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The Due Diligence Obligation to Prevent Violence Against Women:

The Case of Pakistan

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The Due Diligence Obligation to Prevent Violence Against Women: The Case of Pakistan

International law recognizes a State's obligation to adhere to a standard of due diligence when addressing the issue of violence against women. This standard consists of four equally important obligations: prevention, investigation, prosecution, and compensation. Since the ratification of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 1996, Pakistan has focused much of its attention on the obligation of prevention and has enacted new legislation that focuses on the rights of women, specifically concerning violence against women. Current statistics suggest that without additional, significant action taken by the government, this legislation has largely failed to stop violence against women in Pakistan. Ensuring compliance with the legislation—along with nationwide campaigns promoting women's rights, and a more serious dedication to education, especially in rural areas—is necessary for Pakistan to fulfill its due diligence obligation to prevent violence against women.

Part I of this report defines the due diligence standard and evaluates the four criteria a State must meet in order to fulfill its obligation under the standard. Part II describes recent legislative and governmental measures Pakistan has taken to prevent violence against women. It also analyzes Pakistan's shortcomings in this area which permit the continuation of violence against women. Part III suggests actions that Pakistan can take to fulfill its obligation to prevent violence against women such as implementing and enforcing legislation and government programs, and supporting equal education for all. Part IV concludes that while Pakistan's efforts should be recognized, it continues to fail in fulfilling its obligations under the due diligence standard to prevent violence against women. Part V provides recommendations to Pakistan to aid it in ultimately fulfilling its obligation under CEDAW.

I. Due Diligence Obligation to Address Violence Against Women

The international standard regarding a State's obligations when dealing with violence against women is one of due diligence to prevent, investigate, prosecute, and compensate for these crimes.¹ This report focuses on the obligation of prevention, but will first briefly describe all four aspects of the international standard.²

¹ Committee on the Elimination of Discrimination Against Women, General Recommendation 19 (11th session, 1992); Declaration on the Elimination of Violence Against Women, art. 4(c), U.N. Doc. A/RES/48/104 (Dec. 20, 1993); United Nations Commission on Human Rights Res. 1994/45: Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women (Mar. 4, 1994); Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, art. 5, Apr. 7, 2011, Europ. T.S. No.210.

² In 2006, the Special Rapporteur on Violence Against Women, its Causes and Consequences affirmed that this standard of due diligence is a universal one, as well as a rule of customary international law. Special Rapporteur on Violence Against Women, its Causes and Consequences, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, ¶ 29, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006) (prepared by Yakin Ertürk).

A. Prevention

The first obligation of a State in complying with the due diligence standard is to prevent violence against women. CEDAW addresses this obligation by calling on its Parties:

[t]o 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.³

The Council of Europe’s Convention on Preventing and Combating Violence Against Women and Domestic Violence (hereafter, Council of Europe’s Convention) also addresses the prevention of violence against women by promoting “changes in the social and cultural patterns of behavior of women and men with a view of eradicating prejudices, customs, and traditions and all other practices which are based on the idea of the inferiority of women”⁴ Former Special Rapporteur on Violence against Women, its Causes and Consequences (Special Rapporteur) Radhika Coomaraswamy developed certain criteria for determining whether a State has complied with its obligation of due diligence—one of which is to determine whether the State has implemented measures to raise awareness and modify discriminatory policies with the aim of preventing acts of violence against women.⁵

According to a 2011 report by the Special Rapporteur, “[t]he most common first step to prevent acts of violence against women . . . is the enactment of legislation.”⁶ In the case of *Vertido v. Philippines*, however, the Committee on the Elimination of Discrimination Against Women (Committee) emphasized that States parties to CEDAW have an obligation to “take appropriate measures . . . to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women.”⁷

³ Convention on the Elimination of all Forms of Discrimination Against Women, art. 5(a), Dec. 18, 1979, 1249 U.N.T.S. 13.

⁴ Council of Europe’s Convention on Preventing and Combating Violence Against Women and Domestic Violence, Chapter III, art. 12, Apr. 2, 2011, Europ. T.S. No.210.

⁵ Special Rapporteur on Violence against Women, its Causes and Consequences, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: Violence against women in the family*, ¶ 25, U.N. Doc. E/CN.4/1999/68 (Mar. 10, 1999) (prepared by Radhika Coomaraswamy).

⁶ Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, ¶ 53, U.N. Doc. A/66/215 (Aug. 1, 2011) (prepared by Rashida Manjoo).

⁷ *Vertido v. Philippines*, Committee on the Elimination of Discrimination Against Women, ¶ 8.4, U.N. Doc. CEDAW/C/46/D/18/2008 (Sept. 1, 2010), citing to the Convention on the Elimination of all Forms of Discrimination Against Women, art. 2(f), Dec. 18, 1979, 1249 U.N.T.S. 13. Amnesty International has reported that the responsibility of States to prevent violence against women “is not limited to legislation or criminalization” but encompasses a whole range of approaches including training of state personnel, education, ‘demystifying domestic

B. Investigation

A State's second obligation under the due diligence standard is to properly and effectively investigate crimes involving violence against women. According to the Council of Europe's Convention, Parties shall ensure that investigations into violence against women are effective and "carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings."⁸

In *M.C. v. Bulgaria*, the European Court of Human Rights (ECHR) ruled that the Republic of Bulgaria breached its obligation to properly investigate the applicant's case.⁹ The ECHR found that "the failure of the authorities in the applicant's case to investigate sufficiently the surrounding circumstances was the result of their putting undue emphasis on 'direct' proof of rape. Their approach in the particular case was restrictive, practically elevating 'resistance' to the status of defining element of the offence."¹⁰ In *Aydin v. Turkey*, the ECHR also found that the State failed to conduct a proper investigation because of its failure to seek out eyewitnesses to the rape and torture of the applicant.¹¹ The ECHR agreed with the applicant that there was an "absence of an independent and rigorous investigation and prosecution policy," a "prevalence of intimidation of complainants . . . and the lack of professional standards for taking medical evidence."¹²

C. Prosecution

The third obligation of a State regarding violence against women is to fairly and effectively prosecute those who commit these crimes. According to the Special Rapporteur, another criteria in determining whether a State complied with its obligation of due diligence is the number of cases prosecuted involving violence against women and the types of judgments handed down in these cases.¹³ The Council of Europe's Convention has the same requirement for

violence' and other measures . . . [that] the state is obliged to adopt and apply with due diligence." Amnesty International, *Pakistan: Violence Against Women in the Name of Honour*, ASA 33/017/1999, Sept. 21, 1999, available at <http://www.amnesty.org/en/library/asset/ASA33/017/1999/en/53f9cc64-e0f2-11dd-be39-2d4003be4450/asa330171999en.html>; citing to Special Rapporteur on Violence Against Women, its Causes and Consequences, *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms*, U.N. Doc. E/CN.4/1996/53 (Feb. 5, 1996) (prepared by Radhika Coomaraswamy), available at <http://wfrt.net/humanrts/commission/thematic52/53-wom.htm>.

⁸ Council of Europe's Convention on Preventing and Combating Violence Against Women and Domestic Violence, *supra* note 4, at Chapter VI, art. 49.

⁹ See *M.C. v. Bulgaria*, App. No. 39272/98, Eur. Ct. H.R. (2003).

¹⁰ *Id.* ¶ 182.

¹¹ See *Aydin v. Turkey*, No. 23178/94, Eur. Ct. H.R. (1997).

¹² *Id.* ¶ 94.

¹³ *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: Violence against women in the family*, *supra* note 5, ¶ 25.

prosecution as it does for investigation; Parties shall ensure effective prosecution “without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.”¹⁴

In her 2011 report, the Special Rapporteur emphasized the importance of prosecution in cases involving violence against women:

[L]ow levels of prosecution of crimes against women reinforce the belief among victims that there is no systematic and guaranteed judicial response to violence against women and that there might be no punishment for their abusers. This results in underreporting, further minimization and invisibility of these crimes, and the reinforcement of the continuum of violence affecting women.¹⁵

The Committee also made it clear that the accused can be prosecuted to the full extent of the law, and the State can still be found to have violated its obligations under the CEDAW.¹⁶ In the case of *Vertido v. Philippines*, the applicant alleged that she suffered “revictimization by the State party after she was raped;” first, by the acquittal of the accused which “violated her right to non-discrimination” and second, by the failure to “ensure that women are protected against discrimination by public authorities including the judiciary.”¹⁷ In its analysis of the court’s decision, the Committee stressed that,

stereotyping affects women’s right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general.¹⁸

The Committee went on to say that “the compliance of the State party’s due diligence obligation to banish gender stereotypes . . . needs to be assessed in the light of the level of gender sensitivity applied in the judicial handling of the author’s case.”¹⁹ In the end, the

¹⁴ Council of Europe’s Convention on Preventing and Combating Violence Against Women and Domestic Violence, *supra* note 4, Chapter VI, art. 49.

¹⁵ Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, *supra* note 6, ¶ 63.

¹⁶ *Fatma Yildirim v. Austria*, Committee on the Elimination of Discrimination Against Women, ¶ 12.1.6, U.N. Doc. Communication No. 6/2005, CEDAW/C/39/D/6/2005 (2007).

¹⁷ *Vertido v. Philippines*, Committee on the Elimination of Discrimination Against Women, ¶ 3.1, U.N. Doc. CEDAW/C/46/D/18/2008 (2010).

¹⁸ *Id.* ¶ 8.4.

¹⁹ *Id.*

Committee held that the State had failed to fulfil its due diligence obligations in large part due to the gender stereotyping and misconceptions present in the court's decision.²⁰

D. Compensation

According to the Special Rapporteur, “most human rights and humanitarian law treaties provide for a right to a remedy,” including CEDAW.²¹ She emphasizes that the “measures of redress need to link individual reparation and structural transformation” which “subvert, instead of reinforce, pre-existing patterns of . . . gender hierarchies, systemic marginalization, and structural inequalities”²²

States have an obligation to provide compensation, even if State agents are not directly responsible for the violence. In the case of *Opuz v. Turkey*, the ECHR ruled that the State was required to pay the victim damages due to the anguish and distress she suffered from the continual violence against her by her husband, and due to the failure of the authorities in deterring the violence and providing effective measures of prevention.²³ The Special Rapporteur has even stated that, “in the context of norms recently established by the international community, a State that does not act against crimes of violence against women is as guilty as the perpetrators.”²⁴

Each of these four requirements for a State to fulfill its due diligence obligation regarding violence against women is equally important and necessary. Due to the recent emphasis on—and controversy—surrounding certain legislative changes, this analysis of Pakistan's compliance with the due diligence standard will focus on the first requirement, that of prevention.

II. The Prevention of Violence Against Women in Pakistan: Achievements and Challenges

²⁰ *Id.* ¶ 8.6, 8.9. Another example of gender stereotyping by the judiciary that resulted in punishment of the victim is the recently publicized case of an Afghani woman who was put in prison after she reported that she was raped. The court of appeals allegedly told her that it did not believe that she was raped because a woman cannot get pregnant after her first sexual encounter, so therefore she must have had a consensual sexual relationship with the man. She was pardoned by the Afghan president, but is now being pressured to marry her rapist to uphold her family's honor. Atia Abawi, *Afghan woman: I'll marry rapist, 'even though I can't look at him,'* WORLD BLOG NBC NEWS, Dec. 7, 2011, available at <http://worldblog.msnbc.msn.com/news/2011/12/07/9252482-afghan-woman-ill-marry-rapist-even-though-i-cant-look-at-him>.

²¹ Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, *supra* note 6, ¶ 70.

²² *Id.* ¶ 71.

²³ *Id.* ¶ 73.

²⁴ Special Rapporteur on Violence Against Women, its Causes and Consequences, *Alternative Approaches and Ways and Means within the United Nations for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms*, ¶ 72, U.N. Doc. E/CN.4/1995/42 (Nov. 22, 1994) (prepared by Radhika Coomaraswamy).

A. Legislative and governmental measures taken

The Constitution of Pakistan states that all citizens are equal before the law and are entitled to the equal protection of the law,²⁵ but only in recent years—with the addition of new and amended legislation—has Pakistani law supported that claim of equality. In 1996, Pakistan ratified CEDAW, subject to the provisions of its constitution.²⁶ According to a study conducted by the Gender Equity Program of the Aurat Foundation,²⁷ “Pakistan is a signatory to almost all international conventions and agreements on violence against women and gender-based violence.”²⁸ The study also states that “[i]n the past two decades, there have been significant developments related to law and policy to create protections for women vulnerable to violence.”²⁹ A common step in addressing the prevention of violence against women is the passing of new legislation and creation of government programs, and Pakistan is no exception.

In July 2000, the government of Pakistan established the National Commission on the Status of Women to “examine policies, programs and other measures taken by the Government for women’s development and gender equality.”³⁰ In August 2002, the government of Pakistan launched the Gender Reform Action Plan to “improve the framework of gender policies and to develop institutional reform proposals outlining interventions at the federal, provincial and district level, for a proactive approach to include gender perspectives in public sector policies, programmes and projects.”³¹ The goal was to “bring about such changes in structure and process of the government that it promotes equity among men and women, and to enable it to deliver on the rights and entitlements of women.”³²

In recent years, the government of Pakistan passed the Criminal Law (Amendment) Act of 2004,³³ which recognized and imposed punishments for honor crimes, and passed the Protection of Women (Criminal Laws Amendment) Act of 2006,³⁴ which also addressed honor killings and gender discrimination.

²⁵ Constitution of Pakistan, Art. 25(1).

²⁶ The National Commission for Justice and Peace and the Democratic Commission for Human Development, *Discrimination Lingers on . . . A Report on the Compliance of CEDAW in Pakistan*, Feb. 15, 2007, at 7, available at [http://www.iwraw-ap.org/resources/pdf/Pakistan%20SR%20\(NCJP\).pdf](http://www.iwraw-ap.org/resources/pdf/Pakistan%20SR%20(NCJP).pdf).

²⁷ Aurat Foundation is a non-profit, civil society organization working for women’s empowerment in Pakistan.

²⁸ Aurat Foundation, *Gender-Based Violence in Pakistan, A Scoping Study*, Jan. 2011, at 2, available at [http://www.af.org.pk/gep/deskStudies/GENDER%20BASED%20VIOLENCE%20-%20R%20PARVEEN%20\(2\).pdf](http://www.af.org.pk/gep/deskStudies/GENDER%20BASED%20VIOLENCE%20-%20R%20PARVEEN%20(2).pdf).

²⁹ *Id.* at 2-3.

³⁰ <http://www.ncsw.gov.pk/>.

³¹ <http://www.grap.gop.pk/About%20Grap.htm>.

³² <http://www.grap.gop.pk/About%20Grap.htm>.

³³ Criminal Law (Amendment) Act 2004, available at [http://webapps01.un.org/vawdatabase/uploads/Pakistan%20-%20Criminal%20Law%20\(Amendment\)%20Act%202004.pdf](http://webapps01.un.org/vawdatabase/uploads/Pakistan%20-%20Criminal%20Law%20(Amendment)%20Act%202004.pdf).

³⁴ Protection of Women (Criminal Law Amendment) Act 2006, available at <http://www.pakistani.org/pakistan/legislation/2006/wpb.html>.

The 2004 act sought an amendment to the Pakistan Penal Code (PPC) by “introducing higher punishments for ‘Crimes of Honor,’ prohibiting the practice of giving of girls in marriage as a gesture of truce in a dispute and included ‘hurt to a victim’ as falling under the definition of ‘honor crimes’ as well.”³⁵ The legislation also introduced a proviso to Section 302 (c) of the PPC, “which ensured that crimes committed on the pretext of honor would be liable for maximum punishment . . . Under the now amended Section 302 PPC honor crimes carry a maximum imprisonment of 25 years and not less than 10 years for the offence.”³⁶

The 2006 act sought to redress certain legal injustices that were created by the Zina Ordinance;³⁷ it took almost a full year to pass.³⁸ The legislation amended certain aspects of the Zina Ordinance so that a woman can no longer be prosecuted for adultery simply for reporting her rape, and can no longer be arrested and imprisoned on mere accusations of Zina.³⁹

In 2006, the Gender Crime Cell was established in the National Police Bureau to collect data on cases dealing with violence against women, provide advice on cases or legislation, and investigate cases at the request of the Ministry of the Interior.⁴⁰ The government also created separate women police stations, as well as women’s centers and shelters specifically to aid female victims of violence.⁴¹

In 2009, the Domestic Violence (Prevention and Protection) Bill was passed by the National Assembly; however, once it reached the Senate, it lapsed.⁴² In 2010, Art. 25(2) of the Constitution of Pakistan was amended to omit the word “alone” at the end of the clause stating “there shall be no discrimination on the basis of sex.”⁴³ In November 2011, the National Assembly of Pakistan passed the Prevention of Anti-Women Practices (Criminal Law Amendment) Act, which criminalized violent and discriminatory practices against women and

³⁵ Hannah Irfan, *Honor Related Violence Against Women in Pakistan*, prepared for World Justice Forum, Vienna, July 2-5, 2008, at 12, http://www.lexisnexis.com/documents/pdf/20080924043437_large.pdf.

³⁶ *Id.*

³⁷ A set of penal laws that blatantly discriminated against women, including an ordinance dealing with “rape, adultery, prostitution, and abduction crimes, which in its application make no distinction between adultery and rape.” The term “Zina” refers to premarital or extramarital sexual intercourse. The National Commission for Justice and Peace and the Democratic Commission for Human Development, *Discrimination Lingers on . . . A Report on the Compliance of CEDAW in Pakistan*, Feb. 15, 2007, at 11, available at [http://www.iwraw-ap.org/resources/pdf/Pakistan%20SR%20\(NCJP\).pdf](http://www.iwraw-ap.org/resources/pdf/Pakistan%20SR%20(NCJP).pdf).

³⁸ Rubya Mehdi, *The Protection of Women (Criminal Laws Amendment) Act, 2006 in Pakistan*, available at <http://droitcultures.revues.org/2016>.

³⁹ *Id.*

⁴⁰ *Gender-Based Violence in Pakistan, A Scoping Study*, *supra* note 28, at 3.

⁴¹ Immigration and Refugee Board of Canada, *Pakistan: Resources available to female victims of violence in Karachi, Islamabad and Lahore*, Nov. 26, 2009, available at <http://www.unhcr.org/refworld/docid/4b7cee8528.html>.

⁴² Farahnaz Zahidi Moazzam, *Hit Him Back Legally – Domestic Violence Bill*, <http://www.dawn.com/2011/10/21/hit-him-back-legally-domestic-violence-bill.html>.

⁴³ The Constitution (Eighteenth Amendment) Act, 2010.

girls.⁴⁴ The legislation “outlines strong punishments for social practices like wanni, swara or budla-i-sulh, wherein women are traded to settle personal, family or tribal disputes” and “[f]or the first time, the bill proposes a minimum benchmark for penalizing those involved in ‘anti-women practices.’”⁴⁵

B. Continuation of violence against women

While legislative changes are an important part of addressing the problem of violence against women, they “do not change the prevailing mindsets and the social acceptance of such crimes remains intact”⁴⁶ This is evident from the statistics and cases of violence against women that are continually reported in Pakistan.

1. Recent statistics

According to the Aurat Foundation, the total number of cases of violence against women increased from 2008 to 2009—from 7,733 to 8,548, respectively.⁴⁷ Although the total number dropped in 2010 to 8,000,⁴⁸ the most recent report of the Aurat Foundation shows a rise in violent acts against women in the first six months of 2011 as compared to the first six months of 2010, from 4,061 to 4,448, respectively.⁴⁹ While there was an 18 percent decrease in cases involving stove burning during that same period, acid throwing increased substantially and reports of rape and gang rape increased by 19 percent.⁵⁰ It is estimated that between 70-90 percent of Pakistani women in rural areas are subjected to domestic violence.⁵¹

⁴⁴ Zia Khan, *National Assembly passes landmark women’s rights bill*, THE EXPRESS TRIBUNE, Nov. 15, 2011, available at <http://tribune.com.pk/story/292165/prevention-of-anti-women-practices-bill-unanimously-approved-by-na/>.

⁴⁵ *Id.*

⁴⁶ *Honor Related Violence Against Women in Pakistan*, supra note 35, at 11.

⁴⁷ Aurat Foundation Press Release: *Cases of violence against women in Pakistan, Reported in the year 2008*, Feb. 17, 2009, <http://www.af.org.pk/PDF/Press%20Release%20English.pdf>; Aurat Foundation Press Release: *Violence Against Women in Pakistan: A Qualitative Review of Statistics 2009*, June 30, 2010, http://www.af.org.pk/PDF/VAW%20Reports%20AND%20PR/PR/Press_Release%20ANNUAL%20REPORT%2009%20ENG.pdf.

⁴⁸ Aurat Foundation and Violence against Women Watch Group Press Briefing: *Incidents of Violence against Women in Pakistan during January-December 2010*, Feb. 24, 2011, <http://www.af.org.pk/PDF/VAW%20Reports%20AND%20PR/PR/Press%20Release%20in%20English%20Jan-Dec%202010.pdf>. “The decrease in figures is due to the fact that the recent natural catastrophe in the country . . . led to the loss of valuable official, judicial and crime records. Moreover, as the media’s focus was also shifted in highlighting the relief activities throughout the country, the women related issues were less reported.” *Id.*

⁴⁹ Aurat Foundation Press Briefing: *Incidents of Violence against Women in Pakistan Reported during January to June 2011*, <http://www.af.org.pk/PDF/VAW%20Reports%20AND%20PR/PR/PDM%20Bi%20Monthly%20report%20Jan-Jun%202011%20ICT%20final.pdf>.

⁵⁰ *Gender-Based Violence in Pakistan, A Scoping Study*, supra note 28, at 5.

⁵¹ UKaid Department for International Development, *Gender violence in Pakistan*, Dec. 10, 2010, available at <http://www.dfid.gov.uk/stories/case-studies/2010/gender-violence-in-pakistan/>.

2. Honor crimes

According to the 2010 Annual Report of the Human Rights Commission of Pakistan (Commission),⁵²

[i]n January, media reports highlighted the murder of a girl and a boy by the girl's family in a village of Mian Chunnu sub-district of Punjab. The girl . . . and the boy she wanted to marry were clubbed to death and their bodies publicly hanged for the villagers to see that the family had redeemed its honour. The girl had tried to run away from home after her parents arranged her marriage with a man against her will.⁵³

In 2009, there were 647 honor killings reported by the Pakistani press, which represented 46 percent of all female murders that year.⁵⁴ The Commission reported 791 female victims of honor killings in 2010—the vast majority of which were committed by close relatives of the victim.⁵⁵ According to the same report, “[g]irls and women continued to be forced into marriage against their will, killed or intimidated for asserting their right to choose their spouse or generally to make decisions about their own life. The practice of giving away women and even baby girls in marriage to settle men's disputes also continued.”⁵⁶ One reason for the continuance of these honor crimes is the authority and autonomy of local tribal councils, especially influential in rural areas of Pakistan.

3. Tribal council influence

Parallel justice systems—such as Jirgas (local tribal councils), particularly active in the more rural areas of Pakistan—continue to sanction honor crimes and trade girls and women to settle disputes. According to the Commission's 2010 Annual Report, Jirga decisions upheld illegal practices such as swara, vani, and karo kari.⁵⁷ In September 2010, a local tribal council in Sindh ordered the marriage of two minor girls to members of another tribe as a settlement in a

⁵² The Human Rights Commission of Pakistan is an independent, voluntary, non-political, non-profit making, non-governmental organization, with its Secretariat office in Lahore, Pakistan. <http://www.hrcp-web.org/aboutus.html>.

⁵³ Human Rights Commission of Pakistan, *State of Human Rights in 2010*, Apr. 2011, at 207, available at <http://www.hrcp-web.org/Publications/AR2010.pdf>.

⁵⁴ Human Rights Commission of Pakistan, *State of Human Rights in 2009*, Feb. 2010, at 10, available at <http://www.hrcp-web.org/pdf/Annual%20Report%202009.pdf>.

⁵⁵ Human Rights Commission of Pakistan, *State of Human Rights in 2010*, *supra* note 53, at 206.

⁵⁶ *Id.* at 211.

⁵⁷ *Id.* at 202. Swara is the “gift of a girl in marriage in settlement of a tribal dispute.” Vani is the “tradition according to which women are surrendered for compounding a murder case.” Karo kari is “a traditional, feudal custom which still continues whereby couples found in, or more often merely suspected of, adulterous relationship are summarily stoned to death by the family members themselves.” *Id.* at vi.

dispute.⁵⁸ These Jirgas are primarily located in the rural areas of Pakistan and are controlled by village elders or local religious leaders.⁵⁹ These local councils have “strong social legitimacy” within rural communities “and exert informal control over women’s lives and bear responsibility for violations of women’s human rights.”⁶⁰ Although these councils are not legally recognized under Pakistani law,⁶¹ they are often held at official premises and attended by district officials.⁶² According to the Aurat Foundation, “[i]n Pakistan, the conflict between state and customary or tribal law has tended to be resolved by the former mimicking or accommodating the latter. This concord between law and custom—which has much to say on the place of women in society—is also consolidated in the courts.”⁶³

III. Fulfilling the Prevention Requirement

There are multiple ways of fulfilling the prevention requirement of the due diligence standard. In recent years, Pakistan focused much of its work in this area on amending and proposing new legislation addressing violence against women. This is a vital step in achieving the prevention of violence, but some of this legislation encountered problems and therefore has not had the effect of significantly curtailing violence against women. It is also important to recognize that in order to change a population’s view on traditional cultural practices and assumptions about gender roles—and as a result prevent violence—more than legislation is needed.

According to a 2011 article highlighting the continued violence against women in Pakistan, freelance journalist Muhammad Zamir Assadi stated that although many in Pakistan look to new legislation to protect women against violence,

no law can stop a propensity to violence that is ingrained into a people from infancy. Only in places where women are already respected do laws to undo perceived injustice and safeguard women from violence actually work. Only a change in the culture of the country will lower the incidence of violence.⁶⁴

The government must take concrete steps to promote the prevention of violence against women through grassroots campaigns focused on women’s issues and equal education for all.

⁵⁸ *Id.* at 211.

⁵⁹ *Honor Related Violence Against Women in Pakistan*, *supra* note 35, at 21.

⁶⁰ *Id.*

⁶¹ The Constitution of Pakistan states that no court shall have jurisdiction unless it is authorized by the constitution or under other law. The Constitution of the Islamic Republic of Pakistan (1973) art. 175(2).

⁶² *Honor Related Violence Against Women in Pakistan*, *supra* note 35, at 24.

⁶³ *Gender-Based Violence in Pakistan, A Scoping Study*, *supra* note 28, at 5.

⁶⁴ Muhammad Zamir Assadi, *Violence Against Women Remains High in Pakistan*, THE NEW AMERICAN, Feb. 9, 2011, available at <http://www.thenewamerican.com/world-mainmenu-26/asia-mainmenu-33/6246-violence-against-women-remains-high-in-pakistan>.

A. Promoting prevention by implementing and enforcing effective legislation and government programs

1. Eliminating legal and legislative loopholes

While the Criminal Law (Amendment) Act of 2004 was important legislation in that it addressed honor crimes, according to non-governmental organizations (NGOs) working in Pakistan, it “failed to remove main legal lacunas responsible for ‘honour’ crimes,” evidenced by the fact that “perpetrators still enjoy immunity through the waiver of retribution (qisas) and/or payment of compensation (diyat)”⁶⁵

The Domestic Violence (Prevention and Protection) Bill of 2009 was passed by the National Assembly; however, once it reached the Senate, it lapsed.⁶⁶ The Gender Reform Action Plan was closed in June 2010 due to its inability to “achieve the desired objectives,” and because it “barely managed to spend \$84 million of the allocation of \$250 million.”⁶⁷ Multiple NGOs have observed that the National Commission on the Status of Women “lacks resources and capacity to perform its duties under its mandated constitutional role.”⁶⁸

In December 2010, the Federal Shariat Court declared that several provisions of the Protection of Women (Criminal Laws Amendment) Act of 2006 were unconstitutional and sought to reinstate certain provisions of the 1979 Hudood Ordinance, such as the requirement that “women who have been raped . . . produce four witnesses to support [their] testimony – and the reestablishment of the right of police to arrest women on a charge of adultery on the basis of their report of rape.”⁶⁹ Additionally, the act itself has been criticized because it “retains legal discrimination against women and religious minorities” and “the corporal hadd punishments of stoning to death.”⁷⁰

The Asian Legal Resource Centre⁷¹ encouraged the government of Pakistan to ensure the implementation of its legislation regarding parallel justice systems, and “to punish all persons who participate in anti-constitutional parallel justice system who aid, abet or commit violations of women’s rights . . . [t]he government must also take the lead in providing effective protection

⁶⁵ NGO Statement: Pakistan, Presented at the 38th Session of CEDAW Committee, United Nations: May 21, 2007.

⁶⁶ *Hit Him Back Legally – Domestic Violence Bill*, *supra* note 42.

⁶⁷ Human Rights Commission of Pakistan, *State of Human Rights in 2010*, *supra* note 53, at 203-04.

⁶⁸ NGO Statement, *supra* note 65.

⁶⁹ Asian Human Rights Commission, *Pakistan: Sharia Court Launches Major Challenge to Protection of Women Act*, Dec. 23, 2010, available at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-268-2010>.

⁷⁰ *The Protection of Women (Criminal Laws Amendment) Act, 2006 in Pakistan*, *supra* note 38.

⁷¹ An independent regional non-governmental organization holding general consultative status with the Economic and Social Council of the United Nations and a sister organization of the Asian Human Rights Commission.

to victims of such abuse, in order to encourage them to come forwards [sic] and break the system of silence, suffering and injustice that currently accompanies such crimes.”⁷² One of the criticisms of the Prevention of Anti-Women Practices Act of 2011 is that it “does not propose a mechanism to ensure that such cases are reported and reach a court of law—a necessity as these crimes often go unchecked and unreported.”⁷³

2. Ensuring implementation by the judiciary and law enforcement

Legislation is useless if judiciary and law enforcement officials do not implement it. On April 21, 2011, the Supreme Court of Pakistan upheld the verdict of the Multan bench of Lahore High Court in the case of women’s rights activist and gang-rape victim Mukhtar Mai, allowing all but one of the six men accused to be released.⁷⁴ The Asian Legal Resource Centre contends that “this case shows how the country’s constitutional legal system is assisting in protecting the outcomes of the parallel, unconstitutional traditional justice system . . . [i]t is preposterous that only one person can be sentenced under charges of gang-rape, with the other alleged perpetrators being released.”⁷⁵

In 2010, a 16-year-old girl was kidnapped and repeatedly gang-raped for over a month.⁷⁶ When the girl’s father went to the police to report the crimes, they refused to record the gang rape in their report.⁷⁷ Two people were eventually arrested, but they were released within two hours after allegedly bribing police officials.⁷⁸ The Interior Minister was made aware of the case and promised to look into it; to date, no action from the ministry has been taken.⁷⁹

3. Providing and informing women of available resources

In recent years, along with its focus on legislation, the government of Pakistan developed initiatives designed specifically to address violence against women. Unfortunately, these resources for women remain primarily in urban areas and have proven ineffective in many aspects of assisting women victims of violence.

Complaint cells were created at police stations specifically for female victims of violence; separate police stations for women were created for the same purpose.⁸⁰ As of 2009, there were nine women’s police stations in Pakistan and several women’s complaint centers that

⁷² Asian Legal Resource Centre, *Pakistan: Impunity for violence against women must end*, SCOOP INDEPENDENT NEWS, May 23, 2011, available at <http://www.scoop.co.nz/stories/WO1105/S00523/pakistan-impunity-for-violence-against-women-must-end.htm>.

⁷³ *National Assembly passes landmark women’s rights bill*, *supra* note 44.

⁷⁴ Asian Legal Resource Centre, *Pakistan: Impunity for violence against women must end*, *supra* note 72.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Immigration and Refugee Board of Canada, *supra* note 41.

supposedly offered legal assistance and counseling to victims of violence.⁸¹ In March 2011, Pakistan opened its first training school for policewomen in Lahore.⁸²

As of 2009, however, no evaluation of these programs had been conducted.⁸³ According to one women's resource center in Pakistan, "[i]n most city districts, as in Lahore, there is only one Women's Police Station functioning" and they are "understaffed and overburdened, and they have been granted less authority than their male counterparts"⁸⁴ An international humanitarian organization reported that "women's police stations tended to act as mediators between couples, instead of offering women protection."⁸⁵ According to several NGOs, the "existence of Gender Crime Cell at the National Police Bureau . . . in the federal capital Islamabad is little known to [the] public even in the city it is based; it is extremely constrained by human resources and the detail of how many reports it had received and disposed of were never divulged to [the] public."⁸⁶

The government of Pakistan created a network of women's centers and shelters, and it was reported in 2008 that the Ministry of Women Development was running 10 crisis centers located in major cities.⁸⁷ However, many of the workers were not trained to deal with victims of violence and—according to the Commission—some shelters "retained their notoriety for being similar to detention centres with curfews, ill treatment and absence of a gender-sensitive environment."⁸⁸ The legal aid offered at the centers and shelters has been described as "questionable" as well.⁸⁹ Access to these places is also extremely difficult for female victims of violence in rural areas because, according to the legal department of Shirkat Gah,⁹⁰ while "there are no official restrictions that would limit a rural woman's access to medical treatment facilities and shelters located in urban centres, there is no system in place to facilitate their relocation."⁹¹

These are just two examples demonstrating lack of enforcement of the law by judges and law enforcement regarding violence against women in Pakistan.

B. Promoting prevention through education

⁸¹ *Id.*

⁸² German Missions in the United States, *Helping Pakistan Police Combat Violence Against Women*, Mar. 10, 2011, available at http://www.germany.info/Vertretung/usa/en/_pr/P_Wash/2011/03/09_Pakistan_Police_PR.html.

⁸³ Immigration and Refugee Board of Canada, *supra* note 41.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ NGO Statement, *supra* note 65.

⁸⁷ Immigration and Refugee Board of Canada, *supra* note 41.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Shirkat Gah is a women's resource center with 30 years of experience facilitating access to information and resources, as well as working to improve policies and laws that affect women in Pakistan. *Id.*

⁹¹ Immigration and Refugee Board of Canada, *supra* note 41.

1. Equal access to education

In 2010, the 18th Amendment to the Constitution of Pakistan was passed and “the right to education was declared a fundamental right for all citizens.”⁹² Ensuring that all citizens enjoy this fundamental right is no small task, in part because more than 70 percent of the population lives in rural Pakistan.⁹³ No matter how many laws are passed or government programs created, unless these laws and campaigns are communicated to the majority of Pakistan’s population—along with a general understanding of human rights that comes with access to an education—they will have little effect on the lives of Pakistani women and girls.

According to the Commission’s 2010 Annual Report, while “Pakistan moved up 16 places to 125 on the UN Human Development Index (HDI)⁹⁴ . . . Pakistan’s performance in the education department remained poor in comparison with other South Asian countries,” with the expected years of schooling at only 6.8.⁹⁵ The budget allocation for education in 2010 was just above two percent of the country’s GDP.⁹⁶ As of 2010, only 60 percent of children completed primary school and only 10 percent finished secondary school.⁹⁷

According to a 2010 UNESCO Report on education, “Pakistan is among three countries in the region where women are twice as likely to be illiterate than men.”⁹⁸ The literacy rate for Pakistan is 57 percent—69 percent for males and only 45 percent for females—while 59 percent of girls attend primary school compared to 73 percent of boys.⁹⁹ The Aurat Foundation contends that “[s]tatistics show that while urban women have made gains, girls and women in rural areas are at a systematic disadvantage.”¹⁰⁰ Concern Worldwide US, Inc.¹⁰¹ reported that “literacy rates for Pakistani women living in urban areas are five times higher than for women living in rural areas.”¹⁰² In the rural province of Sindh, it is estimated that 70 percent of girls do not attend

⁹² Aurat Foundation, *Women’s Empowerment in Pakistan, a Scoping Study*, Jan. 2011, at 21, available at http://www.af.org.pk/gep/deskStudies/Women_s%20Empowerment.pdf.

⁹³ Dr. Tahira S. Khan, *Roots of Violation of Women/Children’s Rights in Rural Areas of Pakistan: What Needs to be Done?*, International Conference on the Human Rights of Women and Children in Pakistan, Lahore, Nov. 17, 2005.

⁹⁴ The UN Human Development Index is a comparative index composed from data on life expectancy, education and standard of living. Human Rights Commission of Pakistan, *State of Human Rights in 2010*, *supra* note 53, at 254.

⁹⁵ Human Rights Commission of Pakistan, *State of Human Rights in 2010*, *supra* note 53, at 254.

⁹⁶ *Id.*

⁹⁷ *Id.* at 256.

⁹⁸ *Id.* at 269.

⁹⁹ *Id.*

¹⁰⁰ *Women’s Empowerment in Pakistan, A Scoping Study*, *supra* note 92, at 23.

¹⁰¹ Concern Worldwide US, Inc. is an affiliate of Concern Worldwide, a non-governmental, international, humanitarian organization dedicated to the reduction of suffering and working towards the ultimate elimination of extreme poverty in the world’s poorest countries. <http://www.concernusa.org/Public/AboutUs.aspx>.

¹⁰² Concern Worldwide US, Inc., *Women’s Rights: How can we ensure that all women have equal access to their rights?: Focus on Pakistan*, available at http://www.concernusa.org/gcc/media/pdf/Women_Rights.pdf.

school.¹⁰³ It has been reported that “Pakistan has one of the highest gender disparities in education figures in the world.”¹⁰⁴

Along with access to education, curriculum is equally important. The Commission reported that Pakistan’s “new education policy of 2009 strongly emphasized religious content in the curriculum,” which—depending on the interpretation—can lead “to devastating consequences for women”¹⁰⁵ Basic education should include human rights issues and information about the government and legislation so that both genders are aware of their rights under the law. The Aurat Foundation insists that “[w]omen not only need access to education at all levels, they have the right to an education that can ensure their human security by bolstering their capabilities, self-respect, and human dignity.”¹⁰⁶

The lack of access to education and knowledge regarding human rights legislation and rights of women in general contributes to the continued existence of parallel systems of justice, which continue to “sanction acts of violence against women” or “hand[] down severe punishments (such as honour killings) for women who allegedly transgress societal norms.”¹⁰⁷ The continued presence of these tribunals—despite their sanction in the constitution—is evidence that legislation without widespread access to education is not enough to prevent violence against women. Dr. Firdous Ashiq Awan, Federal Minister for Women Development in 2010, stated that “while a lot has been accomplished by the government to empower and protect women, there remains much more to be done at the grassroots level so that women can know their rights. ‘We need to rethink our strategic plan and line of action. There is a wide gap between policies and their implementation.’”¹⁰⁸

2. NGO and government programs

To change traditional social and cultural behaviors that CEDAW, Council of Europe’s Convention, and other international conventions and agreements recommend to prevent violence against women, action must be taken at a local level by organizations and governments to promote the education of law and human rights. In recent years, there have been a growing number of examples in Pakistan of both NGOs and the government sponsoring campaigns and projects focused on violence against women.

¹⁰³ Human Rights Commission of Pakistan, *State of Human Rights in 2010*, *supra* note 53, at 270.

¹⁰⁴ *Id.* at 24.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, *supra* note 2, ¶ 65.

¹⁰⁸ United Nations Development Programme, *UNDP Supports Campaign to End Violence against Women in Pakistan*, Dec. 10, 2010, available at <http://undp.org.pk/undp-supports-campaign-to-end-violence-against-women-in-pakistan.html>.

Rozan, an NGO based in Islamabad, began a “Stop Rape Campaign” in 2011, which focused on 15,000 men between the ages of 16-30 in the Punjab province.¹⁰⁹ The campaign was funded by the Gender Justice and Protection project of the United Nations Office for Project Services with the objective to “raise awareness of sexual violence, and in particular rape, among young men and boys.”¹¹⁰ The campaign focused on the education of groups of young men on issues involving violence against women and promoted the spreading of this information by asking those young men to train and pass on this information to other groups of young men, maximizing the total number of participants in the campaign.¹¹¹

On November 25, 2011, UN Women Pakistan—along with various UN agencies and the government of Pakistan—launched a “One Million Signatures” campaign in honor of the International Day for the Elimination of Violence Against Women and the beginning of the 16 Days of Activism Against Gender Violence.¹¹² The campaign asked government officials, media persons, medico-legal officers, service providers, and university students across Pakistan to sign “take action” cards, pledging “to support legislation, raise awareness through social networking, change their own behaviour, or say no to violence.”¹¹³

More of these types of programs that attempt to reach all regions of Pakistan, urban and rural, and that are sponsored by local NGOs and the government are needed to make significant inroads in preventing violence against women. Signing a name to a pledge card may not stop violence against women, but nationwide campaigns supported by the government that reach into rural areas and promote education and prevention of violence against women can be an effective way to begin the process of changing traditional social and cultural beliefs.

IV. Conclusion

Under international law, States have an obligation of due diligence when addressing violence against women which consists of the principles of prevention, investigation, prosecution, and compensation. When addressing the principle of prevention, legislation is often used as an indicator of a State’s fulfillment of this obligation.

In recent years, Pakistan has attempted to fulfill the first prong of the due diligence standard—prevention—by passing new legislation addressing violence against women. However, much of this legislation is limited in its scope and does not fully address some of the

¹⁰⁹ UN Volunteers, *Stop Rape Campaign mobilizes young men in Pakistan*, Mar. 10, 2011, available at <http://www.unv.org/en/news-resources/news/doc/stop-rape-campaign-mobilizes.html>.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² UN Women South Asia, United Nations Entity for Gender Equality and the Empowerment of Women, *UN Women Commemorates 16 Days of Activism against Gender Violence in South Asia*, Nov. 25, 2011, available at <http://www.unwomensouthasia.org/23.11.11.html>.

¹¹³ *Id.*

most damaging laws affecting women. Legislative efforts are additionally hindered by the lack of implementation and adherence to the legislation by the judiciary and law enforcement.

Legislation is a critical aspect in preventing violence against women, but it is not enough by itself to fulfill the due diligence obligation to prevent violence against women. To fight against a traditional culture of honor killings and tribal council decisions that are harmful to women, the government of Pakistan must make the promotion of preventing violence against women a priority and provide equal access to education for all—especially in rural areas.

While the new changes in legislation regarding women’s rights in Pakistan should be recognized, without action by the government to enforce this legislation on a local level and promote and provide access to education, especially in more rural areas, violence against women will continue and Pakistan will be unable to fulfill its due diligence obligation to prevent it.

V. Recommendations

Based on the above-mentioned information, it is recommended that the government of Pakistan:

1. Support new legislation addressing women’s issues—in particular, violence against women—such as the Domestic Violence Bill.
2. Address legal loopholes and inconsistencies that are present in current legislation specifically, *inter alia*, by abolishing the qisas and diyat laws.
3. Enforce current legislation and ensure compliance by the judiciary and law enforcement by taking concrete steps to prevent and punish those responsible for honor crimes and eliminate the role that tribal councils play in perpetrating discrimination and violence against women.
4. Evaluate and fund current programs/centers/shelters focused on the prevention and protection of women to ensure accessibility and effectiveness.
5. Work with NGOs to expand recourses for women victims of violence to reach beyond cities into more rural areas.
6. Collaborate with NGOs to promote campaigns focused on the elimination of violence against women in rural areas, including the participation of boys and men.
7. Allocate a larger percentage of GDP to education and promote equal education.
8. Include human rights issues and information about legislation in education curriculum so that all people are aware of their rights under the law.