

Pakistan's Domestic Implementation of its International Human Rights Obligations

Executive Summary

Background

The Research Society of International Law, Pakistan (RSIL) has undertaken a broad legal review of Pakistan's international human rights obligations and their domestic implementation. This study was initiated in April 2018 for the Ministry of Human Rights, Government of Pakistan, pursuant to the Ministry's Tender Notice #03/2017.

Project Objectives

The overarching objective of this project was to develop a set of recommendations to bring Pakistan's domestic legal landscape in line with its international human rights obligations. The subordinate objectives that stem from this are:

- Identification of Pakistan's international human rights obligations in their totality and the precise scope of these rights;
- Determination of the scope and parameters of fundamental rights in the Constitution based on latest jurisprudence of the Superior Courts in Pakistan;
- Identification of all domestic implementation mechanisms at the Federal and Provincial level and collation of gaps and lacunae;
- Development of targeted recommendations for improving Pakistan's domestic compliance with its international human rights obligations and suggested vehicles for reform e.g. Act, Rules, Notifications, SOP's, capacity building etc.

Research Activities of the Project

- i. Detailed legal review of the **seven key** international human rights instruments ratified by Pakistan (ICCPR, ICESCR, UNCAT, CEDAW, CERD, CRC, CRPD) and the UDHR. Approximately **197 rights conferring Articles in these international instruments**.
- ii. **27 international human rights categories** emanating from these instruments have been identified for the purposes of review and analysis under this Project.
- iii. These 27 international human rights have been further categorized by RSIL into **five thematic groups** for the purposes of the research study – **civil, political, economic, social and cultural rights**.
- iv. **41 General Comments of UN Treaty Bodies** have been reviewed and quoted in relation to the 27 human rights that have been identified.
- v. **All State Party reports** submitted by Pakistan as well as **Shadow Reports** submitted by independent organizations in relation to Pakistan have been reviewed and analyzed.

- vi. The **Constitutional Obligations** laid down in Chapter 1 (Fundamental Rights) and 2 (Principles of Policy) of Part I of the Constitution of Pakistan have been identified and analyzed.
- vii. More than **900+ judgments of the Superior Courts in Pakistan** have been reviewed in relation to the fundamental rights/constitutional obligations, with 331 selected as being seminal in the protection of fundamental rights.
- viii. A section-wise legal review of over **400 domestic laws** was conducted, and the gaps and lacunae have been identified. These laws include subordinate legislation in the form of Rules and Regulations as well.
- ix. The mandate and work of **70+ statutory and other bodies** have been analyzed.
- x. **Criminal Processes, i.e. the provisions of the Criminal Procedure Code, 1898, and the Pakistan Penal Code, 1860**, have been mapped out to identify areas where international obligations are being observed as well as those processes which undermine international human rights obligations and constitutional guarantees.
- xi. **219 specific recommendations** have been developed in relation to the challenges identified. These include new legislation, amendments in existing legislation, administrative measures, changes in the scope and function of government bodies, development of Standard Operating Procedures, Capacity Building Exercise, and Outreach Programmes.

General Findings

The rights enshrined in the Constitution have been widely interpreted by the Courts of Pakistan and the superior judiciary routinely refers to international instruments in relation to our domestic human rights framework. In fact, even instruments that have not been ratified by Pakistan are referred to on the basis of customary law. Article 184(3) which deals with the enforcement of fundamental rights of individuals by the Supreme Court has been given a highly expansive definition and the judiciary has been exceptionally active in recent years in enforcing fundamental rights.

There is a vast network of laws that cater to the human rights of the citizens of Pakistan at both the Federal and Provincial levels. These laws touch upon almost every aspect of modern Pakistani life. Of these laws, close to 400 have a direct bearing to the rights enshrined internationally and in the Constitution. A further 800 federal and provincial laws tangentially deal with human rights.

However, the devolution of powers to the Provinces pursuant to the 18th Amendment to the Constitution has created confusion regarding the competence of the Provincial Assemblies to enact laws on a multitude of issues. Furthermore, such devolution has led to a lack of uniformity in how laws, granting or protecting rights, operate. Without greater Federal efforts at harmonizing laws which have a direct bearing on the enjoyment of fundamental rights, the citizens of Pakistan will face uneven and potentially discriminatory treatment by State entities.

Another hurdle in the implementation of many laws is the absence of subordinate legislation operationalizing the Act. Furthermore, the enforcement of top-down policies as opposed to utilizing grass-root implementation mechanisms also limits the effectiveness of legislation in Pakistan.

It has been witnessed that bodies mandated to oversee the implementation of human rights in the State are deprived of the necessary resources and powers to effect any meaningful change. It has also been observed that some laws are divorced from the socio-economic realities of Pakistan which makes their implementation far-fetched and problematic. A major obstacle to the full realization of human rights remains the chronic lack of resources to enable State entities to provide the services they are mandated to.

From a legal perspective, it has been observed that there is an overlap in the competences of federal and provincial bodies dealing with human rights. Not only does this create problems in coordination, it also dilutes accountability and reduces ownership amongst stakeholders.

The consolidated draft of this report aims to address a wide variety of these legal gaps to enhance Pakistan's compliance with its International Human Rights Obligations.

Intended Beneficiaries:

Primary Beneficiary:

Ministry of Human Rights

RSIL's research under this project can provide the Ministry with the legal blueprint for initiating wide ranging, multi-sectoral reform in the field of human rights.

The project also serves as a database of Pakistan's State Practice for all future reporting needs.

Secondary Beneficiaries

- 1) **Ministry of Foreign Affairs:** Better informed diplomatic positions and enhanced ability to defend Pakistan against those seeking to attack it at various international forums.
- 2) **Ministry of Interior & Subordinate Policing Bodies:** A clearer picture of international and domestic legal obligations can pave the way for improved capacity building of law enforcement personnel on human rights.
- 3) **Ministry of Law:** Will be in a better position to develop legislation based on the recommendations provided and can ensure that future legislation is in line with Pakistan's domestic and international obligations.
- 4) **Domestic Courts:** The review and consolidation of domestic jurisprudence on human rights will help in the development of better-informed judgments on human rights in the future.
- 5) **Legal Community:** Knowledge of international and domestic protections will enable lawyers to better inform their clients and defend them.
- 6) **General Public:** Ultimately, the greatest beneficiary of this study would be the people of Pakistan who will enjoy enhanced protections and greater realization of their inherent human rights.

Other beneficiaries:

- 7) Provincial Treaty Implementation Cells
- 8) Provincial Law Departments
- 9) Members of the Legislative Assemblies
- 10) Researchers, Academics, and Students
- 11) Civil Society Organizations
- 12) The UN System

Overview of RSIL's Research and Recommendations relating to Civil, Political, Economic, Social, and Cultural Rights.

I. Civil Rights:

Civil Rights as a thematic grouping forms a large portion of the Report. In that, this thematic grouping contains a total of 13 distinct rights that have formed separate Chapters.

These are:

- i. The Right of Equality and Non-Discrimination
- ii. Right to Life, Liberty and Personal Security
- iii. Right to be Treated with Dignity and Humanity while deprived of Liberty
- iv. Protection from Exploitation and other Abuse
- v. Right to Due Process, Fair Trial and the Administration of Justice
- vi. Right to Privacy
- vii. Freedom of Thought and Religion
- viii. Marriage and Family Life
- ix. Right to Seek Asylum
- x. Right to Nationality
- xi. Right to Free Movement
- xii. The Prohibition of Arrest in cases of Unfulfilled Contract
- xiii. Rights of Child

The eight International Human Rights instruments, ratified and adopted by Pakistan have all provided for these rights. The Constitution of Pakistan, 1973 has recognized these rights thereby giving them a constitutional footing through 23 distinct constitutional Articles.

After the analysis of close to 300 laws, a total of **178 Federal and Provincial legislation** were relied upon in order to evaluate the protection of civil rights domestically. Moreover, a total of **156 seminal judgments** have been added to provide for the complete scope of these rights. Lastly, it was seen that 35 domestic Bodies have been mandated by Acts and Policies to fulfill these rights for the citizens of Pakistan. A total of **105 recommendations** have been made, including new legislation, amendments in existing legislation, administrative measures, changes in the scope and function of government bodies, development of Standard Operating Procedures, Capacity Building Exercise, and Outreach Programmes.

II. Political Rights

While researching political rights, four distinct set of rights were identified that have formed separate Chapters in the Report. These are;

- i. The Prohibition of Propaganda for War and Inciting National, Racial or Religious Hatred
- ii. The Right to Freedom of Opinion and Expression and to Information
- iii. The Right to Peaceful Assembly and Freedom of Association

- iv. Right to Take Part in Public Affairs, to Vote and to Access Public Services.

The rights amalgamated in this thematic grouping were drawn from all eight International Human Rights instruments that have been ratified by Pakistan. The Constitution of Pakistan, 1973 has provided a constitutional footing to political rights through 22 distinct Articles.

When identifying and evaluating the scope of these political rights **50 laws** were analysed to fully understand how domestic legislation in Pakistan affected their protection. Prior to the analysis of these domestic Federal and Provincial legislation, a total of 115 laws were filtered through.

In that, a total of 70 judgments were combed through so that **40 seminal judgments** could be relied upon in the Report itself. Lastly, it was seen that **four operational domestic Bodies** have been mandated for the fulfillment of Political rights in Pakistan. A total of **27 recommendations** have been made, including new legislation, amendments in existing legislation, administrative measures, changes in the scope and function of government bodies, development of Standard Operating Procedures, Capacity Building Exercise, and Outreach Programmes.

III. Economic Rights

When identifying economic rights, four distinct set of rights were decided on that have formed separate Chapters in the Report. These are;

- i. The Right to Work
- ii. The Right to Rest, Leisure and Holiday
- iii. The Right to Social Security
- iv. The Right to Property

The rights amalgamated in this thematic grouping were drawn from six International Human Rights instruments that have been ratified by Pakistan. The Constitution of Pakistan, 1973 has provided a constitutional footing to political rights through 5 distinct Articles.

When identifying and evaluating the scope of these economic rights **51 laws** were analysed to fully understand how domestic legislation in Pakistan affected their protection. Prior to the analysis of these domestic Federal and Provincial legislation, a total of 115 laws were filtered through.

In that, a total of 70 judgments were combed through so that **47 seminal judgments** could be relied upon in the Report itself. Lastly, it was seen that **15 operational domestic Bodies** have been mandated for the fulfillment of Political rights in Pakistan. A total of **23 recommendations** have been made, including new legislation, amendments in existing legislation, administrative measures, changes in the scope and function of government bodies, development of Standard Operating Procedures, Capacity Building Exercise, and Outreach Programmes.

IV. Social Rights

The thematic grouping of social rights is an amalgamation of three distinct rights that are:

- i. Right to Health and Well-Being
- ii. Right to Education
- iii. Right to an Adequate Standard of Living

The rights have been protected through provisions in all eight International Human Rights instruments that have been ratified and acceded to by Pakistan. These rights have been realized in the Constitution of Pakistan, 1973 through **9 constitutional Articles**.

Domestically, these rights have been protected through a total of **58 Federal and Provincial legislation**. Moreover, **48 seminal judgments** have been analysed in order to understand the ambit of the protection of these rights. **29 domestic Bodies** have been mandated to protect and fulfill these rights for the citizens of Pakistan. A total of **40 recommendations** have been made, including new legislation, amendments in existing legislation, administrative measures, changes in the scope and function of government bodies, development of Standard Operating Procedures, Capacity Building Exercise, and Outreach Programmes.

V. Cultural Rights

The Cultural Rights' thematic grouping is a collection of three distinct rights that have formed separate Chapters in the Report.

These are:

- i. Right to Culture and Science
- ii. Right to Social and International Order
- iii. Minority Rights

The thematic grouping of cultural rights has been created based on the international provisions of the eight International instruments as ratified and acceded to by Pakistan. The Constitution of Pakistan, 1973 has through **11 distinct Articles**, provided a constitutional footing to these three cultural rights.

Domestically, the rights have been protected through the passage of a total of **36 domestic Federal and Provincial legislation**. The ambit and scope of the rights that have been provided domestically has been analysed through the reliance of **28 seminal judgments** of the Superior Courts. Lastly, a total number of **24 many domestic Bodies** have been mandated with the protection and fulfillment of these rights for the citizens of Pakistan. A total of **24 recommendations** have been made, including new legislation, amendments in existing legislation, administrative measures, changes in the scope and function of government bodies, development of Standard Operating Procedures, Capacity Building Exercise, and Outreach Programmes.