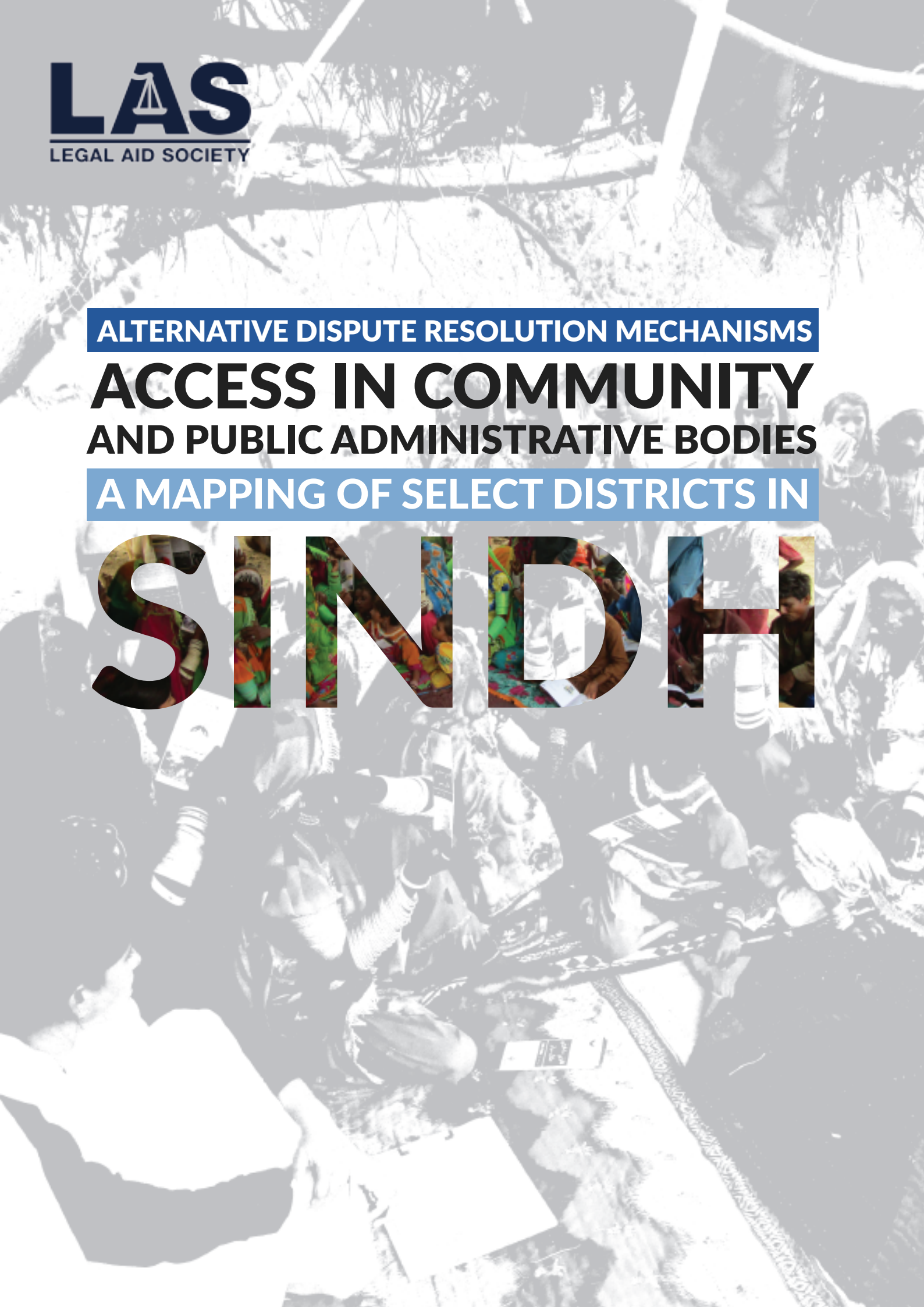


ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

ACCESS IN COMMUNITY AND PUBLIC ADMINISTRATIVE BODIES

A MAPPING OF SELECT DISTRICTS IN

SINDHI



Alternative Dispute Resolution Mechanisms, Access in Community and Public Administrative Bodies: A Mapping of Select Districts in Sindh

Iqbal Ahmed Detho

Alternative Dispute Resolution Mechanisms, Access in Community and Public Administrative Bodies: A Mapping of Select Districts in Sindh

Year of Publication: **2018**

This publication is part of Legal Aid Society's Research Products.

The contents of this publication are the exclusive Intellectual Property of the Legal Aid Society and any unauthorized reproduction, distribution, modification, use, or transmission of this work in any form or by any means, including photocopying or through any other electronic or mechanical methods is illegal and will constitute infringement of such Intellectual Property Rights.

Legal Aid Society shall be identified as the copyright owner on any authorized reproduction, distribution, use or transmission of this work.

For more copies and other related queries, please contact Legal Aid Society at:

Legal Aid Society
Spanish Homes Apartment, Mezzanine Floor
Plot A-13, Phase – 1, D.H.A.,

Tel: (92) 021 – 35390132 – 33

Fax: (92) 021 – 99266015

Email: hr@lao.org.pk, info@lao.org.pk

Website: <http://co.lao.org.pk>

Facebook: LegalAidSocietyPakistan

Legal Aid Society is registered under the Societies Registration Act, 1860 on November 19, 2013 (Registration No. KAR 058 of 2013 – 14) and operates under the chairpersonship of Justice Nasir Aslam Zahid.

TABLE OF CONTENTS

1.	Introduction	5
1.1.	Public Administrative Bodies.....	5
1.2.	Public Administrative Bodies and Alternative Dispute Resolution	6
1.3.	Existing Systems of State-Annexed ADR and PAB ADR mechanisms in Sindh, Pakistan	9
2.	Objectives and Methodology	11
2.1.	Objectives.....	11
2.2.	Methodology.....	12
3.	Analysis of the Functionality of State-Annexed ADR and PAB ADR Mechanisms in Sindh	13
3.1.	Court-Annexed ADR Mechanisms	13
3.1.1	Arbitration Council under Arbitration Act-1940.....	13
3.1.2.	Conciliation Courts Ordinance 1961.....	13
3.1.3	MFLO 1961 & Family Courts ordinance 1964.....	14
3.1.4.	The Small Claims and Minor Offences Ordinance (SCMOO) 2002	14
3.2.	Awareness and Functionality of State-Annexed ADR Processes.....	Error! Bookmark not defined.
3.2.1	<i>Salis</i> and the SCMOO.....	15
3.2.2	The MFLO 1961 and Family Courts Act 1964	19
3.2.3.	Local Governance Laws and Systems	21
4.	Administrative Justice through Public Administrative Bodies (PAB).....	22
4.1	Board of Revenues	23
4.2	Labour Department.....	24
4.3	Minority Affairs Department, Sindh.....	25
4.4	Social Welfare Department.....	25
4.5	The Police Department, Sindh.....	26
5	Administrative Justice through National & Provincial Human Rights Institutions	27
5.1	Ombudsman.....	27
5.2	Human Rights Commissions.....	29
5.2.1	National Commission on Human Rights (NCHR)	29
5.2.2	Sindh Human Rights Commission (SHRC)	30
5.2.3	The National Commission on the Status of Women (NCSW)	30
5.2.4	The Sindh Minorities Rights Commission	30
6.	Miscellaneous Issues	30
6.1	Monitoring and Reporting on ADR.....	30
6.2	Technical Issues with Court-Annexed-ADR Bodies and Mechanisms	31
6.3	Key Stakeholders Understanding on the Court-Annexed Bodies.....	32
6.4	Lack of ADR in PAB	34
7	Conclusion.....	34

8	Recommendations	35
	Recommendations for Legal Aid Society.....	36
	Appendix A: Focus Group Discussion Questions	38
	Bibliography	41
	Primary Sources: Legislation	41
	Secondary Sources: Books, Articles, Reports etc.	42

Alternative Dispute Resolution Mechanisms, Access in Community and Public Administrative Bodies: A Mapping of Select Districts in Sindh

1. Introduction

1.1. Public Administrative Bodies

A State, particularly within a consolidated democracy requires the administrative capacity to maintain law and order and to promote and protect public goods and services. Public confidence in the political system is increased where the public service delivery system is effective, public officials are accessible to local citizens, and government agencies and departments work together in well-coordinated, complementary fashion.¹ This “administrative capacity” is understood to mean a well-established and functioning public administrative setup.

There is no internationally settled upon definition of public administration. However, it is generally agreed that public administration is the act of implementing public policies; it is the action part of the government, an organized manner in which to get things done in accordance with laid down procedures and within a legal framework.² In his words, former American President Woodrow Wilson defined it as a detailed and systematic application of law.³ It functions as a link between the traditional three arms of government and the people. Thus, it becomes both a government, as well as a public machinery of operation.⁴ Public officials are thus seen as the peoples’ representatives or trustees and are accountable to the public for the performance of their designated functions.

Public administrative bodies (PABs) are created through laws, rulings or orders. The legislators or administrators have powers to create PABs, which function for the purposes of public interest. The law under which PAB are created have details about their powers and functions. They “are an extension of the legislation branch of the government and can perform acts of legislative or quasi-legislative nature,”⁵ for example rules, Standard Operating Procedures which all function as legal obligations upon those mandated to follow them. PABs are also

¹ Mujahid Hussain & Ayaz Khan, ‘Rising Nationalism in Pakistan as a tool of Public Administration’ (April 2012) 7 (2) The Dialogue.

² Godwin Ong’anya and Dr. John Mwaruvie, ‘Concept, Nature and Scope of Public Administration’ (*onganya.blogspot*, 23 February 2009) < <http://onganya.blogspot.com/2010/03/concept-nature-and-scope-of-public.html> > accessed 14 July 2017

³ Woodrow Wilson, ‘The Study of Administration’ (1941) 56 (4) Political Quarterly

⁴ (n 2)

⁵ *West’s Encyclopedia of American Law* (2nd edn, 2008) vol 8 < <http://legal-dictionary.thefreedictionary.com/Public+Administrative+Bodies> > accessed 17 July 2017

integral part of the Executive Office of the government and are empowered to manage with issues and problems within the limits of executive power. The governments may come and go but PABs remain there to serve unless the law is changed.⁶

Public officials are seen to be the peoples' representatives or trustees within the governance framework. Individuals are thus at the mercy of administrative officers, who have behind them the entire power of the State. Thus, the officials are held accountable to the public with regards to the performance of their duties, albeit with legal protection for actions performed under the laws to ensure lack of violation of their private lives.

Accountability of the State and its institutions, including PABs is an essential component of democracy and of rule of law. Common methods of public accountability include mechanisms such as elections; legislative accountability;⁷ ministerial accountability;⁸ audit accountability; and judicial review as accountability.⁹

Pakistan's governance sector, including the PABs are considered to be extremely lacking in efficiency and effectiveness and is not well-reputed due to corrupt practices, bureaucratic and political influences, structure of organization itself and incompetent, political appointments by influential individuals. There is little faith of the people in the existing systems despite existing forms of accountability in Pakistan. Of the three branches of government, the judiciary is the one, which inspires most confidence in the people to approach for violation of rights, including those violated by the PABs. In order to run a successful State, amongst other changes needed in Pakistan's governance, focus must be placed on all forms of interaction between State and the citizen's, which includes receiving, investigating and resolving complaints and grievances of citizens. Response must include innovative reforms, re-orientation and transformations in order to have a meaningful impact on society at all levels through a more responsive, transparent, efficient and affordable public sector and ensuring mitigation of corruption.

1.2. Public Administrative Bodies and Alternative Dispute Resolution

Good governance calls for effective grievance redressal mechanisms within the system with these mechanisms being subject to standards of responsiveness, accountability and transparency. It also requires ensuring internal and external mechanisms to be in place to deal with citizens, particularly complaints and grievances. In Pakistan, the primary avenues for citizens include complaints to senior officials in the system (internal complaint mechanisms), appeals to senior government officials, judicial reviews and the Ombudsman

⁶ ibid

⁷ This includes legally enforced publication of accounts and performance reports of departments and agencies etc.

⁸ Ministers in charge of particular agencies appear in front of the Parliament and cabinet and held accountable for any actions of any agencies under their Ministry

⁹ Masood-ur-Rehman and Syeda Qudsia Batool, 'Mechanism of Public Services' Accountability' (2013) 18 (4) Middle-East Journal of Scientific Research 539-545

(the use of which is limited and discussed later) A large portion of the complaints registered are done so in the court or legally specified tribunals or administrative bodies.

There are a number of reasons why approaching courts is not the best solution for administrative relief for citizens. Court-based systems do not always offer the type of remedies or solutions required by the claimant. They can only make orders to the executive bodies and PABs to do a certain task or take a certain action. Furthermore, non-court dispute resolution mechanisms, particularly Ombudsmen, can be more effective at highlighting systemic administrative problems and therefore can have a greater impact on the quality of public service delivery than the courts. Approaching the court-based systems can be expensive and even more time-consuming, particularly in a system such as Pakistan, which is bereft with issues of delay, high costs and low number of judges etc.¹⁰

A number of countries around the world have initiated the use of Alternative Dispute Resolution (ADR) mechanisms, particularly mediation in their public administration processes including a number of European countries (e.g. The Netherlands, Austria, Germany, UK and others) which are referred to here for purposes of analysis. There are two theories, which advocate the use of mediation and other ADR mechanisms in administrative dispute. One perspective states that ADR is useful to avoid such disputes or to achieve settlements to decrease the huge number of administrative cases coming before the court. This follows the doctrine of service-oriented government.¹¹ Another sees mediation in administrative procedures as emerging from the legal duties of administrative bodies to reach consensus, which is part of the due care principle.¹²

States have used a variety of different methods to integrate mediation and other ADR techniques into their administrative processes. These comprise of inclusion of mediation techniques as part of internal administrative procedures or appeal procedure (Netherlands); variety of informal procedures conducted by administrative bodies prior to institution of formal proceedings before administrative courts (Germany); allowing courts to propose ADR during legal proceedings (Germany, UK, Belgium) etc.¹³

Analysis of these States demonstrates that they have put mediation potential cases to good use, in line with service-oriented administration. This has benefits with regards to the quality of decision-making processes. These countries demonstrate that informal communication (negotiation, mediation etc.), may have a significant impact on reducing the number of legal proceedings with the administrative authorities in disputes on the contested legality of

¹⁰ Law Commission, *Administrative Redress: Public Bodies and the Citizen* (Law Com No 187, 2015)

¹¹ Dr. Predrag Dimitrijević, *Upravno pravo - opšti deo* (2. izmenjeno i dopunjeno izdanje, Niš: Pravni fakultet Univerziteta u Nišu 2014) [*Administrative Law - General part* (2nd revised and updated edn, Niš: Pravni fakultet Univerziteta u Nišu 2014) 61,].

¹² Dacian Dragos and Bogdana Neamtu, *Alternative Dispute Resolution in European Administrative Law* (Springer 2014) 594

¹³ Dejan Vucetic, 'Is Mediation Viable in Administrative Matters?' (2016) 14 (4) *Law and Politics* 495 - 504

administrative decisions.¹⁴ Mediation may however also be useful during the process of decision making given the discretionary power of the PABs in such decision-making.

Despite these positive examples, challenges to the use of mediation (in particular) in public administration must also be discussed. These include recognizing the inequality of parties participating in these processes i.e. the relationship between citizens and the administration is regarded as being *de jure* asymmetrical, hierarchical and authoritarian, opposite to the ideals of an ADR processes.¹⁵ To counter this, several creative legal solutions will have to be adopted with sufficient safeguards, as has been demonstrated in the European States. It is also necessary to establish whether a particular PAB even has the legal power to amend decisions made by the same or another PAB as per its rules and powers of functioning. If it does not, then the process to challenge any such decisions is invalid.¹⁶ Administrative matters also impact legal positions of third parties that are not directly involved in the administrative procedures, thus it is important to note the need to limit the use of this process if it has wider outreach, otherwise each person directly or indirectly involved may initiate their own separate procedures.¹⁷ Another issue is that the key feature of mediation is that the concluded agreement in such processes are confidential unless the parties involved agree to its publication.¹⁸ Confidentiality is not possible with public administration and the necessity of transparency. Thus, it would be essential to ensure in each and every single instance, parties involved must be aware and consent to publication of the final decisions. Also, it is important to recognize that judicial and appeal proceedings must be initiated and finished within the prescribed time limits as use of ADR will not suspend deadlines for submission of an appeal or complaint.¹⁹ Thus, parties must be aware of the expiration date of the appeal period or the period for a filing a complaint.²⁰

Thus, it becomes clear that in a traditional administrative set up, it will be difficult to use ADR in public administration due to the challenges identified above. However, keeping in mind the service-oriented approach of public administration, certain deviations from the traditional set up will allow for ADR, which has demonstrated positive results, particularly in terms of reducing the burden on courts and responding to the citizens in a more flexible manner. Furthermore, mediation and ADR may not be viable in all administrative matters but may be used for special/specific administrative matters, where the public administration authorities and private parties can conclude mutual agreements.²¹ Countries such as Canada²² and

¹⁴ (n 13)

¹⁵ (n 13)

¹⁶ (n 13)

¹⁷ (n 13)

¹⁸ (n 13)

¹⁹ (n 13)

²⁰ (n 13)

²¹ (n 13)

²² Matthew Taylor and others, , 'Using Mediation in Canadian Environmental Tribunals: Opportunities and Best Practices' (1999) 22 Dalhousie Law Journal 51

Mexico²³ have adopted this approach, which allows for partial use of ADR in certain mechanisms e.g. in public procurement and certain tax processes etc. Countries such as the United Kingdom have allowed for ADR processes during the course of administrative trials in hopes of a settlement of the dispute.

Thus, ADR within PAB is a viable and effective option for more effective and efficient public administration, however within specific frameworks and legal solutions protecting the process, and with a necessary deviation from the traditional set up. The actual mechanisms for inclusion of ADR will depend and vary according to the socio-legal situations of each State, but the positive impacts of its use may be essential for improved effective, responsiveness and transparency.

1.3. Existing Systems of State-Annexed ADR and PAB ADR mechanisms in Sindh, Pakistan

Within the access to justice framework, it is necessary for the people to be able to approach relevant governmental bodies to attain their basic rights and needs and in particular for the resolution of conflicts and other such issues. Keeping in mind the long delays in civil trials in the courts in Pakistan and deficiencies in the support side services of the justice sector and administrative processes, there has been a movement towards using alternative dispute resolution (ADR) as a potential option instead of going straight to court.

In Pakistan, there are two kinds of ADR practiced: Formal ADR processes (including court-annexed ADR processes, public bodies/institutional ADR) and traditional ADR.

The traditional ADR is centuries old mechanism of justice, which includes *Panchayats*,²⁴ *Jirgas*,²⁵ and *faislo*²⁶ or *Suleh*. The traditional ADR systems are rife with controversy with illegal

²³ Mag. Dr. Manuel Hallivis Pelayp, 'Alternative Dispute Resolution in Administrative Matters: Mexico' (2016) International Association of Supreme Administrative Jurisdictions <http://en.aihja.net/images/users/114/files/Mexico_-_Report_2016_Mexico_-_Report_2016.pdf> accessed 12 July 2017

²⁴ Panchayat and jirgas are traditional mechanisms whereby male elders of the tribe or community sit and resolve a dispute as a judicial forum, despite being illegal under the Constitution and law.

²⁵ Ibid

²⁶ The word *faislo* has various meanings encompassing resolution of a dispute, a settlement, a decision and a judgment. *Faislo* system can be used in an extended family system, in the village community, and in the larger *birathari* or *qaum* (tribe). *Faislo* is used not only to resolve civil matters, but increasingly used to settle matters of life and death and serial killings in tribal feuds see 'Tribal clash: Feud that cost 32 lives in Shikarpur comes to an end' *Express Tribune* (Sukkur, 12 February 2017) <<https://tribune.com.pk/story/1324069/tribal-clash-feud-cost-32-lives-shikarpur-comes-end/>> accessed at 11 July 2017 and 'Shikarpur *jirga* slaps heavy fines to settle blood feud' *Dawn* (Shikarpur, 12 February 2017) <<http://www.dawn.com/news/1314238/shikarpur-jirga-slaps-heavy-fines-to-settle-blood-feud>> accessed at 11 July 2017. Thus, proponents say that *Faislo* seeks to resolve the dispute by not fixing the individual responsibility like the criminal justice system but operates in collective setting by bringing two families or communities together. See Aawaz Programme, 'Study on Alternate Dispute Resolution-Review of Mechanisms in Legislation and Policies at Federal, Punjab and Khyber Pakhtunkhwa Research Report' (2014) 5

decision-making, discriminatory set ups, unsupervised decisions often with adverse effects of vulnerable groups, particularly women and children.²⁷ While the paper focuses on formal ADR mechanisms, with a focus on public bodies, it will touch upon traditional ADR where interviewees have highlighted why the informal mechanisms are approached instead of formal ones.

The formal ADR mechanisms in Pakistan are a mixture of court-annexed ADR, institutional ADR (where arbitrator can be appointed under the law by the parties) and ADR through public bodies. In public bodies, ADR is commonly conducted through public bodies such as Conciliation Courts, Union Councils, Arbitration Councils, and other bodies. In the past, the Arbitration Councils were mainly focusing on issues like divorce, second marriages, and maintenance for existing wives. The Union Councils were arbitrating through elected councillors under Muslim Family Law Ordinance 1961.²⁸ These also took care of a few more matters related to families. The Conciliation Courts were constituted under Conciliation Courts Ordinance 1961 and had jurisdiction over certain civil, criminal, pecuniary matters. It was viewed that most of the above initiatives had become ineffective because the local councils were continuously dissolved.²⁹

Certain initiatives have been taken over the years to strengthen the ADR system in Pakistan including in Sindh. The Code of Civil Procedure (CPC) is the basic procedural law to deal with civil matters in Pakistan.³⁰ It was amended in 2002 and section 89A was inserted, allowing for ADR, specifically mediation and conciliation.³¹ This amendment enabled to provide a mechanism for Court-Annexed ADR in Pakistan. Insertion of Section 89-A in the C.P.C is a very rudimentary provision but it has initiated a basic ADR mechanism in the primary procedural law in Pakistan. Under the Small Claims and Minor Offences Ordinance 2002 (SCMOO), the High Court of Sindh appointed a number of lawyers as *Salis*³² Committee members, who function as court-appointed mediators in small claims cases. This process is activated upon the order of the court.

²⁷National Commission on the Status of Women, 'Women, Violence and Jirgas' (2016)

<[http://af.org.pk/gep/images/publications/Research%20Studies%20\(Gender%20Based%20Violence\)/NB%20NCSW%20JIRGAS.pdf](http://af.org.pk/gep/images/publications/Research%20Studies%20(Gender%20Based%20Violence)/NB%20NCSW%20JIRGAS.pdf)> accessed 14 July 2017

²⁸ Muslim Family Law Ordinance 1961 <<http://punjablaws.gov.pk/laws/777a.html>>

²⁹ In Pakistan's history, the local government has been a much-debated one, being formed under military dictatorship in 2001 and dissolved thereafter. In recent years, as a result of decentralization as per the 18th Amendment to the Constitution of the Islamic Republic of Pakistan 1973, provinces themselves legislated and set up their own local governments.

³⁰ Law and Justice Commission of Pakistan n 28

³¹ Civil Procedure Code 1908 <<https://www.malaw.org.pk/pdflaw/CODE%20OF%20CIVIL%20PROCEDURE%201908.pdf>>

³² Small Claims and Minor Offences Courts Ordinance, 2002 <<https://www.sja.gos.pk/assets/BareActs/SMALL%20CLAIMS%20.AND%20MINOR%20OFFENCES%20COURTS%20ORDINANCE,%202002.pdf>> In Section 2 (g) of the SCMOO 2002, *Salis* means a person acting as conciliator, mediator or arbitrator.

There has been limited ADR legal mechanisms in PAB. However, in recent years, several laws passed by the Sindh Government have included dispute resolution mechanisms as an option (although no details on mechanisms and processes were provided), which include Sindh Public Prosecution Act 2009 and Sindh Revenue Board Act 2010.

There exist Provincial Ombudsman, whose primary responsibility is to respond to mal-administration at the hands of any agency of the Government of Sindh i.e. PABs.³³ Unfortunately, there is little information available to the citizens in how to access this system. Further, the Ombudsman can only look into complaints of mal-administration but not review or mediate over decisions of the PAB. There is mediation and other ADR processes as part of the Ombudsman's work but there has been little focus on training for these mechanisms.

2. Objectives and Methodology

2.1. Objectives

With the intention of advocating for approaching the justice system as a last resort, one must recognise that there are several instances and opportunities for different State bodies to use ADR instead of accessing the justice sector. It is important to create linkages and interface between court-annexed mediation, existing ADR processes including public/institutional ADR mechanisms with existing public administrative functions, which could work towards decreasing the burden on the courts and resulting in quicker resolutions for parties.

To explore the possibilities of creating such linkages and interface, it is important to be aware of the existing ADR mechanisms on the ground, their functionality and the level of awareness within the community about these processes. This would allow for the creation of a plan of action and mechanism to work towards greater usage of court-annexed mediation within and in coordination of these bodies.

The prime objective of this mapping is to identify the primary functioning of public administrative bodies, court-annexed ADR bodies and their functionality in Sindh.

This mapping allows for targeting of specific institutions and persons for advocacy and lobbying and potentially reform, but also to work with those communities in accessing these institutions to provide information about ADR and existing mechanisms and how to access them.

In specific, this study focuses on court-annexed mechanisms/bodies/institutions of ADR with reference to their laws or administrative orders (such as Arbitration Act 1940, etc.), public

³³ The Establishment of the Office of Ombudsman for The Province Of Sindh Act 1991 s. 2
<http://sindhlaws.gov.pk/setup/publications_SindhCode/PUB-15-000768.pdf>

administrative bodies (such as revenue department, union council, etc.) with a concentration on bodies which focus on vulnerable groups,³⁴ and National and Provincial Human Rights Institutions (such as National Commission for Human Rights, Sindh Human Rights Commission etc.)

2.2 Methodology

The study is based on the primary and secondary data. The primary data was gathered through focus group discussions with the potential participants and informal interviews with respondents in Karachi, Hyderabad, Larkana and Sukkur regions. In each region, one FGD was conducted (a total four of FGDs). In total, 25 participants including 12 females participated in four FGDs. In Karachi, 5 females only; in Hyderabad, 3 males and 3 females; in Larkana, 5 males and 2 females; and in Sukkur, 5 males and 2 females. The schedule of questions is included as Appendix A.

In Sukkur, informal interviews were conducted with Wahid Bux Mahar, Regional Director, Provincial Ombudsman (*Muhtasib-e-A'ala*) Sukkur region and Kareem Dino Badani, Jirga *Musheer*/Counsellor, Traditional Justice System/ADR. In Karachi, informal interviews were conducted with Justice Shahid Shafiq- Faculty member Sindh Judicial Academy/ Former coordinator Access to Justice Program, Sindh and Ghulam Mustafa Baloch- Regional Manager-SPO. In Hyderabad, an interview was conducted with Zaheer Jamali, Advocate at High Court of Sindh, Hyderabad.³⁵

In addition to primary sources of information, the study also relied on the secondary source of information that includes annual reports by the Supreme Court of Pakistan, news stories, various studies and researches and other government agencies' reports on ADR.

³⁴ Legal Aid Society provides its services to vulnerable groups, therefore the paper also focused on public administrative bodies/departments relating to these groups.

³⁵ The participants in FGD at LAS Office Hyderabad were Waseem Rajpar (Arbitrator), Jamil Ahmed (Arbitrator), Ambreen Mastoi (In-charge Child Protect Unit Hyderabad), Nawab (In-charge police Human Rights Cell), Tabasam Rani and Zubedha Thaheem (Darulaman).

3. Analysis of the Functionality of State-Annexed ADR and PAB ADR Mechanisms in Sindh

3.1. Court-Annexed ADR Mechanisms³⁶

3.1.1 Arbitration Council under Arbitration Act-1940

There are main two laws that deal with arbitration in Pakistan: The Arbitration Act, 1940³⁷ ("Arbitration Act") and the Recognition and Enforcement Arbitration Agreements and Foreign Arbitral Awards) Act, 2011.³⁸ This study deals only with the Arbitration Act (AA), 1940, which has three classes of arbitration: (a) arbitration without court intervention (in Chapter II, Sections 3-19); (b) arbitration where no suit is pending but through court (in Chapter III, Section 20); and (c) arbitration in suits through court (in Chapter IV, Sections 21-25).

The AA provides for all matters related to arbitration under Pakistani laws. It gives flexibility to the concerned parties to agree on all the pertinent issues between them. The AA is used particularly in commercial and corporate bodies and has a well-established practice. It has not permeated into contracts at the community level.

3.1.2. Conciliation Courts Ordinance 1961³⁹

In 1961, the Conciliation Courts Ordinance 1961 was promulgated to strengthen a uniform system introduced under the Basic Democracies Order 1959. The Ordinance brought in some main changes related to procedure and settlement of certain criminal and civil cases. It had repealed *panchayat* system, brought in the conciliation courts, and extended the jurisdiction of conciliation courts to rural and urban areas (Earlier only the *panchayats* were dealing with

Tariq Panhyar in FGD in Sukkur shared that despite there being many institutions in the district for solving public issues such as Revenue Department, Municipal Administration, Labour Department, Minority Affairs Department, and Police. People seldom go to these places for resolving their matters.

Ikhtlaq Ahmed, in the same FGD, added that people do not have knowledge related to the concerned line departments; therefore, they go to influential persons of the areas for resolving their problems, whether these problems are social, criminal or commercial.

³⁶ Court annexed ADR arises where after parties have presented their case to court, the same is referred by the court to one of the ADR mechanisms for resolution

³⁷ The Arbitration Act, 1940 <<https://www.ma-law.org.pk/pdflaw/Arbitration%20Act,%201940.pdf>>

³⁸ Riasa Barker Gillette 'A Study of the Arbitration Law Regime in Pakistan: An overview of the current legal framework that governs arbitration in Pakistan'(n.d) <<http://www.riaabarkergillette.com/usa/wp-content/uploads/Insight-Article-A-Study-of-the-Arbitration-Law-in-Pakistan.pdf>> accessed 15 July 2017

³⁹ The Conciliation Courts Ordinance 1961 <<http://pja.gov.pk/system/files/Conciliation.pdf>>

cases in rural areas). It is claimed that with repeal of panchayats, a local institution of resolving dispute was abolished in legal documents.⁴⁰

3.1.3 MFLO 1961 & Family Courts ordinance 1964

The Muslim Family Law Ordinance (MFLO), 1961, was introduced on the recommendations of the Commission of Marriage and Family Laws. The MFLO has provision of arbitration council (Section 2 (a)), consisting of a chairperson and one representative from each party, and if any party failed to nominate a representative, the body constituted under the Ordinance shall be called Arbitration Council. The chairperson would be “the Chairman of a Union Council, Union Administration or Municipal Committee or any officer authorized by the Government to discharge the functions of the Chairman under the Ordinance and where the Chairman is a non-Muslim or he himself wishes to make an application to the Arbitration Council, or is, owing to illness or any other reason, unable to discharge the functions of the Chairman, the Arbitration Council shall select one of its Muslim members as Chairman” (Section 2 (b)). The MFLO deals with registration of marriage (*nikah*), polygamy (more than one marriage) divorce, and succession property/inheritance, maintenance of wives and children and dowry.

In 1964, the Family Courts Ordinance (FCO) was promulgated to establish the Family Courts for the speedy settlement and disposal of disputes related to marriages and family affairs. The FCO was an effort to connect with the MFLO because the other courts were occupied with criminal cases.

3.1.4. The Small Claims and Minor Offences Ordinance (SCMOO) 2002

In 2002, the Small Claims and Minor Offences Ordinance (SCMOO) was promulgated to provide an exclusive district and tehsil level exclusive courts to facilitate the resolution of petty disputes. The SCMOO had the ADR mechanism to enable the resolution and settlement of minor disputes that fall under the framework of the court system.

The SCMOO introduced a thorough system of accessing mediation including the appointment of mediators by the courts for small claims in both civil and criminal matters. However, while providing details about the processes on the civil side, it fails to do so for the criminal side, referring it to the Civil Procedure Code 1898, which does not have the necessary levels of details for effective and efficient implementation of laws. The primary purpose of the Ordinance was the provision of quick justice without heavy loss of money and time at the grassroots level. Civil Judges cum Judicial Magistrates were given powers to deal with claims less than 100,000 rupees and also cases carrying less than three years’ sentence. In the

⁴⁰ Usman Shahid, ‘Inquest into justice of the Pakistani customary “Panchayat Justice System” in context of international human rights law.’ (MA thesis, University of London, School of Advanced Study 2012).

Ordinance the procedure for trial of the given cases, offences and claims were given in a summarized manner. It also had mechanism and procedure for a peaceful resolution of disputes between groups through arbitration, mediation/conciliation. Once the parties reached a peaceful settlement, their settlement has to be brought into the order of the court. In case if parties do not reach the settlement, the court will proceed with the trial and will decide the dispute within 60 days.⁴¹

In 2003, the National Judicial Policy Making Committee (NJPMC) had asked the federal government for the enforcement of the Ordinance. Given the slow response, the National Judicial Policy-Making Committee urged the provincial governments for the implementation of the Ordinance. Provincial governments in consultation with the High Courts had to set up or designate such courts.⁴²

3.2.1 *Salis* and the SCMOO

In FGDs and IDIs, the main thrust of the court-annexed bodies discussed was the mechanism under SCMOO 2002 and the respective Provincial High Court's notification of *Salis* for *Salis* Committees under the directives of the Supreme Court of Pakistan. In Sindh, the procedure of *Salis* was notified in 2005, in 2009 and again in 2015. The Sindh High Court made the selection/nominations of *Salis* by following the procedure laid in the appointment of *Salis*.

In FGDs and IDIs, the participants and informants from the lawyer community regretted that judicial officers never utilized *Salis* Committees. These forums have remained completely unused; therefore, assessing these committees' effectiveness is a futile exercise.

A primary concern that was raised by the lawyer community was the *Salis* Committees have no role in picking the case for the mediation. It is the responsibility of the judicial officers to refer the case to the *Salis* or *Salis* Committee. However, in FGDs and IDIs, the participants and informants claimed that judicial officers avoided referring cases to *Salis* panels. They offered a reason that judicial officers were lacking knowledge and understanding of *Salis* committees, or perhaps, they were unaware about such administrative processes. On the contrary, to this argument, Justice Shahid Shafiq-Faculty member Sindh Judicial Academy & former coordinator to Access to Justice Program Sindh claimed that there was no more importance or role of arbitrators/mediators/*Salis* in the dispensing of justice. He said some five years ago, there were some efforts in that direction because there was a shortage of human resource within the judiciary but since then the situation has improved and judiciary had enough resources to manage with cases. He also claimed that the caseload per judge was around 200 cases, which was manageable. He happily shared that in the High Court of Sindh's report, the

⁴¹ 'Small claims courts to be set up' *Dawn* (Islamabad, 23 July 2004)

<<http://www.dawn.com/news/395763/small-claims-courts-to-be-set-up>> accessed 15 July 2017

⁴² 'Govt asked to enforce small claims ordinance' *Dawn* (Islamabad, 30 May 2004)

<<http://www.dawn.com/news/394503/govt-asked-to-enforce-small-claims-ordinance>> accessed 15 July 2017

year wise consolidated cases and pendency in districts have significantly decreased, and there was a substantial progress. Further, he stated that the private mediators were engaged at the High Court level mostly in financial disputes. He regretted that even if the mediators/*Salis* were referred cases by the courts, they did not have knowledge of proceeding with the cases because there were not developed SOPs (Standard Operating Procedures) which could guide them on how to deal with a case.

In FGDs and IDIs, it was pointed out that in most of the cases names of *Salis* were recommended by the District Bar Associations (DBA) especially of whose affiliations were with office bearers of the DBA or had voted for them in the election of Bar. Resultantly, those experienced lawyers belonging to rival panels were not made part of the *Salis* Committees.

Therefore, some of the participants were of the opinion that the selection of *Salis* was biased and polarized in nature, thus less effective. Therefore, it was suggested that *Salis* should not be selected based on the recommendations of bar only, the other competent lawyers should also be given space in the *Salis* Committees. It was also suggested that there should be inclusion of notable retired professionals, councillors and chairperson of the union council in the Committee.

Sabir Maseh said that in his community the police pressurized both parties to resolve the matter without going to the court. They also forced them to compromise cases out of court. Thus, he said that Christian community solved their issues and disputes in their Church and often avoided going to the police. In family and community matters, pastors played mediatory roles. With the consent of both parties, pastors heard both parties and made decisions, which were always successful.

Table 1: District wise Salis notified by the High Court of Sindh in 2015	
Karachi (West, South, East and Central)	11
Malir	07
Hyderabad	26
Thatta	11
Sukkur	11
Shikarpur	10
Jacobabad	09
Badin	06
Sanghar	08
Ghotki	10
Jamshoro	20
Umerkot	10
Tharparkar	10
Mirpurkhas	10
Khairpur	17
Kambar Shahdadhkot	10
Nausheroferoz	08
Kashmore	06
Larkana	16
Matiali	15
Tando M. Khan	08
Tando Allahyar	16
Benazirabad	11
Total	266
Source: High Court of Sindh, Letter to Mr Justice (Retd) Nasir Aslam Zahid, No. Gaz/Mis-2004 (8), dated 26 November 2015	

The participants and informants, particularly those from the lawyer community, stressed the need for orientation and education toolkits on how to access and run *Salis* Committees and what is expected from the *Salis*.⁴³ They also suggested for a continuous follow up of the *Salis* Committees by the District Bar Associations (DBA) and the District & Sessions Judge should seek monthly progress report of the *Salis* Committees. The researcher found that there were some efforts to train *Salis* under the Alternative Dispute Resolution Programme by Legal Aid Society and Pakistan Mediator's Association (PMA), however, these efforts need to be sustained through long terms programs.

There was also knowledge of the existence of *Salis* amongst lawyers, but they lacked interest and ownership of the *Salis* Committees, perhaps due to an undeclared resistance to the practice of *Salis*. Therefore, some lawyers showed a fear that with the popularization of such procedures, the majority of cases would be decided out of the court, thereby negatively affecting lawyers' clientele.

The researcher observed that in majority of the cases, lawyers did not know that the Court of First Civil Judge had been assigned cases of small or minor nature (known as the Small Causes Court). Only a few lawyers or nominated *Salis* knew about the Small Causes Courts. There were no referral cases to these courts by district courts. The Small Causes Courts have much potential to reduce the burden of cases pending in courts particularly falling under mandate of SCMOO-2002.

There is a general misconception about ADR in society when it comes to the institutionalization of ADR mechanisms through court. There are also variations of preferences in relation to accessing justice among the communities/groups. Mostly business-oriented people attempt to resolve issues outside the court and urban dwellers seldom utilize such mechanisms (such as *Salis*) in the first place. Secondly, once they jump into adversarial position or process, legal counsels do not opt for amicable settlement. In some instances, it is noticed that disputant parties do not want to solve their issue for whatever reason and want the process to linger on until the last appeal is exhausted at the highest forums.

All the *Salis* members interviewed for this paper reported that no cases have been referred to them by the Courts. In Karachi, the High Court of Sindh appointed Hina Pirzada as mediator/*Salis*. Hina had attended the training organized by the NCCDR; however, neither she nor other *Salis* who had attended training along with her had mediated a single case due to lack of reference by the court. Hina reiterated the belief that that this may be due to the lack of knowledge of availability or utility of these services of courts or judicial officers. She stated that in her opinion in Karachi, urbanite people prefer not to access or reach out to

⁴³ Legal Aid Society will be embarking on an awareness campaign on *Salis* Committees under the SCMOO within the first half of 2017

informal justice systems such as *Jirgas* or *Panchayats* and would prefer accessing courts for resolving even their petty matters. She further added that media has created awareness among the public especially people living in urban areas, therefore, they prefer to access formal courts. Rubina Jatoi was also appointed as a mediator in Karachi. However, she was not satisfied with the training she had received by the NCCDR. She said that she had not seen any case being referred to her. For her, the prime reason of such state of affairs was a lack of awareness among the judicial officers, a sentiment shared with others. In Hyderabad, the participants in the FGD, said that the appointed arbitrators in the district had not received any case from the courts. The participants themselves had no knowledge and understanding about court-annexed mechanisms.

3.2.2 The MFLO 1961 and Family Courts Act 1964

There are two tiered mechanisms laid down for amicable settlement of disputes related to personal status, i.e. Arbitration Council under the UC Chairman and the Judge of District Family Court under the Family Courts Act 1964⁴⁴ and Rules of 1965.

The findings from FGDs and IDIs reveal that the government functionaries such as Secretary of the Union Council, councillors (both male and female) and Chairman of the Union Councils were not aware about the functions laid down in Section 6 (related to Polygamy), Section 7 (related to divorce) and Section 9 (related to maintenance) of the MFLO.

The research assesses that the dispute resolution under MFLO in family courts for resolving such matters is under-researched. The family judge acts as a mediator for an amicable settlement of family disputes between the parties; this procedure is laid in Part 1 of the Family Court Act 1964 and Part 2 is related to offenses mentioned under Sections 337 A(i), 337F(i), 341, 342, 343, 344, 345, 346, 352 and 509 of the Pakistan Penal Code (Act XLV of 1860)⁴⁵. However, unfortunately, as indicated above, in majority of the cases in family courts, the lawyers wish to pursue the cases. The law clearly provides procedures and means to reconcile before and after the trial as is laid in Section 10 (pre-trial) “the court shall ascertain the points at issue between the parties and attempt to affect a compromise or reconciliation between the parties, if this be possible); and Section 12 (post –trial) in the conclusion of trial, the family court shall make an effort to affect a compromise or reconciliation between the parties within period not exceeding fifteen days.

Some of the local government functionaries were of the view that earlier their predecessors were aware of those functions given in the MFLO through governmental guidelines, i.e. laws, rules, procedures, notifications and orders. However, the Sindh Local Government Act (SLGA),

⁴⁴ Family Courts Act 1964

<http://kpcode.kp.gov.pk/uploads/1964_35_THE_WEST_PAKISTAN_FAMILY_COURTS_ACT_1964.pdf>

⁴⁵ Pakistan Penal Code 1860 <<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>>

2013, was silent on these matters. It was also stated that there were no rules of business for the implementation of the SLGA 2013, leaving a legal lacuna.

Majority of the participants opined that the communities or masses were mostly unaware about the referral of cases to the local government at UC level. They were unaware about functions and roles of the UC in resolving matters of small scale. Those people who had some knowledge about the UC's functions and roles, they avoided to take their matters to the UC members because individuals' (parties') affiliation with councillors or chairperson. Discontinuity of the local government system was reported another factor which had resulted in the loss of peoples' trust and confidence in an unstable institution. It was also observed and noted that councillors were not confident. It was because they feared the change of laws with the change of national or provincial governments. Thus, this discontinuity had weakened the institution and people had little confidence in the institution as venue for remedy of their issues/problems.

Tariq Panhwar, a participant in FGD in Sukkur, said that private arbitrators resolve problems and disputes quickly much faster than the courts, therefore, people took their cases to these. He added that the courts' have their own culture, procedures and processes, which did not fit with people's choices, needs and understanding. Panhwar argued that traditional Jirga/Panchayat decided issues in the light of evidences and merit. People did not lie in these forums and eyewitnesses gave true statements; and the advisors argued for the right decision. He also asserted that in Jirga system both parties happily accepted the decision of the Jirga; they become friends to each other on the spot, which did not happen in the court system.

The local government functionaries were of the view that institution in the formal justice system such as police, judiciary or revenue should refer to the litigants for exhaustion of remedy at the Union Council. In the past, the local government was a favourite subject for the military rulers, which (some of the participants viewed that) was meant to undermine and subdue the political parties and democratic systems. Therefore, the elected governments of political parties give least preference to the local government system, resulting in the system's inability to make roots in the masses.

The key informants said that most of the cases registered at the police station and *Mukhtiarkar/ Tehsildar* could be solved through mediation at local level with the help of union councils. It however would require sincere and systematic efforts by the local government functionaries, police and revenue officials. However, it is important to note that this paper does not advocate for cases involving violence against women and children to be referred and dealt with by ADR mechanisms.

Some lawyer participants claimed that judges were not oriented and trained as mediators, despite the role that befell them. Lawyers critiqued the performance of several judges stating that judges have had only tendency to order and to speak. Judges did not listen the parties and did not read the case carefully so that they could make up mind for pre-trial reconciliation. Commonly, Judges do not even offer pre-trial reconciliation in cases. They also said that in such state of affairs lawyers were bound to pursue the case. A lawyer shared that only trainings to lawyers are not sufficient to convince them that they should advocate for *Salisee*/reconciliation. Some of the in service and retired judges agreed with some observations of lawyers i.e. that in the majority of the cases two persons sitting within the body of family court were not reconciling with the role of the mediator and the judge as envisioned by the law. If a judge applies the mind of mediator and keeps away, his/her status or posture then the outcome can be different. Those who have served as judges were of the view that earlier responsibilities of Judge as Magistrate cum civil Judge cum Family Judge were helpful in solving the backlog of cases in the first instant.

3.2.3. Local Governance Laws and Systems

A. The Sindh Local Government Act (SLGA) 2013

After the 18th Amendment to the Constitution of Pakistan, it has become mandatory on the provinces to set up the local governments.⁴⁶ Consequentially, all provinces passed the local government acts including Sindh in 2013. The SLGA 2013 differed from the previous local government laws and from other provinces by not creating a dispute resolution mechanism at the local government tier.⁴⁷

In urban areas tenancy/rent matters and family matters are normally resolved in the courts without considering legal intricacies involved in the case as the legislations in family courts permit the presiding officer to make attempt to reconcile the dispute during pre and post-trial. Similarly, in rent matters the appellate court has been given powers under the Sindh Rented Premises Ordinance, 1979 to mediate the dispute between the parties and motivate them to reach a settlement. It is a common practice in dispute of civil nature that the parties during pendency of the action continue to explore settlement through informal justice system and on settlement file either a compromise or withdrawal application.

Tariq Panhwar and Abdul Qudoos⁴⁸ stated that people did not have knowledge about the role of union council in solving their problems. The councillors in union councils have good understanding of small-scale issues people go through. They can solve problems but people

⁴⁶ The Constitution of Pakistan, 1973 <<http://www.pakistani.org/pakistan/constitution/>> Article 140(A)

⁴⁷ The Sindh Local Government (Amendment) Act, 2013
<<http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.LIII%20of%202013.pdf>>

⁴⁸ Tariq Panhwar is Union Council Chairman in Sukkur District and Abdul Qudoos Memon is Deputy Director Social Welfare Department, Sukkur.

did not approach them. Shabana Khaki⁴⁹ said that union councils could play an important role in addressing issues related to marriages especially under age marriages, which take place without valid documents, and in the turn, these marriages cause severe problems to women and girls.

Ikhlaz Ahmed⁵⁰ said that most of the marriages are not registered; whereas, there were assigned three marriage registrars in the union council. Zubair Mahar⁵¹ claimed that there was no role or performance of arbitrators in the district; despite the facts that there were appointed 11 arbitrators in the district.

Abdul Ghaffar⁵² said that there were Community Development Department CDD, Women Development Department (WDD) and Women Complaint Cell (WCC) working for the welfare of women in the district. If people have had any problem, they could lodge complaint with these bodies. He added that the referral mechanism is effective to some extent but it needs to be activated at union council level, so that people could benefit from it. He added that WCC was active in District Coordination Office, where people could bring their family and civil matters. A participant (Waseem)⁵³ claimed that those people who seek quick justice, they go to the informal justice system, but those who want to delay or prolong the justice they go to the judiciary. It was also said that 70 percent of family cases were referred to the family courts. The participants said that there is an important role of union councils in resolving family disputes of minor nature. Public did not have the knowledge about the mechanism at the UC level. It was also discussed that due to cultural barriers and privacy or sensitivity of the issue, people resolve their matters at family and community levels.

4. Administrative Justice through Public Administrative Bodies (PAB)

Zar Bano, who is the Coordinator for Panah programme/project in Karachi, said that most of the cases are referred to them by the CSOs, not by the PABs. Bano claimed that PAB and CSOs were working separately but would be much more effective if they worked together, Bano lamented that the Jirga's were working against human rights and most of the victims of their practices are women and girls. Bano opined that in legal terms PABs have to transfer the cases to the judicial system and do not have powers to decide; whereas the practice is different from the theory. She said, for instance, in the police and *thana*⁵⁴ culture, the police officials

⁴⁹ Shabana Khaki is a female councilor in Sukkur District.

⁵⁰ Ikhalque is Union Council Secretary in Sukkur.

⁵¹ Zubair Mahar is Advocate in Sukkur.

⁵² Abdul Ghaffar Thaheem is Deputy Director Woman Development Department.

⁵³ Waseem is civil society activist at Larkana.

⁵⁴ Police station notified under section 4 of Criminal Procedure Code 1898. The Criminal Procedure Code 1898 <http://www.fmu.gov.pk/docs/laws/Code_of_criminal_procedure_1898.pdf>

were deciding the matters and cases themselves. Zaheer Leghari, practicing lawyer at the High Court of Sindh, opposed to the role of PABs in the justice system. He feared that these PAB would misuse the authority and power for personal interests rather than serving public interests. Leghari said that PAB have neither capacity nor accountability system and mechanisms. He recommended putting fines and penalty on those who lodge false cases. A representative of Legal Aid Society said that public did not have knowledge about tiers or layers of justice system, they run after the non-relevant systems. It also added that lawyers lack knowledge and skills to understand and to deal with cases of minor nature. The participants in FGDs in Karachi stated that there was no legal cover of PAB (i.e. the police, human rights cells, women development department etc.) in dispensing justice; therefore, there should be given legal cover.

4.1 Board of Revenues

There are two forums to resolve matters related to revenue, i.e. the federal and provincial boards of revenue. The federal board of revenue has jurisdiction of the Federal Excise Act, 2005, the Customs Act, 1969, the Income Tax Ordinance, 2001 and the Sales Tax Act, 1990. Since under these laws cases are dealt as crime against the State not against the individual property or life, therefore, the mediation or reconciliation is not possible.

While Provincial Board of Revenues is supreme authority under Land Revenue Act-1967 dealing with matters of revenue, land record and as appellant body of resolving the disputes between various claimants against decisions passed by respective forum such as Assistant Commissioner, Deputy Commissioner, Divisional Commissioners. Member Board of Revenue hears such appeals. According to revenue official⁵⁵ who has worked at various positions told that many disputant parties litigate against each other in civil courts or anti-corruption Establishment alleging fraud or manipulations in revenue record just to make suffer other party and remedy lies with revenue forums. In various cases higher judiciary has asked for approaching the relevant forum-i.e. Revenue forums. In an interview⁵⁶ with Ex-Judge & Senior Advocate Larkana Mr. Safdar Bhutto told that due to politicization of bureaucracy people do not repose confidence in dispensation of justice by administrative measures. Abdul Qudoos Memon⁵⁷ stated his belief that if people are made aware at union council of such remedies and provided para-legal support related to property matters such land tax, solvency certificate, succession certificate/title, revenue record, than much of case load can be avoided from civil courts and resolved through administrative justice.

⁵⁵ In interview with Mr. Shahid Ali Shah who has worked as Mukhtiarkar, DDO Revenue/Assistant Commissioner in Shikarpur/ Larkana/ShadadKot Districts and currently as Deputy secretary (Irrigation Department), Government of Sindh.

⁵⁶ IDI with Mr. Safdar Bhutto ex-Judge of Sindh High Court, at Larkana.

⁵⁷ IDI with Mr. Abdul Qudoos Memon, Deputy Director, Social Welfare Department Sukkur.

4.2 Labour Department

The Sindh Industrial Relations Act, 2013, has provision of arbitration in addition to the labour court and labour appellate tribunal. The arbitrator appointed under the Act would resolve disputes between “employers and employers or between employers and workmen or between workmen and workmen [which are related to] employment or non-employment or the terms of employment or the conditions of work of any person and is not in respect of the enforcement of such right guaranteed or accrued to him by or under any law other than the Act, or any award or settlement for the time being in force”. The arbitrator would oversee complaints from industries (i.e. “any business, trade, manufacture, calling, service, including fishing, mining, agriculture, extraction, exploration, processing, print and electronic media, employment or occupation of producing goods or services for sale excluding those set up for charitable purposes”).⁵⁸

Under section 40, the Act provides that in case the conciliation between the parties fails, then “the conciliator shall try to persuade the parties to agree to refer the dispute to an Arbitrator”. In case the parties agree to refer the dispute to an Arbitrator, they shall appoint an Arbitrator and refer the dispute to the Arbitrator by agreement in writing. The Arbitrator to whom a dispute is referred ... may be a person borne on a panel to be maintained by Government or any other person agreed upon by the parties. The Arbitrator shall give his award within a period of thirty days from the date on which the dispute is referred to him or such further period as may be agreed upon by the parties to the dispute. After he has made an award, the Arbitrator shall forward a copy thereof to the parties and to Government, which shall cause it to be published in the official Gazette. The award of the Arbitrator shall be final and no appeal shall lie against it, and it shall be valid for such period as may be specified in the award but not exceeding two years.” The Act does not explain how the conciliator will be appointed, or who the conciliator is. There are also no updates on the progress of the role of arbitrators under the Act. The use of this forum is underutilized. There is potential to use this provision in cases related to working class.

During the FGD in Hyderabad, one lawyer who mostly litigates on behalf of labourers, labour union opined that labourers are not getting relief from labour department forums and prefers cases for mediation. Such views⁵⁹ have also been echoed for inclusion of mediation, conciliation, arbitration for labour disputes in proposed ADR law at federal level. Proponents for mediation for labour rights cite that the employer can sustain litigation for an indefinite period, but the employee cannot afford to hold his ground against high expenses and delayed decisions by the courts.

⁵⁸ The Sindh Industrial Relations Act 2013

<<http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.XXIX%20of%202013.pdf>> s. 34 and 40.

⁵⁹ Pervaiz Rahim, ‘Justice for labor daily’ *Dawn* (24 January 2017)

<<https://www.dawn.com/news/1310299/justice-for-labour>> accessed 14 July 2017

4.3 Minority Affairs Department, Sindh

In 1995, the government of Sindh has set up Religions Affairs, Auqaf, Zakat and Ushr Department that had mandate to deal with minorities' matters in Sindh. In 2010, Minority Affairs Department was separated from Religions Affairs and became an independent department. The prime purpose of the department is to ensure and safeguard the minorities' rights and resolve their issues and problems in the province. It also helps the government in designing the policy, plans, and laws related to minority rights.⁶⁰

However, it is not clear whether the department has played or still playing any role in facilitating or supporting any of the ADR mechanisms in resolving minor disputes between the individuals from the minorities, but has announced to establish facilitation centres⁶¹ for resolution of issues of minorities at divisional level. Currently issues related to law and policy such as Sindh Hindu Marriage Registration Act 2016 and five percent jobs quota were led by this department and matters regarding development, welfare are also dealt with.

4.4 Social Welfare Department

Since 1971, the Social Welfare Department Sindh is working in the province and helping thousands of volunteer agencies in their efforts to address social and economic problems. The prime objectives of the department are to: organize voluntary Social Welfare Service through participation; organize rehabilitation program for the destitute and under-privileged women; establish service for the Rehabilitation of handicapped and disabled children/ adults; register, guide and supervise Voluntary Social Welfare Agencies; organize training program for Voluntary Social Welfare Agencies; and coordinate with Nation building Department.⁶² The department has no direct role in supporting and facilitating any kinds of formal and informal justice system. However, the department has initiated programmes to support victims of harmful traditional practices such as *karo kari*, child marriages.

The Child Protection Unit (CPU) Sukkur received 159 cases related to child protection and welfare that includes 21 cases of missing children, 45 cases of neglect, 1 case of violence, 79 cases of child labour, 2 cases of child marriages and 1 case of child sexual abuse in 2016.⁶³ The CPU referred most of the welfare related cases to NGOs, Labour Department, Social Welfare, Zakat Office. The police itself dealt the protection related cases; however, in none of the cases did the police play the role of mediator or conciliator or arbitrator. It just merely referred cases to the relevant authorities because the police have no legal mandate to take any such

⁶⁰ Minorities Affairs Department, 'Introduction' (*Sindh.gov.pk*, n.d.)

<<http://www.sindh.gov.pk/dpt/MinorityAffairs/index.htm>> accessed 17 July 2017

⁶¹ 'Facilitation Centers established for minorities' *PakObserver* (Karachi, 1 September 2016)

<<https://pakobserver.net/facilitation-centers-established-for-minorities/>> accessed 12 July 2017

⁶² Social Welfare Department, 'Objectives' (*Sindh.gov.pk*, n.d.) <<http://www.sindh.gov.pk/dpt/swd/index.htm>> accessed 17 July 2017

⁶³ Office of the Deputy Director, Social Welfare Department, Sukkur.

measures. However, the police personals possibly can be involved in these roles in their personal capacity and possibly asserting the authority and power they would have as policemen.

4.5 The Police Department, Sindh

The Sindh Police's website shows that training on conflict resolution and negotiation had been organized to build the capacity of the police officials.⁶⁴ In 2015, the Sindh police had launched the facilitation centres in Karachi city, which would also work to resolve small family matters and within these centres. Dispute resolution committees would be constituted which would resolve small family and other disputes in a fair manner. The press release by the IGP Sindh said that these centres would filter down cognizable cases, which would be sent to the police station for formal registration of the case (FIR); however, in non-cognizable cases, the police would play a role to resolve disputes in the centres.⁶⁵ Conceivably, these centres may not survive longer because these are not constituted under a law rather on wish and whim of some individuals. In order to protect these centres and expand these across the province, the Chief Minister Sindh/Government of Sindh has to provide legal cover to the centres in a similar fashion as the Khyber-Pakhtunkhwa (KP) government has supported the IGP KP's idea of Dispute Resolution Council (DRC)⁶⁶ and provided legal cover to it.

However, the participants in FGD in Karachi disagreed with the KP DRC model to be introduced at police station level. They claimed that in KPK a 21-members' committee constituted at the police station level was not workable in Karachi because that committee was more aligned or resembling with tribal type of justice; whereas, the participants in Hyderabad claimed that that the KP model could be workable or suitable in rural parts of Sindh. Overall the participants stressed on improving and strengthening the formal justice system especially judiciary for the dispensing of justice. It was observed in FGD at Hyderabad and Karachi, participants urged for avoiding using the ADR and strengthening of formal Justice.

Sindh Police⁶⁷ has initiated Human Rights Cells in 2009 for addressing the issues of women, children, bonded labour and addressing the general violations of human rights within the Police through special windows like further establishing women complaint cells in those areas where issues of domestic violence, gender-based discrimination and issues of harassment can

⁶⁴ Sindh Police, 'Soft Reform: Capacity Building' (*Sindh Police*, n.d) <http://www.sindhpolice.gov.pk/projects/soft_reform.html> accessed 17 July 2017

⁶⁵ Sindh Police, 'Police Facilitation Centers/ Public Help Centers being Established in the City- IGP Sindh' (*Sindh Police*, 2 April 2015) <http://www.sindhpolice.gov.pk/announcements/Press_Release/2015/apr-15/2.4.15-3.4.15.pdf> accessed 17 July 2017

⁶⁶ Khyber Pakhtunkhwa Police, 'Strategic Initiatives and Institutional Reforms in Khyber Pakhtunkhwa Police 2015-16' (22 February 2016), 102<<https://kppolice.gov.pk/thebook/book.pdf>> accessed 17 July 2017

⁶⁷ Inspector General Police Sindh, 'Standing Order 235/2009' (26th November 2009)

be addressed. Likewise, Child Rights Desks are established in those areas where incidents related children were reported particularly in urban settings. Anti-bonded Labour Cells were established in those areas where bonded labour cases were reported particularly in Mirpurkhas.

The Police Order 2002 envisioned a more proactive role of the police. This law was however revoked by Sindh and therefore does not apply in the province. It is important to recognise that the 2002 Order included a coordination role for actors in the criminal justice system, which may be considered for any future police amendment in the Sindh province. For example, section 109⁶⁸ provided coordination among different actors of the criminal justice system, the idea of a District Criminal Justice Coordination Committee (DCJCC) at the district level. In other provinces, the DCJCCs have primarily remained in administrative mode instead of providing effective coordination among the different entities of the criminal justice system. They could have played a better role in addressing the 'disconnect' within the criminal justice system had the district heads been supervised by their respective provincial heads.⁶⁹

5 Administrative Justice through National & Provincial Human Rights Institutions

5.1 Ombudsman

In Pakistan, 12 ombudsman institutions were reported with general and specific mandates at federal and provincial levels, which include banking, taxation, workplace harassment and insurance. These institutions constitute the Forum of Pakistan Ombudsman (FPO)- viewed as a political association working to promote good governance in the country.⁷⁰ In 2013, the Ombudsman Institutional Reform Act was introduced that gave administrative and financial autonomy to the Ombudsmen offices. In 30 years, since its establishment, the Federal Ombudsmen had processed around 1.07 million complaints, 64000 cases were decided, and one percent complainants had filed review petitions.⁷¹ Overall, just 11 percent women were also complainants.⁷² There were reported grave flaws in these institutions; major among these were the low or poor capacity to meet the desired performance, and standards, set out in the law. In addition, a lack of public awareness about Ombudsman Institutions was one of

⁶⁸ Police Order <<http://punjablaws.gov.pk/laws/2185a.html>> Sindh Government has repealed Police Order 2002 and enacted Police Act-1861 on 14th July 2011. The Police Act-1861 does not provide such mechanism.

⁶⁹ Muhammad Ali Nekokara, 'Rickety Criminal Justice System' *Dawn* (27 August, 2016) <<https://www.dawn.com/news/1280189>> accessed 14 July 2017

⁷⁰ World Bank, 'Pakistan's Ombudsmen: Untapped Potential to Strengthen Good Governance' (*World Bank*, 20 May 2014) <<http://www.worldbank.org/en/news/feature/2014/05/20/pakistans-ombudsmen-untapped-potential-to-strengthen-good-governance>> accessed 14 July 2017

⁷¹ *ibid*

⁷² (n 74)

the causes of low level of public participation. Therefore, potential complaints were not submitted by the weaker and marginalized sections of the society.⁷³

The Federal and Provincial Ombudsman Institutions have mandates to offer relief to complainants and redress their grievances against the concerned government departments. Under the offices of the Ombudsmen at federal and provincial levels, the Child Compliant Offices were established at Federal and Provincial levels, which were given authority to deal with complaints related to child protection in schools, residential institutions, and public services. It was empowered to address on individual complaints, take *suo motos* to address child rights violation, and carry out advocacy and awareness raising activities on child rights with the public, civil society, and the media. In 2013, the Federal Ombudsman had appointed a Commissioner for Children. However, this Commissioner's role is mainly to receive complaints against government departments and forward/refer these to the relevant departments.

Wahid Bux Mahar, Regional Director, Provincial Ombudsman Sindh (POS) (Muhtasib-e-Aala) Sukkur Region, said that the number of cases has increased with his office as compared to the past. He presumed that it was because of public awareness. Mahar said that the disposal of cases had become easy for disposal. All cases were dealt in their sequences and there were no pending cases with them. All cases were proceeded and reached to their ultimate ends in a shorter period. It took around a few weeks to resolve a case and, in some cases, referred to the relevant department. Mahar shared that people brought complaints to the regional directorate related to birth and death certificates, Zakat funds, and issues with revenue and irrigation systems. They scrutinized, collected data of cases and tried to solve these within weeks. He said that they also received cases with complications, which took a long time even a year.

Wahid Bux Mahar said that he also played role of arbitrator and his procedure of disposing of a case is, he called both parties in his officer, heard their views and attempted to resolve the matter in judicious way, and ultimately reconciliation has remained the main agenda of meeting with the parties. He claimed that he had been successful in doing so and that he made people friends again.

Mahar said that there was no provision of an arbitrator in his department, or Ombudsman system and no lawyer is required for representation for redressal nor any training for those currently in office. Mahar also said that his office could call officials from the union councils, tehsil and district councils, and could make them responsible to solve problems of the complainants.

⁷³ Ibid

Mahar said that the Regional Directorate lays emphasis on the completion of departmental records so that issues related families, births, properties and other disputes could be solved easily. In most of the departments, documentation was lacking, or mostly fake documents were prepared. This different approach of dispute resolution was much welcomed.

He said that most of the complaints were related to family matters of dispensation of inheritance among successors of deceased. He informed that of the total, females brought only 10 percent complaints. He shared that in Sukkur region the directorate had solved 22 cases in 2014, 19 cases in 2015 and 63 cases in 2016, and in the beginning of 2017, it had solved more than 15 cases.⁷⁴

Generally, the regional offices are on rent with no permanent structure. People are having difficulties for accessing them that over the last two decades, Sukkur office has changed its office in five different locations. He added that the Ombudsman has judicial and non-judicial powers. Mahar claimed that public awareness at grassroots level is necessary so that people could also come to the Ombudsman office for resolving their matters. He said that a permanent office and regular staff was needed to improve operations and functions of the office in the region.

5.2 Human Rights Commissions

5.2.1 National Commission on Human Rights (NCHR)

In 2012, the National Human Rights Commission Act (NHRCA) was passed and in 2015, notification was issued to nominate members of the National Human Rights Commission (NHRC). The NHRCA empowers the NHRC to investigate human rights violations, spread human rights literacy, publish research on international law, raise awareness about human rights protections, make recommendations for the implementation of treaty obligations and develop a national plan for the promotion and protection of human rights. The NHRC does not have powers to resolve the cases itself. Under Section 13, the NHRC can work as civil court only to summon the parties/evidences and call for documents and reports and can also award sentences to violators its orders but it does not have power to facilitate mediation or arbitration between the parties when the issue is of human rights violation.

However, NCHR is mandated to address cases related to individual and collective nature for redressal but as it is new institution and communities are not aware of its role, nor have any robust and complete systems been established for it to fulfill its role as such.

⁷⁴ List provided by Regional Ombudsman Office Sukkur Region.

5.2.2 Sindh Human Rights Commission (SHRC)

In 2013, under Section 3 of the Sindh Protection of Human Rights Act 2011, the government had notified to form the Sindh Human Rights Commission (SHRC).⁷⁵ It has more or less the same mandate; however, it has also no legal mandate to play the role of mediator or facilitator to resolve dispute between the two parties.

5.2.3 The National Commission on the Status of Women (NCSW)

In 2000, through a presidential ordinance, the NCSW was set up. It had a mandate to examine policies, programs and other measures taken by the governments and other institutions for women's development and equality. It had also mandated to review and analyse legal frameworks that affected women and to monitor systems, mechanisms and institutional procedures responsible for addressing the violations of women's rights and grievances. In 2012, the parliament passed the National Commission on the Status of Women Act to strengthen the Commission and make it an autonomous body. The NCSW has been given powers of a civil court for guaranteeing the presence of the relevant individuals and ensuring the production of relevant documents during the trials in formal courts. However, the NCSW have had no cover to arbitrate or mediate between the parties.

5.2.4 The Sindh Minorities Rights Commission

In 2016, the provincial Assembly of Sindh passed the Sindh Minorities Rights Act for the constitution of the Sindh Minorities Rights Commission (SMRC) but then Governor of Sindh returned that passed bill. The SMRC was intended to "examine the grievances of minority communities, suggest mechanisms for accelerating the pace of their socioeconomic development, and promote and protect their identities at the provincial level.

It would not work to facilitate arbitration or mediation between the parties. It would recommend or suggest to government or concerned authorities or refer these cases of human rights violations. The proposed bill has not yet been passed.

6. Miscellaneous Issues

6.1 Monitoring and Reporting on ADR

The Law and Justice Commission of the Supreme Court notified the provincial justice committees in 2015, including in Sindh in the High Court of Sindh. The mandate of these committees includes coordination, planning and guiding reforms in the justice sector. The role

⁷⁵ Law, Parliamentary Affairs and Human Rights Department, 'Notification to establish the Sindh Human Rights Commission' (*isj.org.pk*, 9 May 2013) <<http://www.isj.org.pk/wp-content/uploads/2014/05/THE-SINDH-HUMAN-RIGHTS-RULES-2013-1.pdf>> accessed at 12 July 2017

of the provincial governments, particularly the political executive and the high courts, is decisive in ensuring effective oversight and reforms in the system at the provincial level.⁷⁶

The recent annual reports and statistics from 2014 onward published by the Law and Justice Commission of Pakistan do not have details of cases resolved through arbitration under the SCMOO 2002 and Reconciliation Courts Ordinance 1940. These reports offer generic details of civil, criminal, family and rent cases. An understandable reason of lack of reportage on arbitrary and reconciliation cases is, there are no cases reported from the lower judiciary.

However, the higher courts create a demand for cases being referred to the *Salis* and tried by the Small Claims and Minor Offences courts, there is possibility to see the courts taking measures in utilizing these forums. In addition to civil, family, rent and criminal cases, if another column of reconciliation cases and arbitration cases may be added to the tables being filled in by the lower/district judiciary as a to report to the higher judiciary, there is likelihood that these forums may recuperate and the district judiciary may take notices of the institutions and mechanism being underutilized.

6.2 Technical Issues with Court-Annexed-ADR Bodies and Mechanisms

The formal ADR systems and mechanism especially court annexed ADR bodies such as reconciliation courts and arbitrators are nearly all underutilised. The law provides for setting up arbitration councils under the MFLO; however, these councils are not formed since the parties do not wish to approach the Union Councils. Similarly, the conciliation courts have to be constituted under the Conciliation Courts Ordinance, 1961. The provision of arbitration in the Industrial Relations Act 2013 is not in use.

As a result of the Supreme Court's directions, the High Courts assigned the power of the Small Claims and Minor Offence's Courts (under the SCMOO 2002) to the First Civil Judge at district level. The Supreme Court's main purpose of getting these courts notified was to reduce the burden on the existing courts and create more courts with more human resource (judges). However, delegating the responsibility to the existing courts, did not serve the purpose and Supreme Court's desire to see additional courts in the judicial ambit did not work.

The High Court of Sindh had notified the *Salis* under the SCMOO; afterward, *Saliseen's* activities or engagement in the cases were not witnessed mainly because the relevant courts did not refer cases to the *Saliseen*. In 2015, the Registrar High Court of Sindh had issued a fresh list of 266 *Saliseen* who had to go for trainings.⁷⁷ Later on, these *Saliseen* were not referred cases by the concerned courts. To the extent of appointments and trainings of

⁷⁶ (n 73)

⁷⁷ High Court of Sindh, Letter to Mr Justice (Retd.) Nasir Aslam Zahid, No. Gaz/Mis-2004 (8), dated 26 November 2015

Saliseen, the court had taken the measures, beyond it these measures the courts have stayed away from the follow ups and monitoring. It indicates towards the ownership of the Small Claims and Minor Offence courts and the *Saliseen*; neither the judiciary nor lawyers owned these forums.

On the one hand, court-annexed ADR bodies and legal mechanisms are underutilised; on the other hand, the existing bodies and mechanisms were not merely ineffective in their functions/performance but also were not being monitored by the high courts. As a result, the court-annexed ADR bodies, mechanisms and legal frameworks remained unknown for a long time, and these still remain insufficiently used.

6.3 Key Stakeholders Understanding on the Court-Annexed Bodies

The court-annexed bodies ADR, such as reconciliation, mediation and arbitration, are possible with strong support and efforts of five key stakeholders, i.e. the government, courts, lawyers, union councils, the police and the community. The State is often blamed for crisis in the justice system for many obvious reasons including low budgetary allocations, delays in creating infrastructure and creating vague piece of laws. However, in the court-based ADR mechanism too, the State appears to be responsible for the underuse of the laws meant to resolve cases outside of the court. The prime recommendation in this direction would be to launch a campaign about the availability of forums to resolve petty matters, which the State could not do over the last many decades.

Overall, assessment of the facts and ground realities reveals that the courts both higher or lower (district) have significantly ignored the court-annexed based ADR mechanisms. This is evidenced by the lack of monitoring of the prevailing mechanisms such as arbitrators/*Saliseen*. After nomination of *Saliseen*, the courts and the bars do not oversee the progress of *Saliseen*. The district bars nominated those as *Saliseen* who had voted to the bar members. This criteria of nominating and appointing *Saliseen* should be changed. Perhaps, the institutions of *Saliseen* could have worked well if there were only two layers -one set from lawyers/District Bars and rest of the members should have been from the community such as retired judges, police officials, teachers and others. Additionally, the structurally hierarchy did not exist amongst the *Saliseen* rather it is entirely dependent on the courts to refer case to any of the *Salis* for the arbitration/reconciliation. Another technical issue with the institution of *Salis* is, it was not formally institutionalized and not given physical existing. The provision of *Saliseen* or *Salis* courtrooms could have a positive step in this direction.

Generally, court-based ADR mechanism lack ownership from lawyers and the lower courts. The lawyer fraternity avoids owning pro-bono, free legal aid to needy and reconciliation or arbitration between parties outside of the court. It is asserted that they have inherent issue with these measures outside of the court. The courts also lack ownership of these measures

perhaps they believe that the reconciliation and arbitration through lawyers takes away their right to exercise powers on the cases.

The lack of establishment of conciliation court is a clear sign of lack of seriousness at the part of the government and the high court. This would have rather proved another wing in the court's strength and power.

The Union Councils are the lowest tiers in the administrative justice system if utilized. In Musharraf era, powers and authorities were transferred to union councils and institution (such as *Anjuman Masalihat*) working under it for resolving petty matters. However, even then, the arbitrary and reconciliation institutions remained underutilized; perhaps these were in infancy and in the state of evolving. The subsequent governments took back powers and authorities by repealing the laws under which they were constituted and re-constituted these local government bodies. Functions and powers of the union councils in SLGA 2013 are negligible in terms of resolving minor disputes. They may resolve matters through arbitration between other municipal bodies but without any legal protection for mediation for communities. Thus, all of these factors could be responsible for the negative effects of the decisions taken by such mechanisms, especially in times when NGOs and the media do not miss such opportunities to condemn all sorts of informal mechanisms.

In 2015, the police in different parts of Karachi set up the centres for dispute resolution. However, there are two issues with these centres; the police do not have a legal framework under which it could resolve public's any disputes. Thus, any such efforts are labelled as an extra judicial effort. The second issue with these centres is, since these are constituted without legal cover rather on some individuals' officials' initiatives, therefore, may be rendered useless once the individuals are transferred or have completed their terms. The instance of KP Police can be a great source of motivation for the Sindh Police, and KP's DRC models could easily be replicated with more power and resources if the government of Sindh gives protection to these measures under a new law for Police.

Largely, minority groups and poor public are unable to afford expensive litigation and they also do not understand the complications in the justice system, therefore, they prefer to use informal forums. At the same time, they are unaware of the court-annexed public bodies. The use of non-institutional informal justice system by a large number of people undermines and hinders the promotion of the court-annexed mechanism, which should give more credence to court-annexed mediation if used. In many cases, the litigant may assert for resolution of their cases through court-annexed bodies provided they have understanding of bodies. Despite expensive and complicated systems, many people do not trust forums other than the courts, therefore, the relevant courts have to communicate and convince the parties about the annexed bodies that have positive consequences in the future. One of the FGD participant

said that NGOs working at the community level have not yet become instrumental in raising awareness regarding decision-making and conflict resolutions.

6.4 Lack of ADR in PAB

There is limited use of ADR mechanisms within the PAB, if at all. It is extremely segmented and limited to certain categories. The Ombudsman is not reported to be accessed by the community at large. There are no or little linkages between the community and ADR processes within the PAB. This needs to be explored further to help support administrative processes at all levels.

7 Conclusion

The redressal of grievances could be addressed through non-judicial mechanisms (*Ombudsman*) or National Human Rights Institutions such as National Commission on Human Rights or Sindh Human Rights Commission, administrative justice through departments concerned like Human Rights Cell, Police, Child Protection Unit-Social Welfare Department, Women Protection Committees, Women Development Department etc. However, these institutions do not have legal foundations or powers to carry out any of the ADR activities. These are merely referral bodies and cannot play the role of arbitration or reconciliation. The better among these is the institution of police where most of the cases could be resolved through arbitration and reconciliations if the police provided legal protection for carrying out such exercise. The institution of union councils could also be an important source of resolving minor disputes; however, it has no mandate in the existing SLGA 2013.

There is no denying the fact that district judiciary is under-resourced both in terms of infrastructure (human as well financial). Delivery of justice requires strengthening of capacity in terms of judgment decision, writing and case management. So capacity of judicial officers is also identified as one reason, overburden of cases and backlog of cases delay the justice delivery.

The family laws, rent laws, Civil Procedure Code, Criminal Procedure Code, Small Claim and Minor Offences Ordinance provide opportunity to the parties to opt alternative procedure of dispute resolution i.e. mediation, conciliation, arbitration. The judicial officers though fully aware with the provision of laws, do not have the capacity to apply these provisions effectively. Through this study, they were usually found to follow the litigation procedure instead of resorting to mediation either themselves or referring the parties for mediation. Most of the judicial officers, who were imparted training on ADR by NCCDR have expressed that unless clear cut guideline were issued by the High Court for referral of cases to outside agency they could not refer the cases. The court-annexed mediation was not properly in

place. Though the judicial officers were of the view that mediation was useful and yielded results, but it remained time and energy consuming and if they indulged themselves in conducting mediation, many other cases would have suffered long delays. For example, rent law empowers the appellate court to itself persuade disputants to reconcile the matter with the consent of parties.

Overall, the study shows that in Sindh, the ADR mechanism of the court-annexed bodies, i.e. arbitration councils, minor offence courts, reconciliation courts, could be useful opportunity and tool to reduce burden on courts. The bodies and mechanism however, have not gained proper attention and sufficient priority from any side. Neither the government totally supported it nor did the judiciary pursue it wholeheartedly. Thus, there are no evidence to testify their practice, performance and progress.

8 Recommendations

The onus lies on relevant stakeholders including government to ensure quick, easy and inexpensive justice for all. The government has to be serious in implementing the existing laws on arbitration and reconciliation especially in allocation of budget and creating infrastructure to utilize the arbitration and reconciliation forums and create new venues to facilitate provision of justice to all in minor cases. The government should create separate arbitration councils under the Arbitration Act 1940 and the Small Claim and Minor Offence under the SCMOO 2002 in each district.

The KP's DRC model appears to be very successful in resolving thousands of minor disputes. The Government of Sindh along with the Sindh police should also replicate the DRC model in Sindh by providing legal cover to the centres established to facilitate citizens throughout the province by amending the existing or making new police law.

The institution of Union Council should be utilized for the dispute resolution of minor or small matters by capacitating the elected councillors and staff along with community volunteers in the shape of paralegals for linking the communities with supply side institutions, mechanisms, and forums such as Police Station, Tehsil Revenue office and public utility services like electricity, registration of legal documents.

The provision of arbitration in the Industrial Relations Act is also underutilized. The government should also look into the provision and appoint arbitrators through Labour Courts, which could monitor the progress of the arbitrators.

The absence of monitoring and accountability mechanisms by the High Court and Supreme Court has led to the underutilization of reconciliation courts and arbitration mechanisms. All

the courts should take effective measures. The High Court should pursue its demand for creating separate Minor Offence courts and separate positions for judges to deal with arbitration and reconciliation matters. The judiciary should avoid delegating responsibility of cases of reconciliation and arbitration to the existing judges/courts; it is one-way adding burden on the already overburdened courts.

The district judiciary should ensure that all judges refer minor offences and disputes to the relevant courts for the arbitration and reconciliation.

The judiciary should develop a strong monitoring mechanism to ensure the utilization of the existing court based annexed bodies.

Until the efforts are materialized for the creation of separate courts for reconciliation under the SCMOO 2002, the Registrar High Court of Sindh may devise or prepare detailed guidelines on the selection and appointment of arbitrators. The criteria of selecting the arbitrators may not be limited to only lawyers (bar associations) and retired judges but it may include retired teachers, police officials, revenue officials, and councillors.

Inside the judicial complexes, the district courts may also create space/rooms for ADR purposes and may appoint a registrar/staff to maintain the space and prepare schedule for the arbitration meetings.

The Government, the Supreme Court and the High Court must focus on strengthening the existing formal court system including justice through court-annexed bodies and mechanisms.

In addition to the NGOs' services for capacity development of judges and lawyers on reconciliation and arbitration, the High Court may use the Sindh Judicial Academy to train officials on regular basis.

The government in association with the Judiciary should launch campaign to raise public awareness on the existing and use of court-annexed bodies in each district.

Recommendations for Legal Aid Society

- The mapping exercise reveals that there is ample space for advocacy and lobby on court-annexed bodies and mechanisms. On the one hand, it is disappointing to see the lack of use of the existing bodies and mechanisms, on the other hand, it provides an opportunity to revisit civil society's role in pushing the government and the judiciary in utilizing the court annexed bodies and mechanisms. The LAS may launch its advocacy and lobbying campaign for the:

- Allocation of funds for the creating of separate ADR councils and minor offences courts in each district
 - Appointment of officials for minor offence courts in each district
 - Utilization of arbitrators and *Salis*
 - Preparation of guidelines for selection of arbitrators
-
- On matters like this, government, courts and civil society are more reluctant, therefore, there were found no records on any advocacy efforts to raise public awareness on the court-annexed mechanisms and systems. This vacuum offers an opportunity to the LAS for a mass public awareness through media and other sources. The campaign should mean to aware and sensitize people on where and what they need do to access justice through court-annexed bodies.
 - In association with the SJA and the High Court of Sindh, the LAS may organize sensitization sessions or meetings with district judiciary and may organize trainings for the arbitrators in each district.
 - The LAS may help the SHC in developing guidelines for the selection of arbitrators.
 - The LAS may also advocate for establishing the DRC models in each district with Police

Appendix A: Focus Group Discussion Questions

Mapping Study on PAB/Access to justice through court annexed bodies in selected districts of Sindh

Respondents #:	Gender (Please check)	Male	
		Female	
Date :	Time Start:	Time End:	
Venue :	City:		
Interviewer Name:			

Instrument for Focal Group Discussions (FGDs)

1. Introduction

THE LEGAL AID SOCIETY, a Society registered under the Societies Registration Act 1860 on 19th November 2013 with registration number KAR. No.058 of 2013-14, operating under and through its authorized representative and Chairperson, Justice (Retd.) Nasir Aslam Zahid. LAS was set up with a mandate to bridge the gap between the demand and supply of low/pro bono legal aid services for disempowered and underprivileged segments of society in Sindh and as part of its mandate LAS seeks to develop the capacity of state actors and state institutions. LAS seek to conduct a mapping study of the PAB/Access to justice sector so that its mandate is fulfilled through well informed interventions. This FGD is a part of the study.

1. *Instruction for moderator*

- A two-member team should conduct the FGD. They have to introduce themselves and their specific role and responsibilities (moderator, note taker) in the beginning.
- Arrangements in field should be made prior to the interview such as gathering people, venue selection and other logistics.
- After welcoming the participants, the moderator will introduce himself/herself and explain the purpose of the activity.
- He would get the consent form signed and facilitate the participants to express their opinion as it is, without any reservations during the discussion. Moreover, s/he will also inform them about the time duration (approximately 90 Minutes).
- After listening to the inputs of the group regarding subject the moderator should proceed to probe related issues and encourage participants to illustrate with examples.
- In the end, he will ensure to keep the given information confidential and not quote individual names except for quotations for which prior consent will be taken then and there.

At the end, thank the participants for their precious time and wrap up the FGD by with positive remarks and gestures

2. Key questions:

- a. What are the key problems that communities faced in terms of accessing justice in the district?
- b. Do you know which institutions are responsible for justice in your district? (Please make a list after moderator will facilitate participants for prioritization with reasons)
- c. What types/ numbers of cases were referred to annexed bodies under various laws in targeted districts in last year?

Prompts

- Arbitration Councils/ forum (through elected councillors to be provided by Union Council) under Arbitration Act-1940
 - Conciliation Courts with civil/criminal/pecuniary jurisdiction under Conciliation Courts Ordinance, 1961 and Muslim Family Law Ordinance 1961, Sections 10 and 12 of Family Courts Act-1964
 - Section 89-A read with Order X, Rule 1-A, Code of Civil Procedure, 1908
 - Encouraging arbitration, conciliation or mediation through *Salis* or *Saliseen* under Small Claims and Minor Offences Ordinance, 2002
- d. How do you see performance of court annexed bodies (family courts, reconciliation courts etc.) in your district?
 - e. How do you see performance of traditional ADR in your districts? Who are the key stakeholders?
 - f. What coordination mechanisms are available within various institutions to ensure justice to common man in the district?
 - g. Who and How Civil Court monitor the performance of court annexed bodies?
 - h. Can you please share with us what/how many resources/funds governments have allocated (in 2014-15, 2015-16 and 2016-17) to court annexed bodies?
 - i. How much and what percentage of the overall budget has been allocated in the district for the court annexed bodies? What have been the trends in budget allocations and spending over the years?
 - j. What are the independent watchdog/monitoring mechanisms at district level to monitoring human rights?

- k. Describe what is being done in the district in relation to accountability, transparency, and efficiency of court annexed bodies in the district?
- l. What are the key recommendations to strengthen court annexed bodies/ADR in the target districts?

PROMPTS:

- a. Capacity building?
- b. Support in system/ mechanism development?
- c. Advocacy with Government for law/ notification/policy formulation/ Act etc.?

List of the participants

	name	organization	position	remarks
1				
2				
3				
4				
5				
6				
7				
8				

Bibliography

Primary Sources: Legislation

Family Courts Act 1964

<http://kpcode.kp.gov.pk/uploads/1964_35_THE_WEST_PAKISTAN_FAMILY_COURTS_ACT_1964.pdf>

Muslim Family Law Ordinance 1961 <<http://punjablaws.gov.pk/laws/777a.html>>

Pakistan Penal Code

1860<<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>>

Police Order <<http://punjablaws.gov.pk/laws/2185a.html>>

Small Claims and Minor Offences Courts Ordinance 2002

<<https://www.sja.gos.pk/assets/BareActs/SMALL%20CLAIMS%20.AND%20MINOR%20OFFENCES%20COURTS%20ORDINANCE,%202002.pdf>>

The Arbitration Act 1940 <<https://www.malaw.org.pk/pdflaw/Arbitration%20Act,%201940.pdf>>

The Conciliation Courts Ordinance 1961

<<http://pja.gov.pk/system/files/Conciliation.pdf>>

The Constitution of Pakistan 1973

<<http://www.pakistani.org/pakistan/constitution/>>

The Criminal Procedure Code 1898

<http://www.fmu.gov.pk/docs/laws/Code_of_criminal_procedure_1898.pdf>

The Establishment of the Office of Ombudsman for The Province Of Sindh Act 1991

<http://sindhlaws.gov.pk/setup/publications_SindhCode/PUB-15-000768.pdf>

The Sindh Industrial Relations Act 2013

<<http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.XXIX%20of%202013.pdf>>

The Sindh Local Government (Amendment) Act, 2013

<<http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.LIII%20of%202013.pdf>>

Secondary Sources: Books, Articles, Reports etc.

--, 'Govt asked to enforce small claims ordinance' *Dawn* (Islamabad, 30 May 2004)
<<http://www.dawn.com/news/394503/govt-asked-to-enforce-small-claims-ordinance>>
accessed 15 July 2017

--, 'Shikarpur *jirga* slaps heavy fines to settle blood feud' *Dawn* (Shikarpur, 12
February 2017) <<http://www.dawn.com/news/1314238/shikarpur-jirga-slaps-heavy-fines-to-settle-blood-feud>> accessed at 11 July 2017

--, 'Small claims courts to be set up' *Dawn* (Islamabad, 23 July 2004)
<<http://www.dawn.com/news/395763/small-claims-courts-to-be-set-up>> accessed 15 July
2017

--, 'Tribal clash: Feud that cost 32 lives in Shikarpur comes to an end' *Express Tribune*
(Sukkur, 12 February 2017) <<https://tribune.com.pk/story/1324069/tribal-clash-feud-cost-32-lives-shikarpur-comes-end/>> accessed at 11 July 2017

--, 'Facilitation Centers established for minorities' *PakObserver* (Karachi, 1
September 2016) <<https://pakobserver.net/facilitation-centers-established-for-minorities/>>
accessed 12 July 2017

Aawaz Programme, 'Study on Alternate Dispute Resolution-Review of Mechanisms in
Legislation and Policies at Federal, Punjab and Khyber Pakhtunkhwa Research Report'
(2014)

Dimitrijević P, *Upravno pravo - opšti deo* (2. izmenjeno i dopunjeno izdanje, Niš:
Pravni fakultet Univerziteta u Nišu 2014) [*Administrative Law - General part* (2nd revised
and updated edn, Niš: Pravni fakultet Univerziteta u Nišu 2014)]

Dragos D and Neamtu B, *Alternative Dispute Resolution in European Administrative
Law* (Springer 2014) 594

Hussain M & Khan A, 'Rising Nationalism in Pakistan as a tool of Public Administration' (April 2012) 7 (2) The Dialogue.

Inspector General Police Sindh, 'Standing Order 235/2009' (26th November 2009)

Khyber Pakhtunkhwa Police, 'Strategic Initiatives and Institutional Reforms in Khyber Pakhtunkhwa Police 2015-16' (22 February 2016),
102<<https://kppolice.gov.pk/thebook/book.pdf>> accessed 17 July 2017

Law Commission, *Administrative Redress: Public Bodies and the Citizen* (Law Com No 187, 2015)

Law, Parliamentary Affairs and Human Rights Department, 'Notification to establish the Sindh Human Rights Commission' (*isj.org.pk*, 9 May 2013) <<http://www.isj.org.pk/wp-content/uploads/2014/05/THE-SINDH-HUMAN-RIGHTS-RULES-2013-1.pdf>> accessed at 12 July 2017

Minorities Affairs Department, 'Introduction' (*Sindh.gov.pk*, n.d.)
<<http://www.sindh.gov.pk/dpt/MinorityAffairs/index.htm>> accessed 17 July 2017

National Commission on the Status of Women, 'Women, Violence and Jirgas' (2016)
<[http://af.org.pk/gep/images/publications/Research%20Studies%20\(Gender%20Based%20Violence\)/NB%20NCSW%20JIRGAS.pdf](http://af.org.pk/gep/images/publications/Research%20Studies%20(Gender%20Based%20Violence)/NB%20NCSW%20JIRGAS.pdf)> accessed 14 July 2017

Nekokara M A, 'Rickety Criminal Justice System' *Dawn* (27 August, 2016)
<<https://www.dawn.com/news/1280189>> accessed 14 July 2017

Ong'anya G and Mwaruvie Dr J, 'Concept, Nature and Scope of Public Administration' (*onganya.blogspot*, 23 February 2009)
<<http://onganya.blogspot.com/2010/03/concept-nature-and-scope-of-public.html>>
accessed 14 July 2017

Masood-ur-Rehman and Batool S Q, 'Mechanism of Public Services' Accountability' (2013) 18 (4) Middle-East Journal of Scientific Research 539-545

Pelayp Mag Dr. M H, 'Alternative Dispute Resolution in Administrative Matters: Mexico' (2016) International Association of Supreme Administrative Jurisdictions <http://en.aihja.net/images/users/114/files/Mexico_-_Report_2016_Mexico_-_Report_2016.pdf> accessed 12 July 2017

Rahim P, 'Justice for labor daily' *Dawn* (24 January 2017) <<https://www.dawn.com/news/1310299/justice-for-labour>> accessed 14 July 2017

Riaa Barker Gillette 'A Study of the Arbitration Law Regime in Pakistan: An overview of the current legal framework that governs arbitration in Pakistan'(n.d) <<http://www.riabarkergillette.com/usa/wp-content/uploads/Insight-Article-A-Study-of-the-Arbitration-Law-in-Pakistan.pdf>> accessed 15 July 2017

Shahid U, 'Inquest into justice of the Pakistani customary "Panchayat Justice System" in context of international human rights law.' (MA thesis, University of London, School of Advanced Study 2012).

Sindh Police, 'Police Facilitation Centers/ Public Help Centers being Established in the City- IGP Sindh' (*Sindh Police*, 2 April 2015) <http://www.sindhpolice.gov.pk/announcements/Press_Release/2015/apr-15/2.4.15-3.4.15.pdf> accessed 17 July 2017

Sindh Police, 'Soft Reform: Capacity Building' (*Sindh Police*, n.d) <http://www.sindhpolice.gov.pk/projects/soft_reform.html> accessed 17 July 2017

Social Welfare Department, 'Objectives' (*Sindh.gov.pk*, n.d.) <<http://www.sindh.gov.pk/dpt/swd/index.htm>> accessed 17 July 2017

Taylor M and others, 'Using Mediation in Canadian Environmental Tribunals: Opportunities and Best Practices' (1999) 22 Dalhousie Law Journal 51

Vucetic D, 'Is Mediation Viable in Administrative Matters?' (2016) 14 (4) Law and Politics 495 - 504

West's Encyclopedia of American Law (2nd edn, 2008) vol 8 < <http://legal-dictionary.thefreedictionary.com/Public+Administrative+Bodies>> accessed 17 July 2017

Wilson W, 'The Study of Administration' (1941) 56 (4) Political Quarterly

World Bank, 'Pakistan's Ombudsmen: Untapped Potential to Strengthen Good Governance' (*World Bank*, 20 May 2014) <<http://www.worldbank.org/en/news/feature/2014/05/20/pakistans-ombudsmen-untapped-potential-to-strengthen-good-governance>> accessed 14 July 2017