

An Assessment of the Staff's Capacity to Implement the Khyber Pakhtunkhwa Child Protection & Welfare Act 2010

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Abstract

Legislation being an integral part of the child protection system around the globe, Pakistan is increasingly incorporating child protection specific laws in its formal child protection system. So far, Khyber Pakhtunkhwa's Child Protection and Welfare Act 2010 is considered the most comprehensive child protection legislation in Pakistan. This article is based on research that was conducted to assess the capacity of the child protection practitioners to understand, interpret and implement this law in the province. The findings of the study reveal that the child protection staff report themselves as lacking the capacity in relation with the relevance of international legislation, i.e., the UNCRC provisions regarding protection rights and the scope of the Khyber Pakhtunkhwa Child Protection and Welfare Act 2010 ; legal interpretation and practical application of local legislation; linkages with pre-existing child-related legislation; and managing special child protection situations and following court proceedings. The staff also expressed frustration over absence of by-laws/rules and SOPs; administrative constraints regarding lack of departmental mandate on protection issues involving child labour; and the gap between the legislative and administrative provisions. It is recommended that a revision of the Act as well administrative changes be introduced to make the district level child protection system more effective.

Keywords: Khyber Pakhtunkhwa Child Protection and Welfare Act 2010, staff capacity, implementation

Introduction

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Of Pakistan's 190 million populations, over 70 million are children (UNICEF 2015). The environment in which the majority of these children grow up is fraught with numerous challenges including social, economic and legal challenges. Children's access to basic rights such as health care, education, protection from abuse, neglect and exploitation, are all compromised. Amongst these, child protection is a multidimensional issue which requires a specifically designed response as these issues are manifested in various forms including violence against children mainly in the form of corporal punishment at home, work and in institutions, child labour in hazardous conditions, vulnerability of destitute, abandoned, runaway, homeless and street children, and as harmful traditional practices such as child marriage and *vani/swara* - the exchange of females for the settlement of disputes.

Child protection, according to the United Nations Child Rights Convention (UNCRC), stands for all appropriate legislative, administrative, social and educational measures taken by the state parties to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment, and, as appropriate, for judicial involvement (UNCRC 1989). Due to the need for this judicial involvement, child protection laws make an important part of any child protection system.

Pakistan, being a federation, comprises four provinces that have considerable autonomy in terms of policy and legislation, and child protection is a provincial subject. The province of Punjab was the first to enact a child protection specific legislation in Pakistan: the Punjab Destitute and Neglected Children Act in 2004 (PDNC Act, 2004), later revised in 2007. However, Khyber Pakhtunkhwa Child Protection and Welfare Act 2010 (KPCPW Act 2010) is considered the most comprehensive child protection legislation, so far. While legal experts and academics have conducted critical analyses of this

law and identified gaps, no know systematic study is available regarding its implementation by the child protection practitioners.

This article is based on a research conducted to assess the capacity of Khyber Pakhtunkhwa's child protection practitioners, employed by the provincial Child Protection and Welfare Commission, to understand, interpret and implement children related legislation in their professional practice. The article comprises of a review of relevant literature which include international, national and provincial legislation and critical reviews of these laws among others. The literature review is followed by a detailed methodology of the research which includes both quantitative and qualitative methods. Next section consists of the study findings and analysis including quantitative data in the form of tables and graphs as well as qualitative data incorporated in the analysis. In the last section, it is concluded that the KP child protection staff assess themselves as lacking capacity to interpret and implement the Act. They expressed real frustration over: the vague, insufficient legal provisions including absence of by-laws/rules and SOPs, practical application of article 19 of the UNCRC and the scope of the KP Child Protection and Welfare Act; administrative constraints regarding lack of departmental mandate on protection issues involving child labour; and the gap between the legislative and administrative provisions. Finally, some recommendations are provided based on the conclusions.

Literature Review

Protection of children is a multi-disciplinary and multi-sectoral subject which needs contribution from everyone (Palmer, 2011). The key elements of a good child protection system comprise of: a set of laws, cogent networking, adequate strategy, indigenous services, qualified practitioners, strong emphasis on participation of children, appropriate resource allocation and a well-established management information system (Save the Children 2011; UNICEF 2008). It is: "the set of laws, policies, regulations and services needed across all social sectors – especially social welfare, education, health, security and justice – to support prevention and response to protection related risk" (UNICEF 2008 para 12). It is pertinent to mention that promoting the welfare of children, through avoidance of violence and exploitation; swift and concerted

action taken against any harm to a child; and making sure that the principle of best interest of the child is upheld in all actions is the overall goal and objective of child protection system (Palmer, 2011).

To achieve this goal, legislation is an integral part of the child protection system around the globe. The idea of legislation for children has travelled a long way. It is closely linked with the realization of children's rights at the global level. Children remained invisible at the global until 20th century. The major event which led to the emphasis on promulgation of appropriate international legislation was apparently the concerns of people regarding the situation of children during world wars and the effects of wars on children. This was the period in which international community started to utilize the laws regarding children to reinstate their wider and vigorous attempts to abolish abuse and to support the acquiring of certain corrective steps by nations (Alston & Tobin, 2005). In this connection, the League of Nations in its 5th Assembly introduced the first important international document clearly protecting the rights of children in 1924. It was legally embraced and called the Declaration of Children Rights also known as Declaration of Geneva (Hodgson, 1992). This document provided the base for an intensified new changing situation and international standard (Heintze, 1992). However, this Declaration was set aside since it failed to fully protect children as the Declaration was more welfare oriented and did not take in to consideration the protection issues. Moreover, children in this Declaration were not seen as rights holders, but more as recipients of adult protection. This Declaration was also criticized due to the fact that it was not binding on the state parties (Fortin, 2009).

As a result of the criticism, the Geneva Declaration was replaced by the Declaration of the Rights of the Child in the year 1959. This document comprises of 10 guiding principles. It did not seek to hold that the "rights" listed constituted legal responsibilities. Instead, states were only needed to take note of the principles contained therein, on the basis that they were universally accepted as being applicable to all children (Fortin, 2009). To a contemporary view, the substantial weakness of 1959 document was its negligence to incorporate the first generation human rights, the liberty from state suppression.

Later in 1976, the UN General Assembly, upon the proposal of the UNICEF, decided to mark the year 1979 as the international year of the child and asked the states to attribute the year by making contributions to enhance the welfare of children. The Polish government in 1978, by way of making a contribution to the year, presented a new draft of a child rights convention to the UN Commission on Human Rights. The final draft was concluded in 1988 and presented for approval in 1989 to the Commission on the Human Rights. The General Assembly adopted the document in 1989 (Fortin. 2009).

Ratification of the United Nations Child Rights Convention (UNCRC) by Pakistan made it obligatory for the state to develop a proper system for the protection of children. But, due to the presence of strong customs and value system, zero to less state intervention has been made in matters relating to children (Jabeen, 2016). Further, Pakistan borrowed the majority of its laws from its colonial master. Child law is a neglected field in this part of the world. Moreover, the laws concerned with children are scattered in different Acts for example the Majority Act 1875, the Guardians and Wards Act 1890, the Child Marriage Restraint Act 1929, the Juvenile Justice System Ordinance 2000 and so on at the provincial level (Sabreen, 2015).

These laws were mainly enacted at the federal level. But, the federal government after the passage of 18th Constitutional Amendment devolved the power to provincial governments in matters relating to enactment of laws for children. Consequently, the Khyber Pakhtunkhwa (KP) government introduced the Child Protection & Welfare Act in the year 2010. This was the first child exclusive law enacted by the provincial government of KP. This law, for the first time, declared different offences relating to children as penal offences (Express Tribune, 2012). However, the many loopholes in the Act left children of the KP unprotected. For instance, Nishtar (2010) argued that the KP CP&WA 2010 lack conceptual clearness in relation to corporal punishment. It is worth mentioning that this Act does not define domestic violence which is a growing phenomenon in our society. Furthermore, it does not consider domestic child labor as an offence. This Act also limits the autonomy of Child Protection Officer by placing him under the supervision of District Social Welfare Officer (Akhunzada, 2015). Similarly, Jabeen

(2016) pointed out that this law fails to provide for establishing a separate child protection court. Section 15 of the law provides that the government may in consultation with Peshawar High Court notify different courts of sessions as child protection courts. In addition, the high court may confer powers of the court for a local area upon a session judge or an additional session judge. The ordinary courts in the province are already burdened with routine cases and this additional responsibility to them is not only hindering swift judicial response but always adding up the miseries of children. Similarly, Akhunzada (2015) pointed out that the drawback of establishing no separate court is that an ordinary judge of session court is always looking into matters from the penal/punishment perspective while the cases of the minor need to be looked in from the rights and welfare perspective.

Against the backdrop of such criticism, which is mostly developed by academics, the research for this article aimed at exploring the views of practitioners who are directly involved in the implementation of the KP CP&WA.

Methodology

Data for this article were collected as part of a Child Protection Unit (CPU) staff's training need assessment conducted by one author. The assessment methodology included a desk review of relevant documents such as the current job descriptions, ToRs, selection criteria, specimen letters of appointment of various cadres of the child protection staff in KP, syllabi/curricula of relevant disciplines from local universities, and materials from training workshops conducted in the past, past CPU assessment/s, and the CPU Standard Operating Procedures which were endorsed by the province in 2015 to be adopted later after some adaptation.

The desk review informed the development of qualitative and quantitative tools for data gathering including a structured questionnaire, and Focus Group (FG) and Key informant interview (KII) checklists. The structured questionnaire were initially emailed to a select number of child protection professionals in order to pre-test, that is, to ensure that the information presented was clear, succinct and later, emailed and/or mailed to the target group at both provincial and district level CPUs.

In all, 23 questionnaires were sent out in eight districts to be filled by child protection officers (CPOs), social workers, psychologists, and administrative staff members with a hundred per cent return rate. Two FGDs were held in Peshawar, one with social workers representing six districts, and the other with CPOs and psychologists representing seven districts. Representation of male and female staff and urban and rural locations was given due consideration, however, it was logistically not possible to ensure participation of the staff members from far off CPUs, such as Chitral. Also, two KIIs were held in the Social Welfare department and the Child Protection and Welfare Commission respectively.

The data were then organized, processed and analyzed. The questionnaire responses were transferred to an excel data sheet and analyzed statistically. The transcription of the electronic tapes of the FGs and the KIIs followed a thematic analysis. Both quantitative and qualitative data sets were analyzed separately as well as in combined form to draw conclusions.

Findings & Analysis

CPU data as of March 2016:

Table 1: KP Child Protection Units (CPU) Data

No. of CPUs	CPU Locations	Staff Strength	Employed (E) / Vacancies (V)	Staff Structure
12	Swabi, Swat, Abbotabad, Bannu, Kohat, Mardan, Lower Dir, Battagram, Chatral, Charsadda, Bunair and Peshawar	84	E: 59 V: 24	1 Child Protection Officer, 2 Male Social Workers, 2 Female Social Workers, 1 psychologist and 1 Database, Admin and Finance assistant

As data in Table 1 reveal, there are twelve district level CPUs in Khyber Pakhtunkhwa. A total staff strength of 84 is approved for these CPUs including one Child Protection Officer (most senior cadre and district team leader), two male Social Workers, two female Social Workers (work in the field with children in need of protection and their families), one psychologist (provide assessment and counseling services to children and families. Also perform the duties of a Social Worker in CPUs where a SW post is vacant) and one Database, Admin and Finance Assistant, however, 24 positions are vacant.

Out of the 59 staff members, 45 participated in the research as following;

Table 2: Research Participants

Designation	KP		
	M	F	Districts represented
Child Protection Officer	5	0	5
Social worker	7	5	6
Psychologist	---	2	2
Others (e.g. admin & finance)	4	---	4
Staff participated in FGDs			
Child Protection Officer	3	2	5
Social Worker	6	5	6
Psychologist	---	4	4
Key Informant Interviews			
	2	---	---

High participation was ensured by involving various staff cadres from as many districts as logistically possible. In all, 23 questionnaires were sent out and a total of five child protection officers (CPOs) who were all male, 12 social workers including seven male and five female workers, two psychologists (both female), and four administrative staff members (all male) from a total of eight districts completed the questionnaire. Two FGDs were held in Peshawar, one with 11 social workers (six male and five female) representing six districts, and the other with five CPOs (three male and two female) and four psychologists (all female) representing seven districts. Representation of male and female staff was given due consideration, however, some cadres were predominantly male (CPOs) and others female (psychologists), therefore, equal representation was not possible. Similarly, representation of urban and rural locations was another consideration; however, it was logistically not possible to ensure participation of the staff members from far off CPUs, such as Chitral. Also, two KIIs were held with persons of authority in the Social Welfare department and the Child Protection and Welfare Commission respectively.

Table 3: CPU Staff Profile

Category	Characteristics
Years in CPU/CP System	5-6 years
Overall Work Experience	Up to 11 years
Previous work experience in children/child protection related fields	CPOs (8) Senior Staff (1) Social Workers (21)
No work experience in children/child protection related fields	SW (2) Psychologists (7)
Master's degree	CPOs (10) SW (23)
Bachelor's degree	0

No of degrees represented at CPU	14: Social Work (4), Sociology (7), Business Administration (2), Islamic studies (1), Anthropology (1), Zoology (1), Economics (2), Pak Studies (2), Statistics (1), Information Technology (1), Human Resource Management (2), Political Science (5), International Relations (1) Law (3).
Trainings in past 12 months	0

Based on data for participants of Focus Groups as well as those who completed structured questionnaires, majority of the district level staff has been working in child protection since 2010-11 when the formal KP child protection system was established. It is a comparatively younger workforce with an overall work experience up to 11 years. While Child Protection Officers (CPO), the most senior cadre and the CPU team leader, have previous work experience in children/child protection related fields in public or private sector, social workers and psychologists included fresh university graduates. All psychologists have a master degree in psychology or applied psychology. All CPOs and social workers have a master level qualification, but, from as diverse academic fields/disciplines as Social Work, Sociology, Business Administration, Islamic Studies, Anthropology, Zoology, Human Resource Management, Political Science, International Relations and Law.

The staff's assessment of their capacity relating to the understanding, interpretation and implementation of CP legislative frameworks in the next table should be considered against the backdrop of this youthful profile of the workforce.

Table 4: CPU Staff's self-assessment of their capacity regarding legislative frameworks

'H' = high capacity; 'M' = medium capacity; 'L' = low capacity													
	You know and can apply;	Psychologists			Total	Social workers			Total	CPOs			Total
		H	M	L		H	M	L		H	M	L	
1	The international child protection law/s	0	0	2	2	0	3	9	12	0	3	2	5
2	federal child protection law/s	1	0	1	2	1	1	9	11	0	2	3	5
3	provincial child protection law/s	1	0	1	2	3	0	9	12	1	3	1	5
4	solutions to legal issues which affect child protection practice	0	1	0	1	1	0	10	11	0	3	2	5
5	relevant rules, policies, procedures, and best practice standards related to intake processes	0	2	0	2	6	5	1	12	3	2	0	5
6	relevant rules, policies, procedures, and best practice standards related to case management processes	1	1	0	2	5	2	5	12	2	2	1	5
7	relevant rules, policies, procedures, and best practice standards related to working with children in need of protection and their families	0	2	0	2	4	3	5	12	1	2	2	5
8	relevant laws, rules, policies, procedures, and best practice	0	1	1	2	1	3	8	12	0	2	3	5

	standards related to institutionalization of children in need of protection												
9	relevant laws, rules, policies, procedures, and best practice standards related to the foster care of children in need of protection	0	0	2	2	4	1	6	11	0	3	2	5
10	relevant laws, rules, policies, procedures, and best practice standards related to the legal custody of children in need of protection	1	0	1	2	1	1	10	12	0	4	1	5
11	relevant laws, rules, policies, procedures, and best practice standards related to the guardianship of children in need of protection	0	0	2	2	1	1	10	12	1	4	0	5
	Total	4	7	12	23	30	24	87	141	1 0	3 2	18	60
	%	17	30	52	100	21	17	62	100	1 7	5 3	30	10 0

The above table comprises the staff's assessment of their capacity to understand, interpret and implement the relevant legislative frameworks including laws, policies, rules, procedures and best practice standards. While majority of the Child Protection Officers ranked themselves as having a medium capacity (53%), both Social Workers and Psychologists ranked themselves mainly as having low capacity, 62% and 52% respectively.

Above responses on the structured questionnaire were, mostly, supported in discussions held in the FGDs and in interviews with the key informants. Combined findings from both quantitative and qualitative data highlight that the respondents' desire to gain a better understanding of legislative frameworks is quadri-layered: (1) international legislation; (2) legal interpretation and practical application of local legislation; (3) linkages with pre-existing child-related legislation; and (4) managing special child protection situations and following court proceedings.

Both managers/supervisors and staff members raised concerns regarding international children related legislation, especially the UN Convention on the Rights of the Child and in particular, the associated protection related provisions. Secondly, staff members expressed the need to be able to understand and interpret the legislation, i.e., the KP Child Protection and Welfare Act, which provide them with the mandate to perform their roles as Child Protection practitioners whilst strengthen their capacity to address and manage the gaps between the respective legislation (till it is amended) and, on a daily basis, the administrative and practical constraints they face during performance of their duties. Under this layer, there are two areas of particular concern in which the staff assessed themselves as having low capacity: (a) how best to work

with other government departments where questions around mandate, powers/authority, and rules of business are asked of the CPU staff, as a means to determine responsibility regarding CP cases; and (b) how best to execute their roles and responsibilities in light of high expectations and/or limited/no support from senior level staff members given the current legal and administrative gaps within the CP system.

The third layer involves staff's concerns around working effectively within a legislative framework which includes other child-related federal and provincial laws such as the Guardian and Wards Act, Child Marriage Restraint Act, and the Employment of Children Act among others. Lastly, staff was clear on the need to build their capacity on how to handle special child protection legal situations such as medico-legal process, filing a First Information Report (FIR) and following court proceedings.

It was worth comparing the staff capacity across cadres.

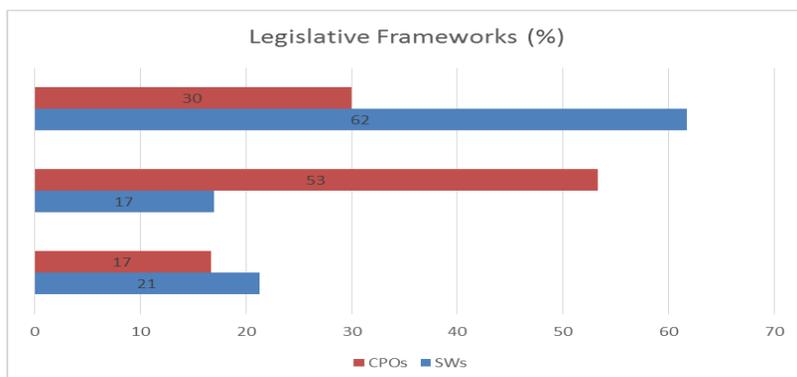
Table 5: Capacity assessment comparison across cadres

Cadre	High capacity		Medium capacity		Low capacity		Total	
	f	%	f	%	f	%	f	%
Psychologists	4	17	7	30	12	52	23	100
SWs	30	21	24	17	87	62	141	100
CPOs	10	17	32	53	18	30	60	100

The psychologists' low capacity with regard to understanding, interpreting and implementing the relevant legislative frameworks could be considered in terms of the nature of their work which focus mainly on a child's psychological assessment and counseling and do not involve legal issues, and therefore, not essential to strengthen this capacity.

However, for CPOs and Social Workers, to be able to effectively deliver protection services to children, it is essential to have the

highest capacity to understand, interpret and implement the relevant legislative frameworks.



Social workers ranked their capacity low and expressed high need for training around all four layers of legislative frameworks as discussed above whilst CPOs assigned themselves as having medium (53%) capacity. CPOs were more interested in having greater knowledge and conceptual clarity about international, national and provincial legislative frameworks, expressed little interest in developing their capacity in the medico-legal process, filing a First Information Report (FIR) and following court proceedings, which were the major concerns for Social Workers. Additionally, unlike their social worker counterparts, CPOs revealed in FGDs that they were most concerned with enhancing their ability to address/manage the gaps in the KP Child Protection & Welfare Act, lack of rules & SOPs and the gaps between the Act and the existing administrative structures.

Conclusions & Recommendations

In sum, KP child protection staff expressed real frustration over: the vague, insufficient legal provisions including absence of by-laws/rules and SOPs, practical application of article 19 of the UNCRC and the scope of the KP Child Protection and Welfare Act; administrative constraints regarding lack of departmental mandate on protection issues involving child labour; and the gap between the legislative and administrative provisions. For example, on the one hand, a welfare fund is provided to respond to welfare needs of children and the managers/supervisors encourage the frontline staff to positively respond to children/families with welfare needs

approaching the CPU, on the other, there is a tendency amongst managers/supervisors to give less weightage to welfare cases compared with protection cases. Fortunately, from discussions with the head of the Commission, that is, additional secretary social welfare and the chief child protection specialist of the Commission, there is a strong realization of the legislative and institutional bottlenecks among the relevant authorities, inclusive of the Child Protection and Welfare Commission which is already planning a revision of the Act as well administrative changes to make the district level child protection system more effective. It is expected that these changes will start taking place in the second half of the current year.

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