

Immigration and Refugee Board of Canada

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Responses to Information Requests

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30 November 2011

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Pakistan: The Protection of Women (Criminal Laws Amendment) Act, 2006 and its implementation
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

The *Protection of Women (Criminal Laws Amendment) Act, 2006* (PWA) addresses laws pertaining to adultery and rape originally enacted under the Hudood Ordinances of 1979 (NCSW 2010, i; US May 2011, 118). For example, it differentiates between the crimes of *zina* (extra-marital sex or "fornication") and *zina-bil-jabr* (rape) (International Crisis Group 12 Oct. 2011, 20), criminalizing rape as an offence under the *Pakistan Penal Code* (Pakistan 2006, Sec. 5; Shirkat Gah 29 Dec. 2010), and preventing women who have been raped from being charged with fornication (US May 2011; Pakistan 2006, Sec. 12A). Additionally, it eliminates the death penalty and flogging as punishment for those convicted of fornication and allows for bail for the accused (NCSW 2010, i).

Legal Challenges to the PWA

In December 2010, the Federal Shariat Court (FSC), described as a "parallel judicial system" (Plus News Pakistan 31 Dec. 2010; NCSW 2010, 11), declared that it had exclusive jurisdiction over all matters relating to *Hudood*, including *zina*, which it defines as "adultery, fornication and rape," and *qazaf* ("imputation of *zina*") (Pakistan 22 Dec. 2010, Sec. 117.iv). The declaration asserts that four sections of the PWA dealing with *zina* and *qazaf* are unconstitutional because they contravene the Hudood Ordinances (ibid., Sec. 117.v, vii), and orders the federal government to repeal those sections by 22 June 2011 (ibid., Sec. 117.ix). According to the United Kingdom Foreign & Commonwealth Office, through this declaration, the FSC is "reinstating its right to act as the court of final appeal on cases of rape, which it had previously given up in response to significant domestic and international pressure" (UK Mar. 2011). Additionally, Shirkat Gah, a Pakistani women's rights organization promoting social and economic development for women (Shirkat Gah n.d.), alleges that the judgement is an attempt by the FSC to "expand its jurisdiction and oust the jurisdiction of the superior courts" and to "undermine the legislative powers of the parliament" (Shirkat Gah 29 Dec. 2010).

The federal government is reportedly appealing the decision of the FSC (US May 2011, 118; Plus News Pakistan 31 Dec. 2010) at the request of the National Commission on the Status of Women (NCSW) (ibid.). Further information on the federal government's appeal could not be found among the sources consulted by the Research Directorate.

Implementation of the PWA

Several sources indicate that the implementation of the PWA has reduced the number of women accused of or charged with adultery (International Crisis Group 12 Oct. 2011, 20; SPDC 4 Nov. 2011; NCSW 2010, 7). A study undertaken by the NCSW finds that a "radical drop in charges of *zina* against women" was observed among all survey respondents, which "included session judges, police officials, [prison] authorities, and lawyers..." (ibid.). Sources have also noted a decrease in the number of female prisoners (ibid., 9; US May 2011, 118). The NCSW also reports that more women have been reporting rape to the police (NCSW 2010, 10).

In contrast, numerous sources report that the PWA has not been implemented effectively (SPDC 4 Nov. 2011; AWID 12 Feb. 2008; see also NCSW 2010), or is not being implemented at all (HRCP 2 Nov. 2011; Shirkat Gah 8 Nov. 2011). In correspondence with the Research Directorate, a representative of Shirka Gah states that, since the FSC's ruling, "implementation is not possible" (8 Nov. 2011).

The lack of awareness among women of the law and of their rights has been identified as a barrier to the implementation of the PWA (Shirkat Gah 2 Nov. 2011; NCSW 2010, 13; SPDC 4 Nov. 2011). According to the representative of Shirkat Gah, the "main issue" is that women are unaware of the law and, further, most civil society organizations who should be informing women about their rights are equally unfamiliar with the law (2 Nov. 2011). Additionally, women have reportedly been discouraged from reporting abuses against them through "threats and intimidation" (AWID 12 Feb. 2008), "harassment" by police personnel (Roza Sept. 2011, 2), or because they cannot afford the legal expenses (AWID 12 Feb. 2008.; *Daily Times* 30 Mar. 2008).

Several sources also note that there are challenges to implementation within institutions, including the police (Shirkat Gah 2 Nov. 2011; NCSW 2010; *Daily Times* 30 Mar. 2008; SPDC 4 Nov. 2011) and the judiciary, which are reported to lack awareness of the law

(Shirkat Gah 2 Nov. 2011; NCSW 2010; SPDC 4 Nov. 2011). In its study assessing the implementation of the PWA, the NCSW found that none of the police officers and judges surveyed received briefings on the new legislation (2010, 13). According to the *Daily Times*, a Lahore-based newspaper, a local non-governmental organization (NGO) was unable to find any copy of the law in the police stations it surveyed (30 Mar. 2008).

The NCSW also reports that a "patriarchal bias" exists in law enforcement agencies and the judicial system, which means that "there is not a genuine acceptance of the PWA" among these groups (2010, 11, 12). Similarly, the Shirkat Gah representative indicates that a lack of sensitivity to gender issues among the police and the judiciary is a barrier to effective implementation of the law (2 Nov. 2011). According to the NCSW, some members of the police and the judiciary believe that the PWA has led to an increase in "honour killings" and in crimes committed by women because punishments for women have been reduced and it is now easier to obtain bail (2010, 12). Additionally, a representative of the Social Policy and Development Centre (SPDC), an "independent and non-partisan research organization" working on development issues, including gender (SPDC n.d.), stated that there has been an increase in the reporting of kidnapping cases against men, as a means of punishing couples who marry without the consent of their families and who can no longer be prosecuted for zina (ibid. 4 Nov. 2011). The representative of Shirkat Gah also states that people are generally opposed to the PWA because they consider it to be "un-Islamic" (8 Nov. 2011).

Low capacity among the police (NCSW 2010, 13; SPDC 4 Nov. 2011) and in the judiciary has also been cited as a reason for poor implementation (NCSW 2010, 13; SPDC 2 Nov. 2011). For example, the NCSW observes that "the quality of investigation, especially in cases of sexual assault, is quite poor" (2010, 13). Additionally, its study finds that criminal investigation units do not have female police officers or personnel, and that staff are not adequately trained in standard procedures for working with victims of sexual crimes (NCSW 2010, 13).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Additional Sources Consulted

Oral sources: Attempts to contact an advocate of the Supreme Court of Pakistan, a representative of the Ministry of Women Development, a lawyer and author, and a human rights journalist were unsuccessful within the time constraints of this Response. Representatives of the Council of Islamic Ideology were unable to provide information for this Response.

Internet sites, including: Amnesty International; Dawn.com; European Country of Origin Information Networks; *The Huffington Post*; Human Rights Watch; *The International Herald Tribune*; ReliefWeb; United Kingdom Border Agency; United Nations – Integrated Regional Information Networks, UN Women.

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