

Request for Allegation Letter

Pakistan's Failure to Protect Women From Violence: The Case of Mukhtar Mai

Submitted to:
Special Rapporteur on Violence Against Women, its causes and consequences

Submitted by:
Human Rights Foundation



Human Rights Foundation

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I. PROCEDURAL ELEMENTS

A. Mandate of the Special Rapporteur on Violence Against Women

According to the most recent mandate of the Special Rapporteur on Violence Against Women (Special Rapporteur), renewed by resolution 16/7 in 2011, the Special Rapporteur is requested to: “(a) seek and receive information on violence against women, its causes and its consequences, from Governments, treaty bodies, specialized agencies, other special rapporteurs responsible for various human rights questions, and intergovernmental and nongovernmental organizations, including women’s organizations, and to respond effectively to such information; (b) recommend measures, ways and means at the local, national, regional and international levels to eliminate all forms of violence against women and its causes, and to remedy its consequences; (c) work closely with all special procedures and other human rights mechanisms of the Human Rights Council and with the treaty bodies, taking into account the request of the Council that they regularly and systematically integrate the human rights of women and a gender perspective into their work, and cooperate closely with the Commission on the Status of Women in the discharge of its functions; (d) continue to adopt a comprehensive and universal approach to the elimination of violence against women, its causes and consequences, including causes of violence against women relating to the civil, cultural, economic, political and social spheres.”

B. Standing of Human Rights Foundation to request allegation letter

Pursuant to the Special Rapporteur’s mandate, the Human Rights Foundation (HRF), a nongovernmental, human rights organization, is permitted to contribute information, including requests for allegation letters, regarding cases of violence against women to the Special Rapporteur. In this case, HRF acts with the authorization of the victim, Mukhtar Mai.

C. Renouncement of confidentiality

HRF renounces its confidentiality and requests its identity be revealed by virtue of paragraph 35 of the Communications Section of the Manual of the United Nations Human Rights Special Procedures (Draft, June 2006).

II. INDIVIDUAL COMPLAINT FORM

The following individual complaint form is taken from the website of the United Nations High Commissioner for Human Rights and is used to document cases of violence against women. It focuses specifically on the case of Mukhtar Mai and includes a summary of the main points of the case; law, practices, and policies that affect the case; and information regarding the failure of

Pakistani Government to exercise due diligence in addressing the violence perpetrated against Mukhtar Mai.

PETITIONER:

- (a) Name of person/organization: Human Rights Foundation
- (b) Relationship to victim(s): Nongovernmental, human rights organization
- (c) Address: 350 Fifth Avenue, #4515, New York, NY 10118
- (d) Fax/tel/e-mail, web-site: (212) 246-8486; info@thehrf.org; www.thehrf.org
- (e) Date petition sent: September 20, 2012

ALLEGED INCIDENT:

(i) Information about the victim(s):

- (a) Name: Mukhtar Mai
- (b) Sex: Female
- (c) Date of Birth or Age: 40 years old (approximately)
- (d) Nationality: Pakistani
- (e) Occupation: Founder of the Mukhtar Mai Women's Welfare Organization
- (f) Ethnic/religious/social background, if relevant: Mai is a member of the Gujjar tribe (referenced as a peasant caste in comparison to attacker's influential Mastoi tribe).
- (g) Address: Meerwala, southern Punjab region, Pakistan
- (i) Has the victim(s) given you her consent to send this communication on her behalf? Yes.
- (j) Has the victim(s) been informed that, if the Special Rapporteur decides to take action on her behalf, a letter concerning what happened to her will be sent to the authorities? Yes.
- (k) Is the victim(s) aware that, if this communication is taken up, a summary of what happened to her will appear in a public report of the Special Rapporteur? Yes.
- (l) Would the victim(s) prefer that her full name or merely her initials appear in the public report of the Special Rapporteur? Full name.

(ii) Information regarding the incident:

- (a) Detailed description of human rights violation:

On June 22, 2002, Mukhtar Mai was gang raped in Meerwala, Pakistan, as a form of honor revenge. The rape was carried out on the orders of a Panchayat (tribal council) of the local

Mastoi Baloch clan as punishment for the alleged behavior of Mukhtar's brother, Shakoor. Shakoor had been accused of engaging in inappropriate conduct with a Mastoi woman, Salma, and on June 22, Shakoor was abducted by three Mastoi men, sodomized in a sugarcane field, and taken to the residence of the Abdul Khaliq, Salma's brother. A Panchayat was convened and it was suggested that Mukhtar be wed to Khaliq as a way of settling the dispute between the two families. This was not agreed to by all those present at the Panchayat, but Mukhtar was told that if she appeared before the council and apologized for her brother, he would be forgiven. Upon her arrival before the Panchayat and hundreds of villagers, Mukhtar was forcibly taken to a nearby hut by Khaliq and three others and gang raped. An hour later she was released and appeared, half-naked, in front of the villagers.

On June 30, 2002, Mukhtar and her family went to the Jatoi police station to file charges. As a result, 14 men were arrested and charged under various provisions of the Anti-Terrorism Act of 1997 and the Offense of Zina (Enforcement of Hadd) Ordinance of 1979. Four of the 14 accused were charged with the rape of Mukhtar and the rest for their involvement in the Panchayat.

On August 31, 2002, the anti-terrorism court sentenced six of the accused to death; four were sentenced for rape, two for their involvement in the Panchayat, which ordered the rape, and eight were released. The State and Mukhtar filed separate appeals in the Multan bench of the Lahore High Court. On March 3, 2005, the Lahore High Court reversed the court's judgment on the basis of "insufficient evidence" and "faulty investigations." The court acquitted five of the six men and released them.

On April 21, 2011, the Supreme Court of Pakistan upheld the High Court's decision, arguing that the accused enjoyed a "triple presumption of innocence." The Court also refused to attach accomplice liability to other members of the council or any members of the crowd of 200-250 people which the Court's own records admit were present when the incident took place. The decision cited lack of evidence as the reason for upholding the acquittals. Mukhtar Mai filed a review petition on May 20, 2011, with the Supreme Court of Pakistan in order to have her case reviewed by a larger bench.

(b) Date: June 22, 2002

(c) Time: Evening

(d) Location/country: Meerwala, Pakistan

(e) Number of assailants: Four directly involved in the rape. Others were involved in the decision made by the Panchayat (tribal council) which ordered the rape.

(f) Are the assailant(s) known or related to the victim? If so, how?

The assailants are members of the Mastoi tribe, located in Meerwala.

(g) Name or nickname of assailant(s) (if unknown, description, scars or body marks such as tattoos, clothes/uniform worn, title/status, vehicle used):

Abdul Khaliq, Allah Ditta, Muhammad Fayyaz, Ghulam Fareed

(h) Does the victim believe she was specifically targeted because of her sex?

If yes, why?

Yes. Mukhtar Mai has stated that it is common in her village and others in Pakistan for men to take justice into their own hands and when they do this, it is the women who are specifically targeted. For example, women are married off as compensation for an offense or raped as a form of revenge.

(i) Has the incident been reported to the relevant State authorities? Yes

If so, which authorities? When?

Jatoi Police; June 30, 2002

(j) Have the authorities taken any action after the incident? Yes

If so, which authorities?

The Jatoi Police recorded Mukhtar Mai's statement and initiated an investigation into the rape. Pakistan's Prime Minister ordered the arrest of those responsible.

What action? When?

By July of 2002, 14 men were arrested and charged under various provisions of the Anti-Terrorism Act of 1997 and the Offense of Zina (Enforcement of Haddood) Ordinance of 1979. Four were charged with rape and the others were charged with sanctioning the rape as members of the Panchayat (tribal council). The case was brought before an anti-terrorism court in July of 2002. The case was heard before the Lahore High Court in March of 2005. The Supreme Court of Pakistan heard the case in April of 2011.

(l) If the violation was committed by private individuals or groups (rather than government officials), include any information which might indicate that the Government failed to exercise due diligence to prevent, investigate, punish, and ensure compensation for the violations.

***Please see enclosed HRF legal report on Pakistan's failure to exercise due diligence to prevent, investigate, punish, and compensate in the case of Mukhtar Mai.**

(m) Has the victim seen a doctor after the incident took place? Are there any medical certificates/notes relating to the incident concerned? Yes. Yes.

(iii) Laws or policies which are or are likely to cause or contribute to violence against women

(a) If your submission concerns a law or policy, please summarize it and the effects of its implementation on women's human rights. Provide concrete examples, when available.

Although Pakistan is a party to the Convention on the Elimination of all forms of Discrimination against Women and has recently enacted legislation addressing honor killings and gender

discrimination [Prevention of Anti Women Practices Bill, 2011; Criminal Law (Amendment) Bill of 2004; Criminal Laws (Amendment) Act of 2006], the country's parallel legal systems (Jirgas/Panchayats) and their ideologies are still supported by law [the Qisas and Diyat Ordinance of 1990], and remain a part of Pakistani life. The Ordinance allows those accused of a crime to be set free if they come to a compromise with the victims' families through retribution or compensation. The types of dispute resolutions, such as in Mukhtar Mai's case, of offering or ordering the surrender of women to a rival tribe, are reinforced by legislation such as the Ordinance and are still accepted by the population, especially in rural areas of Pakistan.

The "honor crimes" sanctioned by these parallel legal systems contribute to violence against women in Pakistan. In its 2009 Annual Report, The Human Rights Commission of Pakistan reported 928 rape cases and 647 people killed in the name of honor. The Commission also highlighted 28 cases reported in the press in 2009 of women who were victims of Panchayat decisions, the majority dealing with honor killings or the trading of girls/women in marriage to settle disputes. The commonality of this problem is illustrated by two separate conferences held by the National Commission on the Status of Women, Pakistan, in 2009 and 2010 entitled "Interface to End Honor Crimes in Pakistan" held in Islamabad and Karachi.

The outcome of Mukhtar's case is typical of rape cases tried under Pakistan's criminal justice system according to Sarah Zaman, Director of War Against Rape in Pakistan. Zaman explained that there are inherent flaws in the legal system in Pakistan that make the outcome of rape cases like Mukhtar's inevitable such as police bias, poor forensic departments, and laws that punish the victim if there is not prompt registration of a complaint and allow for the presentation of the past sexual history of the victim. These flaws can be evidenced by the conviction rates for perpetrators in rape cases. For example, from 2003-2009, there were convictions in only three percent of rape cases in Karachi.

III. PROCEDURE AND JUSTIFICATION FOR ALLEGATION LETTER

A. Violence directed against Mukhtar Mai because of her sex

According to the website of the United Nations High Commissioner for Human Rights, the Special Rapporteur "transmits urgent appeals and allegation letters to States regarding alleged cases of violence against women which she receives." In accordance with her mandate, the Special Rapporteur only processes "cases of alleged violence or threats of violence directed against women because of their sex." The Special Rapporteur's definition of "violence against women" is taken from the United Nations Declaration on the Elimination of Violence Against Women, adopted by the General Assembly in resolution 48/104 in 1993. Article 1 states that "violence against women" refers to "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." According to Article 2, "violence against women" encompasses, inter alia, physical, sexual

and psychological violence occurring within the general community, including rape, and/or perpetrated or condoned by the State.

The Special Rapporteur's mandate to process cases of violence directed against women because of their sex applies to the present case. Mukhtar Mai was gang raped by male members of her community on the order of a tribal council in retribution for the alleged acts of a family member. The idea of committing violence against a woman or girl as a form of retribution has been documented in Pakistan and is the exact practice present in the case of Mukhtar Mai. She was a target of violence based on the fact that she was a woman.

B. Justification for the request of allegation letter

According to the United Nations High Commissioner for Human Rights' website, allegation letters may be sent to Governments, requiring them to clarify the substance of the allegations. These letters are used when urgent action is not required, but relate to violations that already occurred and/or to general patterns of violations (including the legal framework and its application as regards violence against women).

The case of Mukhtar Mai satisfies this requirement. The violence perpetrated against Mukhtar Mai has already occurred, approximately 10 years ago. Her government's failure to exercise its due diligence to prevent, investigate, punish, and ensure compensation for the violations has also occurred, although more recently, when The Supreme Court of Pakistan released all but one of the accused in her case, in April 2011.

IV. REQUEST

Taking into consideration all of the above information which demonstrates in the case of Mukhtar Mai the failure of Pakistan to perform its due diligence regarding violence against women, HRF requests that the Special Rapporteur take the following measures, in accordance with her mandate:

- 1.) Send an allegation letter requiring the Pakistani Government to clarify its failure in the case of Mukhtar Mai to prevent, investigate, punish, and ensure compensation for the violations of its due diligence obligation to protect women against violence.
- 2.) Recommend measures, ways and means at the local and national levels in Pakistan to eliminate all forms of violence against women and its causes, especially in regards to traditional practices of discrimination and violence against women because of their sex.

V. ANNEX

HRF legal report on Pakistan's failure to exercise due diligence to prevent, investigate, punish, and compensate in the case of Mukhtar Mai.