

Draft

National Policy Framework on Human Rights

Ministry of Human Rights

Contents

1.	Institutional set-up	4
2.	Civil and political rights	7
	2.1 Right to life, liberty and security	8
	2.2 Non-discrimination	8
	2.3 Equal protection before the law	9
	2.4 Freedom from torture	10
	2.5 Freedom of expression	11
	2.6 Freedom of assembly and association	12
	2.7 Access to the judicial system	12
	2.8 Participation in political life	14
	2.9 Freedom of religion	15
	2.10 Access to information	16
3.	Social, Economic and Cultural Rights	18
	3.1 Right to work	19
	3.2 Right to health	20
	3.3 Reproductive rights	22
	3.4 Trade union rights	23
	3.5 Social security and social services	24
	3.6 Adequate standards of living	25
	3.7 Land rights	26
	3.8 Right to adequate food and nutrition	27
	3.9 Environmental rights	27
4.	Group Rights	30
	4.1 Child rights	31
	4.2 Women's rights	33
	4.3 Rights of transgender and intersex persons	36
	4.4 Religious, ethnic and sectarian minorities	37
	4.5 Persons with disabilities	39

	4.6	Older persons' rights	40
	4.7	Refugees' rights and the right to seek asylum	41
	4.8	Stateless persons' rights	42
5.		Rights-based approach to specific challenges	44
	9.1	Right to development	45
	9.2	Corruption	46
	9.3	Preventing violent extremism	46
	9.4	Elections	48

1. Institutional set-up

1. Institutional set-up

The relationship between Federal Government and the provinces is regulated under chapter V (Article 141-159) of the Constitution. The eighteenth Constitutional (Amendment) Act (2010) has redefined the structural contours of the state through a paradigm shift from a heavily centralized to a predominantly decentralized federation. The Constitution has reinforced a multi-level governance system by extending greater autonomy to the provinces. Furthermore, redistribution of functions at the district level, tehsil and union council level has been vested with the provincial governments. In light of the above, the following steps are recommended:

- i. In light of central human rights-related areas, in particular, but not limited to, employment, social security, housing, health care and education, being devolved to the provinces, the Ministry of Human Rights, in its mandate to coordinate activities of Ministries, Divisions and Provincial Governments, will strengthen efforts to coordinate between federal and provincial governments, in particular close collaboration and support between the Ministry's regional offices and the provincial human rights departments and directorates.
- ii. The Ministry of Human Rights will provide advise and technical assistance to all other government counterparts in how to mainstream human rights into the country's overall development agenda, and on how to apply a human-rights based approach to development programming throughout all sectors;
- iii. Under the eighteenth amendment to the Constitution (2010), the provinces have been granted greater autonomy, as the federal Government has transferred to them the policymaking authority on crucial sectors such as health, education, protection, employment as well as on all matters related to the advancement of children, women, transgender persons and other marginalized and vulnerable groups. The Ministry of Human Rights will provide guidance to the provincial governments by setting standards and establish an effective mechanism aimed at ensuring a transparent, coherent and consistent implementation of Pakistan's international treaty obligations throughout its territory, to ensure a harmonized application of the law and implementation of human rights standards;
- iv. The Ministry of Human Rights, in its mandate to review the human rights situation in country, will take necessary measures to improve rights-based data collection with a view to collecting comprehensive and comparative data, including on the disadvantaged and marginalized individuals and groups, disaggregated by sex, age, geographical location, disability, religion and other status, to inform, inter alia, Pakistan's treaty body reporting obligations;
- v. The Ministry of Human Rights, in its mandate to administer the National Commission for Human Rights Act (2012), is determined to respect and promote

- Pakistan's National Human Rights Commission as an independent state institution to be fully compliant with the Paris Principles / the Global Alliance of National Human Rights Institutions (GANHRI) criteria, including but not limited to the submission of independent shadow reports to international human rights fora;
- vi. The Ministry of Human Rights, in its mandate to administer the National Commission on the Status of Women Act, 2012, as well as concerning its probable future responsibility to administer the National Commission on the Rights of Child Act (2017), will (continue to) support the Commission(s), aiming to empower them to become fully independent and sufficiently resourced state institutions.

2. Civil and Political Rights

2. Civil and Political Rights

Pakistan reflects its commitment to ensure the individual's civil and political rights in the country's Constitution. The country has further ratified multiple treaties, including the International Covenant on Civil and Political Rights (ICCPR).

2.1 Right to life, liberty and security

The right to life, liberty and security is protected by Article 9 of the Constitution of Pakistan, which states that “[n]o person shall be deprived of life or liberty save in accordance with law.” Furthermore, Article 4 (2) (a) of the Constitution of Pakistan states that “no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law”. In order to protect and promote these constitutional provisions, the following steps are recommended:

- i. The Ministry of Human Rights, in its mandate to protect and promote human rights, will engage with all relevant stakeholders to work towards a joint strategy, including necessary legislative measures, to ensure the application of the death penalty to most serious crimes only, within the meaning of article 6 (2) of the ratified International Covenant on Civil and Political Rights, with the aim to ultimately reinstate the moratorium;
- ii. The Ministry of Human Rights, in accordance with its mandate to review the human rights situation in the country, will advocate for the development and implementation of effective mechanisms to examine and determine the age and mental health of accused offenders, ensuring that no person who was below eighteen years of age at the time of the commission of an offense, or with a serious psychosocial or intellectual disability, is executed or sentenced to death;
- iii. The Ministry of Human Rights will draft and put forward legislation to include enforced disappearances as a criminal offense into Pakistan's Penal Code.

2.2 Non-discrimination

Article 15 (1) of the Constitution of Pakistan guarantees equality before the law, whilst Article 15 (2) states that “[t]here shall be no discrimination on the basis of sex”. Furthermore, articles 25 to 27 enshrine non-discrimination provisions on the ground of “race, religion, caste, sex, residence or place of birth”. However, these non-discrimination provisions do not afford protection against discrimination on all the grounds prohibited under the international human rights treaties Pakistan has ratified, including discrimination on the grounds of color, language, political or other opinion, national or social origin, property, disability, gender identity, or other status. In light of the above, it is recommended that:

- i. the Ministry of Human Rights, in accordance with its mandate to harmonize legislation with the international human rights covenants and agreements Pakistan is a party to, will take efforts to prepare, in consultation with necessary stakeholders, a government bill to amend the constitution towards revising articles 25-27, ensuring that the constitution prohibits discrimination on all grounds;
- ii. the Ministry of Human Rights, in accordance with its mandate to foster public awareness about human rights, will develop and run a comprehensive public education and awareness-raising programme to combat and prevent discrimination.

2.3 Equal protection before the law

Under the article 25 (1) of the Constitution of Pakistan, “All citizens are equal before law and are entitled to equal protection of law”. Furthermore, articles 25 (2) and 25 (3) specify that “There shall be no discrimination on the basis of sex” and that “Nothing in this Article shall prevent the State from making any special provision for the protection of women and children”. However, the situation of several population groups of Pakistan poses challenges to the principle of equality before the law. For a long time, residents of the former Federally Administered Tribal Areas were not subjected to the Constitution and the Pakistan Federal laws, but to the Frontier Crimes Regulations. Women suffer from discriminatory legal provisions. Religious minorities, and in particular Ahmadis, are subjected to discriminatory legal provisions. Furthermore, delays in the delivering of justice are detrimental to the equal treatment of the Pakistani citizens during legal proceedings. In light of the above, it is recommended that:

- i. the Ministry of Human Rights, in accordance with its mandate to pursue and defend issues before official or non-Governmental organizations, body and forums in Pakistan, will make sure that the integration of the tribal districts with the Province of Khyber Pakhtunkhwa establishes a standardization of the justice system in the geographic areas comprising former FATA;
- ii. the Ministry of Human Rights, in accordance with its mandate to take initiatives to harmonize the legislation with Pakistan’s international obligations, will promote an amendment of discriminating dispositions against women in the law, in line with CEDAW's concluding observation No. 16 (2013), as well as the discriminative dispositions against minorities;
- iii. the Ministry of Human Rights, in accordance with its mandate to take initiatives to harmonize the legislation with Pakistan’s international obligations, will initiate measures to implement the effective enforcement of the legal provisions safeguards upon every deprivation of liberty:
 - (a) A prompt access of the defendant to a lawyer, to his or her family, as well as the presentation of the defendant to a magistrate within the first 24 hours of detention;
 - (b) The right to receive an independent medical examination upon deprivation of liberty,

(c) The detention should be promptly registered in a comprehensive and accurate detention centre accessible to detainee's family members;

- iv. the Ministry of Human Rights, in accordance with its mandate to formulate programmes for the teaching of human rights, will design courses to be implemented in the curricula of the judicial and law enforcement agencies (LEA) personnel to ensure that procedural safeguards are enforced upon deprivation of liberty;
- v. the Ministry, in accordance with its mandate to develop and conduct information programmes, will organize campaigns aiming at enhancing the public awareness on the right to legal safeguards in case of arrest;
- vi. the Ministry of Human Rights, in accordance with its mandate to pursue and defend issues before official or non-Governmental organizations, bodies and forums in Pakistan, will advocate for a profound reform of the justice system which will allow for the quick settling of cases. This reform may promote the establishment of local courts and prisons, as well as the creation of a common digital and centralized case management system.

2.4 Freedom from torture

Under article 14 (2), enshrining the inviolability of dignity of man, Pakistan's Constitution guarantees that "[n]o person shall be subjected to torture for the purpose of extracting evidence." Pakistan has further ratified the Convention against Torture (CAT). However, current domestic legislation does not provide for a definition of torture, and lacks the stipulation of sanctions adequate to the crime. In light of the above, it is recommended that:

- i. the Ministry of Human Rights, in accordance with its mandate to harmonize legislation, regulations and practices with the international human rights covenants and agreements to which Pakistan is a party, will develop and put forward legal amendments reflecting the prohibition of all elements of the crime of torture in accordance with article 1 of the Convention against Torture, as well as sanctions that are commensurate with the gravity of the crime;
- ii. the Ministry of Human Rights, acting upon its mandate to refer and recommend investigations and inquiries in respect of any incident of violation of human rights, will support the prompt, thorough and effective investigation of all allegations of torture and ill-treatment;
- iii. the Ministry of Human Rights, in accordance with its mandate to obtain information, documents and reports on complaints and allegations of Human Rights violations, as well as its mandate to refer and recommend investigations and inquiries, will assess the practices that prevent the victims of torture to access justice and recommend that their cases are examined by the competent authority. Acting upon its coordination mandate, the ministry will further review these practices and ensure that complainants are protected from retaliation;

- iv. the Ministry of Human Rights, within its powers to provide trainings on human rights issues at the national level, will take measures to strengthen the training of judges, prosecutors, the police and security forces on human rights, including on the absolute ban on torture as enshrined in Pakistan's Constitution;
- v. the Ministry of Human Rights will raise awareness for the universal jurisdiction provisions of CAT across state institutions, particularly the criminal justice system, in Pakistan.

2.5 Freedom of expression

Article 19 of the constitution of Pakistan reads, “[e]very citizen shall have the right to freedom of speech and expression and there shall be freedom of press, subject to any reasonable restriction imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court (commission of) or incitement to an offence”. While the provision is in consonance with international conventions, the right to freedom of expression and media freedom in Pakistan has not improved since Pakistan's ratification of the ICCPR. However, the Constitution does not require the necessity of limitation of expression, to be established / proven for pursuit of legitimate purposes, which is of concern. Meanwhile, fact-finding reports of the Human Rights Commission of Pakistan have indicated that attacks against journalists and media workers, and a high level of impunity for these abuses, disruption in circulation and transmission, as well as self-censorship as a result of press advice and intimidation, have intensified in recent years.

To promote freedom of expression, the policy recommends:

- i. the Ministry of Human Rights to take due note of individuals' and professional associations' complaints on curbing freedom of expression that are not entertained and addressed by relevant authorities, and support exercise of RTI for the same;
- ii. the Ministry of Human Rights, based on its mandate for harmonization of legislation, to carry out an independent review and indicate if the rules of business and/or practices of the proposed Pakistan Media Regulatory Authority (as a result of forthcoming merger of PEMRA, Press Council of Pakistan) do not comply with the provisions in the constitution on freedom of expression, international standards and due process;
- iii. the Ministry of Human Rights, in light of its mandate to coordinate with Ministries, Divisions and Provincial Governments in respect of human rights, to acquire progress reports and voluntary information from the entities created at federal and provincial level for protection of journalists such as the Pakistan Coalition on Media Safety, provincial Media Security Committees, threat monitoring units of Press Information Departments;
- iv. the Ministry of Human Rights, in light of its mandate to pursue or defend issues relating to human rights, to publicly, unequivocally and systematically condemn

- the intimidation, harassment, abduction and killing of journalists and other media workers, lawyers, human rights defenders and civil society actors;
- v. the Ministry of Human Rights to recommend prompt and thorough investigations of all such cases;
 - vi. the Ministry of Human Rights, based on its mandate to obtain information, documents and reports on complaints and allegations of human rights violations from Ministries, Divisions, Provincial Governments and other agencies, to lead the compilation of information about the judicial status of cases of murdered journalists for the UNESCO Director-General's Report on the Safety of Journalists and the Danger of Impunity.

2.6 Freedom of assembly and association

The right to peaceful assembly and association is one of the fundamental freedoms legally guaranteed under international human rights law, namely under Article 20 of the Universal Declaration of Human Rights (UDHR), under Article 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), and under Article 15 of the Convention on the Rights of the Child. Pakistan further ratified the ILO Convention on Freedom of Association No. 87. These international instruments have been accepted by the Government of Pakistan, and they are also part of the Pakistani law under Article 17 of the Constitution of Pakistan, which guarantees the right “to form associations or unions”. In order to ensure protection and promotion of this constitutionally guaranteed human right, this policy recommends that:

- i. the Ministry of Human Rights, as per its mandate to monitor and review Human Rights NGOs, engages with all relevant state and civil society stakeholders to commence a national dialogue on Pakistan's Policy for Regulation of International Non-Governmental Organizations, in order to ensure that, in line with the policy's intention, it is not used to unnecessarily constrict the registration of international non-governmental organizations (NGOs) and their activities;
- ii. the Ministry of Human Rights, in line with its mandate to harmonize legislation, regulations and practices with the international human rights covenants and agreements to which Pakistan is a party and monitoring their implementation, will seek for a review of the Policy for Regulation of International Non-Governmental Organizations, aiming to harmonize it with Article 22 of the ICCPR, with a particular focus on revising the broad and vague grounds for cancellation of the registration of organization;
- iii. the Ministry will perform its monitoring and review function of NGOs with a view to enhancing capacity, coordination and collaboration between itself and civil society organizations.

2.7 Access to the judicial system

According to article 10-A of the Constitution of Pakistan, “a person shall be entitled to a

fair trial and due process”. Moreover, Pakistan has the responsibility to provide access to justice for all. However, due to social-cultural barriers, a lack of information, of resources or trust in the law enforcement agencies (LEA) and justice personnel, parts of the population are less likely to seek justice through the judicial system. Those categories of people include, but are not limited to, women, ethnic and religious minorities, refugees, transgenders as well as the poor and marginalized in general. Also, in some areas, due to a lack of trust in the judicial system and delays in the delivery of justice, the access to justice through informal settlement of disputes (jirgas and panchayat) is preferred over the filing of cases to the courts. In light of the above, it is recommended that:

- i. the Ministry of Human Rights, in accordance with its mandate to pursue and defend issues before official or non-Governmental organizations, bodies and forums in Pakistan, will promote the improvement of the fairness, equity and the rapidity of the justice system to curb the use of parallel justice systems such as jirgas and panchayat;
- ii. the Ministry of Human Rights, in accordance with its mandate to harmonize regulations and practices, will review the criteria for applying to governmental mechanisms providing legal aid (and in particular the mechanisms planned under the National Action Plan for Human Rights of 2016), and ensure that the new criteria for access to the legal aid mechanisms are fair, speedy, transparent and effective, allowing a full access to justice to minorities and vulnerable groups;
- iii. the Ministry of Human Rights, in accordance with its mandate to develop and conduct information programmes, will organize awareness campaigns, in collaboration with civil society organizations, to enhance awareness among most marginalized and vulnerable groups with limited access to justice of their rights, and of the availability of legal aid mechanisms;
- iv. the Ministry of Human Rights, in accordance with its mandate to pursue and defend issues, will promote:
 - a) the installation of areas reserved for women and other vulnerable groups in courts and in public judicial facilities;
 - b) the establishment of “one stop shop” for victims of rape, providing medical, psychological as well as a legal counseling, and allowing them to file a complaint at once;
 - c) the establishment of mobile legal clinics and courts to bring formal legal services to isolated neighborhoods where it remains difficult for residents to reach free legal assistance, allowing a better access to justice for all;
 - d) the improvement of juvenile justice throughout the criminal justice chain;
- v. the Ministry of Human Rights, in accordance with its mandate to formulate programmes for the teaching of human rights, will initiate and design mandatory courses in the judicial personnel curricula on the specific rights and needs of categories of population with limited access to justice: women, ethnic and religious minorities, refugees, transgenders, children, and other vulnerable and

- marginalized groups. The Ministry will further coordinate the adoption of these courses with the Higher Education Commission, the judicial education institutions, the Ministry of Law and Justice and the Ministry of Federal Education and Professional Training;
- vi. the Ministry of Human Rights, in accordance with its mandate to take initiatives to harmonize the legislation with Pakistan's international obligations, will initiate the adoption of legal amendments aiming at precisising the definitions of terrorism in the Federal laws, and particularly in the Anti-Terrorism Act (1997). The ministry will initiate a review and harmonization of the laws related to terrorism and integrate the amendments precisising the references to terrorism.

2.8 Participation in political life

The Preamble to the Constitution of Pakistan states that “the state shall exercise its powers and authority through the chosen representatives of the people”. The same focus on participation in political life is laid down in the Principles of Policy of the Constitution of Pakistan that delineates: “The state shall encourage local government institutions composed of elected representatives of the areas concerned and within such institutions special representation will be given to peasants, workers and women.”

The Universal Declaration on Human Rights also lays great importance on political participation: “(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government.” (Art. 21) Lastly, the International Covenant on Civil and Political Rights extrapolates: “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: 1. To take part in the conduct of public affairs, directly or through freely chosen representatives; 2. To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; 3. To have access, on general terms of equality, to public service in his country.” (Art. 25)

Political participation of religious minorities is an area of concern where the current system of ‘reserved quotas’, though necessary, fails to translate democratic accountability between the constituency and the elected officials. The marginalization of religious minorities extends to electoral and political processes where legal, social and political barriers violate their rights. The marginalization includes not only restriction of the religious affiliation of Pakistan’s President and Prime Minister¹ but also seeps into political processes where religious minorities are not adequately represented. The Eighth Amendment to the Constitution of Pakistan introduced the concept of ‘separate electorates’ for religious minorities which allowed religious minorities to vote for only 5% of reserved seats in the National Assembly.² This flagrant violation of constitutional

1 Constitution of Pakistan, Articles 41(2) and 91(3).

2 Dr. Faheem Younus, 'Pakistan's 'Separate but Equal' Elections' (HuffPost, 14 May 2013).

fundamental rights eventually resulted in the push for ‘joint electorates’ in 2002, finally allowing religious minorities to actively contribute to the general electoral and political processes.³ The ‘joint electorate’ system does not represent the whims and concerns of religious minorities, where – even though they can now participate in the general elections – the religious minorities ‘selected’ on reserved seats in the Legislatures do not adequately address the issues of the communities they represent. It has been critiqued by religious minorities that the ‘joint electorate’ system is merely cosmetic in nature and fails to ‘include’ religious minorities in electoral and political processes at federal and provincial levels.⁴

This policy recommends that for all Pakistanis to participate politically in society, the Ministry of Human Rights should:

- i. ensure that political parties create opportunities for women, transgenders and other vulnerable and underrepresented groups to participate in political life;
- ii. ensure that parliamentarians receive sensitization training in the area of gender and discrimination to create an enabling environment for the participation of marginalized groups in political life;
- iii. monitor equitable compliance of the allocation and implementation of quotas, in fields such as political participation, civil service, health, education and employment, with a focus on women belonging to minority communities;⁵
- iv. advocate for specific quotas for each political party to field minority candidates;
- v. support initiatives by civil society organizations and political parties to promote meaningful participation of all groups.

2.9 Freedom of religion

The Constitution of Pakistan guarantees the freedom of religion, inter alia, in article 20 (a), stating that “every citizen shall have the right to profess, practice and propagate his religion”. This policy recommends that:

- i. the Ministry of Human Rights, in light of its mandate to provide training on human rights issues, engages with all relevant stakeholders, including state institutions, civil society and religious leaders and actors, to foster interfaith and intra-faith dialogue;
- ii. the Ministry of Human Rights, as per its mandate to formulate programmes for teaching of human rights at educational institutions, engages with the education sector as well as religious institutions and madrassas to ensure that all derogatory statements about religious groups are removed from school textbooks, and to promote the teaching of tolerance, non-discrimination, understanding, inter-faith

3 Neha M Zaigham, advocating for inclusive electoral processes, for minority rights and for rule of law in South Asia: Report on issues faced by minorities in Pakistan (South Asians for Human Rights (SAHR) 2013).

4 Samson Simon Sharaf, 'The Nation' (Elections and Religious Minorities, 12-12-2012).

5 Committee on Elimination of Discrimination against Women, 'Concluding observations on the fourth periodic report of Pakistan, adopted by the Committee at its fifty-fourth session' (United Nations 2013).

- harmony, and human rights in general;
- iii. the Ministry of Human Rights as per its mandate to coordinate with Ministries, and formulate programmes for teaching of human rights, will liaise with and advise educational institutions and relevant government line departments to ensure non-discriminatory educational/exam requirements for minorities;
 - iv. the Ministry of Human Rights as per its mandate to coordinate and facilitate functions relating to Human Rights, is recommended to establish a grievance cell and referral system for complaints regarding discrimination on the basis of religion, and make information on government responses public.

2.10 Access to information

With the enactment of the eighteenth Constitution (Amendment) Act, 2010, Article 19-A has been incorporated into the Constitution of Pakistan. This article provides that every citizen shall have the right to access information in all matters of public importance subject to regulation and reasonable restrictions imposed by law. This article exemplifies the right to access to information hence contributing to democratic governance.

The right to information is a human right recognized and granted under several international treaties acceded to and ratified by the State of Pakistan. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) contains a reference to the basic human right to seek and receive information. Pakistan is also a member to the United Nations Convention Against Corruption, which binds State Parties to take multi-pronged action to eradicate corruption. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) contains specific provisions requiring State Parties to institute measures for enabling women's participation in public decision-making. This can be possible only if there is transparency and a right to seek and obtain information about such processes. The UN Convention on the Rights of the Child (CRC) also contains a specific provision requiring State Parties to guarantee children's access to information from public bodies. To guarantee the right to information, it is recommended that:

- i. the Ministry of Human Rights make its processes and programs transparent, making information access to its practices public;
- ii. the Ministry of Human Rights invests in training Public Information Officers at the Ministry level to support their roles under the right to information act;
- iii. the Ministry of Human Rights invests in establishing a complaints redressal mechanism in coordination with provincial information commissions;
- iv. the Ministry of Human Rights, in accordance with its mandate to coordinate with provincial line departments on human rights issues, will encourage and monitor that provincial public information officer posts are filled;
- v. the Ministry of Human Rights, in coordination with Provincial Governments, should review all provincial laws, rules, regulations to bring them in line with Provincial Rights to Information Acts and international covenants and agreements to which Pakistan is signatory.

The RTI law enables federal ministries to declare certain information exempt from disclosure, while recording reasons for doing so. However, information pertaining to violation of human rights and criminal wrongdoing cannot be declared exempt from disclosure. This policy further recommends

- vi. in the light of its mandate to review implementation of human rights laws, policies and measures, the Ministry of Human rights to be a member of the information commission that reviews such cases and for classifying certain information in the public interest.

3. Social, Economic and Cultural Rights

3. Social, Economic and Cultural Rights

Pakistan reflects its commitment to ensure the individual's social, economic and cultural rights in the country's Constitution. The country has further ratified multiple treaties, including the International Covenant on Social, Economic and Cultural Rights (ICESCR).

3.1 Right to work

Pakistan has ratified the Convention on International Labour Instruments. Pakistan's ratifications relate to the Hours of Work (Industry), Convention 1919 (No. 1) and the Weekly Rest (Industry) Convention 1921 (No. 14). Other ILO instruments that Pakistan has ratified and are relevant to this theme are the Employment Policy Convention, and the ILO Declaration on Fundamental Principles and Rights at work. Pakistan's Constitution accords all citizens the right to work. Article 18 of the Constitution ensures that all citizens have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade, business or profession. Even though this law is inclusive of all citizens, male, females and transgenders, it does not provide an exclusion for a cut off age for when citizens can access the freedom to trade, to carry out business and to hold a profession. Hence it provides leeway for children below the age of eighteen to work in any field. This loophole in the law has often given credence to the recruitment of children for various forms of labour, included bonded and unlawful child labour.

Regarding women and the right to work, there are still some reservations and restrictions in Pakistan concerning the recruitment of women in employment. In all provinces of the country, low participation of women in the formal sector, the job segregation and concentration of women in low-paid and low-skilled jobs, and the widening pay gap and lack of legal provisions guaranteeing the principle of equal pay for work of equal value prevail.

Within the Ministry's mandate to support and create initiatives for the harmonization of legislation, regulations and practices with the international human rights covenants and agreements to which Pakistan is a party, and for monitoring their implementation, this policy recommends that the Ministry of Human Rights should:

- i. review existing legislation towards creating a comprehensive legislative and policy framework on labour protection for all workers, irrespective of the sector they are employed in;
- ii. review policies and programs to tackle and assess strategies aimed at the prevention of and protection from forced labour, as well as responses, including prosecution of cases and rehabilitation; and to speed up the development of the national labour protection framework;

- iii. develop a clear implementation and monitoring plan for all national and provincial legislation on bonded labour;
- iv. strengthen the monitoring mechanisms of domestic labour conditions;
- v. support the labour ministry and other relevant stakeholders in collecting and analyzing data on job creation / the realization of the right to work;
- vi. strengthen the capacity of relevant ministries, law enforcement agencies, employers, trade unions and the national human rights commission to identify, monitor and devise strategies to effectively abolish forced labour in all its forms, with a particular focus on vulnerable and marginalized groups at greatest risk of entering situations of forced labour;
- vii. support the Ministry of Overseas Pakistanis and other relevant stakeholders in developing responsive legislation and regulations to strengthen the oversight of recruitment, placement, living and working conditions of workers and their families, including the performance of recruiters
- viii. support the Interior Ministry and other relevant stakeholders in developing responsive legislation and regulations to strengthen the protection of foreign migrant workers and their families employed in Pakistan;
- ix. develop monitoring mechanisms for assessing the effective elimination of forced labour and modern-day slavery from Pakistan;
- x. recommend and follow up on the thorough investigation of cases of forced labour, ensuring victims' access to justice and rehabilitation;
- xi. advocate for the ratification of ILO Protocol No. 29 of 2014 to the Forced Labour Convention and its application to address modern forms of forced labour.
- xii. adopt effective measures to ensure that employers in the formal labour market increase female participation;
- xiii. prepare, jointly with all relevant stakeholders, a plan of action for the protection of women working in the informal sector;
- xiv. advocate for the ratification of the International Labour Organization (ILO) Convention No. 177 (1996) concerning Home Work, as well as the ILO Convention No. 189 (2011) concerning Decent Work for Domestic Workers, and amend the relevant domestic legislation;
- xv. develop a country-wide awareness raising programme on bonded, domestic and child labour and trade-unionism;
- xvi. advocate that maternity and paternity benefits are secured for those in employment.

3.2 Right to health

The right to health, including access to affordable health coverage, is a fundamental part of the human rights framework, and of the common understanding of a life lived in dignity. The right to the enjoyment of the highest attainable standard of physical and mental health was first articulated in the 1946 Constitution of the World Health Organization (WHO), whose preamble defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”. The

preamble further states that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.” The 1948 Universal Declaration of Human Rights also mentions health as part of the right to an adequate standard of living (art. 25). The right to health was again recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Rights.

Besides having ratified several international treaties enshrining the right to health, Pakistan further ensures the right to medical relief in article 38 (d) of the Constitution, stating that the State shall “provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race”. The right to health is an inclusive right. The underlying determinants of health include safe drinking water and adequate sanitation, safe food, adequate nutrition and housing, healthy working and environmental conditions, health-related education and information, and gender equality. The right to health should further entitle citizens to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health, to the right to prevention, treatment and control of diseases, and to access to essential medicines. Health services, goods and facilities must be provided to all without any discrimination. Free quality basic health services must be provided to all, including disadvantaged and marginalized individuals, with a particular focus on the rural areas.⁶

Pakistan's Health Vision 2016-2025 reaffirms to improve the health of all Pakistanis, particularly women and children, through access to affordable and quality essential health services, delivered through a resilient and responsive health system. However, one of the challenges Pakistan faces is a rapid increase in HIV infections. In order to contribute to reduce key populations' vulnerability to HIV/AIDS, enabling people living with HIV to access treatment, as well as to help reducing social stigma and discrimination against those living with HIV, this policy recommends that:

- i. the Ministry of Human Rights, as per its mandate to harmonize national legislation with international human rights standards, will draft and put forward a constitutional amendment bill proposing the recognition of health as a fundamental right in the Pakistani Constitution;
- ii. the Ministry of Human Rights, within its mandate to foster public awareness on human rights, will liaise with all relevant stakeholders, in particular the Ministry of National Health Services, Regulation and Coordination, the provincial health departments and civil society actors, to develop a country-wide awareness raising strategy about HIV/AIDS and Sexually Transmitted Infections;
- iii. coordinate with the private and public sector health institutes to ensure a rights-based health response across the country;
- iv. the Ministry of Human Rights to promote making Sexual and Reproductive Health (SRH) information and services available to persons with disabilities, creating a pool of peer educators on Sexual and Reproductive Health (SRH) for persons with disabilities, and ensuring mainstreaming disability related issues into

6 Cf. <https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>.

- programme initiatives;
- v. the Ministry of Human Rights to advocate for the standardization of Health Management Information System (HMIS) data, inclusion Violence against Women and transgenders indicators;
 - vi. advocate for the effective implementation of the Sindh HIV/AIDS control Act, and monitor the implementation of the same, whilst supporting the other provinces in developing similar legislation within the ministry's mandate to harmonize laws.

3.3 Reproductive rights

Reproductive rights embrace certain human rights recognized in national and international laws and international human rights standards, resting on the recognition of the basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children, and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right to make decisions concerning reproduction free of discrimination, coercion and violence.

Reproductive rights refer to a diversity of civil, political, economic, social and cultural rights affecting the sexual and reproductive life of individuals and couples. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obligates the states parties to ensure “access to health care services, including those related to family planning” and mentions appropriate services in connection with pregnancy and the right to decide on the number and spacing of children (Articles 12 and 16). The general right to the highest attainable standard of health is protected by the International Covenant on Economic, Social and Cultural Rights (Article 12). Discrimination against women is prohibited by CEDAW, the International Covenant on Economic, Social and Cultural Rights and several other global and regional instruments. The Convention on the Rights of the Child also protects children's right to the highest attainable standard of health (Article 24). The Convention on the Rights of Persons with Disabilities specifically mentions the right of persons with disabilities to sexual and reproductive health (Article 25). The International Covenant on Civil and Political Rights and the International the International Covenant on Economic, Social and Cultural Rights, also underline the right of women to be free from all from all forms of discriminations, the right to liberty and security of the person and free and full consent of intending spouses to marriage. The high level of preventable maternal mortality further violates the right to life, set out in the International Covenant on Civil and Political Rights (Article 6).⁷

In Pakistan, abortion remains criminalized except to save the life of the woman or provide “necessary treatment”; the circumstances under which voluntary termination of pregnancy is allowed are not clearly defined or widely understood among medical professionals or the general public. Consequently, a very large number of women seek unsafe abortions, which may put their lives and health at risk. There is a high level of

7 Cf. <https://www.ohchr.org/Documents/Publications/NHRIHandbook.pdf>.

resulting maternal mortality. Moreover, a high rate of unintended pregnancy exist, owing to limited access to information and services regarding sexual and reproductive health including Family Planning.

The findings of a national study, Post-Abortion Care in Pakistan, issued by Population Council in 2013 how that Pakistan has made strides of progress in the area of sexual and reproductive health (SRH). However, we still have a long way to go as a large proportion of women still have unmet contraception (as high as 20%, according to the latest PDHS) and safe abortion needs; a huge percentage of women are still experiencing post abortion complications (as estimated 15 per 1,000 women of reproductive age⁶) and the contraception prevalence rate is still very low (approximate level of contraceptive use among married women aged 15-49 is as low as 30 percent), according to the Population Council study.⁸

In light of these challenges, the policy recommends that:

- i. the Ministry of Human Rights, as per its mandate to harmonize legislation, regulations and practices with international human rights standards, should undertake a legislative review with the aim to amend the legislation on abortion to ensure its compatibility with other fundamental rights, such as women's rights to life and physical and mental health by broaden the permitted circumstances for legal abortion in order to ensure that legal restrictions do not prompt women to resort to unsafe clandestine abortions that may endanger their lives and health;
- ii. the Ministry of Human Rights, in accordance with its mandate to develop and conduct information programmes to foster public awareness about human rights, should develop a public information campaign to improve women's and men's access to sexual and reproductive health rights information, including for disadvantaged women and girls in rural areas;
- iii. the Ministry of Human Rights to coordinate and strengthen efforts to collect data of maternal deaths, and to institutionalize monitoring systems for annual reporting, on the basis of which budget allocations can be advocated for;
- iv. the Ministry of Human Rights to review, amend and implement laws and policies to address the health needs of young people including access to adolescent-sensitive health programs and build awareness and capacity of service providers to meet young people's health needs such as client centered counseling and health care. Provide comprehensive sexual and reproductive health education to young people.

3.4 Trade union rights

The Constitution of Pakistan ensures that every citizen has the right to assemble peacefully, and that every citizen has the freedom of association, particularly in relation to the right to form associations or unions. While there is freedom in Pakistan to form,

⁸ Country Profile: On Universal Access to Sexual and Reproductive Health: Pakistan page 2. (<https://arrow.org.my/wp-content/uploads/2015/04/Country-Profile-SRH-Pakistan.pdf>).

and be a member of, a political party, the freedom to form associations in the place of work is often restricted by employers, and also remains restricted due to legal barriers. Non-Governmental Organizations (NGOs) and certain political parties have faced, and continue to face, increased resistance both from the State as well as from non-state actors. The restrictions against freedom of association for agricultural employees, domestic and home-based workers, the self-employed, and a vast number of the formal labour force are unable to form or join unions where they would most likely be able to press for demands affecting their situations. These restrictions indicate that these workers are unable to have any form of collective bargaining power. Under all four versions of the Provincial Industrial Relations Act, a law for settlement of industrial disputes and registration of trade unions, the provisions in place for the protection of workers right to associate fall short of international standards. It needs to be ensured that these acts extend to the former areas of former FATA. They currently exclude anyone employed in the administration of the state, police, armed forces, security staff of Pakistan International Airlines (PIA), staff of public educational institutions, fountain houses, orphanages and government hospitals. With a long list of exclusions, the realization of the right to freely form associations remains remote. Moreover, the act demands that a trade union may only be registered if more than 75% of the workforce of that particular industry is a part of it. These limitations are legal encumbrances in and of themselves.

This policy therefore recommends that the Ministry of Human Rights:

- i. advocates for the implementation of the International Labour Organization's Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Domestic Workers Convention, 2011 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and for the ratification of the the Workers' Representatives Convention, 1971 (No. 135). These steps will provide legal opportunities for workers and employers to join organizations, enjoy adequate protection against acts of anti-union discrimination, and enjoy adequate protection against any acts of interference within the industrial relations;
- ii. Should ensure that Pakistan's ratifications, are harmonized with national and provincial legislation, allowing for the MoHR to monitor the implementation of the freedom to form trade unions and exercise the right to collective bargaining.

3.5 Social security and social services

The State of Pakistan has committed itself to promoting social justice and eradicating social evils. A loophole to this legal principle is the absence of a definition to 'social evils.' The absence of a concise breakdown of what social evils entail in Pakistan has created blind spots – hence the lack of comprehensive information on the social security schemes within the country, including contributory and non-contributory, public and private schemes. This has also left a majority of workers, including those in the formal economy, without any access to social security programmes. For example, the participation rate in the Employees' Old Age Benefit Institution is below 10 per cent.

Moreover, Pakistan has not established a social protection floor as per article 9 and 11 of the International Covenant on Economic, Cultural and Social Rights. Another critical issue of concern in Pakistan is the situation of women working in the informal sector (agriculture, domestic and home-based work), in particular the fact that they are not recognized in the existing labour legislation as workers, and as such are unprotected and do not have access to social security and benefits.

This policy recommends that the Ministry of Human Rights should:

- i. advocate for establishing a comprehensive social protection system along with an associated management information system for both the formal and informal sector workers;
- ii. advocate for the formulation and adoption of a Policy on Home Based Workers by all provinces, and monitor its proper implementation so as to guarantee that all workers have adequate access to social security benefits;
- iii. advocate for and support the monitoring of the standards set out in the constitution on minimum wages, which should cover all workers in the country;
- iv. liaise with the employers organizations in Pakistan to advocate for the payment of the prescribed minimum wage to the workers.

3.6 Land rights

Equal access and rights to land are key elements for the food security and well-being of rural people who rely on agriculture for their livelihoods; this is acknowledged in SDG Target 1.4 and SDG target 5a. Secure land tenure rights also enable key human rights, such as the right to a standard of living adequate for the health and well-being of people, including the right to food. These rights are enshrined in Article 25 of the Universal Declaration of Human Rights, Article 11 of the International Covenant on Economic, Social and Cultural Rights, and in Article 38-D of the Constitution of Pakistan.

In Pakistan, governance issues hamper land rights and tenure security and, consequently, food security and equitable social and economic development. Concentration of land-ownership among a small number of large land-owners, tenure insecurity and gender matters are among the most compelling land-related issues.

Statutory law related to land rights is dated and fragmented. Over 24 laws at the national and provincial levels regulate ownership, transfer, acquisition and tenancy, but there are still gaps and incoherence. Customary tenure systems and law exist for transferring land and dealing with land disputes that are more accessible and inclusive, and may be more efficient. However, these systems are not always aligned with statutory law and human rights principles, including gender equality.

Pakistan's Constitution provides that every citizen shall have the right to acquire, hold and dispose of property. The Land Reform Act (1977) was expected to address inequality of land access and tenure by regulating tenancy, establishing land ceilings and implementing distribution reforms but it failed to meet its objectives. Consequently, uneven land distribution issues remain unaddressed. In Sindh, where there is a higher

proportion of tenant farmers, the Sindh Tenancy Act requires updating and enforcement.

In light of the above challenges, this policy recommends that the Ministry of Human Rights should:

- i. advocate for the application of the principles in the internationally agreed “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security” (VGGT) – for example by identifying innovative options for increasing rural land access for the poor, or allocating small areas of land, without requiring the government to identify large amounts of agricultural land for redistribution;
- ii. advocate for and support the utilization of proven alternatives to improve relationships between tenants and landlords demonstrated in pilot projects at provincial level, to improve tenure security and encourage enhanced agricultural productivity;
- iii. establish guidelines for written agreements between landlords and tenants, aligned with national and international legislation and human rights principles, to assist establishing more balanced relations, preventing bonded work;
- iv. develop strategies allowing women to acquire land and water rights, which are already a legal right, in ways consistent with Pakistan’s Constitution, to increase women’s economic opportunities and productivity as per SDG Target 5a;
- v. raise awareness and develop education programs about the advantages of a more gender-equitable access to land in order to enhance not only women’s enjoyment of land rights, but also household food security and economic development.

3.7 Adequate standard of living

The right to an adequate standard of living is enshrined in Article 38 (d) of the Constitution of Pakistan, which states that the State shall “provide basic necessities of life, such as [...] housing”. However, there is an acute shortage of adequate housing and a lack of financing programmes for low-income families. A high number of persons live without legal tenure in urban informal settlements, with limited access to basic services. People without secure tenure in urban areas and people living in areas where development projects are being carried out are often subject to forced evictions without due process or adequate alternative housing or compensation. Relative and extreme poverty levels remain high, particularly among children. Efforts to help families in need through projects such as the Benazir Income Support Programme, the Child Support Programme and the Zakat Programme still do not extend to the poorest and most marginalized segments of society. Also, a high number of people have no access to safe drinking water and adequate sanitation facilities. To address these human rights and development challenges, this policy recommends that:

- i. the Ministry of Human Rights, in its role to coordinate on human rights, and to harmonize practices with international human rights standards, will advise

- Pakistan's existing social safety networks on how to ensure a rights-based approach to its application and coverage, inter alia by (a) clearly informing potential beneficiaries about their right to claim benefits and to challenge any decision resulting in their exclusion from the Programme, (b) by ensuring all persons living in poverty are covered, including by aligning the level at which people are eligible for benefits under the scheme with an objective poverty line, and (c) by continuing to increase the number of beneficiaries and making special efforts in regions with a higher incidence of poverty;
- ii. the Ministry of Human Rights, as per its mandate to harmonize legislation, regulations and practices with the international human rights covenants and agreements to which Pakistan is a party and monitoring their implementation, in consultation with relevant stakeholders including civil society, develops and puts forward suggestions on how to bring the legal framework on eviction, especially affecting those without tenure or with insecure tenure, in line with international standards, including (a) legal guarantees that, in case of eviction, the affected people are consulted prior to the eviction, (b) that procedural safeguards are observed, and (c) that adequate alternative housing is provided.

3.8 Right to adequate food and nutrition

The right to food is recognized in the 1948 Universal Declaration of Human Rights as part of the right to an adequate standard of living, and is enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights. All human beings, regardless of their race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status have the right to adequate food and the right to be free from hunger.⁹ In order to address the challenge of food insecurity in Pakistan, this policy recommends that:

- i. the Ministry of Human Rights, in line with its mandate to coordinate activities of Ministries, Divisions and Provincial Governments in respect of human rights, to harmonize legislation, regulations and practices with international human rights standards, and to monitor implementation, will liaise closely with the Federal Ministry of Health and the Ministry of Food Security and Agriculture, as well as provincial health departments and other relevant stakeholders, including civil society, to develop a legislative framework protecting the right to adequate food and nutrition, and a national action plan on food security and nutrition that is in line with the human right to adequate food and the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.

3.9 Environmental rights

A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a

⁹ Cf. <https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>.

wide range of human rights, including the rights to life, health, food, water and sanitation. Without a healthy environment, we are unable to fulfill our aspirations or even live at a level commensurate with minimum standards of human dignity. At the same time, protecting human rights helps to protect the environment. When people are able to learn about, and participate in, the decisions that affect them, they can help to ensure that those decisions respect their need for a sustainable environment.

People experience the negative effects of environmental degradation ecosystems decline, including water shortage, fisheries depletion, natural disasters due to deforestation and unsafe management and disposal of toxic and dangerous wastes and products. Climate change is exacerbating many of these negative effects of environmental degradation on human health and wellbeing and is also causing new ones, including an increase in extreme weather events and an increase in spread of malaria and other vector born diseases. These facts clearly show the close linkages between the environment and the enjoyment of human rights, and justify an integrated approach to environment and human rights.

In Pakistan, the apex judiciary, in a landmark decision, has established that the realization of a life in dignity (Article 9 in connection with Article 14 of the Constitution) require access to a clean atmosphere and an unpolluted environment. In Pakistan, the most significant impact of environmental degradation can be seen in illness and premature mortality caused by indoor and outdoor air pollution and lead exposure. Diarrheal diseases and typhoid are caused due to inadequate clean water supply. Environment-related factors are responsible for roughly one third of all child mortality cases. Those most vulnerable to the adverse environmental and health consequences of climate change are poor people, members of minority groups, women, children, older people, people with chronic diseases and disabilities, those residing in areas with a high prevalence of climate-related diseases, and workers exposed to extreme heat or increased weather variability. Polluted air, water and soil have significant effects on children's health. To tackle the above challenges, this policy recommends that:

- i. the Ministry of Human Rights, within its mandate to harmonize national legislation with international human rights standards, liaise with all relevant stakeholders for the development of a constitutional amendment bill to expressly recognize the right to environment in the chapter of fundamental rights in the Constitution of Pakistan;
- ii. the Ministry of Human Rights, as per its mandate to harmonize legislation, regulations and practices with international human rights covenants and agreements, will take legislative steps to include the rights to water and sanitation in the national regulatory frameworks;
- iii. the Ministry of Human Rights, in its role to coordinate activities of Ministries, Divisions and Provincial Governments in respect of human rights, will play a lead role in establishing an effective communication network between different federal departments, specifically between the Planning Commission of Pakistan and the Ministry of Climate Change;
- iv. the Ministry of Human Rights, in its role to coordinate activities of Ministries,

- Divisions and Provincial Governments in respect of human rights, will emerge as a coordinator to facilitate inter-provincial meetings and mechanisms on environmental protection by creating interface between provinces for experience sharing and mutual learning on effective management of environmental protection;
- v. the Ministry of Human Rights, within its mandate to raise awareness for human rights issues, will play a leading role in sensitizing the public through mass media on the close linkages between the right to life and the environment, including developing initiatives on how to be sustainable and introduce recyclable alternatives to everyday appliances.

4. Group Rights

4. Group Rights

Pakistan reflects its commitment to ensure group rights in the country's Constitution. The country has further ratified multiple treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD).

4.1 Child rights

Pakistan has signed and ratified a number of international treaties and conventions such as the United Nations Convention on the Rights of the Child (CRC) along with its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, as well as the International Labour Organization's Convention on the worst forms of Labour, Minimum Age Convention and Forced Labour Convention. In reaching the Sustainable Development Goals, Pakistan is also committed to end abuse, exploitation, trafficking and all forms of violence against and torture of children (target 16.2), and to provide legal identity for all, including birth registration (target 16.9), under SDG 16.

Pakistan has further protected children within its national legal framework by enacting criminal law amendments that seek to criminalize acts of violence and abuse against children. This includes cruelty towards children under section 328-A of the Pakistan Penal Code (PPC); kidnapping or abducting a minor under the age of fourteen years under section 364-A PPC; kidnapping or abducting in order to subject a person to unnatural lust under section 367-A PPC; trafficking of human beings under section 369-A PPC; sexual abuse under section 377-A PPC; exposure to seduction of a child under section 292-A PPC, and child pornography under section 292-B PPC.

To ensure the protection and promotion of child rights across the country, his policy recommends the Ministry of Human Rights

- i. to draft a comprehensive National Child Protection Vision to prevent and address all forms of violence against children;
- ii. to develop a national coordination framework to address all forms of violence against children;
- iii. to raise awareness on child protection issues and the implementation of laws related to child protection, including the enacted Juvenile Justice System Act 2018, ICT Child Protection Act 2018 and National Commission on the Rights of the Child, 2018;
- iv. to propose and advocate for the adoption of pending bills in the area of children's

- rights, whilst ensuring that they are in conformity with the international standards;
- v. to take measures to harmonize its legislation and regulations with the principles and provisions of the Convention on the Rights of the Child in all areas affecting children at the federal level, and liaise and support provincial and territorial levels in meeting the same standards;
 - vi. to raise awareness for the need to respect, protect and fulfill the rights of the most vulnerable and marginalized children, including children with disabilities, and monitor the same;
 - vii. to develop and put forward legal amendments to ensure the full harmonization of domestic legislation with international standards regarding definition of the child so as to define a child as any human being below the age of 18 years;
 - viii. to recommend and monitor the prompt and effective investigations of all reported cases of child marriage and related harmful practices;
 - ix. to develop, in close coordination with all relevant stakeholders including NADRA and the Bureau of Statistics, effective mechanisms to ensure that all children are registered at birth, and to identify children whose birth has not been registered and children without identity documents, and how to register them;
 - x. to raise awareness about the importance of birth registration;
 - xi. to advocate for and monitor effective measures necessary to put an end to the worst forms of child labour and hazardous forms of child labour by rigorously enforcing the laws on child labour and strengthening labour inspection mechanisms;
 - xii. to undertake a national survey on the nature and extent of child labour, and on its root causes;
 - xiii. to develop and roll out a country-wide awareness-raising campaign on the harmful impact of corporal punishment, with a view to changing the prevailing attitude towards this practice and in order to promote positive, non-violent and participatory forms of child-rearing and discipline;
 - xiv. in order to address the pressing issue of the large number of children falling victim to sexual abuse, exploitation, rape and abduction, to develop and put forward appropriate laws that clearly and explicitly define and prohibit child sexual abuse and exploitation; to recommend and advocate for a prompt, effective, accessible and child-friendly system for the mandatory reporting of cases of child sexual abuse and exploitation in the home, in schools, in institutions or in other settings;
 - xv. to conduct awareness-raising activities to combat the stigmatization of victims of sexual exploitation and abuse;
 - xvi. to develop, in close collaboration with all relevant stakeholders, programmes and policies focusing on the recovery and social reintegration of child victims;
 - xvii. to carry out a systematic assessment of children in street situations in order to develop and implement a comprehensive strategy, which should address the root causes of the problem, in order to prevent children from leaving families and schools for the streets;

- xviii. to raise awareness and conduct research on the root causes of the sale and trafficking of children, including gender-based discrimination, poverty, early and child marriage and a lack of access to education and vocational training;
- xix. to raise awareness on the issue of children born intersex, including amongst medical professionals, to ensure these children grow up in their family set-ups and have equal opportunities.

4.2 Women's rights

Article 25 of the Constitution of Pakistan guarantees gender equality, and empowers the State to make special provisions for the protection of women, including the protection of life, liberty, economic empowerment, and education. The Government of Pakistan has also ratified various international human rights instruments, committed to securing equal rights for women, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Labor Organization (ILO) Conventions No. C-100 (Equal Remuneration Convention) and C-111 Discrimination (Employment and Occupation). CEDAW obliges member States to eliminate all forms of discrimination against women and bring de iure and de-facto equality between men and women. It also obliges States to take all legislative, administrative and other measures to ensure women's enjoyment of economic, political and cultural rights. ILO Conventions No. 100 and 111 provide for equality of opportunity and treatment in all employment related matters including remuneration.

Pakistan has, both at the federal and provincial level, taken steps by enacting legislation to protect women against sexual harassment, forced marriages, denial of inheritance, acid attacks and so-called "honor" killings. In addition to relevant federal laws, the Federal Government has also established the National Commission on the Status of Women under the National Commission on the Status of Women Act (2012) to monitor and facilitate the implementation of laws for the protection of women.

Despite considerable improvements in the situation of women's rights in Pakistan, the status of women in the country remains poor. Patriarchal attitudes and deep-rooted stereotypes concerning women's roles and responsibilities persist, discriminating against women and perpetuating their subordination within the family and society. High prevalence of gender-based violence in Pakistan, including high numbers of domestic violence, remains one of the biggest challenges with regard to gender justice and the empowerment of women. In recent years, the legal frameworks to tackle violence against women have been considerably strengthened. While these legislative initiatives are commendable, their impact is undermined by weak implementation.

The 2016 Global Gender Gap Index of the World Economic Forum ranked Pakistan 143 out of 144 countries – making it the worst country in Asia. The 2012-13 Pakistan Demographic and Health Survey (PDHS) found that one-third of ever-married women aged 15-49 had experienced physical violence at least once; approximately 40 percent were subject to various forms of spousal abuse. Critically, 52 percent of those surveyed who had experienced violence had never sought help. Therefore, there is a dire need to address the transparency, accountability and effectiveness of the legal system and duty

bearers as well as service providers working with survivors of gender-based violence. Access to justice remains a challenge for women. Also, the low level of participation of women in political and public life, especially in decision-making positions is of concern. Gender inequality is alarming in the field of education, which is characterized by a high illiteracy rate among women, the low enrollment of girls, and their high dropout rate, especially in the rural areas. The prevalence of customs and traditional practices limiting the degree of involvement of rural women in development programmes and preventing them from inheriting or acquiring land and other property remains a challenge.

Investing in women's economic empowerment sets a direct path towards gender equality, poverty eradication and inclusive economic growth. Women make enormous contributions to economies, whether in businesses, on farms, as entrepreneurs or employees, or by doing unpaid care work at home. Economic empowerment of women has drawn many factors together because it presents a case for human rights, a case for development and growth and lastly it presents as a business case. The costs of gender gaps are enormous and bridging these gaps signify potential gains. The aim is higher incomes, better access to and control over resources, and greater security, including protection from violence.

In view of the above, this policy recommends the following:

- i. in line with its mandate to coordinate activities of Ministries, Divisions and Provincial Governments in respect of human rights and facilitation of functions relating to Human Rights, the Ministry of Human Rights will support measures that increase and strengthen the representation of women in politics, economy, academia and the judiciary;
- ii. the Ministry will provide support to the provincial line departments for the roll-out of implementation of provincial human rights policies and plans, strengthening mechanisms for monitoring and coordination related to women's human rights, e.g. Inter-Departmental CEDAW Provincial Committees;
- iii. Following its role for reviewing the implementation of laws, policies and measures, the Ministry will monitor periodically the allocation and implementation of quotas across the provinces, particularly the civil service employment quotas;
- iv. According to its role of reviewing human rights issues, the Ministry will track progress on measures undertaken by provincial labour departments to promote women's economic empowerment;
- v. In line with its role to review the labour rights situation in the country, the Ministry for Human Rights will support the enactment of laws and policies for the recognition of women as economic actors, in particular as home based workers, agricultural workers or in the informal sector;
- vi. With regard to its mandate to protect labour rights in the country, the Ministry will support the enactment of laws, policies and strategies to ensure economic empowerment of women by creating a safe and decent work environment to increase female participation in the labour force.

- vii. The Ministry will develop a strategy to facilitate mobility, remove occupational segregation and the wage gap between women and men, and to ensure equal opportunities at work);
- viii. In accordance with its role to coordinate activities and facilitate functions related to human rights, the Ministry will promote dialogue between various stakeholders (private and public) to highlight and document the presence and role of women in conflict and post-conflict scenarios, including their role as mediators;
- ix. In line with its mandate to harmonize legislation with international covenants, the Ministry, in close collaboration with the National Commission on the Status of Women, will expedite the adoption of laws relating to violence against women that are under consideration at the federal and provincial levels and ensure they comply with international human rights standards;
- x. In line with its mandate to harmonize legislation, regulations and practices with international covenants and monitor their implementation, the Ministry will finalize the Draft National Policy on Ending Violence against Women and Girls that has been prepared by the Ministry of Human Rights, ensure that it is in line with national and international commitments, including the SDGs, and follow through its implementation;
- xi. According to its role in reviewing the human rights situation in the country, the Ministry will ensure the collection of disaggregated data on all forms of violence against women, including domestic violence;
- xii. In line with its mandate to foster public awareness about human rights, the Ministry will encourage the reporting of violence against women, by raising awareness among women on their rights and the legal recourse available to them through publicity campaigns;
- xiii. In accordance with its role for coordination of activities of Ministries, Divisions and Provincial Governments in respect of human rights and facilitation of functions relating to Human Rights, the Ministry will ensure that service delivery mechanisms for women who experience violence enable them to receive the necessary legal, medical, financial and psychological support including protection and shelter; government agencies providing services to survivors of VAW should be encouraged and supported in increasing the number of shelters and improve the quality of facilities to make them gender sensitive; there should be regular monitoring to ensure that the standard of services is high and SOPs are adopted uniformly (c.f. related recommendations on access to justice);
- xiv. The Ministry should recommend a uniformed medical legal system for the entire country to standardize examination and verification procedures on violence against women, including by adjusting the medical legal examination form to capture all required information needed to provide evidence on violence;
- xv. In line with its mandate to provide facilities for professional and technical training on Human Rights, the Ministry will support the capacity building and training of law enforcement agencies to respond effectively and sensitively to cases of violence against women and ensure that judges, prosecutors, and lawyers receive

- appropriate training that equips them to deal with cases of violence against women effectively; such trainings should be integrated into the standard curricula of the law enforcement and judicial professionals;
- xvi. According to its mandate for referring and recommending investigations and inquiries in respect of any incident of violation of human rights, the Ministry will recommend and monitor that cases of violence against women are promptly and thoroughly investigated;
- xvii. In line with its mandate to foster public awareness about human rights, the MoHR will undertake awareness-raising efforts targeting the general public, academia, media, religious and community leaders, law enforcement officials and judicial authorities, in order to eliminate discriminatory attitudes, behaviors and practices towards women and girls;
- xviii. In accordance with its mandate to develop and conduct information programmes, the Ministry will ensure that in all its initiatives related to women's human rights, it will focus on engaging men and boys to become champions and active supporters, especially towards the cause of ending violence against women and girls;
- xix. In line with its mandate, the ministry will follow up on, monitor, and report on the implementation of existing laws addressing discriminatory behavior practices against women and girls at both federal and provincial level.

4.3 Rights of transgender and intersex persons

The Universal Declaration of Human Rights states that “All human beings are born free and equal in dignity and rights.”¹⁰ Equality and non-discrimination principles enshrined in international human rights law apply to all people, regardless of their gender identity. The Constitution of Pakistan emphasizes the dignity of the human being as linked with the principles of international human rights law. Article 25 (1) states that all citizens are equal before the law, whilst Article 25 (2) enshrines that “[t]here shall be no discrimination on the basis of sex”, which has to be interpreted as encompassing gender and a person's gender identity. It's within this legal framework that the Ministry of Human Rights should focus its resources and expertise on protecting the rights of transgender and intersex persons in Pakistan. The Transgender Persons (Protection of Rights) Bill, (2018) confirms the prohibition of discrimination on the basis of one's self-perceived or alleged gender identity. It is within the mandate of the Ministry of Human Rights to translate the fundamental rights for Pakistan's legally recognized people whose gender identity does not fit within the binary concept of male and female into policies and ensure their implementation.

Institutionalized discrimination refers to the colonial impact of gender relations in Pakistan. Promulgation of laws like the Criminal Tribes Act 1871 have ostracized and marginalized the transgender community for 250 years.¹¹ This perpetual marginalization

10 <http://www.un.org/en/universal-declaration-human-rights/>

11 Qaiser Abbas and Ghiasuddin Pir, “History of the Invisible: A People's History of the Transgender Community of Lahore.” 2016 THAAP Journal: People's History of Pakistan 162-175, 166.

and exclusion has festered violence against the transgender community in Pakistan at various levels including family, society and state. To support the full realization of human rights for Pakistan's third gender population, widely referred to as “transgenders” as an umbrella term, this policy recommends the Ministry of Human Rights shall take the following initiatives:

- i. the Ministry of Human Rights will act as the national repository to collect and analyze multi-sectoral disaggregated data on transgender persons including, but not limited to transgender persons with disabilities, older transgender persons, transgender persons from religious minorities, and transgender children;
- ii. develop a scheme to establish skills development and rehabilitation centers for transgender people in the country, providing technical and vocational training opportunities towards the economic empowerment of the transgender community;
- iii. promote affirmative action to mainstream transgender persons in the workforce;
- iv. raise awareness amongst all relevant state stakeholders, including but not limited to NADRA, the Election Commission, the Bureau of Statistics and the Passport Office to ensure legal gender recognition in line with a person's perceived gender identity;
- v. ensure registration with NADRA of all transgender persons across country;
- vi. liaise with social support schemes to ensure they reach transgender people;
- vii. liaise with all relevant provincial and national counterparts, including the ministry of national health services and the provincial health departments, to promote and improve access to comprehensive, integrated quality health services, including HIV services that respond to transgender needs, and invest into HIV prevention outreach programmes;
- viii. support draft legislation to harmonize the criminal provisions which application is expressis verbis limited to men and women, to encompass transgender people in line with the national anti-discrimination legislation, with a particular focus on amending the criminal definition of rape which, to date, can only be inflicted on women;
- ix. support the capacity building and training of law enforcement agencies to respond effectively and sensitively to cases of violence against transgender persons and ensure that police, judges, prosecutors, and lawyers receive appropriate training that equips them to deal with cases of violence against transgenders effectively, including sexual violence; such trainings should be integrated into the standard curricula of the law enforcement and judicial professionals.

4.4 Religious, ethnic and sectarian minorities

Protection of the rights of minorities is a constitutional requirement. Religious minorities enrich cultural diversity and pluralistic roots of Pakistan. They have made invaluable contributions to the development, peace and prosperity of the country. The Constitution of Pakistan guarantees equal rights and status to everyone, irrespective of race, religion, caste, or creed. According to 1998 Census of Pakistan, religious minorities (non-

Muslims) represent about 3.72 percent of the total population of Pakistan, which includes Hindus, Christians, Parsis, Baha'is, Ahmedis, Buddhists, Sikhs and others. Over 80 percent of non-Muslims in Pakistan are either Christians or Hindus.

After the 18th Constitutional Amendment, a new Ministry of Interfaith Harmony has been established at the federal level, and recently merged and renamed as Ministry of Religious Affairs and Interfaith Harmony. The Ministry has been mandated with the task of developing policy and legislation with regard to interfaith harmony to promote interfaith dialogue and peace. Opportunities are available to minority communities for participation in the political process. The Minority communities have the right to contest elections on general seats as well as the special seats reserved for them. The Government is conscious of the fact that a major part of the minority population is poor and illiterate, thus socially and economically marginalized. Therefore, special measures are needed for the empowerment of minorities. The State is seeking to mitigate the issues between majority and minority communities through interfaith dialogue and understanding in raising the culture of tolerance and respect for religious minorities.

The narrative of ethnic minorities in Pakistan is shrouded in ambiguity and controversy.¹² Minorities in Pakistan are categorized as 'ethnic and linguistic' minorities and 'religious' minorities. While data pertaining to the existence of ethnic minorities is skewed, it is usually gleaned from the Population census of Pakistan which includes a column on 'mother tongues'.¹³ It must be noted that column options are restrictive in nature as more than sixty languages are spoken in Pakistan.¹⁴ Pakistan has ratified the International Convention on the Elimination of All Forms of Racial Discrimination which protects the rights of ethnic, racial and religious minorities in Pakistan.¹⁵

This policy recommends that

- i. the Ministry of Human Rights, within its mandate to harmonize national regulations and practices with international human rights norms, in consultation with all relevant stakeholders, including civil society, drafts domestic anti-discrimination legislation, providing a definition of racial discrimination, and considering all grounds of discrimination including race, colour, descent, ethnic, national origin or language, in conformity with the Convention on the Elimination of Racial Discrimination;
- ii. the Ministry of Human Rights, within its mandate to harmonize national regulations and practices with international human rights norms, and to monitor their implementation, develops a strategy to review Pakistan's regime of temporary special measures, including quotas for minorities, to ensure that they apply to all persons belonging to religious, cultural and ethnic minorities, and collects data on the implementation of these quotas;
- iii. the Ministry of Human Rights, as per its mandate to refer and recommend

12 <http://minorityrights.org/country/pakistan/>.

13 http://www.pbscensus.gov.pk/sites/default/files/census_form/short_form.pdf.

14 <https://www.worldatlas.com/articles/ethnic-groups-in-pakistan.html>.

15 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

- investigations and inquiries in respect of any incident of violation of human rights, continues to advocate for the prompt, effective and impartial investigation of all acts of violence by non-State actors, including mob violence, against vulnerable individuals, particularly members of Shia, Christian and Ahmadiyya communities and individuals accused of blasphemy, for perpetrators being punished and for victims obtaining appropriate redress;
- iv. the Ministry of Human Rights, within its mandate to raise awareness for human rights issues, develops and launches a comprehensive strategy to combat racist hate speech by human rights education and awareness-raising campaigns, including sensitizing public officials to refrain from such speech and condemn it;
 - v. the Ministry of Human Rights, in light of its mandate to provide the forum for debate and national consensus-building on considerations to repeal the blasphemy laws that go against the freedom of expression and the freedom of religion, as established in the Constitution of Pakistan, in order to address the challenge of disproportionate use of those laws against individuals belonging to ethnic and religious minorities;
 - vi. the Ministry of Human Rights, as per its mandate to raise awareness on human rights, promote religio-cultural diversity, inter alia by organizing and celebrating religious festivals of minorities at the national level, by advocating for the reform of the educational curriculum to eliminate content that has the potential to incite hatred against religious and ethnic minorities, and to promote tolerance and discourage hate images against minorities, and by ensuring that the role of media houses will be enhanced to increase interfaith harmony and create awareness about other religions.

4.5 Persons with disabilities

Article 38 (d) of the Constitution of Pakistan guarantees the protection of rights of those who are permanently or temporarily unable to earn livelihood on account of infirmity and sickness. The Government of Pakistan has also enacted a special law, titled, the Disabled Persons (Employment and Rehabilitation) Ordinance, 1981, wherein, the rights of infirm, sick and disabled persons are protected. The rights of Persons with Disabilities are protected are further recognized under the International Labour Organization Convention on Vocational Rehabilitation and Employment of Disabled Persons and the United Nations Convention on the Rights of Persons with Disabilities, which Pakistan is a signatory to. However, the national legislation in Pakistan provides for a definition of disability which is too narrow, limiting the capacity of the state to assess the situation of persons with disabilities and to develop effective policies to address the discrimination facing them in relation to the enjoyment of fundamental rights. In light of the above, this policy recommends that:

- I. the Ministry of Human Rights, in its mandate to harmonize legislation with the international human rights covenants and agreements to which Pakistan is a party, in consultation with all relevant stakeholders including civil society, develop and

- put forward legislation that brings the definition of disability in line with the Convention on the Rights of Persons with Disabilities, and includes the denial of reasonable accommodation as a ground of discrimination;
- ii. the Ministry of Human Rights, in accordance with its mandate to review the country's human rights situation, would carry out a nationwide study on the situation of persons with disabilities, collecting data disaggregated by sex, ethnicity and other social status;
 - iii. the Ministry of Human Rights should coordinate with concerned Ministries and Departments for the inclusion of disability related indicators in Pakistan National Statistical accounts and information system for their representations;
 - iv. Ministry of Human Rights, in line with its mandate, should take the lead in coordinating with Provincial Governments for the enactment and implementation of existing Provincial Disability Legislation; this existing legislation **is aligned** with the Convention on the Rights of Persons with Disabilities;
 - v. The Ministry of Human Rights should take lead in coordination with other relevant institutions & Organizations for the inclusion, participation and engagement of persons with disabilities including aging population in political, economic and social spheres of society. Affirmative initiatives and policy actions can be taken for enhancing access of persons with disabilities including older people to assistive technology devices for enabling socio-economic environment through mobility and universal access;
 - vi. the Ministry of Human Rights, in line with its mandate to develop human rights awareness programmes, will develop and implement an awareness-raising campaign aimed at government officials, the general public and families to combat the stigmatization of and prejudice against children with disabilities and to promote a positive image of such children, in order to protect children with disabilities from abandonment.

4.6 Older persons' rights

Aging is accompanied by specific socio-economic and cultural challenges. State obligations towards senior citizens including the right to provide them with care and protection is reflected in international instruments, including the Universal Declaration of Human Rights, the ICCPR and the ICESCR. Respect and care for older people is part of Pakistan's cultural fabric. Moreover, Pakistan is also a signatory to the Madrid Plan of Action on Aging (2002) which stipulates the State's responsibility for providing welfare to the elderly. The Constitution of Pakistan also expressly prohibits discrimination on the basis of age. Recognizing the rights of senior citizens, the Government of Pakistan has initiated various schemes for the aging population, such as the Old-Age Benefits under the umbrella of the Employee Old Age Benefit Institution (EOBI). However, age-related discrimination is still a challenge that needs attention, particularly in terms of age-related discrimination, poverty, violence and abuse, as well as the lack of specific measures and services. This policy recommends for the Ministry of Human Rights to take the following action:

- i. to collect data on older persons to identify and address their challenges and identify targeted support measures;
- ii. Raise awareness and sensitize on the human rights of older people, particularly their right to access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help;
- iii. Develop and support community programmes for older people to remain integrated in society, ensure that they participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations;
- iv. Promote opportunities for older persons to serve to their community as volunteers in positions appropriate to their interests and capabilities.

4.7 Refugees' rights and the right to seek asylum

Pakistan is not a signatory to the 1951 Convention and its 1967 Protocol and does not have its own legal framework related to refugees, yet it generously hosts one of the world's largest protracted refugee populations. However, Pakistan is signatory to a number of international treaties and conventions, such as, the UN Convention Against Torture and Inhuman and Degrading Treatment (UNCAT), the International Covenant on Civil and Political Rights (ICCPR), the UN Convention on the Rights of Persons with Disabilities, the UN Convention on the Rights of the Child (CRC) and the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). In addition, Pakistan was one of the 48 countries that voted in favor of the Universal Declaration of Human Rights (UDHR), which guarantees the right to seek asylum and some other rights that form part of the international refugee protection regime. The basic principles that should be adhered to in all circumstances and that reflect global norms and standards in the field of refugee protection including inter-alia, right to seek asylum, non-refoulement, prohibition on expulsion, non-discrimination, respect of family unity, the right to education and birth registration are guaranteed by the aforementioned human rights instruments to which Pakistan is a party.

The Constitution of the Islamic Republic of Pakistan through Art. 25A and Art. 35 guarantees the right to education to every individual present on its territory without any discrimination and the preservation of family unity respectively. The equal application of these provisions should be ensured to refugees and asylum seekers as well.

Presently some 1.4 million refugees reside in Pakistan, the vast majority of whom are from Afghanistan. The majority of the refugee population (68 per cent) live in urban areas, while 32 per cent reside in rural areas, including in 54 refugee villages. Children and youth (up to 24 years of age) constitute 64 percent of the Afghan refugee population in Pakistan, the majority of whom were born in Pakistan and are second or third generation refugees. Khyber Pakhtunkhwa (KP) province hosts 59 per cent of total refugee population in Pakistan with the rest of refugee population living in Balochistan and Punjab.

In February and March 2005, Government of Pakistan (GoP), conducted the first census

of Afghans residing in Pakistan registering approximately 3.4 million individuals. After the voluntary repatriation exercises in 2005 and 2006, more than 2.1 million Afghans re-affirmed their continued stay in Pakistan and were issued, for the first time, Proof of Registration Cards (PoR cards) between October 2006 and March 2007, which legalized their stay in Pakistan, recognized them as refugees and protected them from refoulement. PoR cardholders, in principle, are exempted from the application of the 1946 Foreigners Act (FA), which is the primary legal instrument regulating entry, exit and stay of non-citizens in Pakistan. Subsequently, there have been two re-issuance exercises, in 2010 and 2014, during which 1.2 million PoR cardholders renewed their cards and 308,434 children who had reached the age of five received their own PoR cards. Since 2015, GoP has been issuing official notifications on the extension of validity of the PoR cards instead of conducting a re-verification exercise.

In February 2017 the Federal Cabinet of Pakistan adopted a Comprehensive Policy on Voluntary Repatriation and Management of Afghan Nationals. The policy, in addition to extending the validity of the PoR cards till the end of that year, included a number of forward-looking and progressive actions to enhance refugee protection and the management of migration in the sub-region, including the support to the voluntary and gradual repatriation of registered Afghan refugees, registration of undocumented Afghan nationals in Pakistan, enhanced border management and the adoption of national refugee legislation in line with the national interest of Pakistan and in accordance with the international law.

The GoP's practice of short term extensions of the validity of PoR cards that followed have created sense of anxiety among refugees with regards to the durability of their stay.

Recommendations:

In light of the above, the following is recommended:

- i. continue with the implementation of the comprehensive national Policy on Voluntary Repatriation and Management of Afghan Nationals and its progressive measures, including the adoption of the national refugee law in accordance with international standards;
- ii. ensure that the interests of refugees and asylum seekers are mainstreamed into all national and provincial laws, policies and development plans, in particular with regards to access to basic services such as health, shelter, civil registration, education and the right to work;
- iii. continue to take all necessary measures to ensure that all refugee children are registered at birth;
- iv. continue to ensure the adherence to the principle of the non-refoulement, which prohibits forcible return of refugees to their country of origin;
- v. liaise with relevant government counterparts, in particular with NADRA, SAFRON/Chief Commissioner of Afghan Refugees, the Ministry of Interior, and the Ministry of Foreign Affairs, for the application of a rights based approach in policies and programmes directed towards refugees.

4.8 Stateless persons' rights

Pakistan hosts a number of stateless persons including from Bengali, Bihari and Rohingya communities, mainly concentrated in the metropolitan city of Karachi. Individuals are either stateless or at risk of statelessness due to unresolved nationality issues (e.g. Bengali and Bihari populations as a result of the creation of Pakistan and India in 1947 and Bangladesh in 1971; or in the case of Rohingyas because their country of origin denies them right to a nationality. As access to basic services in Pakistan is increasingly dependent on the possession of identity cards (a computerized ID card for Pakistani nationals), the situation of this population is particularly challenging.

Pakistan is not a party to 1954 and 1961 statelessness conventions nor does it have its own specific national legislation/mechanism to address statelessness. Therefore, stateless persons remain unidentified and their protection needs unattended. For instance, there is no legal provision to grant citizenship to children who would otherwise be stateless, including foundlings. While the Pakistan 1951 Citizenship Act contains the jus soli principle, allowing that “every person” born in the territory acquire Pakistani citizenship, this provision has been interpreted to only apply to children born of Pakistani parents¹⁶.

The existing laws of Pakistan do not explicitly provide for the birth registration of non-nationals in general, including for potentially stateless persons, resulting in absence of an established birth registration process for such individuals. Birth registration is fundamental to the protection of individuals and to the prevention of statelessness; it is also an obligation arising out of the Art. 7 of the CRC. Failure to document a person’s legal existence can impact the effective enjoyment of a range

of human rights, including access to education, health care and livelihoods. It also serves as an important documentary proof to acquire the parents’ nationality or the nationality of the State in which the child is born. It is worth noting that during the Ministerial Conference on Civil Registration and Vital Statistics (CRVS) in Bangkok in December 2014, Pakistan made a commitment to support the universal civil registration of all populations on its territory.

It is recommended that the Ministry of Human Rights should:

- i. consider measures to prevent statelessness by applying favourable interpretation of the Citizenship Laws and rules for the inclusion of Bihari, Bengali and Rohingya Populations, including through positive expansion of current interpretation of section 4 (jus soli) of the Pakistan Citizenship Act (PCA) 1951 to cover every person born in the territory who would otherwise be stateless;
- ii. ensure measures for regularization of the legal stay of those who are currently without legal status in Pakistan and are unable to pursue naturalization. Such measures might include individuals’ registration with NADRA as foreigners which would allow such persons access to basic services including the right to work;
- iii. ensure that all children born on its territory are registered at birth;

16

PLD 1999 Peshawar 18, Ghulam Sanai vs Assistant Director, National Registration Office, Peshawar.

- iv. in parallel to actions to reduce statelessness, consider adopting legislative and policy frameworks to provide protection to stateless persons.

5. Human rights-based approach to specific challenges

5. Human rights-based approach to specific challenges

5.1 Right to development

The link between development and human rights is extrapolated in the Constitution of the Islamic Republic of Pakistan. Article 29 (2) of the Pakistan Constitution states that “in so far as the observance of any particular Principle of Policy may be dependent upon resources being available for the purpose.” The European Union GSP+ has also provided the necessary impetus for human rights legislation, policies and action plans at federal and provincial levels to uphold the implementation of twenty-seven international conventions. EU’s GSP assessment of Pakistan encourages the positive steps Pakistan has taken to address human rights challenges for competitive edge in European markets.¹⁷ The Sustainable Development Goals and 2030 Agenda, provides a comprehensive framework of human rights and sustainable development to guide global and national development.¹⁸ Pakistan has made strides in its efforts to infuse a human rights-based approach to development.¹⁹ While SDG units have been set up, concerted efforts between provincial and federal governments are still needed to ensure implementation of the SDG framework in Pakistan. The Conventions target various areas of human rights and development in Pakistan. EU GSP+ has provided an impetus for protection and promotion of international trade development and human rights in the country. Sustained efforts to uphold the undertaking under the GSP+ status will institutionalize mechanisms for human rights in Pakistan while promoting a human rights approach to sustainable development.

The following is recommended for promoting a rights-based approach to development:

- i. the Ministry of Human Rights should facilitate social protection to workers in the informal sector and promote employment opportunities for women and youth by providing vocational training and education to meet current labour market demands;
- ii. the ministry of Human Rights should take necessary steps to define disability in

17 European Commission. The EU Special Incentive Arrangement for Sustainable Development. <http://trade.ec.europa.eu>. January 2018. [Cited: February 16, 2018].

18 Office of the High Commissioner, UNHR. Human Rights and the 2030 Agenda for Sustainable Development. <http://www.ohchr.org>. [Cited: February 16, 2018].

19 European Commission. The EU Special Incentive Arrangement for Sustainable Development. <http://trade.ec.europa.eu>. January 2018. [Cited: February 16, 2018].

- line with the convention on Economic, Social and Cultural Rights, and initiate a nationwide study on the situation of persons with disabilities;
- iii. the Ministry of Human Rights should strengthen efforts to implement labour laws guaranteeing fundamental rights of workers in line with ratified ILO Conventions, including through improved governance, effective monitoring and coordination between government ministries, administrative departments, commissions, law enforcement officials and the judiciary.

5.2 Corruption

Institutions tasked with countering corruption need to significantly improve their investigative, prosecutorial and enforcement capacities to be fully effective. The institutions tasked with countering corruption also lack coordination and cooperation mechanisms. Furthermore, the legislations on formal witness, whistle blowers and extradition need to be reviewed. In light of the above, the following steps are recommended:

- i. the Ministry of Human Rights, in accordance with its mandate to formulate programmes for the teaching of human rights, will design and provide the necessary trainings to the said institutions;
- ii. given its coordination mandate, the Ministry of Human Rights will organize coordination meetings to improve experience sharing and cooperation between the various relevant institutions in Pakistan and abroad, and put in place a mechanism involving anti-corruption focal points in each institution should be put in place to allow an efficient sharing of information between the national institutions;
- iii. the Ministry of Human Rights, in accordance with its mandate to pursue and defend issues before official or non-Governmental organizations, body and forums in Pakistan, will monitor and promote the adoption and enforcement of the bills on witness protection and on whistle blower protection;
- iv. the Ministry of Human Rights, in accordance with its mandate to pursue and defend issues before official or non-Governmental organizations, body and forums in Pakistan, will make sure that offenses related to corruption should be legally considered as sufficient grounds for extradition. The Ministry will also encourage the amendment of section 5 (2) (g) of the Extradition Act in order to “ensure that no obligation to extradite is imposed if there are substantial grounds for believing that the request was made to prosecute or punish a person on account of sex and ethnic origin”.

5.3 Preventing violent extremism

Violent extremism is the advocating, engaging, preparing or otherwise supporting ideologically motivated or justified violence to further social, economic, political and religious objectives that are rigid, uncompromising and intolerant.’ Violent extremism is

preceded by a process of radicalization that is immersed in grievance projection, negative associations, and a psychosocial identity transformation that seeks revenge through violence. Violent extremist groups manufacture narratives that exacerbate sense of loss, grievance and anger at the state of affairs.’

Some of the drivers of violent extremism include, state and governance failures, state repression and human rights violations, endemic conflict and insecurity, entrenched corruption and elite impunity, social marginalization and fragmentation, cultural threat narratives, low literacy levels, poverty and unemployment, dislocation and identity crisis, narrative, literature and discourse.

To prevent violent extremism and radicalization, the Ministry of Human Rights should:

- i. advocate for the allocation of at least 1% of GDP for cultural pursuits, particularly in communities that are vulnerable to the influence of violent extremist groups;
- ii. reinvigorate an indigenous narrative of peace, tolerance, and inclusiveness by reviving and supporting local festivals and cultural activities in partnership with the provincial ministries of culture and youth affairs;
- iii. contribute to upgrading the National Plan of Action by including structural issues on urgent basis, including bridging any gulf between the state narrative on violent extremism and the civil society’s view/experience on its root causes, drivers and manifestations along with addressing the social ruptures along ethnic, sectarian, and religious lines to prevent violent extremism taking place;
- iv. work with the Ministry of Religious Affairs and the Wafaq-ul-Madaris (religious seminary boards) to develop an effective counter-narrative against violent extremism by foregrounding religious teachings that promote pluralism, peaceful co-existence, and respect for diversity;
- v. keep track of and support human rights defenders in their reporting of all sectarian organizations, especially those that promote exclusivism and supremacy of any one religious school of thought;
- vi. develop and broadcast television and radio programmes in collaboration with the Ministry of Information and private sector broadcasters/media houses to increase public awareness about Pakistan’s international human rights commitments, gaps in the implementation of the human rights agenda in Pakistan, and actions taken by the Government to remedy the situation;
- vii. encourage all government authorities to work side-by-side with civil society groups, local and international NGOs, to develop rooted, contextual and long-term comprehensive strategy on countering and preventing violent extremism at all levels in all its forms and manifestations;
- viii. work with the National Counter Terrorism Authority (NACTA) to institutionalize human rights as a cross cutting theme/agenda in the Implementation Plan of the recently approved National Internal Security Policy 2018-2023;
- ix. apply a ‘whole of government’ approach to reforms in education, police and judicial sectors, as well as tackling corruption across all branches of government;

- x. make specific efforts to reform the education system in order to equip youth with the critical analysis skills to challenge narratives that promote violent extremist;
- xi. collaborate with the Higher Education Commission to include an optional module on Human Rights in the curriculums of Undergraduate and Masters students in universities;
- xii. support the strengthening of the National Action Plan (NAP) developed in the wake of the Peshawar Army School massacre by including stakeholders across the country including civil society practitioners and analysts, to broaden its scope and ensure that targets are more relevant and provide clarity. The National Action Plan also needs to have transparent and accountability mechanisms to improve governance and minimise the risk of corruption;
- xiii. Develop and implement a clear policy and a legal framework to tackle hate speech;
- xiv. collaborate with educational institutions, Pakistan National Council of Arts, and CSOs to develop an alternative human rights centric narrative against violent extremism through theatre performances and local literature festivals;
- xv. ensure that the NAP focuses on vulnerable and ‘at risk’ groups, for instance young people, specifically from marginalised socio-economic sections, who are the biggest segment of the population and most vulnerable to extremism;
- xvi. should initiate curriculum reform covering public schools and madrasas and engage closely with Madrasas to ensure that the curriculum is not contributing to increasing violent extremism;
- xvii. take steps to initiate a constitutional review to resolve contentious issues such as the status of FATA and the Frontier Crimes Regulation (FCR) that continue to fuel extremism;
- xviii. should encourage relevant government counterparts to promote a representative police force that is able to respond to conditions that fuel violent extremist organizations particularly by increasing the number of women police officers to enhance the operational effectiveness of police forces and strengthening trust between police and civilians;
- xix. institutionalize human rights courses in the core training modules of provincial police; also, undertake regular trainings on human rights and related legislation in the Pakistan Judicial Academy and provincial prosecution departments;
- xx. work with Women to develop a progressive narrative on women’s rights that creates effective opportunities for them to actively participate in public life.

5.4 Elections

The freedom of speech and expression of opinions is an essential pre-requisite for the purpose of successful democratic institutions in a country. Suffrage, the right to vote is an internationally recognized right. Article 25 of the International Covenant on Civil and Political Rights (ICCPR) states that “(a) Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 [distinctions of any

kind such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status] and without unreasonable restrictions: (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”. The Constitution of Pakistan 1973 guarantees the right of association and freedom of speech under Articles 17 and 19 respectively. The fourth Schedule of the Constitution provides that Elections to the office of President, National Assembly, the Senate, the Provincial Assemblies, Chief Election Commissioner and Election Commissions is a Federal subject under federal legislative list. The Federal Government has enacted several laws on elections to ensure a free, fair and transparent electoral process in the country.

In 2017, the Parliament enacted the Elections Act, 2017²⁰ to address many issues relating to conduct of free and fair elections. This Act has empowered the Election Commission of Pakistan (ECP) for this purpose and made it autonomous from influence of Government. The Act has given several powers to the Election Commission of Pakistan including, nullifying election results of a constituency where women’s turnout is equal to or less than 10%, formalizing the use of citizens’ registry data for creating electoral rolls and simplifying the process of voters’ registration. It also requires that the commission conduct local government elections within 120 days after the expiration of the tenure of the existing local government bodies.

This policy recommends that the Ministry of Human Rights:

- i. monitors the implementation of the quota on female voters' turnout, as well as the allotment of 5% party tickets for women on general seats by each political party – in addition to monitoring the inclusion and access of women, transgenders, persons with disabilities, and other marginalized groups in the electoral process in accordance to the electoral laws, rules and regulations of Pakistan.
- ii. suggests to the ECP the inclusion of a human rights section into electoral management trainings and, if endorsed, provides assistance to the ECP on developing a human rights training component;
- iii. supports the ECP with strategic advise on improving the election system and procedures, as relevant and with a human rights lens, with a view to ensuring the inclusion of all voters on electoral lists and that all citizens can exercise their right to vote without obstacles, placing a particular focus on the access to voting for persons with disabilities, Pakistan's third gender population, and persons belonging to minorities, including gypsies;
- iv. supports the ECP on solving the human rights concern of the removal of Ahmadis from the general electoral list and their registration on a separate voting list;
- v. Supports the ECP, as relevant, in processing and mitigating complaints regarding the right to vote.

20 http://www.na.gov.pk/uploads/documents/1506961151_781.pdf.