



Committee on the Rights of the Child
Human Rights Treaties Division
Office of the United Nations High Commissioner for Human Rights
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva, Switzerland

April 15, 2016

Re: Supplementary Information on Pakistan, scheduled for review by the Committee on the Rights of the Child during its 72nd session

Dear Committee Members:

The Center for Reproductive Rights (the Center) respectfully submits this letter to assist the Committee on the Rights of the Child (Committee) in its review of the Government of Pakistan's (state party) compliance with the Convention on the Rights of the Child (Convention) during its 72nd session. This letter is a follow up to our June 2015 pre-session submission (Annex I), which focused on the continued prevalence of child marriage in Pakistan resulting in violations of the Convention. The Center welcomes the Committee's list of issues (LOI) in relation to the state party's Fifth Periodic Report (state party report) that raises several crucial measures relevant to the elimination of child marriage and protection of married girls' rights. These include adoption and implementation of legislation raising the minimum legal age of marriage to 18, measures to ensure adolescent girls' sexual and reproductive health, protection from sexual abuse and exploitation, and mandating birth registration.¹ Through this submission, the Center aims to highlight information and updates relevant to these issues raised by the Committee and supplement the state party's response to the LOI.

I. Supplemental Information in Response to the LOI and the State Party's Replies

- a. Please explain what measures have been taken to adopt and implement legislation raising the minimum age of marriage to 18 in all provinces, to prosecute and convict perpetrators of offences under the 2011 Prevention of Anti-Women Practices Act and to provide protection to victims. (para. 10)**

Pakistan's Child Marriage Restraint Act (CMRA) penalizes the solemnization of a marriage of a girl before 16 years of age and a boy below 18 years of age.² As noted in the pre-session letter, the state party is obligated to raise the age of marriage to 18 years of age for both boys and girls under human rights law as well as under its commitment under the Regional Action Plan to End Child Marriage in South Asia, which was adopted in 2014. While select provinces have begun to undertake reform to raise the minimum legal age of marriage, at the national level, efforts to raise the minimum legal age of marriage from 16 to 18 years for girls have not yet succeeded.³ Although the state party's response to the LOI states that the National Assembly has passed a bill to raise

the minimum legal age of marriage to 18 years of age which is now awaiting Senate approval, in actuality this bill was withdrawn earlier this year after being rejected by the Parliamentary Standing Committee on Religious Affairs and Interfaith Harmony due to opposition by the Council of Islamic Ideology characterizing the measure as “un-Islamic.”⁴ The failure of this bill is particularly problematic given that it would have not only raised the minimum legal age of marriage to 18 years of age, but also strengthened penalties against the practice.⁵

The absence of national amendments to the CMRA means that currently there are inconsistent laws among provinces in Pakistan, in addition to incongruous standards between national laws and personal laws. As noted in the state party’s response, the Sindh and Punjab provinces have passed positive legislation increasing penalties for child marriage. However, it must be clarified that while the Sindh legislation raises the minimum legal age of marriage to 18 for boys and girls,⁶ the Punjab province maintains 16 as the minimum legal age of marriage for girls.⁷ Although the state party mentions in its reply that other provinces are considering bills to raise the minimum legal age of marriage to 18 years,⁸ as of the time of this submission such bills have yet to be passed into law.

Beyond the minimum legal age of marriage in the CMRA, the legislative barriers discussed in the pre-session letter persist. Pakistan’s child marriage law only recognizes such marriages as legally voidable but not automatically void, contains weak penalties including a maximum fine of approximately USD 10, and is silent on the intersection with personal laws.⁹ In addition to the inconsistencies raised in the pre-session letter concerning the Muslim and Christian personal laws as well as the Special Marriage Act governing marriages not occurring under religious laws in Pakistan, Hindu girls and women married as girls face barriers to challenging child marriages because there is no national legislation which provides for Hindus to register their marriages.¹⁰ This prevents Hindu women and girls from being able to show proof of marriage, leaves girls at greater risk of abduction and forced marriages, and limits women’s and girls’ ability to seek divorce or successfully claim alimony, property, or child custody.¹¹ In a positive step, the Sindh Parliamentary Assembly passed a provincial Hindu Marriage Bill 2016, which requires that both parties to the marriage be 18 years of age and are able to provide proper consent, as well as mandates registration of marriage with the union council/ward within 45 days of solemnization.¹² Similar legislation at the federal level is pending but has yet to be passed. In February 2016, the National Assembly standing committee on law and justice approved a final draft of the Hindu Marriage Bill 2015, which will now be tabled in the National Assembly.¹³ The bill, if approved, would fix the minimum legal age of marriage for Hindu boys and girls to 18 years and be applicable nationwide.¹⁴

- b. Given that the birth registration rate reportedly remains at only 30 per cent, please describe the strategy or strategies that have been developed or planned at the federal and provincial levels to achieve universal free birth registration, including for refugee and internally displaced children. Please clarify whether birth registration is considered to be a right for all children without discrimination, or whether it is left to the discretion of local authorities. (para. 4)**

As discussed in the pre-session letter, inconsistencies persist in related laws impacting girls’ vulnerabilities to and risks within child marriage, including a failure to mandate marriage registration and a birth registration law that carries no penalties for failing to register a birth.¹⁵ While birth registration is reported at only 30% in the government’s most recent demographic

and health survey, the disparity between urban and rural registration is also significant-- nearly 60% in urban areas, and under 23% in rural areas.¹⁶ Birth registration has been recognized as essential for preventing and providing remedies for child marriage, yet this lower registration in rural areas correlates with a lower age at first marriage—the age at first marriage for women is consistently lower in rural areas than in urban areas, regardless of province.¹⁷

- c. With reference to paragraph 174 of the State party’s report, please provide more information on measures taken to increase access to information on sexual and reproductive health, especially in schools, and to confidential contraceptive services. Given the reportedly high rate of clandestine abortion among adolescent girls, please indicate the measures the State party plans to take to ensure their access to safe abortion and post-abortion services. (para. 14)**

Despite the inclusion of adolescent sexual and reproductive health—and contraception specifically—in the list of issues as well as a prior concluding observation by the Committee calling for “clear policies and, when applicable, legislation addressing the prevention of adolescent health-related issues, in particular early marriage and pregnancies,”¹⁸ the state party’s response simply states that maternal mortality rates “have seen significant improvement” without any further elaboration.¹⁹ This response fails to adequately address the state’s obligation to address the particular risks of maternal mortality as well as unintended pregnancy, unsafe abortion, and maternal morbidity faced by adolescent girls in Pakistan, including as a result of the high prevalence of child marriage.

As noted in the pre-session letter, the World Health Organization (WHO) has recognized Pakistan as one of the ten countries that comprise 58% of the global maternal deaths reported in 2013.²⁰ The maternal mortality ratio in Pakistan is 276 maternal deaths per 100,000 live births which, according to the Pakistan Demographic and Health Survey, indicates “the dire state of reproductive health care and women’s rights.”²¹ The WHO has categorized Pakistan’s progress to achieving its target maternal mortality ratio of 122 by 2015, which it did not meet, as “insufficient” and “slow.”²² Adolescent girls face significant risks in pregnancy,²³ and in Pakistan tend to have the shortest birth intervals, which is associated with higher risk of maternal mortality.²⁴ Adolescent girls are most likely (83%) among any age groups of women in Pakistan to report experiencing at least one barrier in accessing health care generally, including needing to get permission to go for treatment, the distance to health facilities, managing transportation and costs, and fears about going to a health facility alone.²⁵ As the pre-session letter discusses, adolescent girls who become pregnant also face risks of developing life-threatening pregnancy-related complications, including obstetric fistula which is experienced by 5,000 women in Pakistan each year.²⁶

Adolescent girls’ risks in pregnancy are compounded by barriers in access to contraceptive information and services and safe, legal abortion. Less than 7% of girls ages 15-19 use modern methods of contraceptives,²⁷ and the unmet need is 15% for girls ages 15-19.²⁸ While adolescent-specific data on abortion access is not publically available, Pakistan’s restrictive abortion law which only permits abortion on very limited grounds²⁹ means that legal abortions services are not widely available leaving women to resort to unsafe and clandestine procedures.³⁰ According to the Guttmacher Institute, 54% of Pakistan’s 4.2 million unintended pregnancies resulted in induced abortion in 2012, and another 34% (1.4 million) led to unplanned births.³¹

d. Please provide updated information on measures taken, including legal and policy measures, to address the sexual abuse and exploitation of children in the State party (para. 9)

As noted in the state party's replies, the Parliament has recently passed the Criminal Law (Amendment) Bill 2015 into law in March of 2016.³² While this law should be commended for aiming to regulate several areas relating to children's rights neglected in the Penal Code and Code of Criminal Procedure,³³ including by providing protection to children from sexual assault and cruelty, the mechanism for implementation of the law remains weak as it also does not provide for the establishment of a national commission on the protection of children's rights. Such a body is necessary to central monitoring and implementation of law reform efforts.

Other gaps and ambiguities discussed in the Center's pre-session letter remain in place. For example, despite the fact that marriage is not listed as a defense to rape in the Penal Code, courts have continued to allow evidence of marriage to be a bar to a finding of rape.³⁴ This failure to explicitly criminalize marital rape leaves married girls, who are particularly likely to experience sexual violence by their husbands, without remedy or recourse.³⁵

II. Suggested Questions and Concluding Observations

Reflecting on the information and concerns presented in our pre-session letter and this submission, the Center respectfully requests that this Committee pose the following additional questions to the delegation representing the state party during its 72nd session.

1. What steps has the state party taken to fulfill its "due diligence" obligation to ensure the effective implementation of the Child Marriage Restraint Act, as required under General Comment 18, including to facilitate prevention of child marriage, enforcement of the law, follow-up, monitoring and evaluation of the results achieved?
2. Please clarify the status of any national and provincial legislation pending to raise the minimum legal age of marriage to 18 years of age for girls and boys and to increase the penalties for child marriage. What measures is the state party taking to amend the Child Marriage Restraint Act to comply with human rights standards and the state party's commitments under the Regional Action Plan to End Child Marriage in South Asia, including ensuring that the minimum legal age of marriage is 18 years for both girls and boys and clarifying that this law has primacy over any personal laws?
3. What measures has the state party taken to increase birth registration? Is the state party taking steps to legally require birth registration as mandated under the Convention as a means to end child marriage?
4. What measures are being taken to specifically enable married girls to postpone pregnancy and access quality reproductive health-related information and services, including contraceptive information and services, maternal health care, and safe abortion services? What steps is the state party taking to address the data gap on adolescent girls' need for reproductive health services as well as on unplanned pregnancies, maternal mortality and morbidity, and unsafe abortion experienced by married girls?

5. What specific steps are being taken by the state party to protect girls from sexual violence both within and outside of marriage? Is the state party taking measures to criminalize marital rape? What steps is the state party taking to address the data gap on sexual violence experienced by women married as children and married girls?

The Center also respectfully requests that this Committee consider incorporating the following recommendations in its concluding observations to the state party.

1. Recalling that child marriage violates the best interests of the child and recognizing that the state party's failure to enact and implement comprehensive laws to combat child marriage leads to a continuum of violations of the rights of girls, including marital rape, early pregnancy which increases the risk and occurrence of maternal mortality and morbidity, and physical and emotional abuse, take immediate steps to:
 - a. Raise the minimum legal age of marriage to 18 years for both girls and boys, regardless of parental consent and clarify that this law has primacy over any lower minimum legal ages of marriage established in personal laws, consistent with human rights law and the Regional Action Plan to End Child Marriage in South Asia.
 - b. Ensure registration of all births, as mandated under the laws, as well as of marriages such that married girls and women married as children have access to the requisite documentation to avail themselves of legal protections to dissolve child marriages or seek remedies for abuse suffered within a child marriage.
 - c. Clarify that as marriage is not recognized as a defence to rape and that marital rape is criminalized. Ensure that marital rape should be prosecuted and punished as a crime by courts.
2. Recognizing the role of reproductive health information and services in preventing the reproductive health harms associated with child marriage, take immediate steps to ensure the provision of comprehensive sexuality education and that adolescent girls, particularly married girls, have access to quality reproductive health information and services as well as information about maternal health care, contraception, and safe abortion.

We hope that this information is useful to the Committee as it prepares to review the state party's compliance with the provisions of the Convention. If you have any questions or would like further information, please do not hesitate to contact Payal Shah at pshah@reprights.org.

Sincerely,

Center for Reproductive Rights

¹ Committee on the Rights of the Child (CRC Committee), *List of issues to be taken up in connection with the consideration of the third and fourth periodic reports of Pakistan*, (52nd Sess., 2009), paras. 4, 9, 10, 14, U.N. Doc. CRC/C/PAK/Q/3-4 (2009).

² The Child Marriage Restraint Act, No. 19 of 1929, art. 2(a) (Pak.).

³ Maryam Usman, *Bill aiming to ban child marriages shot down*, THE EXPRESS TRIBUNE (Jan. 15, 2016), <http://tribune.com.pk/story/1027742/settled-matter-bill-aiming-to-ban-child-marriages-shot-down/>.

⁴ *Id.*

⁵ *Id.*

⁶ The Sindh Child Marriages Restraint Act, No. 15 of 2014, art. 2-5 (Pak.).

⁷ The Punjab Marriage Restraint (Amendment) Act, No. 15 of 2015, art. 2 (Pak.).

⁸ Government of Pakistan, *Replies of Pakistan to the list of issues in relation to the fifth periodic report of Pakistan*, para. 10, U.N. Doc. CRC/C/PAK/Q/5/Add.1 (2016) [hereinafter State Party Replies (2016)].

⁹ *Id.*

¹⁰ *Decades delayed: Lawyer, activists for early passage of Hindu marriage bill*, THE EXPRESS TRIBUNE (Jan. 29, 2016), <http://tribune.com.pk/story/1035962/decades-delayed-lawyer-activists-for-early-passage-of-hindu-marriage-bill/>.

¹¹ *Id.*

¹² Hafeez Tunio, *Sindh Assembly becomes first in Pakistan to pass Hindu marriage bill*, THE EXPRESS TRIBUNE (Feb. 15, 2016), <http://tribune.com.pk/story/1047279/sindh-assembly-becomes-first-in-pakistan-to-pass-hindu-marriage-bill/>.

¹³ PTI, *Pakistan approves Hindu Marriage Bill after decades of inaction*, THE TIMES OF INDIA (Feb. 9, 2016), <http://timesofindia.indiatimes.com/world/pakistan/Pakistan-approves-Hindu-Marriage-Bill-after-decades-of-inaction/articleshow/50914816.cms>.

¹⁴ *Id.*

¹⁵ The Birth, Deaths and Marriages Registration Act, No. 6 of 1886 (Pak.) (no penalty for failing to register births).

¹⁶ *Id.*

¹⁷ *Id.* at 65.

¹⁸ CRC Committee, *Concluding Observations: Pakistan*, para. 65, U.N. Doc. CRC/C/PAK/CO/3-4 (2009).

¹⁹ State Party Replies, *supra* note 8, para. 7.

²⁰ WORLD HEALTH ORGANIZATION ET AL., TRENDS IN MATERNAL MORTALITY: 1990 TO 2013. ESTIMATES BY WHO, UNICEF, UNFPA, THE WORLD BANK AND THE UNITED NATIONS POPULATION DIVISION 21 (2014), <http://www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2013/en/>.

²¹ National Institute of Population Studies, *Pakistan Demographic and Health Survey 2012-13 (PDHS) (2013) 130*, <https://dhsprogram.com/pubs/pdf/FR290/FR290.pdf> [hereinafter PDHS (2013)].

²² Department of Maternal, Newborn, Child and Adolescent Health (MCW/WHO), *Maternal and Perinatal Health Profile (2013)*, http://www.who.int/maternal_child_adolescent/epidemiology/profiles/maternal/pak.pdf.

²³ CRC Committee, *General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, (33rd Sess., 2003), para 20, U.N. Doc. CRC/GC/2003/4 (2003).

²⁴ PDHS (2013), *supra* note 21, at 74.

²⁵ *Id.* at 146.

²⁶ *Id.* at 5.

²⁷ *Id.* at 94.

²⁸ *Id.* at 106.

²⁹ PAKISTAN PENAL CODE, Act 45 of 1860 (1860) (Pak.); *see also* GUTTMACHER INSTITUTE, *Abortion in Pakistan*, IN BRIEF 2 (2009), https://www.guttmacher.org/pubs/IB_Abortion-in-Pakistan.pdf. Accordingly, before formation of the fetus' organs (determined as approximately 4 months into pregnancy), abortions are permitted to save the woman's life or to provide necessary treatment; after, abortion is permitted only to save the woman's life. IN BRIEF at 1-2.

³⁰ GUTTMACHER INSTITUTE, UNINTENDED PREGNANCY AND INDUCED ABORTION IN PAKISTAN (2015), <https://www.guttmacher.org/pubs/FB-Pakistan.html>.

³¹ H. Ball, *Pakistani Study Finds High Abortion Rate and Low Level Of Contraceptive Use*, 41 INTERNATIONAL PERSPECTIVES ON SEXUAL AND REPRODUCTIVE HEALTH 52, 52 (2015), <http://www.guttmacher.org/pubs/journals/4105115.pdf>.

³² The Criminal Law (Amendment) Act, 2015 (Pak.),

http://www.na.gov.pk/uploads/documents/1429632152_291.pdf.

³³ *Id.* para 2.

³⁴ *Id.*; *see also* Allah Nawaz v. Station House Officer, Police Station Mahmood Kot Dist., Muzaffargarh, (2013) PLD (Lahore) 243 (Pak.); Sarah Childress, *The Stigma of Reporting a Rape in Pakistan*, PBS FRONTLINE (May 28, 2013), <http://www.pbs.org/wgbh/pages/frontline/afghanistan-pakistan/outlawed-in-pakistan/the-stigma-of-reporting-a-rape-in-pakistan/>.

³⁵ *Id.*