim only where they “reside or carry-on business”, or where they last resided together with the perpetrator. Considering that many victims might have had to escape to a location other than those listed in the bill, this restriction may hamper their ability to access justice and obtain protection and remedies. As the CEDAW Committee explained in its General Recommendation No. 33 (2015) on women’s access to justice, victim’s effective access to justice depends on a number of essential components which include availability (the establishment of courts throughout the territory) and accessibility (that they are secure, affordable and physically accessible to women). Likewise, as the Special Rapporteur on violence against women recommended (A/HRC/35/30), “States shall make the necessary amendments to domestic legislation to ensure that protection orders are duly enforced by public officials and easily obtainable”.

Children as primary victims of domestic violence

We note that the bill includes children as a group particularly vulnerable to domestic violence, and in its article 10 provides for custody arrangements when the child is the direct victim of violence or is the child of the victim. While we welcome this acknowledgement of children’s exposure to domestic violence as direct or indirect victims, including through child, early and forced marriage, we stress the need for provisions, whether in the same or a separate Act, that clearly stipulates children’s rights as well as provides for the protection and assistance measures they are entitled to, given that the needs of children victims of violence and adults victims of violence are different.

We remind your Excellency’s Government that, according to article 3 (1) of the Convention on the Rights of the Child, “In all actions concerning children (...) the best interests of the child shall be a primary consideration”. Likewise, article 2 (2) of the Convention provides that “States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members”.

We refer to the Model Law on Justice in Matters involving Child Victims and Witnesses of Crime of the United Nations Office on Drugs and Crime (UNODC) of 2009, according to which a child victim of witness of a crime should 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. The child’s privacy must be protected, and he or she must have the right to express his or her views, opinions and beliefs freely, in his or her own words, and should have the right

to contribute to decisions affecting his or her life, including those taken in the course of judicial proceedings.

Collection of evidence of domestic violence

Article 20 (g) of the bill establishes the obligation of protection officers to get the aggrieved person medically examined, if the person has sustained bodily injuries.

While medical examinations can provide important evidence to prosecute cases of domestic violence, it is important to note that, as the Special Rapporteur on violence against women recommended (A/HRC/47/26/Add.1), there should not be an absolute requirement for medical evidence for investigation, prosecution, or conviction. Likewise, the Special Rapporteur noted that “timely, appropriate and gender-sensitive and disability sensitive medical examinations” should be “conducted with voluntary, genuine and informed consent of the victim”.

We also note the absence of an explicit provision allowing for psychological forensic examinations, which can be particularly relevant in cases of “emotional, psychological and verbal abuse” as stipulated under article 3(b) of the bill.

Protection orders

We welcome the inclusion of articles 7 and 8 of the bill, which provides for interim orders and protection orders. It is particularly positive that the bill allows for a Court to decide on protection measures based on a *prima facie* analysis that an act of domestic violence has been committed, or that there is a likelihood of it. As explained by the Committee on the Elimination of Discrimination against Women in its General Recommendation No. 35 (2017), States should provide appropriate and accessible protective mechanisms to prevent further or potential violence.

We note, however, that the Committee clarified that protection orders should not be dependent upon the victim having initiated legal action. As the Special Rapporteur on violence against women noted (A/HRC/35/30), protection orders should be easily obtainable *ex parte* for immediate protection in case of immediate danger of violence (emergency orders), and should remain in effect until a longer-term protection orders comes into effect after a Court hearing. She recommended that protection orders should not be dependent on the initiation of a criminal case.

We welcome the fact that the bill, in its articles 6 and 8, provides for the perpetrator to be ordered to move out of a house shared with the victim, and establishes to victim’s right to reside in the shared household, whether or not she has any right, title or beneficiary interest in it. We note that, in line with the abovementioned recommendations by the Special Rapporteur on violence against women noted (A/HRC/35/30), an order for a perpetrator to vacate the family home should not be restricted to when violence has already taken place, but also when there is risk of violence.

Finally, we welcome that article 12 includes clear sanctions for the breach of an interim order of protection order by perpetrators. This is in line with the recommendation by the Special Rapporteur on violence against women, who noted (A/HRC/35/30) that States should provide appropriate criminal sanctions for perpetrators’ non-compliance with protection orders.

Services provided to victims

We note with satisfaction that in its article 20 (d) the bill includes among the obligations of protection officers to ensure that the aggrieved person is provided legal aid, therefore establishing an entitlement of the victim to legal aid.

Other types of services that the victim is entitled to should also be enumerated, such as crisis counselling to provide support and assurance of safety, confidential handling of contact with them and their families, access to non-legal services in coordination with public and private service providers, including for the purpose of long-term rehabilitation of the victim through counselling, job training and referrals.

Reparations and compensation

We note with satisfaction that article 9 of the draft bill foresees monetary compensation for victims of domestic violence in relation to economic losses they may have suffered, such as economic abuse, loss of earnings, medical expenses, losses related to property. These costs would be borne by the perpetrator, directly or via an employer or debtor of the perpetrator.

It is worth mentioning that the Committee on the Elimination of Discrimination against Women, in its General Recommendation No. 35 (2017) on gender-based violence against women, recommended that States parties provide effective reparations to victims, which include but are not limited to monetary compensations. A broad range of reparations should include the provision of legal, social and health services, including sexual, reproductive, and mental health services for a complete recovery, and satisfaction and guarantees of non-repetition. Such reparations should be adequate, promptly attributed, holistic and proportionate to the gravity of the harm suffered.

Likewise, in addition to compensations provided by perpetrators, the Committee recommends that States also implement administrative reparations schemes and establish specific funds for reparations for victims of gender-based violence against women. The Committee stresses that, without prejudice to the rights of victims to seek judicial remedies, States should design transformative reparations programmes that help to address the underlying discrimination or disadvantaged position that caused or significantly contributed to the violation, taking into account the individual, institutional and structural aspects. Priority should be given to the agency, wishes, decisions, safety, dignity and integrity of victims.

This transformative potential of reparations had been pointed out by the Special Rapporteur on violence against women, on her report on reparations (A/HRC/14/22). She explained that reparations should aspire to subvert pre-existing patterns of cross-cutting structural subordination and gender hierarchies, requiring then a complex scheme of reparations. She noted that measures of symbolic recognition can also be crucial.

Furthermore we would like to recall article 12, coupled with article 2.2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) that guarantees the right to the enjoyment of the highest attainable standard of physical and mental health, as ratified on 17 April 2008 by Pakistan. In this connection, we

would like to also refer your Excellency's Government to General Comment 14 of the Committee on Economic, Social and Cultural Rights, which indicates that States are obliged to take measures to protect all vulnerable or marginalized groups of society, in particular women, in the light of gender-based expressions of violence. (GC 14, Para. 35).

Custody

We have noted that article 10 of the draft bill foresees placing a victim under appropriate custody. When custody arrangements for child victims are necessary, once a determination has been made of their best interest, they should be assigned a guardian and referred to appropriate child-specific protection and assistance mechanisms.

Nevertheless, we express our concern regarding the provision establishing that adult victim of violence should be placed under custody of a service provider or some other person, albeit with the agreement of the victim. As noted by the Special Rapporteur on violence against women in her report on integrated services and protection measures, with a focus on shelters and protection orders (A/HRC/35/30), women victims of gender-based violence are entitled to measures including alternative housing (or access to shelters) and protection from the perpetrator, often through protection orders. Shelters (or other services) should not be used as forms of protective custody. In the same sense, the Committee on the Elimination of Discrimination against Women highlighted in its General Recommendation No. 35 (2017) that all legal proceedings, protective and support measures and services concerning victims respect and strengthen their autonomy.

Duties of police officers

We welcome that the bill spells out several of the important and critical duties of the Protection Committee and different officials that are part of the committee in relation to the victim. In this respect, we remind your Excellency's Government of the Framework for model legislation on domestic violence (E/CN.4/1996/53/Add.2) by the Special Rapporteur on violence against women, which provides guidance on these duties as well.

In particular, the Special Rapporteur on violence against women has recommended that police officers should not assign a lower priority to calls concerning alleged abuse by family and household members than to calls alleging similar abuse and violations by strangers. Emergency response should also be made a priority. Police should respond at the scene of domestic violence when the victim indicates that violence is imminent or in progress; indicates that an order relative to domestic violence is in effect and is likely to be breached; or when the victim of the case indicates that domestic violence has occurred previously. We recommend that this be considered as a matter of priority. The Special Rapporteur laid out in detail the actions that a police officer should take on receiving a complaint, including informing victims of their rights in a language they can understand, interviewing the parties and witnesses, recording the complaint, and advising the victims on their rights; filling and filing a domestic violence report; providing or arranging transportation for the victims and their children or dependents to a safe place or shelter, providing protection to the victims and arranging to remove the perpetrator from the home, as well as arrest the perpetrator if needed.

The Special Rapporteur on violence against women (A/HRC/35/30) has also recommended that States ensure that police officers and other professionals carry out an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence to manage the risk and provide safety and support to victims. States should take the necessary measures to ensure that such assessments are duly considered at all stages of the investigation and application of protective measures and that they duly take into account possession of or access to firearms by perpetrators. Relevant authorities must also be aware of the increased risk of reprisals that women face when they seek official assistance from the authorities, the courts or the police.

Final observations

We would also like to remind your Excellency's Government that women's right to equality and non-discrimination includes being free from violence, in the terms of General Recommendation No. 35 (2017) of the Committee on the Elimination of Discrimination against Women. As explained by the Committee, article 2 (e) of the Convention explicitly provides that States parties are to take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise. That obligation of due diligence underpins the Convention as a whole and accordingly States parties will be held responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women. States parties must adopt and implement diverse and comprehensive measures to tackle gender-based violence against women committed by non-State actors, including having laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice and are supported by all State agents and bodies who diligently enforce the laws. The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators and to provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations.

Therefore, the effort to pass a bill to address gender-based violence against women, is welcome but not sufficient on its own to meet Pakistan's international human rights obligations. In its Concluding Observations (CEDAW/C/PAK/CO/5), the Committee on the Elimination of Discrimination against Women noted several gaps in the response to gender-based violence against women, including a lack of awareness and training of officials; the insufficient number of shelters; the lack of medical and psychological rehabilitation services for them; and the lack of data on protection orders and the related rate of compliance. The Committee issued several recommendations which include legislation and policy measures to better respond to gender-based violence against women.

In conclusion, we call upon your Excellency's Government to take the necessary measures to carefully review the draft bill in light of Pakistan's international human rights obligations and address the current shortcomings presented in this communication before the bill is signed into law.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned information, including the current status of the bill.
2. Please provide details of how the bill complies with the State's obligations under the international legal framework of human rights law and standards including, among others, the CEDAW Convention, Convention on the Rights of the Child (CRC), the CESCRC Convention and the Convention Against Torture (CAT).
3. Please provide information on any measures that your Excellency's Government has taken or intends to take to harmonize its legislation with international human rights law obligations on gender-based violence against women.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to offer our readiness and preparedness to support the further readjustment of this bill, as well as its finalization.

Please accept, Excellency, the assurances of our highest consideration.

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