

SUBMISSION OF NATIONAL COMMISSION FOR HUMAN RIGHTS, PAKISTAN



Pakistan's Third Universal Periodic Review, 2017

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1. INTRODUCTION

The National Commission for Human Rights (NCHR), established in May 2015 under the National Commission for Human Rights Act 2012, is Pakistan's first National Human Rights Institution (NHRI). The Commission has an extensive mandate which includes powers to take *suo moto* notice¹ of human rights violations, carry out fact finding missions and investigate complaints of human rights abuses.

Pakistan has undergone two cycles of Universal Periodic Review (UPR) in 2008 and 2012 and has witnessed developments, both beneficial and detrimental to the ethos of human rights in the country. The establishment of the NCHR and the introduction of legislation safeguarding women from domestic violence are some positive developments.²

Pakistan's submission of its UN treaty body reports in late 2015 and early 2016 came ahead of its first Generalised Scheme of Preference Plus (GSP+) compliance review. The challenge of national security in recent years has resulted in anti-terrorism laws. Stringent measures aimed at curbing terrorism and crushing militancy might be needed to protect Pakistan's national security. Yet, national legislation enacted in the past five years reveals that many of its provisions are in contrast with human rights standards as enshrined in the country's constitution and international treaties.

The outcome document of the last UPR (2012) adopted in March 2013 contains 167 recommendations. In response to this, Pakistan accepted 126 recommendations, noted 34 and rejected seven recommendations.³

This report provides an overview of the progress made by the state in implementation of accepted recommendations and provides recommendations to overcome gaps in areas where there has

¹ Initiating inquiries into human rights violations on its own initiative.

² Establishment of NCHR http://202.83.164.28/ministries/mohr/mohr.php?mc_id=7

The Punjab Protection of Women Against Violence ACT 2016 <http://punjablaws.gov.pk/laws/2634.html>

³ A look back at our promises: Civil society mid-term assessment report available at <http://hrcp-web.org/hrcpweb/wp-content/uploads/2015/09/A-look-back-at-our-promises.pdf>

been little or no progress. It also makes additional recommendations where Pakistan can improve promotion and protection of human rights.

2. NATIONAL FRAMEWORK ON HUMAN RIGHTS

2.1 LEGAL AND INSTITUTIONAL FRAMEWORK FOR HUMAN RIGHTS PROTECTION

The Constitution guarantees fundamental rights and freedoms in line with universal human rights values.⁴ Pakistan's legislative framework provides for human rights protection and is largely in line with international standards. However, there are a few laws that infringe upon human rights of minorities and people living in certain geographical areas. For example, the exercise of the freedom to profess religion and to manage religious institutions (Article 20 of the Constitution of Pakistan) is subject to 'law, public order and morality'. Such restrictions and their arbitrary application lead to and facilitate potential discriminatory amendments (i.e. Pakistan Penal Code). This and other laws which are discriminatory or restrictive in nature require revision and reform.

As per Article 2 (2) of the International Convention on Civil and Political Rights (ICCPR), several mechanisms exist in Pakistan at the state level to give effect to rights contained in the Covenant. However, these mechanisms suffer from institutional weaknesses such as political interference, budgetary constraints, lack of trained personnel and restrictive power. A primary example of this can be found in the delayed notification for the establishment of the NCHR⁵.

The Ministry of Human Rights, earlier a wing within the Ministry of Law, Justice and Human Rights, was restored to a full-fledged Ministry of Human Rights in November 2015. In its June 2016 meeting the Senate Standing Committee on Law, Justice and Human Rights noted that the

⁴ Articles 8 to 28 include the right to security of person (art. 9); safeguards as to arrest and detention and right to a fair trial (arts. 10 and 10A); inviolability of individual dignity (art. 14); freedom of religion (art. 17); freedom of expression and right to information (arts. 19 and 19A); and equality before law (art. 25). Chapter II of the Constitution focuses on the 'Principles of Policy' and includes guidelines aimed at ensuring some of the core human rights.

⁵ Whereas the legislation for the establishment of the Commission was passed in 2012 the Commission was set up in 2015. After being established the NCHR has had to wait several months before receiving its allocated funding, hampering its ability to function and implement its mandate. <http://www.dawn.com/news/1242806>

Ministry entrusted with ensuring human rights in the country is not delivering as expected.⁶ Further, after the 18th Amendment to the Constitution of Pakistan in 2010, a bulk of legislative and implementation responsibilities with regards to human rights are transferred to the provinces. The Federal ministry, following the amendment, can only cover the geographical area of the Islamabad Capital Territory.

Multiple departments and institutions are responsible for the protection and promotion of human rights in the country and often their mandates overlap and create confusion. For example, the Ministry of Human Rights launched a 16-point National Action Plan⁷ for the promotion and protection of human rights in February 2016. Legally, the NCHR is mandated to release such a plan, and a number of tasks in the Ministry's action plan come under the NCHR mandate.

The National Commission on the Status of Women (NCSW), established in 2000, was granted administrative and financial autonomy through the 2012 Act.⁸ From December 2015 until October 2016, the NCSW remained without a chairperson (due to administrative lapse of the Ministry). Similarly, provincial bodies on women rights such as the Provincial Commissions on Status of Women in Punjab and Khyber Pakhtunkhwa (KP) are unable to function as independent institutions. The KP Commission lacks autonomy of funds and is dependent on the provincial social welfare and women development department. The government has long made promises for the establishment of an independent Minority Rights Commission and a Commission on the Rights of the Child. The establishment of these commissions is also a requirement under Pakistan's international human rights law commitments.

Recommendation: The Government of Pakistan (GoP) should remove the conditionality from Article 20 the Constitution of Pakistan, 1973 and must ensure the provision of adequate resources and safeguard the independence and autonomy of all Commissions.

⁶ <http://www.dawn.com/news/1217813>

⁷ Full text of the plan is available on <http://www.mohr.gov.pk/>

⁸ See text of the law at http://www.na.gov.pk/uploads/documents/1331808860_398.pdf

3. SCOPE OF INTERNATIONAL OBLIGATIONS AND COOPERATION WITH HUMAN RIGHTS MECHANISMS

Pakistan has demonstrated an increasing commitment for the protection and promotion of human rights by ratifying a number of relevant UN human rights treaties. The country is party to seven of the nine human rights core treaties.⁹ As mentioned earlier Pakistan has also increased its engagement with treaty bodies and as of 2016 submitted all its reports, some of which had been pending for over three years.¹⁰ In 2013 Pakistan received the visit of the UN Special Rapporteur (SR) on the Independence of Judges and Lawyers and the Working Group on Enforced or Involuntary Disappearances. The government, however, has not made a standing invitation to the special procedures and has not accepted the request of a number of other relevant mandates to visit its territory, namely, the UN special procedures such as the SR on torture, the SR on extrajudicial, summary or arbitrary executions, the SR on freedom of religion and belief and the SR on the promotion and protection of human rights and fundamental freedoms while countering terrorism.¹¹

Recommendation: The GoP should extend a standing invitation to Special Rapporteurs and comply with UN special procedures.

3.1 STATUS OF THE IMPLEMENTATION OF THE RECOMMENDATIONS FROM THE SECOND UPR IN 2012

The outcome document of Pakistan's second UPR was adopted in March 2013. During the review process Pakistan received 167 recommendations, out of which 126 were accepted, 34 noted and seven rejected. A civil society mid-term assessment has suggested that out of 67 accepted recommendations, 38 recommendations have not been implemented at all, while 29 have only been partially implemented.¹² Recommendations from 2012 reviews were not properly disse-

⁹ Pakistan has not ratified the 2003 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families the 2010 International Convention for the Protection of All Persons from Enforced Disappearances; <http://indicators.ohchr.org/>

¹⁰ <http://hrqp-web.org/hrqpweb/govt-urged-to-answer-un-committees-questions-on-pakistans-rights-record/>

¹¹ <http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/PKIndex.aspx>

¹² <http://hrqp-web.org/hrqpweb/wp-content/uploads/2015/09/A-look-back-at-our-promises.pdf>

nated to concerned departments. The state institutions and the civil society did not actively follow up on the implementation of the recommendations of the second cycle of the UPR.

Recommendation: The GoP should take necessary measures inter alia: (i) to disseminate UPR recommendations and (ii) to ensure effective implementation of recommendations, by means of an independent monitoring body.

A. CIVIL AND POLITICAL RIGHTS

Right to Life (Art. 6 ICCPR)

Violation of the fundamental right to life remains a challenge in the country due to the War-on-Terror, armed conflicts, and religious extremism. The state-led operation Zarb-e-Azb, launched on 15 June 2014, has led to a drop in terrorist attacks and fatalities. The ‘Karachi Operation’, initiated in September 2013, has helped to restore law and order and reduced killings in Karachi. However, alleged extra-judicial killings in the city of Karachi have increased. According to a report of the Dawn newspaper 925 people were killed by the law enforcement agencies in ‘encounters’ during the year 2015 alone.¹³

Recommendation: The GoP should ensure the right to a fair trial and end impunity. All those guilty of extra-judicial killings must be brought to justice.

Right to fair trial (Articles 9, 10, 14, 15 ICCPR)

Pakistan’s Constitution does provide safeguards related to arrest, detention, and the right to a fair trial. However, these safeguards have been reversed since the federal government extensively amended the key legislation on terrorism (Anti-Terrorism Act 1997) and enacted new legislation, resulting in an enhanced parallel judicial system, the Anti-Terrorism Courts (ATCs). These include the Investigation for Fair Trial Act 2012, the Anti-Terrorism (Amendment) Act 2013, the Anti-Terrorism (Second Amendment Act) 2013, the National Counter Terrorism Authority Act 2013, the Pakistan Protection Act 2014 (with a sunset clause hence expired in July 2016) and the

¹³ <https://www.dawn.com/news/1154281>

Constitution (21st Amendment) Act 2015.¹⁴ The above legislations gave sweeping power to the military, para-military and police forces.

Recommendation: The GoP should review anti-terrorism laws and bring them in line with the ICCPR. Subsequently the GoP must invest in the capacity building of the judiciary and ensure equitable access to justice.

DEATH PENALTY

Mandatory capital punishment for offences that do not involve intentional killing violates Article 6 (2) of the ICCPR. The State of Pakistan lifted the moratorium on the death sentence for all death row prisoners in March 2015. According to UN Human Rights Experts, 8,300 persons were on death row by October 2015.¹⁵ As of July 2016, over 400 death row convicts were executed.¹⁶

Recommendation: The GoP should ratify the Second Optional Protocol of the ICCPR aiming at the abolition of the death penalty and as an immediate action reintroduce the moratorium on the death penalty.

Freedom of thought, conscience, and religion (Arts. 18 and 27 ICCPR)

While the Pakistani Constitution ensures the right to freedom of thought and religion, this right has been made conditional to ‘law and public morality’. Also, blasphemy laws (Section 295 B and C of the Pakistan Penal Code) remain an area of deep concern. According to a report, 1,377 cases of blasphemy accusations were recorded in 2014.¹⁷ Passing of the Prevention of Electronic Crimes Bill, 2016 in the name of preventing cybercrime has been seen to curtail the internet freedom in the name of national security.

Recommendation: The GoP should encourage public hearings and enhance stakeholder engagement to ensure legislation is heard before it is passed. Laws guarding freedom of expression need to be less ambiguous and subject to better implementation.

¹⁴ Although some of this legislation was time bound and has expired since there are talks of extending the validity of such acts and in some cases renewing them. In particular, military courts see more at: <http://dunyanews.tv/en/Pakistan/369587-Military-courts-extension-Govt-calls-parliamentary>

¹⁵ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16560&LangID=E>

¹⁶ https://en.wikipedia.org/wiki/Capital_punishment_in_Pakistan

¹⁷ HRCP State of Human Rights Report 2014, <http://hrnp-web.org/hrnpweb/data/ar14c/3-2%20Freedom%20of%20thought%20-%202014.pdf>

Torture and other inhumane or degrading treatment (Articles 1,2 CAT)

Pakistan ratified the Convention against Torture (CAT) in June 2010 and is yet to withdraw reservations on Articles 3, 4, 6, 8, 12, 13, 16, 28 and 30. The government also did not accept the Inquiry Procedure under the Convention.¹⁸ The state has not yet enacted a law to combat, prevent and criminalise torture. The civil society has documented a rise in killings and torture of suspects in Karachi during para-military security operations. **Recommendation: The GoP should withdraw reservations to CAT, ratify the OP-CAT and enact domestic legislation, which includes a definition of torture.**

Enforced Disappearances

Pakistan has not ratified the UN International Convention for the Protection of All Persons from Enforced Disappearance (ICEPD). The Criminal Code of Pakistan does not contain the crime of enforced disappearance.

Recommendation: The GoP should ratify the ICEPD, bring about required changes in domestic law and recover all those who are still missing.

B. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Education, health and wages (Articles 11, 12, 13) ICESCR

Economic growth in the country has not been equitable. According to the latest official data, national average monthly wages are US\$ 126.19, but a significant proportion, 58.48 per cent, of workers earns US\$96 per month.²⁰ A very large proportion of the population — 42 per cent — is illiterate and 24 million children are out of school.²¹ Less than 2 per cent of the GDP is allocated to education. Health indicators are dismal and the government spends barely 0.42 per cent of the GDP on health.

¹⁸ http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=PAK&Lang=EN+

¹⁹ Ibid.

²⁰ Source: Ibid.

²¹ <http://www.dawn.com/news/1254909>

Recommendation: The GoP should immediately raise the GDP allocation to education and health to five per cent. Education to be viewed as critical as national security, with the GoP ensuring not only resources but also invest in teachers' trainings and ensure quality of education for all children. The GoP shall also ensure the implementation of minimum wage standards.

C. VULNERABLE GROUPS

Children (Articles 19,12, 39, 37 (a), 28(2)) CRC

There is an increase in incidences of children being physically and sexually assaulted. Year 2014 was one of the worst in terms of child homicide.²² Since 2012, provinces have enacted several pieces of legislation that include the Sindh Right of Children to Free and Compulsory Education Act 2013; the Sindh Child Marriage Restraint Act 2013; the Punjab Child Marriage Restraint Act 2015; the Balochistan Free and Compulsory Education Act 2014. Despite legislation, child development indicators are grim. In 2011, the ILO adopted Convention 189 Domestic Workers Convention which protects children working inside private homes. In 2015, the ILO estimated that there are at least 8.5 million domestic workers in Pakistan, many of whom are women and children²³, however, it is pertinent to mention that national law of Pakistan does not recognize child domestic labour as a crime/punishable offence.

Recommendations: The GoP should immediately establish the National Commission on the Rights of the Child or delegate said responsibility to NCHR. The GoP should ratify the ILO Convention 189 and enact the Domestic Workers Bill in line with the aforementioned convention. The GoP should review section 89 of the Pakistan Penal Code (PPC) to protect children.

²² <http://hrcp-web.org/hrcpweb/data/HRCP%20Annual%20Report%202014%20-%20English.pdf>

²³ http://www.ilo.org/islamabad/info/public/fs/WCMS_347029/lang--en/index.htm

Women (Articles 1, 2,5) CEDAW

Pakistan has ratified the Convention on Elimination of Discrimination Against Women (CEDAW) since 2010, the government has passed several laws and instituted procedures for the protection of women's rights.²⁴ The recently promulgated Criminal Law Amendment (Offences in the Name or Pretext of Honour) Act 2016 and the Criminal Law Amendment (Offences relating to Rape) Act 2016 provide further safeguards. At least 4,308 cases of violence against women and girls were reported for the first six months of 2015. The figure included 709 cases of murder; 596 of rape and gang rape; 36 of sexual assault; 186 of "honour" crimes; and 1,020 of kidnapping.

Recommendation: The GoP should strictly implement existing laws to protect women. Law enforcement authorities should receive trainings for gender sensitization, to better implement their work. The GoP should make crimes in the Prevention of Anti-Women Practices Act 2011 cognizable.

Forced Labour and Working Conditions (Article 8) ICCPR, (Articles 6, 7) ICESCR

The country has constitutional safeguards against forced labour yet this phenomenon remains widespread. The Global Slavery Index put the number of people working in slavery-like conditions in Pakistan at 2,134,900 and Pakistan's ranking at number three among 167 countries reviewed for slave labour²⁵. Further, Pakistan has since 2012 witnessed a number of incidents which highlight a problem with health and safety in workplaces. There are no independent laws in place that instruct occupational health and safety, and incidents such as the Baldia Factory Fire²⁶ resulting in the death of over 200 workers and the Gadani shipbreaking incident²⁷ in 2016 exemplify this problem.

Recommendation: The GoP should take necessary steps to make health and safety mechanism effective. The GoP must review and strengthen legal provisions on occupational health and safety to make them compliant with the ICESCR and ensure that maladministration is addressed adequately.

²⁵ <http://www.dawn.com/news/1264018#>

²⁶ <http://newslinemagazine.com/magazine/burning-questions-the-karachi-factory-fire/>

²⁷ <http://www.dawn.com/news/1294669>

Rights of Minorities (Article 1,2,5) ICERD, (Articles 2,25,26) ICCPR

The constitution of Pakistan currently bars a non-Muslim from becoming President of the country. Further as per the Constitution Article 260: 3(A) and 3(B), Ahmedis are declared as non-Muslim. Ahmedis consider themselves Muslims and reject inclusion in the category of non-Muslims. This state of affairs is contrary to the ICCPR Articles 2, 25 and 26 that categorically prohibit the ratifying state against discrimination on religious grounds. This categorization is also in violation of provisions of ICERD article 5. Forced conversions have also been on the rise. A civil society report claims that between 100 and 700 Christian girls, and around 300 Hindu girls, are married forcibly each year and forced to convert to Islam.²⁸ This issue has also been addressed by the Special Rapporteur on Minority Issues in a thematic report to the human rights council (A/HRC/31/56).²⁹

Recommendation: The GoP should take effective measures to prevent and investigate cases of the forced conversion of girls and reconsider constitutional provisions which lead to violations of CERD and ICCPR articles mentioned above.

²⁸ https://www.af.org.pk/pub_files/1416847483.pdf

²⁹ Iszak-Ndiaye, Rita, "Minorities and discrimination based on caste and analogous systems of inherited status" Report to the 31st Session of the Human Rights Council (A/HRC/31/56), 2016:
http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A_HRC_31_56_en.doc