Executive Summary

The present brief aims at clarifying some key conceptual and policy issues around socio-economic rights as a subset of fundamental human rights. Taking as guiding framework the International Covenant on Economic, Social and Cultural Rights (ICESRC) and the nature of state obligations elaborated by the relevant Covenant Committee, the brief highlights how policy-makers and legislators in Pakistan can help secure these rights. It is our contention that traditional civil liberties and socio-economic rights do not represent a hierarchical relationship or a binary opposition. Rather, they complement each other and entail more or less similar state obligations and remedial measures. The brief advocates a minimum core approach to socio-economic rights, calling upon the policy makers to ensure that the State respects all socio-economic rights and fulfills at least the essential core of subsistence rights, including the right to food, shelter basic education and primary healthcare. The constitutional requirement for an annual report to be presented in the Parliament with regard to progress on the Principles of Policy is highlighted as a pressing need for the government to signal its commitment to socio-economic rights. As illustrative policy concerns, the brief calls for revising and updating policy documents in the areas of education, migration and internal displacement, women’s inheritance rights and labour rights in line with state obligations under international treaty law and the Constitution.

Introduction

‘Human Rights’ is a moral concept referring to those minimum conditions, under which human beings can flourish as moral agents and which ought to be secured for them, if necessary by force. Based on this definition, fundamental human interests or concerns such as the right to liberty and personal security, speech and association, subsistence, basic health care and education, freedom from discrimination etc. fall within the domain of human rights. In principle, human rights imply a commitment to individual autonomy and equality of all human beings regardless of race, religion, nationality or gender. As a moral concept, human rights must be distinguished from legal and constitutional rights, although there is often an overlap among these categories. If our constitution does not provide adequate safeguards against discrimination, for example, it does not mean that we cease to have a human right i.e. a genuine moral claim to freedom from discrimination.

Human rights are sometimes categorized into civil and political rights and socio-economic rights. The former category includes the right to vote, the right to free speech and association, freedom from torture etc. whereas the latter refers to welfare or subsistence rights, such as the right to food, shelter, housing, education, health care, and so on. The official UN position is that the two sets of rights are “universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.” However, in practice there has been a tendency to equate human rights with first generation rights. The idea of human rights abuse or violation is less readily applied to socio-economic rights than traditional civil liberties and freedoms in international relations.

Socio-economic rights were embodied in international treaty law through the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the General Assembly in 1966 and entered into force in 1976. Pakistan signed the Covenant in 2004 and ratified it in April 2008. There are some overlaps between the two sets of rights under ICESR and its

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1 Vienna Declaration, Para 5
2 Pakistan ratified the Covenant with a general reservation that it will “with a view to achieving progressively the full realization of the rights recognized in the present Covenant, shall use all appropriate means to the maximum of its available resources.”
counterpart the International Covenant on Civil and Political Rights (ICCPR). For example, while the ICCPR recognizes the right to freedom of association, the right to form trade unions is contained in the ICESCR (See Box 1). It is important to remember that international treaties do not become a part of domestic law in Common Law countries unless they have been incorporated into it through legislation. As such, these conventions and treaties cannot be a cause of action in a court of law in Pakistan. However, these conventions do have a persuasive value in that they might influence a court in interpreting domestic law. Additionally, by signing up to an international treaty or convention, the government signals a formal commitment before international community to abide by its provisions, including the adoption of appropriate constitutional and legal measures to harmonize domestic law with international law.

**ICESR Provisions**

The substantive rights listed under Part III of the Covenant on Economic, Social and Cultural Rights (ICESCR) include the rights to work and to just and favorable conditions of work; to rest and leisure; to form and join trade unions and to strike; to social security; to special protection for the family, mothers and children; to an adequate standard of living; including food, clothing and housing; to physical and mental health; to educational and to scientific and cultural life. - Box 1

The Constitution of Pakistan does not include any extended list of socio-economic rights under Chapter 1 on Fundamental Rights. However, the Right to Education is now expressly recognized in Article 25A inserted through the 18th Amendment. Article 22 (Safeguards to Educational Institutions in Respect of Religion) and Article 28 (preservation of language, script and culture) recognize what are normally considered cultural rights. In addition, the Constitution provides for freedom from slavery and forced labour (Article 11); freedom of trade, business or profession (Article 18); safeguards against taxation for the propagation of a religion other than one’s own (Article 21); right not to receive religious instructions in an educational institution except those related to one’s own religion (Article 22); and finally, the right to property (Article 23 and 24). The Principles of Policy (Articles 29-40) call upon the State to “make provision for the just and humane conditions of work; to provide basic necessities of life such as food, clothing, housing, education and medical relief” without discrimination; and “to reduce disparity in income and earnings” (See Box 2).

There is less of an agreement among academics and policymakers around legalizing socio-economic rights compared to civil and political rights. Critics argue that socio-economic rights are not justiciable i.e. cannot be enforced by courts, that they involve interference with free markets and downgrade traditional civil and political rights. The disagreement over the proper place and status of economic, social and cultural rights is not merely an intellectual squabble. It has serious and far-reaching policy implications. The next section of the brief discusses some of these issues to mark out a coherent conceptual framework for legislators, policymakers and others interested in debating and promoting socio-economic rights alongside other human rights.

**Principles of Policy**

The Constitution of Pakistan, 1973, requires each organ of the State to act in accordance of the Principles of Policy (Article 29) but exempts any action or law to be challenged “on the ground that it is not in accordance” with these Principles (Article 30, Clause 2). Subsequent Articles calls upon the State to enable the Muslims to live in accordance with Islamic way of life (Article 31); to promote the local government institutions (Article 32); to discourage parochial prejudices (Article 33); take steps to ensure participation of women in national life (Article 34); to protect the institution of the marriage and the family (Article 35); protect minorities (Article 36); promote social justice (Article 37); promote social and economic well-being of the people (Article 38); enable people from all parts of Pakistan to participate in the Armed Forces (Article 39); and strengthen bonds with the Muslim world and promote international peace (Article 40). Box 2

**Conceptual Framework**

There is a symbiotic relationship between traditional civil and political rights and socio-economic rights codified in the ICESR, which is important to recognize for setting state priorities in a balanced and harmonious manner. Enjoyment of civil liberties and political freedoms requires access to at least a minimum core of social and economic rights such as the right to food, housing, clothing, basic healthcare, water and sanitation and basic education. Similarly, a lack of basic freedoms can seriously hamper the process of development and exercise of socio-economic rights. According to Nobel laureate economist Amartya Sen, the intensity of economic needs in many parts of the world adds to rather than subtracts from the urgency of political freedoms. Sen has also persuasively argued that famines do not occur in functioning democracies because of relatively greater access to information and participation in public affairs.

In some accounts of human rights, socio-economic rights are referred to as positive rights whereas civil and political rights are categorized as negative rights requiring non-interference from the state. However, the distinction does not stand when we consider budgetary allocations required to run and train law enforcement agencies to protect people’s liberty and freedoms. Seen this way, all human rights are positive rights requiring similar corresponding duties. Elaborating the nature of obligations, the ICESR Committee has noted that the right to adequate food, like any other human rights, imposes three types or levels of obligations on state parties: the obligations to respect, to protect and to fulfill. The obligation to respect
existing access to adequate food requires state parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the state to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfill means the state must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security⁷.

While the Covenant provides for progressive realization and acknowledges the constraints due to resource constraints, it also imposes various obligations which are of immediate effect⁸. One of these is the undertaking to guarantee that relevant rights will be exercised without discrimination. Additionally, the fact that realization over time is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. The Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least minimum essential levels of each of the rights, is incumbent upon every state party. Thus, for example, a state party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant⁹.

Salient Substantive and Policy Issues in Pakistan

In terms of the constitutional status of socio-economic rights, Pakistan lies somewhere in the middle of a continuum: on the one end we have countries like the United States, where such rights do not enjoy constitutional protection, and post-Apartheid South Africa on the other end, where socio-economic rights have been expressly included in the Bill of Rights. While the predominant legal understanding is that the Principles of Policy in the Constitution of Pakistan are meant to serve as guidelines for the government in enacting legislation and are not enforceable themselves, their interpretative and persuasive value cannot be underestimated. As the Sindh High Court observed in an important judgment, “these principles can always be called in aid for the purpose of interpretation of any legal provision or instrument”⁸. Any interpretation which seeks to comply with or advance the Principles of Policy should always be adopted as against an interpretation which goes against them⁹. Additionally, the Principles of Policy, being part of the Constitution, provide the overall framework for law-making and policy formulation around key socio-economic rights and citizens’ welfare.

In the light of Pakistan’s own constitutional requirements as well as the nature of obligations elaborated by the ICESRC Committee, it is incumbent upon the state to take appropriate legislative, administrative and policy measures to respect, protect and fulfill socio-economic rights. In many instances, this may simply require new legislation or amendments to existing legislation. Appropriate policy-making to operationalize the Principles of Policy may pre-empt what is sometimes called judicialization of policy or “creative” interpretation of the Constitution by the courts. Legislative measures may also help secure socio-economic rights by requiring private enterprises to remove discriminatory and exclusionary practices without any budgetary implications for the resource-constrained public sector. That may take the form of a law making it mandatory for public places such as cinemas, private hospitals and educational institutions to have disability access, for example.

Strictly within the parameters of the constitutional requirements, Article 29 (3) calls upon the President and Governors of the four provinces to have a report prepared on the observance and implementation of the Principles of Policy and present it before each house of the Parliament and the Provincial Assemblies⁷. The National Assembly records confirm that only 12 annual reports have been laid in the Assembly since 1973, whereas the Assembly has remained functional for 28 years since the promulgation of the Constitution of 1973. This can plausibly be taken as an indicator of a lack of commitment to citizen’s welfare on the part of successive governments and a rather hands-off approach by the members of the Parliament to hold the governments accountable. Regular debates on progress against the Principles of Policy could have provided an impetus to better policy-making and improved administrative measures around many socio-economic rights.

The enormity of the challenge of realizing socio-economic rights in Pakistan is highlighted by Pakistan’s position on the Human Development Index. The country stands 141th out of 182 nations. The Human Poverty Index (HPI-1), which focuses on the proportion of people below certain threshold levels in each of the dimensions of the human development index (living a long and healthy life, having access to education, and a decent standard of living), puts Pakistan at 101st rank among 135 countries for which the index has been calculated⁸. One obvious policy requirement in the light of these figures is a significant increase in public spending on education and health. However, a more urgent task and the one which dovetails with the framework of state obligations and minimum core approach relates to gender and regional inequalities that cut across all human development indicators.

Across social sectors, education being a constitutional right, calls for a radically new approach that looks at education as a

⁵ Certain provisions of ICPPR such as right to political participation can also be progressive.
⁷ Shahabad Mattoon Case (PLD 1993, Kara 83)
⁸ Leading cases where the Pakistani judiciary has interpreted the Principles of Policy in the light of Fundamental Rights include Shehla Zia v WAPDA, PLD 1994 SC 693, Pakistan Chest Foundation v Government of Pakistan, 1997 CLC 1379, Benazir Bhutto v Federation of Pakistan, PLD 1998 SC 416 and Benazir Bhutto v President of Pakistan, PLD 1998 SC 358.
⁹ The term "Each House of Majilis-i-Shoora i.e. Parliament" replaced the words the National Assembly in Article 29, Clause 3 by Section 11 of the Constitution (Eighteenth Amendment) Act, 2010.
¹⁰ http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_PAK.html
human right and not merely a means for economic progress and development. The National Education Policy 2009, for example, is silent on the right to education of the physically and mentally disabled children. Admittedly, there is a separate National Policy on Disability; however, most children with physical disabilities can be integrated into mainstream education with facilities such as wheelchair access and some level of teachers’ training provided. Removing gender, religious and ethnic biases from the school curricula is again a task that can be accomplished with little expense to the national exchequer but will entail a major step toward ending discrimination in education.\(^{11}\)

Another concrete policy example, which needs to be looked at afresh from a human rights perspective, is the National Emigration Policy 2009. On the positive side, the policy envisages diversification of destination countries for Pakistani migrant workers, strengthening the institution of Community Welfare Attaches (CWAs) in Pakistani missions abroad and increasing the share of skilled and highly skilled workers in overseas job markets. The policy also calls for a gradual increase of women’s share in emigration. However, it falls short of proposing changes in the Emigration Rules 1979, specifically the clause which bars women below the age of 35 to emigrate as a maid or a domestic worker.\(^{12}\) While the government may need to put in place monitoring and support mechanisms to ensure protection of Pakistani women abroad, denying them the right to improve their economic status abroad amounts to discrimination and a denigration of the state’s duty to respect human rights.

Staying on with women’s rights, an important area which impinges on their ability to exercise other socio-economic rights pertains to the right to inheritance. The existing Inheritance laws whereby women inherit half of what men inherit may have been a progressive law in a society where women were treated as mere commodities.\(^{13}\) As one legal expert points out, “over the centuries, this entitlement of women to half the share of men in a comparable situation became the fixed, unchangeable and only share that she was entitled to. Justifications advanced for the practice include: women are not providers for households, while men are; hence greater burden requiring greater share; women are not required under Islamic law to share their resources with their spouse or to spend it on household expenses; and finally, that a husband is required to pay his wife a sum of money or other property as dower as part of the marriage contract.”\(^{14}\) These justifications do not hold in the light of changing circumstances of present day society where many women are bread winners or household heads. Similarly, while women may not be required by way of religious injunction to support household expenses, they often do just the same. In practice, women are deprived of even the share they are supposedly entitled to under the existing law. That happens through signing of relinquishment deeds and other manipulative tactics by male relatives including forced marriages to the Koran.

Another example that resonates with the minimum core approach to socio-economic rights advocated in this brief has to do with internal displacement as a result of development projects. Right to shelter and livelihood are universally accepted as subsistence rights, which trump other considerations such as economic progress and growth insofar as they represent minimal interests that human beings share universally.\(^{15}\) The Land Acquisition Act of 1894, an archaic colonial legacy, remains on the statute books in all four provinces. Under the law, the government can displace people if any land is required for public purposes. Among those displaced following the construction of the Tarbela Dam, for example, there are many who have not received compensation or alternative sources of livelihood. While a land acquisition law may be necessary to facilitate infrastructure development, stringent rules and operating procedures must be in place to ensure fundamental rights to survival, dignity and livelihood.

Finally, in the agriculture sector which forms the lifeline of Pakistan’s economy and provides livelihood to a major proportion of the population, a glaring rights violation is the exclusion of agricultural workers from the ambit of labour law. While Tenancy Acts provide some protection to tenant farmers against forced eviction and exploitation, they clearly fall short of recognizing the fundamental right to freedom of association and other core labour rights.\(^{16}\)

Against the conceptual debate presented in the brief and the substantive issues highlighted so far, the following section presents a set of general and sector-specific recommendations for policy-makers, legislators and opinion-makers in the context of socio-economic rights.

\(^{11}\) A 2003 study titled, ‘The Subtle Subversion: the state of curricula and textbooks in Pakistan 2003’, carried out by the Sustainable Development Policy Institute (SDPI), illustrated multiple means used to disseminate ideologies of hate through the state’s educational system. The 140-page SDPI report contained a detailed analysis of currently used textbooks in government schools. It noted how historical facts had been twisted and mutilated at length and how national curriculum fostered prejudice against religious minorities and women.


\(^{13}\) The laws governing inheritance in Pakistan today include the Family Law Ordinance 1961, the West Pakistan Muslim Personal Law, the Application Act (V of 1962) and the Succession Rule 25(XI), Emigration Rules 1979.


\(^{15}\) An insightful elaboration of the issue can be found in a judgment delivered by the South African Constitutional Court in the case, Minister of Public Work v Kyalami Ridge Environmental Association, 2001 (3) SA 1151 (CC).

\(^{16}\) Through the 1998 Declaration on Fundamental Principles and Rights at Work, the International Labour Organisation (ILO) picked out eight Labour Rights Conventions and grouped them under four core rights: the right to organize and engage in collective bargaining; the right to equality at work; the abolition of child labour; and the abolition of forced labour. Pakistan is a signatory to the Fundamental Principles and has also ratified the core conventions.
Recommendations

Based on the preceding discussion and the conceptual framework elaborated in the brief, we now present a set of general, cross-sector recommendations followed by more specific recommendations with regard to policy areas highlighted in the brief.

General Recommendations

- The National Assembly Standing Committees should take up the task of developing minimum standards or adopting internationally recognised benchmarks for the right to education, right to health and right to shelter against which state performance can be measured.
- Members of the National Parliament and the Provincial Assemblies should call upon the President and the Provincial Governors respectively to fulfill their constitutional obligation of preparing and having presented before the members an annual report on progress against the Principles of Policy.
- Public representatives and political leaders should work to incorporate into their party manifestoes commitments for respecting, protecting and fulfilling socio-economic rights in the light of the ICESCR and the Principles of Policy with concrete proposals following the minimum core approach.

Sector-Specific Recommendations

Recommendations presented in this section are by no means exhaustive and they do not cover the entire range of issues even within the selected sectors. However, they are meant to provide some illustrative examples of legislative, policy and administrative measures that are required to make social & economic rights a reality.

Education

- The provincial budgets will have to make sufficient provisions for the constitutional right to education to be realized. The quantum of public spending on education should see a substantial increase from the current level of 1.82 percent of the GDP.
- The National Education Policy should be revised to address the needs of the children with mental and physical disabilities. Proper cross-referencing should be done where there are complementarities or overlaps with the National Disability Policy.

Farmer and Labour Rights

- The National Employment Policy 2009 purports to have gender mainstreaming as an integral part of planning, monitoring and implementation of the policy. However, it is weak on expounding specific areas for enhancing women’s employment. There is no mention of other marginalized groups. The policy document needs to be made more inclusive;
  - Introduce legislation to extend the right to freedom of association, collective bargaining and employment benefits to agricultural workers;
  - Make it mandatory for the Water Users Associations and Abadkar Boards to have representation of small and marginal land holders and religious minorities in proportion to their numbers to ensure that marginalized farmers are not denied the right to freedom of association.

Migration and Internal Displacement

- Prepare a new Migration Policy to cover both internal and external migration and looking at existing patterns and potential routes and destinations of migration in years to come. Amend the Emigration Ordinance 1979 to remove the bar on women less than 45 years of age emigrating as domestic worker. Ensure that overseas employment promoters do not charge a fee in access to the amount stipulated in the Emigration Ordinance Rules;
- Replace the Land Acquisition Act of 1894 with new legislation which recognizes that it is simply unacceptable for human beings to be deprived of the minimum core of socio-economic rights in the name of national development and macro-economic indicators. Prepare policy guidelines for compensating the landless and non-agricultural workers where displacement occurs.

Women’s Inheritance Rights

- Bring inheritance and other family laws under a secular Civil Code which would enable the state to enact gender neutral laws. Even keeping within the confines of the Muslim Personal Law, the State could ensure that men and women get equal shares in inheritance as in the case of Turkey and Somalia where male and female children inherit equally from the father’s estate;
- Enact legislation to penalize any attempt or the actual act of marrying women off to the Koran.


______ (2008 d) National Agriculture Sector Strategy. Islamabad: MINFAL.


