

Human Rights and Organized Crime

Protecting the Rights of the Victim



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Meanwhile, the National Initiative against Organized Crime (NIOC) continues as a flagship project from the platform of the Centre for Governance Research (CGR).

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CGR-NIOC Issue Paper
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Protecting the Rights of the Victim

This issue paper seeks to explore the relationship between human rights and serious and organized crimes which is often mutually interdependent, complementary, and on occasions tense. The principal argument of this paper is that human rights principles provide a framework for balancing the rights and liberties of perpetrators and victims of organized crime, and the traditional approach that ignores victims' rights is contrary to the human rights framework.

Serious and Organized Crimes
are human rights violations

In the Pakistan context, the human rights principles are articulated in the second chapter of the Constitution of the Islamic Republic of Pakistan, 1973 (Articles 8-28). Article 8 lays down a guiding principle of legislation by mandating that all laws inconsistent with fundamental human rights will be void and hence all laws dealing with organized crime must adhere to this principle.

Under international law, all states have the responsibility to protect, promote and uphold human rights. At a conceptual level, all crimes are also violations of human rights. As particular examples, serious and organized crimes can be viewed as a violation of the victims' right to life, liberty, and security of person (UDHR, Art. 3 and Constitution of Pakistan, Art. 9)

or their right to property (UDHR, Art 17 and Constitution of Pakistan, Art. 24). To treat all individuals including victims of serious and organized with dignity and respect (UN Declaration, Art. 1. and Constitution of Pakistan Art. 14) is the foundational principle of human rights and a robust, effective criminal justice system response.

Viewing crimes as human rights violation leads to two separate, but related sets of duties and obligations are applicable: due process, fair trial, transparency, and proportionality for those who stand accused of perpetrating the crimes and rights violations and justice, reparation, and protection for the victims. Viewed in this perspective, governments have a duty to prevent serious crimes, protect the victims, and to respond effectively to gross violations of human rights. Under international jurisprudence, this obligation extends to states taking reasonable steps to prevent human rights violations and investigate and prosecute serious crimes committed within its jurisdiction, punishing violations of human rights committed by private actors. Additionally, an effective criminal investigation is a duty owed by states to victims of serious crimes and the investigation must be conducted within a reasonable time.

Victims not by-standers in the
criminal justice system

Criminal justice system discourse often focuses exclusively on the accused and the rights of victims are ignored. The fundamental jurisprudential reason for this is the development of international human rights law treated the state as the primary stakeholder in the justice process excluding the victim. The definition of crime, being an offense against the

state, has contributed to reducing the victim as a by-stander in the criminal justice system. Pakistan remains one of the few jurisdictions where several serious offenses in the Pakistan Penal Code, 1860 are legally treated to be offenses against the victims as well.

This paper does not seek to do an exhaustive analysis of the implications of the privatization of the criminal justice system in Pakistan but only to highlight that Pakistan has an example of a framework of victim-centric criminal justice system which can inform the legal treatment of victims of organized crime.

The Universal Declaration of Human Rights 1948 does not mention the term “victim” even once. However, as international law and the discourse on human rights evolved the realization of the significance of safeguarding victims’ rights also progressed.

In 1985, the UN General Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which includes several rights for victims. The Preamble to the Declaration acknowledges that the rights of victims have not been adequately recognized. According to the Declaration, its aim is “to assist Governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power.”

The Declaration defines “victims” as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states, including those laws proscribing

criminal abuse of power.

The definition of victim is an expansive one and a person may be considered a victim, under the Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim. The term “victim” also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

This definition of victim provides a basis of legal and policy framework for a robust, efficient, rights-respecting response to serious and organized crime in Pakistan which seeks to protect not only those accused of crimes but also those who are victims of crimes.

International law mandates that victims should be treated with compassion and respect for their dignity, a commitment reaffirmed in Pakistan’s Constitution. According to the Declaration, victims are also entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive, and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

Effectively safeguarding victim’s rights to dignity, redressal and justice require the Pakistani legislative framework to explicitly recognize and articulate these rights in laws dealing with serious and organized crimes.

Protection of rights of victims in UNTOC

The rights of victims have also been safeguarded specifically in UN Convention on Transnational Organized Crime and article 25 mandates that states parties take appropriate measures to provide assistance and protection to victims. Such assistance includes access to compensation and restitution and lays the obligation on the states to enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders. UNTOC also seeks to create a balance between the rights of the victims and perpetrators and states that the victim impact statements should be presented in a manner not prejudicial to the rights of the defense.

Similarly, Article 24 of UNTOC articulates a further obligation on countries to undertake robust measures to protect witnesses from potential retaliation or intimidation. The obligation to offer protection may be extended to their relatives and other persons close to them as retaliation or intimidation through the

loved ones is a modus operandi many organized criminal groups have adopted. Such protection measures may include physical protection such as relocation or non-disclosure or limitations on their identity or whereabouts. The measures may also include permitting witness testimony to be given in a manner that ensures the safety of the witness such as video links. Recent court decisions in Pakistan have made progress on this. However, reforming the Qanoon-i-Shahadat (Evidence Act) to bring it in line with international standards, and incorporate the use of modern technology, is the need of the hour.

There are several other international human rights treaties that Pakistan has ratified, including the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC) that apply to legal systems' engagement with victims of organized crime in terms of upholding dignity, redress and justice.

Conclusion

The objective of this issue paper is to sensitize the state and the relevant stakeholders to their obligations to create a balance between the rights of victims and effective law enforcement to combat transnational organized crime.

This represents the collective voice of the Civil Society Alliance for due consideration by all the relevant stakeholders involved in the UNTOC Review Process under Cluster-1 on Criminalization and Jurisdiction.



ABOUT THE AUTHOR



Saroop Ijaz is a lawyer and a Senior Counsel for Asia, Human Rights Watch (HRW). He is also a member of the Human Rights Commission of Pakistan (HRCP). He has been appointed as amicus curiae in many significant constitutional cases such as the YouTube ban, Christian divorce act, and the challenge to the local government act 2013 amongst others. He has formerly been the Chairperson of the Lahore High Court Bar Committee on International Human Rights. He has been a consultant and an advisor for the European Union, British Council, International Commission for Jurists, and various other organizations.



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