

Submission to the Universal Periodic Review

National Commission for Human Rights, Pakistan

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Introduction

Background

The National Commission for Human Rights (NCHR) is a federal statutory body set up in 2015 as an independent NHRI developed under the Paris Principles. Its core functions include acting as adjudicator in individual complaints brought to it, and in taking suo motu notice of violations of human rights in Pakistan. It is also responsible for reviewing existing legislation, proposing amendments, and monitoring implementation. In 2021, a new Chairperson and Provincial members were appointed to the NCHR¹ and since then the NCHR has been working tirelessly with renewed resolve.

Scope of this Report

This Report is an independent assessment undertaken by NCHR on Pakistan's progress in implementing the Recommendations it received within the third cycle of the UPR. A total of 289 recommendations were made to Pakistan by UN Member States out of which 168 were accepted, 121 were noted and 4 were rejected.

Our evaluation is categorized into three thematic areas which are: access to justice, prisons, and torture.

These thematic areas have been identified as the criminal justice system remains riddled with gaps which have a grave impact on the protection of human rights of Pakistani citizens. Since 2018 to 2022 we have received a total of 1305 cases of custodial torture and have taken suo motu actions in 31 cases. Moreover, our recent efforts in supporting complainants in the Usman Mirza case, and the Nazim Jokhio case have highlighted the need for reform of the criminal justice system (CJS). The assessment of the CJS considering previous recommendations is crucial to help Pakistan fulfill its international human rights obligations.

Methodology

To develop this Report, first-hand information has primarily been used in the form of quantitative and qualitative data collected through our federal and provincial offices. Our commissioners have conducted jail visits and collected quantitative data on the prison population, availability of medical equipment etc. which has been supplemented by interviews conducted with members of the staff as well.

In addition to on-site visits, our team has also collected data with regards to the number of complaints received under thematic areas and has kept track of the progress in each of these complaints. This exercise is conducted at both federal and provincial levels and is supplemented by the investigations that have been initiated by the NCHR Team.

Finally, to ensure that a consultative process is used we have conducted a consultation session with key stakeholders such as UN agencies, civil society organisations and other human rights

¹ 'NCHR Holds First Board Meeting After Appointment of New Chairperson - Pakistan Observer' (*Pakistan Observer*, 2022) <<https://pakobserver.net/nchr-holds-first-board-meeting-after-appointment-of-new-chairperson/>>

organisations to ensure credibility and validity of the assessment made in our report.

Scope and Assessment of Pakistan's International Obligations

Pakistan is a party to seven of the nine core human rights treaties. We commend the efforts that the Government of Pakistan has made in committing to the International Human Rights framework by submitting all its reports to the UN Treaty Bodies.² The only outstanding Report this year has been under the Convention on the Rights of the Child which was due on 11th June 2021. We urge the Government to submit the outstanding Report without further delay.

The Government, has undertaken various efforts to ensure realization of human rights in the State. In 2022, the Protection against Harassment of Women at the Workplace Act 2010 was amended to include men and women alike as potential victims of harassment and expanded the definition of an employee as well.³ Other notable efforts include the inclusion of domestic work as hazardous by proscribing it under the Children Employment Act 1991,⁴ introduction of the Zainab Alert, Response and Recovery Act 2020,⁵ to extend protection to missing and abducted children under the age of eighteen and the enactment of the new Anti-Rape (Trial and Investigation) Act 2021 which calls for the establishment of a federal sex offenders register which will help protect vulnerable groups from sex offenders.

National Action Plans

1. Human Rights

Progress has been achieved in relation to the implementation of the National Action Plan on Human Rights under which human rights education and sensitization has been a focal area. Under the NAP, twelve major laws have been introduced with a view to protect the rights of women, children, minorities etc.⁶

2. Business and Human Rights

The NAP on BHR focuses on human rights, anti-discrimination, protection of labor rights in the informal economy, child labor, forced or bonded labor, access to remedy amongst other things.

² 'Reporting Status for Pakistan' (ohchr.org)

<https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=PAK&Lang=EN>.

³ Amendment to the Protection Against Harassment of Women at the Workplace Act 2010, Act No. V of 2022 <https://mohr.gov.pk/SiteImage/Misc/files/Women%20H_%20Work_%20Act%202022%20Amendment.pdf>

⁴ The Reporter, 'Child Domestic Labour Banned in Islamabad' (dawn.com, 2020)

<<https://www.dawn.com/news/1572655#:~:text=The%20Employment%20of%20Children%20Act,factories%2C%20carpet%20industries%20and%20mines.>>

⁵ Zainab Alert, Response and Recovery Act, 2020 (Act No. XV of 2020)

⁶ These laws include: Criminal Law (Offences relating to Rape) Act, 2016, Criminal Law (Offences relating to Honour Killing) Act, 2016, The Criminal Law (Amendment) Act, 2016 (Child Protection), National Commission on the Rights of the Child Act, 2017, Hindu Marriage Act, 2017, Transgender Persons (Protection of Rights) Act 2018, National Commission on the Status of Women (Amendment) Act, 2018, the Women in Distress and Detention Fund (Amendment) Act, 2018, ICT Child Protection Act, 2018, the Juvenile Justice System Act, 2018, Legal Aid and Justice Authority Act 2020, the Zainab Alert, Response and Recovery Act, 2019.

However, since the publication of the NAP the Ministry of Human Rights has yet to show progress on its implementation.

Progress Achieved - National Commission of Human Rights

Various activities have been conducted by us to deal with issues of human rights effectively and conduct awareness campaigns on different issues external to the thematic areas discussed below. Some of these include:

Minority Rights

In the past year, we have launched a report on the rights of sanitary workers who primarily belong to minority communities.⁷ Based on nationwide consultations with minority leaders, we reported on the issue of discriminatory job advertisements. We took notice of the brutal murder of Mr. Priyantha Kumara – an act of religious violence based in the exploitation of blasphemy law in our country. Our Member from Punjab coordinated with the Head of the District Police of the area to ensure that individuals who took part in the incident are arrested and brought to justice.⁸

Women Rights

The NCHR has resolved to continue its fight for women rights. In 2022, two women in Mirpurkhas District in Sindh were kidnapped and raped. The NCHR through its Member in Sindh took cognizance of the case and contacted concerned police officers to ensure that a report was filed. Continued updates were also requested from the police to ensure that justice is provided without delay to the victims.⁹

Assessment of UPR Recommendations

1. Prisons

UPR Recommendation 152.136 (supported): Take the necessary measures to improve detention facilities, including renewing its Prisons Act, which was enacted in 1894.

Pakistan's prison system remains focused on retribution as opposed to rehabilitation of prisoners. Lack of adequate infrastructure and human resources have led to the prevalence of various issues within the prison system which effect human right standards including protection of life, liberty and dignity, prohibition on discrimination, right to health etc.

The NCHR at both the federal and provincial levels have conducted visits to prisons in all provinces. Our findings reflect the grave issue of overcrowding in prisons which was further exacerbated during the COVID-19 pandemic. Through our visit to the District Jail Lahore, it was found that the prison had a capacity of 2,000 individuals however 3,814 prisoners were housed there which led to issues of ventilation, lack of medical facilities and equipment including

⁷ 'Unequal Citizens: Ending Systemic Discrimination Against Minorities' (nchr.gov.pk, 2022) <<https://www.nchr.gov.pk/wp-content/uploads/2022/05/Minority-Report-compressed.pdf>>.

⁸ 'Judicial/Legal Monitoring' (nchr.gov.pk) <<https://www.nchr.gov.pk/judicial-investigative-monitoring/>>

⁹ 'Policy Making' (nchr.gov.pk) <<https://www.nchr.gov.pk/policymaking/>>

transportation. It has also been reported that the number of undertrial prisoners continues to increase prison population, which without an increase in resources, exacerbates current human rights inequalities and violations. In Karachi and Lahore, out of 4,181 prisoners, 3,410 are under trial.

It has been reported that there are currently only four female prisons in Pakistan due to which women are housed in separate barracks in largely male prisons.¹⁰ This leads to increased vulnerability and discrimination. For example, within District Jail Quetta while recreational activities are available for adult and juvenile men, the same does not apply to women as it is considered difficult to take them out for excursions etc.

Additionally, prison budgets remain negligible which leads to issues of sanitation, medical treatment, and human resource. In the past seven years, the post of a psychologist has remained vacant in District Jail Quetta which reflects the lack of state investment in medical treatment for prisoners.

The Report on Prison Reform¹¹ developed by MoHR conducted a gap analysis of the Prison Rules by using the Mandela Rules¹² and the Bangkok Rules¹³ on Treatment of Prisoners as the baseline. The Report finds that the Prison Rules do not lay the same emphasis on dignity of persons as international rules do. Additionally, no electronic management systems exist all over Pakistan to deal with prisons including prison population. Moreover, while internationally, prisoners must be transferred to their home district, under the Prison Rules this only becomes mandatory 30 days before the release of the prisoner. With regards to medical treatment as well, while prisoners are screened for physical and mental health issues, this treatment does not continue. The Prison Rules also do not deal with the issue of overcrowding or the rights of prisoners especially differently abled prisoners which have been dealt with internationally. NCHR took cognizance of the case of Abdul Basit, who was sentenced to death and became permanently disabled due to gross incompetence of the jail authorities, after which he was provided with medical help.

While there has been no execution in Pakistan since December 2019, the process of review of mercy petition is below the international standards.¹⁴ Since the moratorium was lifted, there has not been any pardon or commutation granted to a death row prisoner by the President.

The Sindh prison rules¹⁵ have been notified in 2020 which comply with the minimum requirement set by the Bangkok Rules, however the remaining provinces and the federal government is behind in reviewing the Prisons Act or its accompanying rules.

¹⁰ 'More Than 1600 Women Prisoners In 99 Different Jails In Pakistan - Islamabad Post' (Islamabad Post, 2020) <<https://islamabadpost.com.pk/more-than-1600-women-prisoners-in-99-different-jails-in-pakistan/>>.

¹¹ "Plight of Women in Prisons in Pakistan," (mohr.gov.pk) <https://www.mohr.gov.pk/SiteImage/Misc/files/Prison%20Report_1pbleed_pq.pdf>

¹² Mandela Rules are the Standard Minimum Rules for the Treatment of Prisoners and emphasise the provision of health care for prisoners as a responsibility of the State.

¹³ Bangkok Rules have been established to establish minimum standard of protection for women prisoners.

¹⁴ All persons sentenced to death, pursuant to Article 6(4) of the ICCPR, have the right to consideration, on an individual basis, of their clemency petitions

¹⁵ Sindh Prisons and Corrections Service Act and Rules 2019, (Sindh Prisons & Corrections Manual), <<https://www.lao.org.pk/wp-content/uploads/2021/08/Sindh-Prisons-Corrections-Service-Act-Rule-2019-R.pdf>>

Additional Recommendation

- Address the grave issue of overcrowding in prisons and develop a plan of action to resolve the issue.
- Bring prison facilities in line with international standards especially in light of the right to health. To this end, orders of the Supreme Court and High Court of Islamabad, and the responses received by the Federal Ombudsman and the Ministry of Human Rights must be read in conjunction to develop a concise plan of action to conduct prison reform in the State.
- Take special cognizance of the issues faced by women in prisons and invest in infrastructure to establish more female prisons.
- Develop a plan of action to provide adequate rehabilitation to the prison population including provision of treatment for both physical and mental health issues.
- Develop a plan of action to bring the Prisons Act and Rules in line with international guidelines.

2. Torture

UPR Recommendations 152.134 (supported), 152.133 (noted), 152.144 (noted): These Recommendations require Pakistan to take the necessary steps to effectively prosecute perpetrators of torture, define torture and ensure implementation of recommendations made by the CAT Committee and the Human Rights Committee during their reviews in 2017.

In relation to custodial torture and ill treatment, the Constitution of Pakistan under Article 14(2) prohibits the use of torture in extracting evidence. Article 156(d) of the Police Order 2002 also establishes penalties for those who inflict torture or violence on any person in custody. Nonetheless, the use of torture by law enforcement agencies as a tactic to either extract confessions or information, or to intimidate individuals prevails in Pakistani society. From 2021-2022, we have received 9 cases related to police torture, which amounted to a total of 1,305 cases from 2018 to 2022. We developed a comprehensive report on the systematic torture perpetrated by the police in District Faisalabad from 2006 to 2012 along with recommendations ranging from strict policy reforms to establishment of robust mechanism for effective medical examinations and compensation mechanism for the victims. NCHR is in the process of developing a follow up report to cover the cases from 2012-2022 and to assess the implementation of its recommendations.

While the Torture and Custodial Death (Prevention and Punishment) Bill 2019 was approved by the Senate it has not been voted on by the National Assembly and thus, does not have the status of legislation. If passed, the law will define and criminalize torture, and establish an independent body to regulate activities of law enforcement agencies and provide victims with redress. It will establish a mechanism to grant compensation to victims as well.¹⁶

¹⁶ Section 3 (4) provides that any fines recovered from perpetrators are to be given to the victim, and if a fine is not recovered, then imprisonment of the convicted perpetrator is to be extended by 3 years.

Currently, inquiry Committees within the police have the power to deal with complaints,¹⁷ however, the main concern is the fact that the perpetrator and those who hold them accountable are the same. This is contrary to the right to due process and thus, must be remediated.

Additional Recommendations

- Expedite the process of defining and criminalising torture. To this end, the Custodial Death (Prevention and Punishment) Bill 2019 must be passed in the National Assembly to safeguard the rights of Pakistani citizens.
- Ensure that strict guidance is developed and disseminated within all law enforcement agencies with regards to the prohibition on torture to sensitize officers as to their duties and obligations under the law particularly on the safeguards available for women and children so as to mitigate the incidence of torture in custody.
- In the absence of the Custodial Death (Prevention and Punishment) Bill 2019, take quick action to improve redressal mechanisms within the existing police system by establishing an independent body to hold perpetrators accountable.

3. Access to Justice

UPR Recommendations 152.143, 152.144, 152.246 Advance the efforts made to facilitate equitable access to justice for all, especially the poor and marginalized.

Our work relating to access to justice focuses on two aspects: Witness Protection and Capacity Building of Prosecution Departments. These are important building blocks of a criminal justice system guided by the rule of law.

Witness Protection requires participants of the criminal justice system to ensure that the risk of threat of any harm to the life of a person cooperating in the process of holding perpetrators liable is dealt with. The primary responsibility to protect witnesses and victims alike falls on the State. Pakistan has introduced laws for the purpose of witness protection,¹⁸ however its enforcement remains lacking and political influence, corruption and bribery in the justice system allows for witnesses to be made to give statements under duress, or to retract statements during trial.

To this end, we have conducted efforts to provide witness protection in the Usman Mirza case, which gained much national interest when videos of the defendant went viral on the internet where he can be seen harassing, threatening, and abusing a young couple. As the case was under trial, the victims became hostile, owing to external pressures and refused to give a statement against the perpetrator. Our office took notice of the issue and the Chairperson, along with other members attended court hearings and gave recommendations which included the use of the Witness Protection Law. We highlighted the need to reform witness protection in Pakistan and ensured—through our intervention in the case—that the court ensures justice without any external influences.

¹⁷ 'TAB Branch Started Quick Resolution Of Complaints Against Police | Punjab Police' (Punjabpolice.gov.pk, 2020) <<https://punjabpolice.gov.pk/node/8621>>

¹⁸ Witness Protection, Security and Benefit Act, 2017, Punjab Witness Protection Act, 2018, KP Witness Protection Act, 2021, Sindh Witness Protection Act, 2013 and Balochistan Witness Protection Act, 2016.

A similar trend was witnessed in the Nazim Jokhio case who was killed after being tortured by a Member of the Sindh Assembly. Our provincial counterpart hosted a meeting of a group of civil society organisations as well as a Joint Action Committee to discuss next steps to ensure speedy justice to the victim's family. The JAC met with the victim's wife and held a press conference to counter the prosecution teams tactics in delaying the case. It was noted that the prosecution department had also been pressurised by the perpetrator as he was a highly influential person. Despite the efforts made by us, the victim's wife was pressured into issuing a video wherein she pardoned all the accused who had been named in the case. However, efforts are underway in ensuring that justice is met in this case.

We have developed a Report on federal and provincial prosecution departments. It highlights the issues that continue to plague Pakistan's criminal justice system which include: lack of service structure or structures for promotions, lack of defined terms and conditions for the prosecution department, non-provision of special judicial allowance, lack of human resources, lack of ability to conduct scientific and reliable evidence, lack of witness protection programs, lack of coordination between prosecutors and police and overwhelming dependence on ocular evidence which may be retracted by witnesses due to influence, pressure and duress. Corruption within the system also impedes the ability of the criminal justice system to do justice in most cases which means that those who can pay their way out of crimes will do so. This has been observed by our work both in the Usman Mirza, and the Nazim Jokhio case.

Additional Recommendations:

- Identify barriers to enforcement of the domestic witness protection regime.
- Develop plan of action to operationalise and enforce the domestic witness protection regime
- Development a special law for ICT Prosecution Department so that it can attain organisational independence, establish particular policies for promotions, define the role of the prosecutor during investigations, empower prosecutors to select charges for the accused on the basis of available evidence and propose sentences.
- Develop clear policies to introduce service structures and policies on promotions in federal and provincial prosecution departments so that bribery and corruption are mitigated.
- Build capacity on police-prosecution partnership by conducting joint trainings for both departments at the federal and provincial levels.
- Empower the prosecutor to withhold prosecution and direct stoppage of the investigation in situations where there is no evidence or chances of success.