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Paris Principles and Sindh's Human Rights Institutions

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National Human Rights Institutions (NHRIs) are official, independent, and legal domestic mechanisms established by the State with the objective and legal powers to protect and promote human rights. Human rights institutions —national/provincial— are mandated to monitor human rights situations, provide advice to the government, receive, investigate and resolve complaints, deliver human rights education and engage with the international human rights community. In 1993, the UN General Assembly on Human Rights endorsed a broad framework for the ‘status, structure, mandate, composition, power and methods of operation of the principal domestic human rights mechanism.’¹

In Pakistan, human rights institutions came very late: the first National Commission of Human Rights was established through federal law in 2012. Since the passage of the 18th Amendment to the Constitution of Pakistan in 2010, human rights fall within the legislative purview of the provinces.

Human Rights Laws and Institutions in Sindh

The Government of Sindh has legislated various laws in the area of human rights and established human rights institutions in the province. The major laws passed by Sindh include the Sindh Child Protection Authority Act, 2011; the Sindh Protection of Human Rights Act, 2011; the Domestic Violence (Prevention and Protection) Act, 2013; the Sindh Child Marriage Restraint Act, 2013; the Senior Citizens Welfare Act 2014; the Sindh Commission on the Status of Women Act, 2015; the Sindh Prohibition of Employment of Children Act 2017; the Sindh Hindu Marriage (Amendment) Act, 2018; the Sindh Empowerment of Persons with Disabilities Act, 2018; and the Sindh Home-Based Workers Act, 2019.

The Government of Sindh has established human rights institutions (HRIs) in various areas. The Sindh Child Protection Authority Act (SCPAA) was passed in 2011, the Sindh Child Protection Authority (SCPA) was set up in 2014 and its rules were approved in 2016. It constituted three child protection institutions in Karachi, Sukkur, and Hyderabad in 2016. The Sindh High Court noted in 2020 that the government authorities did not implement the SCPAA.²

The Sindh Human Rights Commission (SHRC) was set up in May 2013 under the Sindh Protection of Human Rights Act 2011. Since then, the SHRC has been working to promote and protect human rights throughout the province as part of its mandate. It built its first regional office in Sukkur in 2021. Between June 2016 and June 2021, the Commission investigated 1,700 cases of human rights abuses in the province. The cases are thoro

1 A Manual on National Human Rights Institutions, Asia-Pacific Forum, 2015 (updated in 2018), https://apf-prod.s3.amazonaws.com/media/resource_file/Manual_on_NHRIs_Oct_2018.pdf?AWSAccessKeyId=AKIA57J6V557ISASX34R&Signature=cTIVrJH%2FWDla1rwpXdeGuYo49pM%3D&Expires=1637739555

2 Dawn. <https://www.dawn.com/news/1584161>

ughly investigated, and recommendations are filed with the relevant authorities and the Government of Sindh.³

The Sindh Healthcare Commission (SHCC) was set up under the Sindh Healthcare Commission (SHCC) Act, 2013. The Sindh Commission on the Status of Women (SCSW) was set up under the Sindh Commission on the Status of Women Act (SCSWA), 2015.

In addition to the provincial-level institutions, several institutions, including NHRIs at the federal level are also coordinating the implementation of human rights among departments and agencies in the province. Among the federal human rights mechanisms having relevance for Sindh are:

- The National Commission for Child Welfare and Development (non-statutory) has established the Provincial Commission for Child Welfare and Development in Sindh;
- The National Commission on the Right of the Child has a member from the Sindh province;
- The Ministry of Human Rights;
- The National *Commission on the Status of Women (NCSW)* (two members from Sindh);
- The National Commission for Human Rights (NCHR) (one member from Sindh);
- The Senate’s Standing Committee on Human Rights;
- The National Assembly Standing Committee on Human Rights);
- The Human Rights Division at the Federal level.

These human rights bodies are mandated to protect and promote human rights across the country also in Sindh. Pakistan’s Ministry of Human Rights serves as a coordination agency at the federal level, and it has the authority to monitor human rights violations in Sindh too.

Among all other provincial human rights institutions, the SCPA, the SHRC, and the SCSW are important because these have considerable mandates related to both social, economic, and cultural rights and civil and political rights. Examining the extent and the scope of powers, mandates, and resources provided to these institutions in the founding laws (SCPAA, SPHRA, and SCSWA) helps us understand the inherent issues and the future course of action required to enable the institutions function efficiently. The Paris Principles adopted in 1993 by the UN General Assembly provide a yardstick to assess and measure these institutions. In the context of the Paris Principles, this paper probes what is missing from the SCPAA, the SPHRA, and the SCSWA to ensure that human

3 The Sindh Human Rights Commission. Annual Report 2019-2020. <https://shrc.org.pk/annual-reports/SHRC-Annual-Report-2019-2020.pdf>

rights are protected in Sindh, and analyse the basic elements of the Paris Principles whose effective compliance could make the SCPA, SHRC, and SCSW strong and autonomous institutions capable of safeguarding and advancing human rights in Sindh.

Status of Human Rights in Sindh

Sindh, the second largest province of Pakistan in terms of population (47.85 million)⁴, faces a range of human rights issues. From July 2019 to December 2020, the Sindh Human Rights Commission (SHRC) registered 728 cases of human rights violations.⁵ The type of cases includes extrajudicial killings, custodial torture, enforced disappearances, honor-related killings, domestic violence, sexual harassment, rape, kidnapping, illegal occupation of the property, workplace harassment, and forced child marriages. The Sindh Human Rights Commission (SHRC) report 2019-2020 noted that in contrast with the data from the previous year, in the last 18 months, the cases of sexual harassment have risen from eight to 20, while the cases of domestic violence against women registered an increase from eight to 17. Cases of honor-related killings also increased from two to five, whereas a sharp surge was noticed in reports of rape cases which rose from three to 21 from 2018 to 2020.⁶

Sahil, an NGO working on child protection, reported 861 child abuse cases in Sindh in 2019, including 155 cases of abduction, 231 cases of missing children and 85 cases of child marriages. Sindh accounted for 82 percent of the total 104 child marriage cases reported in the same year in Pakistan. Furthermore, seven of Pakistan's ten most vulnerable abduction districts were in Sindh: Khairpur, Sukkur, Larkana, Hyderabad, Dadu, Ghotki, and Nusheroferoz.⁷ In 2020 and 2021, 113 and 126 cases of karo kari were respectively reported in Sindh.⁸

What and Why are the Paris Principles?

The Paris Principles set guidelines for the role, governance and functions of national human rights institutions. These guidelines are given under three thematic areas: i) competence and responsibilities; ii) composition and guarantees of independence and

4 Pakistan Bureau of Statistics and the Government of Sindh, 2017 PROVINCIAL CENSUS REPORT SINDH.

5 The Sindh Human Rights Commission. Annual Report 2019-2020. <https://shrc.org.pk/annual-reports/SHRC-Annual-Report-2019-2020.pdf>

6 Ibid

7 Mathrani, S. (2020). The deteriorating state of children's rights in Sindh: On universal children day. <https://citynews.com.pk/2020/11/20/the-deteriorating-state-of-childrens-rights-in-sindh-on-universal-children-day/>

8 Sindh Police. https://www.sindhpolice.gov.pk/announcements/crime_stat_all_cities.html

pluralism; and iii) methods of operation.⁹ NHRIs are governed and regulated by the founding legislation.¹⁰ An NHRI must have the authority, autonomy, and freedom to investigate all government-sanctioned human rights violations and abuses, monitor human rights situations, and carry out actions to promote and safeguard human rights.¹¹

Although the Paris Principles are not legally enforceable, article 2 of the Paris Principles requires governments to establish NHRIs as legal or statutory entities in accordance with their constitutional or legislative texts. The Paris Principles set out the criteria that NHRIs are required to meet. Under three thematic areas, these principles include independence, pluralism, broad mandate, broad functions, adequate powers, adequate resources, cooperative work, and international engagement. All these criteria are inter-linked and interdependent impacting each other, implying that lack of a certain criterion, for instance, lack of funds, could deprive the HRIs (human rights institutions) of performing their duties.¹²

The section below notes the current position of three Sindh Human Rights Institutions—the SCPA, the SHRC, and the SCSW--in the context of the Paris Principles' criteria.

The Paris Principles and Sindh's three HRIs

1. Independence of the HRIs refers to their freedom from control and influence of the government, the NGOs, or any other stakeholder. The autonomy and independence of HRIs are reflected in their founding laws, mandates, framing policies and plans, and having adequate funds to execute their mandates. Importantly, effective HRIs have autonomous members who think and lead independently. The process of establishing NHRI should be transparent, inclusive, and consultative. This is not the case with Sindh's Human Rights Institutions. The appointment of the Chairperson and members in the SCPA and the SHRC is done through non-parliamentary procedure. Civil servants (bureaucrats) possess a mandate to appoint them, which influences the neutrality and independence of these institutions. However, the Chairperson and the members in the

9 The Paris Principles: Principles relating to the status of National Human Rights Institutions (NHRIs), UN, <https://www.un.org/ruleoflaw/files/PRINCI-5.PDF>

10 The Danish Institute for Human Rights. (2013). NHRIs' Independence and Accountability: The Eight Arab-European Human Rights Dialogue. http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Sonstiges/NHRIs_Independence_and_Accountability.pdf.

11 The Danish Institute for Human Rights. (2013). NHRIs' Independence and Accountability: The Eight Arab-European Human Rights Dialogue. http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Sonstiges/NHRIs_Independence_and_Accountability.pdf.

12 Asia Pacific Forum <https://www.asiapacificforum.net/support/what-are-nhris/paris-principles/>

SCSW are appointed through parliamentary procedure that also include opposition leader. Thus, as compared to the SCPA and SHRC, the SCSW is partially autonomous because the appointment of the Chairperson and its members is made through a parliamentary body that also includes the opposition leader. Also, compared to the SHRC and the SCSW, the SCPA has been mandated to frame its own rules, but these have to be approved by the provincial government.

In the 2019-2020 annual report, the SHRC's Chairperson indicated that the founding laws of the SHRC did not provide the jurisdiction and authority. The Chairperson stated that the SHRC was only a consultative body, with no guarantee that its recommendations (made after significant investigation, research, and consultations) would be accepted by government ministries. The SHRC lacks legal authority to take action against individuals or institutions who failed to follow the SHRC's recommendations. The SHRC lacks civil court authority delegated to the National Human Rights Commission.

The SHRC has the authority to visit detention centres, but it must notify the authorities ahead of time, as per procedures. The SCSW has complete authority to inspect any detention facility housing women and girls and make necessary recommendations to the authorities. The SCPA is given the mandate to visit detention facilities. Thus, it can reach out to all children, particularly those who are underprivileged or vulnerable. However, it needs to be investigated how much the SCPA faces challenges enforcing this founding law's provisions (the Sindh Child Protection Authority Act).

2. Pluralism is an important factor that enables any NHRI to promote and protect human rights. It implies that an HRI should have diverse social forces (of civilian society) as members. The SCPA has men and women members from the government and NGOs. But it does not have children as its members, especially representation of children with disabilities. The SHRC has men and women members from government, NGOs, and religious minorities, but it does not represent trade unions and peasant rights organizations. The SCSW also has men and women members from government, NGOs, academia, and religious minorities, but it does not have members from trade unions and peasants and child rights organizations and no girl child representation. Hence, these HRIs (i.e., the SCPA, the SHRC, and the SCSW) do not have an adequate pluralistic structure.

3. Broad mandate of NHRIs indicates that these institutions promote and protect all human rights recognized in international human rights legislation. The SCPA, SHRC, and SCSW have a mandate to promote and protect human rights. However, it has yet to be assessed to what extent the founding laws of these HRIs are fully complying with the international human rights treaties i.e., the Convention on the Rights of the Child, the Convention on the Elimination of Discrimination against Women (CEDAW), and the

Convention against Torture. Due to limited scope, this article does not assess Sindh's HRIs compliance of the international human rights treaties.

4. Broad functions of NHRI refers to providing guidance, monitoring, receiving complaints, providing human rights education, and doing other activities as mandated in the founding laws. The three institutions in Sindh do have the functions included in their founding laws. They could receive complaints but (except the SHRC) cannot take suo moto actions, hold proceedings, and have no civil court powers. These are not quasi-judicial NHRIs. Thus, their functions are grossly limited as per Paris Principles.

The SCPA, the SHRC, and the SCSW are largely doing restricted work because of their narrow mandates and powers. They receive complaints only to transfer to other authorities. These HRIs cannot provide remedies for violations of children's, women's, labour human rights suffered by workers and peasants. The majority of the populace is uninformed of these institutions' existence, and those who are aware of them are unsure of their mandate and capacities to handle their problems. The only recourse available to victims is to obtain information from the relevant office (such as the Ministry of Justice or the police) and then refer the case to the appropriate authority (such as the police or the judiciary) for action.

During the Covid-19 pandemic, the Sindh HRIs had insufficient resources to ensure that marginalized communities were protected. Standard Operating Procedures (SOPs) had been notified by the provincial authorities and departments to prevent the spread of Covid-19. However, the HRI was involve in developing SOPs in view of the human rights principles and values. Juvenile inmates placed in isolation/quarantine wards inside prisons, for example, are at risk of being mistreated. But the SCPA did not provide or publicize precise guidelines on how children should be treated in conformity with human rights standards in detention centers. Strict SOPs may have impacted the human rights of women, inmates, and children (girls). To protect the rights of these vulnerable groups, there should be an active role of HRIs but that role is missing.

5. Power mean that an NHRI can launch inquiries and investigations, collect evidence and documents, engage with the NGOs and government agencies, and make their reports, conclusions and recommendations public. The SHRC and the SCPA institutions have the suo moto powers; but the SCSW does not have such powers. In 2021, the SC-PAA was amended to increase its powers, functions, and mandates to protect children in the province.¹³ Following the recent modifications, police will have no excuse for failing to report incidents of children who are victims of various forms of violence. On receiving

13 The Sindh Child Protection Authority (Amendment) Act <http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.XI%20of%202021.pdf>

a complaint from a person or a representative of a child protection authority, police or any law enforcement agency will be required to file an FIR. According to the amended law, the failure or non-registration of an FIR by police will result in punishment¹⁴. The amended law also provides civil court powers to the SCPA. By exercising the powers of a Civil Court under the Code of Civil Procedure, 1908, it will summon and compel the attendance of concerned officers and the production of relevant documents and inquire into the progress. In non-compliance or unsatisfactory performance, they will be prosecuted as per relevant or applicable laws.¹⁵ All the SHRC and the SCSW do not have civil court powers and are not treated as quasi-judicial authorities. Instead, these are working under relevant provincial ministries controlled by the government.

6. Resources of HRIs refer to adequate funding, staffing, infrastructure, and institutional capacity to carry out activities and fulfill their responsibilities. Given the infrastructure and lack of proactive role, the SCSW, SCPA, and SHRC have inadequate human and financial resources. Many years have passed, but these institutions have limited access, activities, and functions in other districts of Sindh. The three HRIs lack adequate funding, infrastructure, human resources, physical space, and financial independence. Hence, they rely heavily on NGOs to carry out their missions. Due to insufficient budgetary allocations, these institutions have also been unable to expand their structures at district and tehsil levels, thus the issue of physical and geographical accessibility to all citizens in the province.

7. Cooperative work indicates the NHRIs' cooperation and collaboration with other State entities, NGOs, and civil society groups to fulfill the mandates effectively. Sindh's three HRIs are able to collaborate with civil groups but have difficulties in seeking cooperation from the officers in the provincial government departments or line agencies.

8. International engagement refers to the HRIs' powers and capacity to facilitate international and regional human rights authorities and processes by sharing their knowledge and skills. The SCPA, SHRC and SCSW have a mandate to publish reports. Yet, these institutions are not entitled to report to any UN human rights systems and mechanisms. On request, they assist the federal government which is responsible for submitting reports to the UN and ILO monitoring mechanisms. The SCPA, SHRC, and SCSW lack the

14 Hafiz Tunio. 2021. <https://tribune.com.pk/story/2296402/sindh-assembly-empowers-child-protection-agency>

15 The Sindh Child Protection Authority Act, 2011, <http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.XI%20of%202021.pdf>

authority to report cases to international monitoring agencies directly, independently, and without fear of retaliation.

Conclusion and Recommendations

The analysis of the SCPAA, the SPHRA, and the SCSWA reveals that except for the SCPA, the SHRC and the SCSW have weak mandates and curtailed powers. There are gaps and flaws in the founding laws. The NHRI's primary characteristic of independence is its power to inquire into complaints, similar to a civil court trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908). Only recently, in 2021, the Sindh Child Protection Authority and the National Human Rights Commission, set up in 2012, were bestowed with this power. However, in two provincial HRIs, such powers are not granted. Another important feature of the NHRIs is to monitor all institutions (such as detention centers, schools, and workplaces) without government interference. But the two of Sindh's HRIs' founding laws (the SPHRA and the SCSWA) are devoid of this key feature of power to monitor any detention place anytime. As a result, SHRC and SCSW cannot visit detention centers without first notifying the officials.

These issues imply that the HRIs cannot monitor human rights, undertake investigations, or function according to the Paris Principles and implement other international human rights treaties as the establishing laws fail to ensure the independence and autonomy of these institutions. The foundation statutes play an essential role in granting NHRIs their independence. As a result of the weak founding statutes (Sindh Protection of Human Rights Act and the Sindh Commission Status of Women Act), the SHRC and the SCSW might work in a constrained way, navigating through obstacles to achieve the purposes outlined in their mandate they often fail. It can be concluded that the SCPA, SHRC, and SCSW do not fully meet the Paris Principles' criteria for NHRIs. The founding laws of the Sindh Child Protection Authority Act, the Sindh Protection of Human Rights Act, and the Sindh Commission on the Status of Women must be amended so that these Sindh's human rights institutions can perform their duties effectively. These institutions must have independence to protect victims of human rights abuses and hold the Sindh government to account for its human rights obligations. It is also essential that each of these institutions asserts its role and authority to promote and protect human rights and pushes the provincial government to further amend their founding laws. The amendments in the law should be made as to genuinely reflecting the Paris Principles.

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