

## PAKISTAN<sup>1</sup>

### OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES

(Updated as at 31 May 2017)

| Family Law Matter   | Description   |   |   |           |   |
|---|---|---|---|-----------|---|
|   | Legislative Framework   | Case Law  | Policy  | Procedure | Practice  |
| <p><b>Equality of spouses in marriage</b></p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncoded? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncoded, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is ap-</i></p> | <p>Article 25 of the Constitution provides for equality before the law and prohibits discrimination on the basis of sex.<sup>2</sup></p> <p>Article 35 of the Constitution obligates the State to protect the marriage, the family, the mother and the child.<sup>3</sup></p> <p>Matters regarding marriage and family relations of the Muslim majority population in Pakistan are mainly governed by the Muslim Family Laws Ordinance (MFLO)<sup>4</sup> and the following codified laws:<sup>5</sup></p> <ul style="list-style-type: none"> <li>• Dissolution of Muslim Marriages Act (DMMA),<sup>6</sup></li> <li>• Child Marriage Restraint Act;<sup>7</sup></li> </ul> | <p>In <i>Resham Bibi vs. Muhammad Shafi</i>,<sup>16</sup> the court defined “obedience” to be submission to reasonable authority. The courts often avoid adjudicating over matters of covert disobedience – expressed generally in the intimate details of the married life of the couple – and leave for such matters to be sorted out personally. Overt disobedience – involving some public action – is more easily deter-</p> | <p>Pakistan has a reservation to Article 29(1) of CEDAW. The Pakistani government also declared that Pakistan’s accession to CEDAW is subject to the provisions of Pakistan’s Constitution.<sup>18</sup></p> <p>The Government of Pakistan in its 2011 report to the CEDAW Committee informed that the National Commission on Status of Women</p> |           | <p>According to the 2016 UNDP Human Development Report, Pakistan ranked 147 on the UNDP Human Development Index and 130 on the UNDP Gender Inequality Index.<sup>20</sup></p> <p>According to Pakistan’s 2012/13 Demographic and Health Survey, about 11% of households in Pakistan are headed by women (Urban: 10%; rural 12%).<sup>21</sup></p> |

<sup>1</sup> This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Pakistan country table, we would also like to thank Darshana Prakasham and Divya Srinivasan from Harvard Law School, and Dr Zubair Abbasi for their inputs in its preparation.

<sup>2</sup> Article 25 of Pakistan’s Constitution (1973), [https://www.constituteproject.org/constitution/Pakistan\\_2015.pdf?lang=en](https://www.constituteproject.org/constitution/Pakistan_2015.pdf?lang=en)

<sup>3</sup> Article 35 of Pakistan’s Constitution (1973), [https://www.constituteproject.org/constitution/Pakistan\\_2015.pdf?lang=en](https://www.constituteproject.org/constitution/Pakistan_2015.pdf?lang=en)

<sup>4</sup> Muslim Family Laws Ordinance (1961), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-cJyX-sg-jjjjjjjjjjjj>

<sup>5</sup> Sharmin Osmary, “Family Laws and Judicial Protection”, <http://www.supremecourt.gov.pk/ijc/articles/21/2.pdf>

<sup>6</sup> Dissolution of Muslim Marriage Act (1939), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-cJaW-sg-jjjjjjjjjjjj>

<sup>7</sup> Child Marriage Restraint Act (1929), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-ap%2Bb-sg-jjjjjjjjjjjj>

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| <p><i>plicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Article 16(1)(c)<br/>Paras. 17-18 GR21<br/>Paras. 54-55 GR29</p> | <ul style="list-style-type: none"> <li>• Dowry and Bridal Gifts (Restriction) Act,<sup>8</sup></li> <li>• Guardians and Wards Act,<sup>9</sup> and</li> <li>• Family Court Act.<sup>10</sup></li> </ul> <p>The majority of Muslims in Pakistan follows the Hanafi School. Consequently, there is a legal presumption that a case falls under the rules of Hanafi jurisprudence (<i>fiqh</i>) unless either party proves to the contrary. A sizeable population in Pakistan follows the Shia Ithna Ashari school and there is a legal presumption that Shia Muslims follow this school.<sup>11</sup></p> <p>The MFLO adopts a moderate interpretation of Muslim family law.<sup>12</sup> Marriage is not specifically defined in the MFLO nor the rights and obligations of the husband</p> | <p>mined and in such instances the wife can lose her right to maintenance.<sup>17</sup></p> | <p>has been activated with the vision of achieving objectives of gender equality in the society.<sup>19</sup></p> | <p>According to a civil society 2012 Shadow Report to the CEDAW Committee:<br/>“Marriage and family as institutions hold a great deal of importance in Pakistan and are often thought to be more important than the concerned individuals. It is considered important for women to not shame the family and not allow a marriage to fail. There are many taboos on divorce and un-married women. Women are</p> |
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<sup>16</sup> [1999] SCMR 2325

<sup>18</sup> United Nations Treaty Collection Website, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en)

<sup>20</sup> UNDP, “Human Development Report 2016”, Table 5, pp. 214-217, [http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf)

<sup>21</sup> Pakistan National Institute of Population Studies and ICF International, “Pakistan Demographic and Health Survey 2012/13”, Table 2.9, p. 21, <http://dhsprogram.com/pubs/pdf/FR290/FR290.pdf>

<sup>8</sup> Dowry and Bridal Gifts (Restriction) Act (1976), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-bpuUY2Rp-sg-jjjjjjjjjjjj>

<sup>9</sup> Guardians and Wards Act (1890), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-cJc%3D-sg-jjjjjjjjjjjj>

<sup>10</sup> Family Court Act (1964), <http://punjablaws.gov.pk/laws/177.html>; see also Rizvi Sah, “Composition, Jurisdiction and Powers of Family Courts in Pakistan”, <http://www.zklawassociates.com/wp-content/uploads/2012/03/Family-Courts-in-Pakistan.pdf>

<sup>11</sup> *Ghulam Shabbir v Mst Bakhat Khatoon* [2009] SCMR 644

<sup>12</sup> Martin Lau, “Sharia and National Law in Pakistan”, in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 415, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

<sup>17</sup> Fayeze Qamar, “Maintenance of Wives in Islam”, *Courting the Law*, 3 March 2016, <http://courtingthelaw.com/2016/03/03/commentary/maintenance-of-wives-in-islam/>

<sup>19</sup> Pakistan State party report, U.N. Doc CEDAW/C/PAK/4 (2011), para. 2, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

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|  | <p>and wife explicitly detailed except for Section 9.</p> <p>Section 9 of the MFLO provides that if any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives may, in addition to seeking any other legal remedy, apply to the Arbitration Council (consisting of Chairman of the Union Council and representatives of each of the parties) to determine the matter. The Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.<sup>13</sup></p> <p>There is expectation that the wife's right to maintenance is subject to the obedience of the wife to her husband. However:<sup>14</sup></p> <ul style="list-style-type: none"> <li>• Muslim jurists have not reached consensus as to the accepted legal definition, interpretation and application of "disobedience". Generally it is accepted that when a wife leaving the home without con-</li> </ul> |  |  |  | <p>recognised primarily in their roles within the marriage and family as wives, mothers, daughters etc. Their identity is derived from their family.<sup>22</sup></p> <p>Based on media reports, the MLFO and other related laws are periodically objected to by the Council of Islamic Ideology ('CII'), a constitutional body that gives advice to parliament on the compatibility of laws with <i>Shari'ah</i>, for provisions that protect the interest of women and children e.g. prohibition of child marriages, procedural requirements with regard to polygamous marriages and prohibition of</p> |
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<sup>13</sup> Section 9 of the Muslim Family Laws Ordinance (1961), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-cJyX-sg-jjjjjjjjjjjj>  
<sup>14</sup> Fayeze Qamar, "Maintenance of Wives in Islam", *Courting the Law*, 3 March 2016, <http://courtingthelaw.com/2016/03/03/commentary/maintenance-of-wives-in-islam/>  
<sup>22</sup> Aurat Foundation, "Pakistan: NGO Alternate Report on CEDAW" *Submission to the CEDAW Committee for the 54<sup>th</sup> Session*, 2012, p. 90, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PAK/INT\\_CEDAW\\_NGO\\_PAK\\_13269\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PAK/INT_CEDAW_NGO_PAK_13269_E.pdf)

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|  | <p>sent or lawful excuse may amount to disobedience; and</p> <ul style="list-style-type: none"> <li>Non Hanafi jurists have argued that a healthy wife who denies her bed to her husband is disobedient and therefore loses her right to maintenance.</li> </ul> <p>Marriage and family relations of Pakistan's non-Muslim minority communities are governed by their own laws and customs.<sup>15</sup></p> |   |   |  | <p>domestic violence. Though the advice of the CII is not legally binding, its statements of usually widely publicised.<sup>23</sup></p>   |
| <p><b>Minimum and equal legal age for marriage</b></p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Does the minimum age of mar-</i></p> | <p>Generally, the minimum legal age for marriages is 16 for females and 18 for males as per Section 2 of the Child Marriage Restraint Act.<sup>24</sup></p> <p>The Act criminalises and penalises the following:<sup>25</sup></p> <ul style="list-style-type: none"> <li>Males over 18 who contract a child marriage;</li> </ul>   | <p>The courts have argued that while the marriage of a female below 16 constitutes an offence, the marriage is valid if the female has attained puberty, as under principles of Muslim laws.<sup>28</sup></p> | <p>The CII have advised that Pakistani laws prohibiting child marriage are 'un-Islamic'. While the advice of the CII is not legally binding, a nationwide bill to increase the minimum age of</p> | <p>A prospective bride must provide her age and National Identification Card number to the marriage registrar, who in turn, must verify the age of the persons getting married.<sup>35</sup></p> | <p>According to UNICEF's State of the World's Children 2016 report, 21% of women aged 20- 24 in Pakistan were first married by 18 and 3% were first married by 15.<sup>36</sup></p> <p>According to UN</p> |

<sup>15</sup> For instance Christian Marriage Act (1872), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-a54%3D-sg-jjjjjjjjjjjj>; Divorce Act (1869), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-a5Y%3D-sg-jjjjjjjjjjjj>; Parsi Marriage and Divorce Act (1936), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-b56a-sg-jjjjjjjjjjjj>

<sup>23</sup> Editorial, "CII: Of What Use?", *Dawn*, 28 May 2016, <http://www.dawn.com/news/1261054>; Siobhan Fenton, "Anti-domestic violence law to protect women is un-Islamic, Pakistani advisory group rules", *The Independent*, 4 March 2016, <http://www.independent.co.uk/news/world/asia/bill-protecting-women-against-domestic-violence-is-un-islamic-pakistani-advisory-group-rules-a6911161.html>; Ishaan Tharoor, "Bill banning child marriage fails in Pakistan after it's deemed 'un-Islamic'", *The Washington Post*, 15 January 2016, [https://www.washingtonpost.com/news/worldviews/wp/2016/01/15/bill-banning-child-marriage-fails-in-pakistan-after-its-deemed-un-islamic/?utm\\_term=.798a3a040782](https://www.washingtonpost.com/news/worldviews/wp/2016/01/15/bill-banning-child-marriage-fails-in-pakistan-after-its-deemed-un-islamic/?utm_term=.798a3a040782); Waseem Ahmad Shah, "Fresh controversy over polygamy, marriage dissolution", *Dawn*, 27 October 2014, <https://www.dawn.com/news/1140685>

<sup>24</sup> Section 2 of the Child Marriage Restraint Act (1929), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-ap%2Bb-sg-jjjjjjjjjjjj>

<sup>25</sup> Sections 4-6 of the Child Marriage Restraint Act (1929), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-ap%2Bb-sg-jjjjjjjjjjjj>

<sup>28</sup> Women Living Under Muslim Laws, "Knowing Our Rights: Women, Family Laws and Customs in the Muslim World", (Nottingham, UK: The Russell Press, Third Edition,

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| <p><i>riage match the age of majority? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Article 16(2)<br/>Paras. 36-39 GR21</p> | <ul style="list-style-type: none"> <li>Whoever performs, conducts or directs any child marriage;</li> <li>Parents or guardians who do any act to promote a child marriage, permit it to be solemnised or negligently fail to prevent it from being solemnised.</li> </ul> <p>In February 2017, Pakistan toughened penalties for those guilty of being involved in child marriages. Under the new law, offenders will face a minimum of five years in prison and may serve up to 10 years. They also face a fine of up to one million rupees (9500 US dollars). Before the change in law, offenders faced a minimum of three years in prison and a fine of 500,000 rupees.<sup>26</sup></p> <p>The minimum legal age for marriage in the Sindh province is 18 years for both females and males as per Section 2 of the Sindh Child Marriages Act. The</p> | <p><i>(Behram Khan v Mst. Akhtar Begum;</i><sup>29</sup> <i>Allah Diwaya v Mst. Kammon Mai;</i><sup>30</sup> <i>Bakhshi v Bashir Ahmed;</i><sup>31</sup> <i>Zafar Khan v Muhammad Ashraf Bhatti and another.</i><sup>32</sup></p> | <p>marriage to 18 was withdrawn by lawmakers in 2016 following the Council's rulings.<sup>33</sup></p> <p>Pakistan is a part of the South Asian Initiative to End Violence Against Children (SAIEVAC) which has a regional action plan to end child marriage to be implemented between 2015 and 2018.<sup>34</sup></p> |  | <p>World Marriage Data 2015, the average of first marriage among Pakistani females was 23.1 in 2007 and 2013 to 23.5 in 2011 and among males, it was 26.9 in 2007.<sup>37</sup></p> <p>According to civil society and media reports.<sup>38</sup></p> <ul style="list-style-type: none"> <li>Policy and lawmakers struggle to reform laws relating to child marriages because of the CII declaration that the prohibition of child marriages and the provision for harsher penalties are 'un-Islamic';</li> </ul> |
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<sup>35</sup> 2006), p. 71, [http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor\\_2006\\_en.pdf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor_2006_en.pdf)  
Bilquees Bano, "Factors Reinforcing Girl Child Marriages in Pakistan", *Save the Children*, 2015, <https://everyone.savethechildren.net/articles/factors-reinforcing-girl-child-marriages-pakistan>; Immigration and Refugee Board of Canada, "Pakistan: Information on marriage registration, including mixed marriages", 2013, <https://www.justice.gov/sites/default/files/eoir/legacy/2014/03/04/PAK104253.E.pdf>

<sup>36</sup> UNICEF, "The State of the World's Children 2016", Table 9, pp. 150-153, [https://www.unicef.org/publications/files/UNICEF\\_SOWC\\_2016.pdf](https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf)

<sup>26</sup> Saleem Shaikh and Sughra Tunio, "Pakistan seeks to curb child, forced marriages with harsher punishment", *Reuters*, 7 February 2017, <http://www.reuters.com/article/us-pakistan-child-marriage-idUSKBN15M274>

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|   | Act criminalises and penalises acts relating to child marriages. <sup>27</sup>  |  |  |  | <ul style="list-style-type: none"> <li>Laws punishing individuals involved in child marriages are frequently not effectively implemented.</li> </ul>                                  |
| <p><b>Women's consent to marriage</b></p> <p><i>Is a marriage valid without the woman's consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that</i></p> | <p>Regardless of their age, both prospective brides and grooms must consent to the marriage.<sup>39</sup> Consequently; <i>ijbar</i> marriages are prohibited.</p> <p>The Penal Code criminalises and penalises forced marriages.<sup>40</sup></p> <p>The mandatory registration of</p> | <p>The Pakistani courts have held in numerous cases that marriage without the consent of the spouses is void e.g. <i>Mst. Humera Mehmood v. The State and Ors</i><sup>42</sup> and</p> | <p>The Government of Pakistan in its 2011 report to the CEDAW Committee:<sup>49</sup></p> <ul style="list-style-type: none"> <li>Asserts that men and women have the legal right to freely choose</li> </ul> | <p>There is a standardised marriage (<i>nikah nama</i>). It requires the bride's signature but allows a proxy to sign for the groom. In addition to the standard detail requirements (e.g.</p> | <p>According to the 2016 statistics released by the UK Forced Marriage Unit (FMU), 612 (43%) of cases involving a victim who was either at risk of being or had already been in a</p> |

<sup>29</sup> PLD 1952 Lahore 548  
<sup>30</sup> PLD 1957 Lahore 651  
<sup>31</sup> PLD 1970 SC 323  
<sup>32</sup> PLD 1975 Lahore 234  
<sup>33</sup> Girls Not Brides, "Pakistan", *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/pakistan/>; Editorial, "CII: Of What Use?", *Dawn*, 28 May 2016, <http://www.dawn.com/news/1261054>; Ishaan Tharoor, "Bill banning child marriage fails in Pakistan after it's deemed 'un-Islamic'", *The Washington Post*, 15 January 2016, [https://www.washingtonpost.com/news/worldviews/wp/2016/01/15/bill-banning-child-marriage-fails-in-pakistan-after-its-deemed-un-islamic/?utm\\_term=.798a3a040782](https://www.washingtonpost.com/news/worldviews/wp/2016/01/15/bill-banning-child-marriage-fails-in-pakistan-after-its-deemed-un-islamic/?utm_term=.798a3a040782)  
<sup>34</sup> SAIEVAC, "Regional Action Plan to End Child Marriage in South Asia (2015-2018)", [http://www.saievac.org/download/Thematic%20Area%20Resources/Child%20Marriage/RAP\\_Child\\_Marriage.pdf](http://www.saievac.org/download/Thematic%20Area%20Resources/Child%20Marriage/RAP_Child_Marriage.pdf)  
<sup>37</sup> United Nations Population Division, "World Marriage Data 2015", <https://esa.un.org/ffps/Index.html#/maritalStatusData>  
<sup>38</sup> Aurat Foundation, "Pakistan: NGO Alternate Report on CEDAW" *Submission to the CEDAW Committee for the 54<sup>th</sup> Session*, 2012, p. 90, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PAK/INT\\_CEDAW\\_NGO\\_PAK\\_13269\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PAK/INT_CEDAW_NGO_PAK_13269_E.pdf); Ishaan Tharoor, "Bill banning child marriage fails in Pakistan after it's deemed 'un-Islamic'", *The Washington Post*, 15 January 2016, [https://www.washingtonpost.com/news/worldviews/wp/2016/01/15/bill-banning-child-marriage-fails-in-pakistan-after-its-deemed-un-islamic/?utm\\_term=.798a3a040782](https://www.washingtonpost.com/news/worldviews/wp/2016/01/15/bill-banning-child-marriage-fails-in-pakistan-after-its-deemed-un-islamic/?utm_term=.798a3a040782)  
<sup>27</sup> Sections 2-5 of the Sindh Child Marriages Restraint Act (2014), <http://rtepakistan.org/wp-content/uploads/2014/11/The-Sindh-Child-Marriages-Restraint-Act-2013.pdf>; Hafeez Tunio, "Sindh Assembly passes bill declaring marriage below 18 punishable by law", *The Express Tribune*, 28 April 2014, <https://tribune.com.pk/story/701321/sindh-assembly-passes-bill-declaring-marriage-below-18-punishable-by-law/>  
<sup>39</sup> Pakistan State party report, U.N. Doc CEDAW/C/PAK/4 (2011), para. 478, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>  
<sup>40</sup> Sections 310A, 365B, 498B, of the Penal Code (1860), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apk%3D-sg-jjjjjjjjjjjj>

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| <p><i>ought to be highlighted on the basis that it advances women's rights or otherwise? Is it mandatory to register a marriage?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Article 16(1)(b)<br/>Paras. 15-16 GR21<br/>Paras. 25-26, 33-34 GR29</p> | <p>marriages is provided under Section 5 of the MFLO.<sup>41</sup></p> | <p><i>Hafiz Abdul Waheed v. Miss Asma Jehangir and Anr.</i><sup>43</sup></p> <p>In <i>Issa Khan v. Mst Razma</i>,<sup>44</sup> the Supreme Court held that an agreement of engagement for marriage between the elders, without the consent of the parties, was not binding.</p> <p>In <i>Muhammad Aslam v The State</i>,<sup>45</sup> the Federal Shariat Court held that consent of marriage obtained through fear is invalid.</p> <p>The Peshawar High Court held that giving a woman in marriage as a part of a settlement of a feud is illegal and the resulting</p> | <p>their spouse before marriage and a marriage is void which does not have consent according to the law;</p> <ul style="list-style-type: none"> <li>Acknowledged that forced marriages do sometimes take place, as often the elders of the family arrange the weddings.</li> </ul> <p>In addition, the Pakistani government explained that the MFLO requires the registration of all marriages solemnised under Muslim law. There is no time bar for registration and non-registration does not invalidate a</p> | <p>names of bride and groom, age of bride, name of witnesses, amount of dower), the standard marriage contract also includes questions on the following:<sup>51</sup></p> <ul style="list-style-type: none"> <li>Whether any portion of the marriage dower was paid at the time of marriage and if so how much;</li> <li>Whether any property was given in lieu of the whole or any portion of the dower together with specification and valuation;</li> <li>Whether the husband has delegated the</li> </ul> | <p>forced marriage that the Unit handled originated from Pakistan.<sup>52</sup></p> |
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<sup>42</sup> PLD 1999 Lah. 494

<sup>49</sup> Pakistan State party report, U.N. Doc CEDAW/C/PAK/4 (2011), para. 478, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>41</sup> Section 5 of the Muslim Family Laws Ordinance (1961), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-cJyX-sg-iiijiiiiiiiiii>

<sup>43</sup> PLD 1997 Lah. 301, as cited in Muslim Institute, "Family laws in Muslim majority and minority contexts", *Muslim Marriage Contract*, <http://muslimmarriagecontract.org/laws.html>

<sup>44</sup> [1991] SCMR 2454

<sup>45</sup> [2012] PCrLJ 11 (FSC)

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|  |  | <p>marriage should be considered void and illegal.<sup>46</sup></p> <p>In <i>Allah Rakha and Anr v. Federation of Pakistan and Ors</i>,<sup>47</sup> the Federal <i>Shariat</i> Court upheld registration of marriages as Islamic.<sup>48</sup></p> | <p>marriage. Non-registration can create problems for women in the event of being widowed or divorced, when they are establishing their rights or proving that they are legitimate widows or divorcees.<sup>50</sup></p> | <p>power of divorce to the wife, if so, under what conditions;</p> <ul style="list-style-type: none"> <li>• Whether the husband's right of divorce is in any way curtailed; and</li> <li>• Whether the groom has any existing wife and if so, whether he has secured the permission of the Arbitration Council to contract another.</li> </ul> |  |
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<sup>51</sup> See for instance Form II of the West Pakistan Rules Under Muslim Family Ordinance (1961), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2FwbZo%3D-sg-jjjjjjjjjjjj>; Immigration and Refugee Board of Canada, "Pakistan: Information on marriage registration, including mixed marriages", *Request for Information*, 14 January 2013, <https://www.justice.gov/sites/default/files/eoir/legacy/2014/03/04/PAK104253.E.pdf>; Women Living Under Muslim Laws, "Knowing Our Rights: Women, Family Laws and Customs in the Muslim World", (Nottingham, UK: The Russell Press, Third Edition, 2006), p. 78, [http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor\\_2006\\_en.pdf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor_2006_en.pdf)

<sup>52</sup> UK Home Office and Foreign & Commonwealth Office, "Forced Marriage Unit Statistics 2016", p. 3, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/597869/Forced\\_Marriage\\_Unit\\_statistics-2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/597869/Forced_Marriage_Unit_statistics-2016.pdf)

<sup>46</sup> Women Living Under Muslim Laws, "Knowing Our Rights: Women, Family Laws and Customs in the Muslim World", (Nottingham, UK: The Russell Press, Third Edition, 2006), p. 79, [http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor\\_2006\\_en.pdf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor_2006_en.pdf)

<sup>47</sup> PLD 2000 FSC 1

<sup>48</sup> Muslim Institute, "Family laws in Muslim majority and minority contexts", *Muslim Marriage Contracts*, <http://muslimmarriagecontract.org/laws.html>

<sup>50</sup> Pakistan State party report, U.N. Doc CEDAW/C/PAK/4 (2011), para. 479, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>



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| <p><b>Women’s capacity to enter into marriage</b></p> <p><i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Articles 16(1)(a), 16(1)(b)<br/>Paras. 15-16 GR21<br/>Para. 34 GR29</p> | <p>Based on the rules of Hanafi <i>fiqh</i>, an adult prospective bride does not require the consent of a marital guardian (<i>wali</i>) to enter into marriage.<sup>53</sup></p> <p>Both spouses may stipulate any condition in their marriage contract.<sup>54</sup></p> | <p>The Pakistani higher courts have consistently ruled that adult Muslim women have a right to choice in marriage e.g. <i>Mst. Humera Mehmood v. The State and Ors.</i><sup>55</sup></p> <p>In <i>Hafiz Abdul Waheed v. Asma Jehangir</i>,<sup>56</sup> the Supreme Court held that the consent of a guardian is not required for a marriage of an adult Muslim female.</p> <p>In <i>Gul Khatoon v. Haji Muhammad Aslam</i>,<sup>57</sup> the Court held that the <i>wali’s</i> lack of consent does</p> | <p>The Government of Pakistan in its 2011 report to the CEDAW Committee explained that in accordance with Muslim law, marriage is a contract in which every adult Muslim of sound mind can enter. In Pakistan both women and men have the right to enter into marriage.<sup>58</sup></p> | <p>Column 17 of the standard marriage contract provides a space for the parties to stipulate any special conditions of the marriage contract; Column 20 enquires whether any separate agreement regarding dower, maintenance, etc. was drawn up between the parties and if so what are the contents in brief.<sup>59</sup></p> | <p>According to a civil society report, sometimes, families who oppose their children’s marriage choices use various penal provisions in the Zina (Enforcement of Hudood) Ordinance 1979 to obstruct them. In most cases, parents file a case of kidnapping against the husband and make the wife a witness against the man she married out of choice.<sup>60</sup></p> |
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<sup>53</sup> Tahseen Butt & Associates, “Laws of Pakistan Relating to Marriage, Divorce, Custody and Maintenance”, [http://www.tahseenbutt.com/divorce\\_lawyers\\_pakistan.html](http://www.tahseenbutt.com/divorce_lawyers_pakistan.html)

<sup>54</sup> See for instance Form II of the West Pakistan Muslim Personal Law (Application Act) (1962), [http://kpcode.kp.gov.pk/uploads/The\\_West\\_Pakistan\\_Muslim\\_Personal\\_Law.pdf](http://kpcode.kp.gov.pk/uploads/The_West_Pakistan_Muslim_Personal_Law.pdf)

<sup>55</sup> PLD 1999 Lahore 494, as cited in Muslim Institute, “Family laws in Muslim majority and minority contexts”, *Muslim Marriage Contracts*, <http://muslimmarriagecontract.org/laws.html>

<sup>56</sup> PLD 2004 SC 219  
<sup>57</sup> [2015] PCrLJ 193 (Quetta)

<sup>58</sup> Pakistan State party report, U.N. Doc CEDAW/C/PAK/4 (2011), para. 477, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>  
<sup>59</sup> See for instance Form II of the West Pakistan Rules Under Muslim Family Ordinance (1961), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2FwbZo%3D-sg-jjjjjjjjjjjj>

<sup>60</sup> Women Living Under Muslim Laws, “Knowing Our Rights: Women, Family Laws and Customs in the Muslim World”, (Nottingham, UK: The Russell Press, Third Edition, 2006), p. 75, [http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor\\_2006\\_en.pdf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor_2006_en.pdf)



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|  | <p>Council to record its reasons for its decision regarding the proposed polygamous marriage;</p> <ul style="list-style-type: none"> <li>• Penalises any man who contracts a polygamous marriage without the permission of the Arbitration Council.</li> </ul> <p>Section 495 of the Penal Code criminalises the concealment of a previous marriage. The penalty is imprisonment up to ten years and/or a fine.<sup>62</sup></p> <p>The DMMA permits a wife to seek dissolution of the marriage if her husband has taken an additional wife in contravention with the provisions of the MFLO.<sup>63</sup></p> |  |  |  | <p>brackets;</p> <ul style="list-style-type: none"> <li>• Rural women were more likely to report having co-wives than urban women (4% versus 3%);</li> <li>• Women living in poorer households were more likely than women living in richer households to have co-wives. For instance, 5% of women living in households in the lowest wealth quintile reported having co-wives, as compared with 2% of women living in households in the highest quintile; and</li> <li>• Lower educated women were slightly more likely to report having co-wives than higher educated</li> </ul> |
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<sup>62</sup> Section 495 of the Penal Code (1860), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apk%3D-sg-jjjjjjjjjjjj>

<sup>63</sup> Section 2(iia) of the Dissolution of Muslim Marriage Act (1939), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-cJaW-sg-jjjjjjjjjjjj>

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|  |  |  |  | <p>women. For instance, 4% of married women with no education reported having co-wives, as compared with 3% of women who has attained secondary or higher education.</p> <p>According to information gathered by the Immigration and Refugee Board of Canada and media reports, the Arbitration Council is not effective as a procedural check against polygamous marriages that do not meet the injunctions of the Qur'an for reasons that include: (i) lack of acceptance of the law by men; (ii) lack of awareness of the law by women; (iii) As such, many mend do not seek the permission of the Arbitration Council and instances where they do, the</p> |
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| <p><i>register a divorce?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Article 16(1)(c)<br/>Paras. 17-18 GR21<br/>Paras. 34, 39-40 GR29</p> | <p>wife may sign a Mutual Divorce Deed;<sup>71</sup></p> <ul style="list-style-type: none"> <li>• <i>Redemptive divorce (khul’)</i>: A wife can apply to dissolve the marriage by <i>khul’</i> by filing suit in the Family Court. This can be done without the consent of the husband if she foregoes her financial rights;<sup>72</sup></li> <li>• <i>Divorce by way of judicial decree</i>: Valid grounds for seeking divorce by way of judicial decree include a husband’s: (i) prolonged absences for more than four years; (ii) failure or inability to provide maintenance for more than two years; (iii) taking of an additional wife in contravention with the provisions of the MFLO; (iv) imprisonment for more than</li> </ul> | <p>could be considered as consideration for <i>khul’</i>: <i>Abdul Rashid v Shahida Parveen</i>.<sup>80</sup></p> |  |  | <p>stands. However, a woman has to prove a ground for divorce in court if her husband does not consent to a divorce or she has not been delated the right to divorce. With regard to the later, often times, families and elders cross out the clause delegating the right of divorce in the standard marriage contract at the time of marriage saying that it is a bad omen to talk about divorce. Redemptive divorce (<i>khul’</i>) is available to the wife, but she may not necessarily</p> |
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<sup>75</sup> Information obtained from Pakistani advocate, February 2017; Zariya Mushtaq, “The Impact of Islamisation of Laws on Muslim Family Law, especially the Khula Law, in Pakistan”, *Courting the Law*, 31 July 2015, <http://courtingthelaw.com/2015/07/31/commentary/the-impact-of-islamisation-of-laws-on-muslim-personal-law-especially-the-khula-law-in-pakistan/>

<sup>76</sup> PLD 1959 Lah 566

<sup>77</sup> PLD 1967 SC 97

<sup>78</sup> PLD 2014 FSC 43

<sup>79</sup> [2014] CLC 1270 (Lah)

<sup>81</sup> See for instance Form II of the West Pakistan Rules Under Muslim Family Ordinance (1961), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2FwbZo%3D-sg-jjjjjjjjjjjj>

<sup>71</sup> Section 8 of the Muslim Family Laws Ordinance (1961), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-cJyX-sg-jjjjjjjjjjjj>; Ali Shaik, “Law of Divorce & Khula in Pakistan”, p. 3, [https://www.ma-law.org.pk/pdf/Law%20of%20Divorce%20in%20Pakistan%20\(Article\).pdf](https://www.ma-law.org.pk/pdf/Law%20of%20Divorce%20in%20Pakistan%20(Article).pdf)

<sup>72</sup> Ali Shaik, “Law of Divorce & Khula in Pakistan”, p. 4, [https://www.ma-law.org.pk/pdf/Law%20of%20Divorce%20in%20Pakistan%20\(Article\).pdf](https://www.ma-law.org.pk/pdf/Law%20of%20Divorce%20in%20Pakistan%20(Article).pdf); Gul & Gul Law Form, “Pakistan Divorce Law (FAQ)”, <https://gmlaw.wordpress.com/pakistan-divorce-law-faq/>

<sup>80</sup> [2013] YLR 2616 (Pesh)

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|   | <p>seven years; (v) failure to perform, without reasonable cause, his marital obligations for a period of three years; (vi) impotence at the time of marriage and thereafter; (vii) severe physical and mental illness.<sup>73</sup></p> <p>In addition, the wife may seek divorce on the basis that her husband treats her with cruelty, including: (i) he habitually assaults her or makes her life miserable; (ii) associates with women of evil repute or leads and infamous life; (iii) attempts to force her to lead an immoral life; (iv) disposes of her property or prevents her exercising her legal rights over it; or (v) obstructs her in the observance of her religion profession or practice.<sup>74</sup></p> |   |  |   | <p>be able to compensate her husband for such a divorce.<sup>82</sup></p>            |
| <p><b>Women's financial rights after divorce</b></p> <p><i>Is there a legal concept of matri-</i></p> | <p>Upon divorce a woman may be entitled to financial maintenance during the waiting period after the divorce (<i>iddah</i>).<sup>83</sup></p>  | <p>In <i>Muhammad Muinuddin v Jamal Fatima</i>,<sup>84</sup> the court recognised the</p> | <p>The Law and Justice Commission in a 2009 report proposed that a new</p> | <p>The couple may agree on the division of assets acquired during the</p> | <p>According to a civil society report, women often find it a challenge claiming</p> |

<sup>73</sup> Section 2 of the Dissolution of Muslim Marriage Act (1939), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-cJaW-sg-jjjjjjjjjjjjjj>

<sup>74</sup> Section 2(viii) of the Dissolution of Muslim Marriage Act (1939), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-cJaW-sg-jjjjjjjjjjjjjj>

<sup>82</sup> Aurat Foundation, "Pakistan: NGO Alternate Report on CEDAW" *Submission to the CEDAW Committee for the 54<sup>th</sup> Session*, 2012, pp. 91-92, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PAK/INT\\_CEDAW\\_NGO\\_PAK\\_13269\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PAK/INT_CEDAW_NGO_PAK_13269_E.pdf)

<sup>83</sup> Law and Justice Commission of Pakistan, "Post-Divorce *Mata'a* for Wife", *Report No. 103*, 2009, p. 7, [http://www.ljcp.gov.pk/Menu%20Items/Reports\\_of\\_LJCP/11/103.pdf](http://www.ljcp.gov.pk/Menu%20Items/Reports_of_LJCP/11/103.pdf); Fayez Qamar, "Maintenance of Wives in Islam", *Courting the Law*, 3 March 2016, <http://courtingthelaw.com/2016/03/03/commentary/maintenance-of-wives-in-islam/>

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| <p><i>monial assets? Is there equal division of marital property upon dissolution of the marriage? Is the woman's role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a consolatory gift or compensation upon divorce (mut'ah)? Who is responsible for the financial maintenance of children following a divorce? Can the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Articles 16(1)(c), 16(1)(h)<br/>Paras. 30-33 GR21<br/>Paras. 34-35, 43-48 GR29</p> | <p>There is no legal concept of matrimonial assets.</p> | <p>wife's right to lifelong maintenance for a divorced wife that was incorporated as a condition in a marriage contract.</p> <p>In <i>Shazia v. Muhammad Nasir</i>,<sup>85</sup> the court held that maintenance during marriage is not a gift but a right of a wife.</p> <p>In <i>Ghazala Sadia v. Muhammad Sajjad</i>,<sup>86</sup> the court held that <i>khul'</i> divorce does not deprive a wife of her right to be maintained during <i>iddah</i> period.</p> | <p>section be added in the MFLO to provide for a wife's right to a consolatory gift or compensation (<i>mu'tah</i>) at the time of divorce by a husband. The Commission specifically proposed the following amendments to the MFLO:<sup>87</sup></p> <ul style="list-style-type: none"> <li>• Section 2(bb): "Mata'a means a fair provision in kindness by the husband according to his means and includes anything in cash or kind either movable or immovable.";</li> <li>• Section 9A:</li> </ul> | <p>marriage in the marriage contract. Column 20 of the marriage contract enquires whether any document was drawn up at the time of marriage relating to financial and property matters (e.g. dower, maintenance etc.) and if so the contents in brief.<sup>89</sup></p> | <p>their rights to any marital property that they may be entitled to because civil cases in these regard are extremely lengthy and the expenses can be prohibitive.<sup>90</sup></p> |
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<sup>84</sup> [1921] 43 All. 650  
<sup>85</sup> [2014] YLR 1563 (Pesh)  
<sup>86</sup> [2012] YLR 2841 (Lahore)  
<sup>87</sup> Law and Justice Commission of Pakistan, "Post-Divorce *Mata'a* for Wife", *Report No. 103*, 2009, pp. 18-19, [http://www.ljcp.gov.pk/Menu%20Items/Reports\\_of\\_LJCP/11/103.pdf](http://www.ljcp.gov.pk/Menu%20Items/Reports_of_LJCP/11/103.pdf)  
<sup>89</sup> Rural Development Institute, "Women's Inheritance Rights to Land and Property in South Asia: A Study of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka", 2009, p. 20, [http://www.landesia.org/wp-content/uploads/WJF-Womens-Inheritance-Six-South-Asian-Countries.FINAL\\_12-15-09.pdf](http://www.landesia.org/wp-content/uploads/WJF-Womens-Inheritance-Six-South-Asian-Countries.FINAL_12-15-09.pdf); See for instance Form II of the West Pakistan Rules Under Muslim Family Ordinance (1961), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2FwbZo%3D-sg-jjjjjjjjjjjj>  
<sup>90</sup> Women Living Under Muslim Laws, "Knowing Our Rights: Women, Family Laws and Customs in the Muslim World", (Nottingham, UK: The Russell Press, Third Edition, 2006), p. 327, [http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowing%20our%20rights/kor\\_2006\\_en.pdf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowing%20our%20rights/kor_2006_en.pdf)



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|   |   |  | <p>“Where the marriage is dissolved under Section 7 or Section 8, other than Khula or Mubbarat, the wife shall be entitled to mata’a by the husband”.</p> <p>This proposal has not yet been incorporated into the MFLO.<sup>88</sup></p> |  |   |
| <p><b>Custody of Children</b></p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon re-marriage or if she is deemed disobedient or when the child reaches a designated age when custo-</i></p> | <p>Child custodial rights between women and men are equal. The custody of children is decided by the courts based on the welfare of the child.<sup>91</sup></p> | <p>Numerous cases have reiterated that the principle of the welfare of the child overrides any other consideration in cases involving child custody. For instance, in the case of <i>Mst Shazia Bano v Government of Sindh</i> through</p> |  |  | <p>According to civil society reports and information on the ground:<sup>94</sup></p> <ul style="list-style-type: none"> <li>• The concept of joint custody is underdeveloped in Muslim law. As such, it is not often viewed or used as an</li> </ul> |

<sup>88</sup> Information obtained from Pakistani advocate, February 2017

<sup>91</sup> Section 17 of the Guardians and Wards Act (1890), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-cJc%3D-sg-jjjjjjjjjjjj>; Fahad Ahmad Siddiqi, “Child Custody Law in Pakistan”, *Courting the Law*, 9 November 2015, <http://courtingthelaw.com/2015/11/09/commentary/child-custody-law-in-pakistan/>

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| <p><i>dy goes to father?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Articles 16(1)(d), 16(1)(f)<br/>Paras. 19-20 GR21</p>  |   | <p><i>Secretary Home Department,</i><sup>92</sup> the Karachi High Court stated that jurisdictional defects and mere technicalities cannot be fatal to the court awarding custody where the welfare of the child demands so.<sup>93</sup></p> |  |  | <p>option;</p> <ul style="list-style-type: none"> <li>On average, a family/custody case in the guardian courts can take three to five years till resolution.</li> </ul> |
| <p><b>Guardianship of Children</b></p> <p><i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Articles 16(1)(d), 16(1)(f)<br/>Paras. 19-20 GR21</p> | <p>A father is considered the natural guardian of the child.<sup>95</sup></p> |   |  |  |   |

<sup>94</sup> Aurat Foundation, "Pakistan: NGO Alternate Report on CEDAW" *Submission to the CEDAW Committee for the 54<sup>th</sup> Session*, 2012, p. 92, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PAK/INT\\_CEDAW\\_NGO\\_PAK\\_13269\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PAK/INT_CEDAW_NGO_PAK_13269_E.pdf); Fahad Ahmad Siddiqi, "Child Custody Law in Pakistan", *Courting the Law*, 9 November 2015, <http://courtingthelaw.com/2015/11/09/commentary/child-custody-law-in-pakistan/>

<sup>92</sup> [2014] YLD 152

<sup>93</sup> Shabnam Ishaque and Muhammad Mustafa Khan, "The Best Interests of the Child: A Prevailing Consideration within Islamic Principles and a Governing Principle in Child Custody Cases in Pakistan", (International Journal of Law, Policy and the Family, 29, 2015), pp. 88-89, <http://www.rwi.uzh.ch/dam/jcr:fffff-c577-dc11-0000-00006f1137fc/IshaqueTheBestInterestoftheChildChildCustody.pdf>

<sup>95</sup> Section 19(b) of the Guardians and Wards Act (1890), <http://pakistancode.gov.pk/english/UY2FqJw1-apaUY2Fqa-cJc%3D-sg-jjjjjjjjjjjj>; Pakistan State party report, U.N. Doc CEDAW/C/PAK/4 (2011), para. 44, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; Shabnam Ishaque and Muhammad Mustafa Khan, "The Best Interests of the Child: A Prevailing Consideration within Islamic Principles and a Governing Principle in Child Custody Cases in Pakistan", (International Journal of Law, Policy and the Family, 29, 2015), p. 88, <http://www.rwi.uzh.ch/dam/jcr:fffff-c577-dc11-0000-00006f1137fc/IshaqueTheBestInterestoftheChildChildCustody.pdf>; Aurat Foundation, "Pakistan: NGO Alternate Report on CEDAW" *Submission to the CEDAW Committee for the 54<sup>th</sup> Session*, 2012, p. 92, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PAK/INT\\_CEDAW\\_NGO\\_PAK\\_13269\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PAK/INT_CEDAW_NGO_PAK_13269_E.pdf)

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| <p><b>Family Planning</b></p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilisation in law or in practice?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Articles 16(1)(e), 12<br/>Paras. 21-23 GR21</p> | <p>Abortion is strictly prohibited unless it is conducted to save a mother's life or preserve her health.<sup>96</sup></p> |  |  |  | <p>According to World Bank data, the total fertility rate decreased from 6.6 children per woman in 1960 to 3.5 in 2015.<sup>97</sup></p> <p>According to Pakistan's 2012/13 Demographic and Health Survey:<sup>98</sup></p> <ul style="list-style-type: none"> <li>• The median birth interval in Pakistan is 28 months, with 37% of children being born less than 24 months after their siblings;</li> <li>• 20% of married women have an unmet need for family planning services, with 9% having an unmet need for spacing and 11% an unmet need for</li> </ul> |
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<sup>96</sup> Section 338 of the Penal Code (1860), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apk%3D-sg-jjjjjjjjjjjj>; Centre for Reproductive Rights, "The World's Abortion Laws", 2014, <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/AbortionMap2014.PDF>

<sup>97</sup> World Bank, "Fertility rates, total (births per woman)", <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>

<sup>98</sup> Pakistan National Institute of Population Studies and ICF International, "Pakistan Demographic and Health Survey 2012/13", Tables 5.8, 7.1, 7.15, 7.2, pp. 75, 93, 94, 106, <http://dhsprogram.com/pubs/pdf/FR290/FR290.pdf>

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|  |   |  |  |  | <p>limiting of children;</p> <ul style="list-style-type: none"> <li>• 55% of married women are using a method of contraception, with 26% of women using a modern method; and</li> <li>• Knowledge of at least one method of family planning is high (99%) among married women in Pakistan.</li> </ul> |
| <p><b>Personal rights of spouses</b></p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> | <p>Article 9 of the Constitution prohibits the deprivation of a person's liberty.<sup>99</sup></p> <p>Article 15 of the Constitution guarantees every Pakistani the right to freedom of movement and choice of residence within Pakistan.<sup>100</sup></p> <p>Article 18 of the Constitution, all citizens shall have the right to enter into any lawful profession or occupation.<sup>101</sup></p> |  |  |  | <p>According to Pakistan's 2012/13 Demographic and Health Survey:<sup>103</sup></p> <ul style="list-style-type: none"> <li>• 29% of married Pakistani women were employed at the time of the survey;</li> <li>• 52% of married women earning</li> </ul>   |

<sup>99</sup> Article 9 of Pakistan's Constitution (1973), [https://www.constituteproject.org/constitution/Pakistan\\_2015.pdf?lang=en](https://www.constituteproject.org/constitution/Pakistan_2015.pdf?lang=en)  
<sup>100</sup> Article 15 of Pakistan's Constitution (1973), [https://www.constituteproject.org/constitution/Pakistan\\_2015.pdf?lang=en](https://www.constituteproject.org/constitution/Pakistan_2015.pdf?lang=en)  
<sup>101</sup> Article 18 of Pakistan's Constitution (1973), [https://www.constituteproject.org/constitution/Pakistan\\_2015.pdf?lang=en](https://www.constituteproject.org/constitution/Pakistan_2015.pdf?lang=en)

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| <p><u>Applicable CEDAW Provision</u><br/>Article 16(1)(g)<br/>Para. 24 GR21<br/>Para. 34 GR29</p> | <p>Article 34 of the Constitution, obligates the State to take steps to ensure that women can fully participate in all spheres of national life.<sup>102</sup></p> |  |  |  | <p>cash made independent decisions on how to spend their earnings;</p> <ul style="list-style-type: none"> <li>• 89% of married women aged 15-49 do not own a house while 96% do not own land; among women who do own assets, 2% of women own a house and land by themselves;</li> <li>• 62% of married women participate either alone or jointly with their husband in making decisions pertaining to their own healthcare, major household purchases, and visits to their family or relatives; and</li> <li>• 43% of married women accept at</li> </ul> |
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<sup>103</sup> Pakistan National institute of Population Studies and ICF International, "Pakistan Demographic and Health Survey 2012/13", Tables 13.1, 13.2.1, 13.4.1, 13.6.1, pp. 200-201, 205, 208, <http://dhsprogram.com/pubs/pdf/FR290/FR290.pdf>

<sup>102</sup> Article 34 of Pakistan's Constitution (1973), [https://www.constituteproject.org/constitution/Pakistan\\_2015.pdf?lang=en](https://www.constituteproject.org/constitution/Pakistan_2015.pdf?lang=en)

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|  |  |  |  |  | <p>least one reason as a justification for wife beating. Women are most likely to agree that if a wife argues with the husband, it justifies wife beating (34%).</p> <p>According to World Bank data, female labour force participation increased from 13% in 1990 to 25% in 2016.<sup>104</sup> During the same period, male labour force participation fell from 85% to 82%.<sup>105</sup></p> <p>According to the 2016 UNDP Human Development Report:<sup>106</sup></p> <ul style="list-style-type: none"> <li>• 27% of women over 25 have at least some secondary education as compared to 47% of men of the same age</li> </ul> |
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<sup>104</sup> World Bank, "Labour force participation rate, female (% of female population ages 15+) (modelled ILO estimate)", <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>

<sup>105</sup> World Bank, "Labour force participation rate, male (% of male population ages 15+) (modelled ILO estimate)", <http://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS>

<sup>106</sup> UNDP, "Human Development Report 2016", Tables 5, 9, 14, pp. 214-217, 230-233, 250-253, [http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf)

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|  |  |  |  |  | <p>group;</p> <ul style="list-style-type: none"> <li>• 69% of females aged 15-24 are able to read and write a short simple sentence as compared to 82% of males in the same age group; and</li> <li>• 59% of women are satisfied with their freedom of choice as compared to 58% of men.</li> </ul> <p>According of the Rural Development Institute:<sup>107</sup></p> <ul style="list-style-type: none"> <li>• Women are expected to maintain the honour of their families which tends to restrict their freedom of mobility, dress, etc. and they are generally expected to take care of household</li> </ul> |
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<sup>107</sup> Rural Development Institute, "Women's Inheritance Rights to Land and Property in South Asia: A Study of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka", December 2009, pp. 17, 58-59, [http://www.landesa.org/wp-content/uploads/WJF-Womens-Inheritance-Six-South-Asian-Countries.FINAL\\_12-15-09.pdf](http://www.landesa.org/wp-content/uploads/WJF-Womens-Inheritance-Six-South-Asian-Countries.FINAL_12-15-09.pdf)

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|   |  |   |  |  | <p>tasks;</p> <ul style="list-style-type: none"> <li>• Many women practice <i>purdah</i> (seclusion), particularly in rural areas, which prevents them from learning new agricultural skills or learning how to negotiate in the market and, as a result, it is believed that a woman should not own or manage family land because of her lack of social mobility and skills. That said, more women are beginning to enter the workforce and become more involved in the community.</li> </ul> |
| <p><b>Inheritance rights</b></p> <p><i>Are women and men in the same degree of relationship to a deceased entitled to equal shares in</i></p> | <p>Generally, inheritance rights between women and men are unequal. The devolution of the estate of a person who, at the time of their death is a Muslim, is</p> | <p>To protect the inheritance rights of women, courts have also held that the onus of proof is on</p> |  |  | <p>According to civil society reports, challenges faced by Pakistani women in terms of exercising</p>  |



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| <p><i>the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their inheritance in favour of their mother upon the death of their father?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Paras. 34-35 GR21<br/>Paras. 49-53 GR29</p> | <p>governed by <i>Shari'ah</i>. In many instances, for example in the cases involving widows and widowers as well as siblings, a woman is entitled to half the share of a man.<sup>108</sup></p> <p>The province of West Pakistan has adopted the West Pakistan Muslim Personal Law (<i>Shariat</i>) Act. Section 2 provides that inheritance rights are based on <i>Shari'ah</i>.<sup>109</sup></p> <p>Section 4 of the MFLO provides that the grandchildren of grandparents with predeceased sons or daughters receive the share which the predeceased son or daughter would have received had they been alive at the time of the death of their parent.<sup>110</sup></p> <p>Section 498A of the Penal Code criminalises deceitful and unlawful acts that deprive women of their legal inheritance rights.<sup>111</sup></p> | <p>the claimant that a female heir has relinquished her share in inheritance; mere knowledge of mutation and silence of a female heir would not constitute a relinquishment: <i>Gohar Khanum v Jamila</i>.<sup>112</sup></p> <p>In <i>Ghulam Ali v. Ghulam Sarwar Naqvi</i><sup>113</sup>, the Supreme Court held that brothers of female co-sharers, who are in possession of land, are required by law to protect the property rights of their sisters.</p> |  |  | <p>their inheritance rights include:<sup>114</sup></p> <ul style="list-style-type: none"> <li>• Women being socially pressured to not claim property rights and at the same time not standing up for themselves for fear of being ostracised by their kin and social groups;</li> <li>• Women sometimes believing that that they are part of either their birth family or their spouse's family and subsequently do not believe they are entitled</li> </ul> |
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<sup>108</sup> Shahbaz Ahma Chema, "Socially Abhorrent but Legally Acceptable: A Study of Alleged Conversions of Sunnis and Shias in Cases of Inheritance in Pakistan", (Journal of South Asian Studies, 29:1, 2014), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2388546](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2388546)

<sup>109</sup> West Pakistan Muslim Personal Law (*Shariat*) Act (1962), [http://kpcode.kp.gov.pk/uploads/The\\_West\\_Pakistan\\_Muslim\\_Personal\\_Law.pdf](http://kpcode.kp.gov.pk/uploads/The_West_Pakistan_Muslim_Personal_Law.pdf); Obaid Abbasi, "Know your Rights: Inheritance Rights", *The Tribune*, 25 November 2014, <http://tribune.com.pk/story/797069/know-your-rights-inheritance-rights/>

<sup>110</sup> Section 4 of the Muslim Family Laws Ordinance (1961), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-cJyX-sg-jjjjjjjjjjjjj>; Nadjma Yassari, "Intestate Succession in Islamic Countries", in *Comparative Succession Law: Vol. II: Intestate Succession*, eds. Kenneth Reid, Marius de Waal, Reinhard Zimmermann, (Oxford: Oxford University Press, 2015), p. 436

<sup>111</sup> Section 498A of the Penal Code (1860), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apk%3D-sg-jjjjjjjjjjjjj>

<sup>112</sup> [2014] SCMR 801

<sup>113</sup> PLD 1990 SC 1

<sup>114</sup> Aurat Foundation, "Pakistan: NGO Alternate Report on CEDAW" *Submission to the CEDAW Committee for the 54<sup>th</sup> Session*, 2012, p. 58,

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|  |  |  |  |  | <p>to property rights from either.</p> <ul style="list-style-type: none"> <li>• Women in the Federally Administered Tribal Areas (FATA) of Pakistan being especially systematically denied inheritance rights because the women are treated as property;</li> <li>• The requirement for the computerised National Identity Card in order to claim the right to inheritance and other benefits; but getting an ID card is considered a low priority often for a number of women.</li> </ul> |
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|  | <p>protection system the Act establishes include a universal toll free dial-in-number for the aggrieved persons and Protection Centres and shelter homes.<sup>118</sup></p> |  | <p>the Gender Crime Cell within the National Police Bureau. The crime cell collects and analyses data regarding violence against women particularly gang rape, rape, abduction, kidnapping and “honour killings”;</p> <ul style="list-style-type: none"> <li>• Operation of the End Violence against Women Alliance, comprising of members of the government and civil society to collaborate to end violence against</li> </ul> |  | <p>12 months prior to the survey;</p> <ul style="list-style-type: none"> <li>• 27% of married women aged 15-49 reported having experienced physical violence from their spouse at least once, and 18% reported having experienced such violence within the 12 months prior to the survey;</li> <li>• Among married women who had experienced spousal violence in the past 12 months, 35% reported</li> </ul> |
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<sup>119</sup> [2007] SCMR 605  
<sup>120</sup> Committee on Elimination of Discrimination against Women, “Consideration of Reports submitted by States parties under article 18 of the Convention: Fourth Periodic Report of Pakistan”, 24 September 2011, p.14, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>  
<sup>121</sup> 2005 PCRLJ 937  
<sup>122</sup> Committee on Elimination of Discrimination against Women, “Consideration of Reports submitted by States parties under article 18 of the Convention: Fourth Periodic Report of Pakistan”, 24 September 2011, p. 23, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>  
<sup>123</sup> 2009 PCRL LJ547  
<sup>124</sup> Committee on Elimination of Discrimination against Women, “Consideration of Reports submitted by States parties under article 18 of the Convention: Fourth Periodic Report of Pakistan”, 24 September 2011, p. 24, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>  
<sup>125</sup> Pakistan State party report, U.N. Doc CEDAW/C/PAK/4 (2011), paras. 130, 138-139, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>  
<sup>127</sup> Pakistan National institute of Population Studies and ICF International, “Pakistan Demographic and Health Survey 2012/13”, Tables 14.5, 14.10-14.11, pp. 226, 232-233, <http://dhsprogram.com/pubs/pdf/FR290/FR290.pdf>  
<sup>118</sup> Sections 2, 3 of the Punjab Protection of Women Against Violence Act (2016), <http://punjablaws.gov.pk/laws/2634.html>

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|  |  |  | <p>women.<br/>The Council of Islamic Ideology has ruled that it was 'un-Islamic' for women to leave an abusive relationship and seek refuge in a shelter and strongly opposed Punjab's law. Before the law is expanded from Punjab to other areas of Pakistan the CII states that it wanted to weigh in on its own proposal as Islam allowed husbands to beat their wives, albeit "lightly."<sup>126</sup></p> |  | <p>experiencing physical injuries; and</p> <ul style="list-style-type: none"> <li>It is not common for women in Pakistan to seek assistance from any source for violence they have experienced. 52% of women never sought help and never told anyone about the violence they have experienced.</li> </ul> <p>According to media reports:<sup>128</sup></p> <ul style="list-style-type: none"> <li>Violence against women is rampant with thousands of honour crime victims and women having attempted or committed suicide;</li> </ul> |
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<sup>126</sup> Saeed Shah and Quasim Nauman, "Pakistan Grapples with Long Arm of Islamic Law", *Wall Street Journal*, 19 July 2016, <http://www.wsj.com/articles/pakistan-grapples-with-long-arm-of-the-islamic-law-1468959870>; Tim Graig, "Pakistani husbands can 'lightly beat' their wives, Islamic council says", 27 May 2016, <https://www.washingtonpost.com/news/worldviews/wp/2016/05/26/pakistani-husbands-can-lightly-beat-their-wives-islamic-council-says/>

<sup>128</sup> Hafsa Adil, "Pakistan: Laws fail to check violence against women", *Al Jazeera*, 12 June 2016, <http://www.aljazeera.com/news/2016/06/pakistan-laws-fail-check-violence-women-160611045032781.html>; Lizzie Dearden, "'Rampant' violence against women in Pakistan revealed as groups fight 'un-Islamic' law against domestic abuse", *The Independent*, 5 April 2016, <http://www.independent.co.uk/news/world/asia/rampant-violence-against-women-in-pakistan-revealed-as-groups-fight-un-islamic-law-against-domestic-a6969311.html>

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|   |   |  |  |  | <ul style="list-style-type: none"> <li>While the legal framework is protective in nature, there are still social and cultural norms that create an environment for increased violence against women.</li> </ul>                                 |
| <p><b>Nationality rights</b></p> <p><i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the nationality of an adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Article 9<br/>Para. 6 GR21</p> | <p>A Pakistani man may pass his nationality to his non-Pakistani wife. However, a Pakistani woman cannot confer citizenship to her non-Pakistani husband through marriage.<sup>129</sup></p> <p>Both a Pakistani mother and father may pass their citizenship to their children regardless of where they are born.<sup>130</sup></p> <p>Children born to Pakistani mothers and non-Pakistani fathers are treated as Pakistani citizens after 18 April 2000.<sup>131</sup></p> | <p>The Federal <i>Shariat</i> Court held that a Pakistani woman's inability to transfer her Pakistani citizenship to a foreign husband under Section 10(2) of the Citizenship Act was discriminatory and negated equality provisions of the Constitution.<sup>132</sup></p> <p>The Government of Pakistan filed an appeal against this decision before the <i>Shariat</i> Appellate Bench of the</p> |  |  | <p>According to media reports, a Pakistani woman's inability to confer her citizenship to her foreign spouse is a particular problem among Pakistani women are married to Afghan refugees who are legally living in Pakistan.<sup>135</sup></p> |

<sup>129</sup> Section 10 of the Pakistan Citizenship Act (1951), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-ap%2BXZQ%3D%3D-sg-jjjjjjjjjjjj>; Directorate General of Immigration of Passports, "Citizenship of Pakistan", <http://www.dgip.gov.pk/files/immigration.aspx#A>

<sup>130</sup> Sections 4, 5 of the Pakistan Citizenship Act (1951), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-ap%2BXZQ%3D%3D-sg-jjjjjjjjjjjj>

<sup>131</sup> Directorate General of Immigration of Passports, "Citizenship of Pakistan", <http://www.dgip.gov.pk/files/immigration.aspx#A>

<sup>132</sup> PLD 2008 FSC 1, cited in Pakistan State party report, U.N. Doc CEDAW/C/PAK/4 (2011), para. 55, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

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|  |  | <p>Supreme Court of Pakistan, and the appeal is pending.<sup>133</sup> The Act has not yet been amended to give effect to the FSC judgment.<sup>134</sup></p> |  |  |  |
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<sup>135</sup> Siraj Uddin, “Pakistani women married to Afghan refugees face uncertain future following repatriation drive”, *The News Eye*, 28 February 2017, <https://www.thenewseye.com/pakistani-women-married-to-afghan-refugees-face-uncertain-future-following-repatriation-drive/>; Waseem Ahmad Shah, “View from the Courtroom: Pakistan’s Citizenship Law in the Limelight”, *Dawn*, 19 September 2016, <http://www.dawn.com/news/1284651>

<sup>133</sup> Waseem Ahmad Shah, “View from the Courtroom: Pakistan’s Citizenship Law in the Limelight”, *Dawn*, 19 September 2016, <http://www.dawn.com/news/1284651>

<sup>134</sup> Information obtained from Pakistani Advocate, February 2017