

ORDER SHEET

Case No: W.P. No. 7122/2017

Federation of Pakistan, etc.

03.	15.03.2017	M/s Mohammad Nabeel Khan Dahir and Hamza Khalid Randhawa, Advocates for the petitioner. Mr. Nasar Ahmad, Deputy Attorney General for Pakistan. Ms. Hina Hafeezullah Ishaq, Assistant Attorney General for Pakistan. Akbar Ali Dogar, Joint Census Commissioner, Pakistan Bureau Statistic, Lahore. Khalil-ur-Rehman Rana, Deputy Census Commissioner/Admn, Pakistan Bureau Statistic, Lahore. Mr. Mohsin Mumtaz, Civil Judges/Research Officer, Lahore High Court Research Centre (LHCRC).
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(Inclusion of persons with disabilities in Census Form-2)

This is a public interest petition praying that the persons with disabilities or persons with special abilities (commonly and wrongly referred to as “disabled persons”) are not being included and counted in the upcoming National Population Census conducted by the Federal Government. It is submitted that Census under Section 2 (c) of the General Statistics (Reorganization) Act, 2011 means housing and population census. It is submitted that population includes all classes of population and by not enumerating persons with disabilities, the upcoming National Census is incomplete and defective besides being violative of the fundamental rights of persons with disabilities.

2. Learned DAG and Assistant Attorney General alongwith Joint Census Commissioner, Pakistan Bureau Statistic, Lahore relying on parawise comments filed by the concerned Bureau submit that as per decision of the Council of Common Interest, Form-2 pertains to core questions which will be used in the census operation while Form-2A containing questions on fertility, migration, unemployment and disability is to be canvassed on a sample basis after the census operation is over in September, 2017. It is submitted that even in the last census in 1998 information regarding disability was collected on sample basis.

3. According to Article 31 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) which has been ratified by Pakistan in 2011 it is an international obligation on Pakistan to collect appropriate information regarding persons with disabilities in order to formulate and implement policies to give effect to the purposes of the Convention. Convention mandates that persons with disabilities have inherent dignity, individual autonomy including freedom to make one's own choices and independence of persons. It also mandates that persons with disabilities shall not be discriminated and given full participation and inclusion in the society and be accepted as a part of human diversity and humanity.¹ The lack of data and information on disability and the situation of persons with disabilities at the national level contributes to the invisibility of persons with disabilities in official statistics, presenting an obstacle to achieving

¹ Article 3 of the CRPD.

development planning and implementation that is inclusive of persons with disabilities.”²

4. International material placed before the Court by the Research Centre of Lahore High Court, Lahore shows that it now is a global practice to include persons with disabilities in the population census and this practice is being followed in USA, UK, Australia, India, Indonesia, Italy, South Africa, Sri Lanka, Viet Nam, Brazil, Korea, Mauritius amongst other countries.

5. According to United Nation Principles and Recommendations for Population and Housing Census (Revision 2) the importance of collecting information regarding the persons with disabilities through census data can be utilized for general planning programmes and services (prevention and rehabilitation), monitoring selected aspects of disability trends in the country, evaluation of national programmes and services concerning the equalization of opportunities, and for international comparison of selected aspects of disability prevalent in countries. The above shows that depriving the persons with disabilities from being included and counted in the National Census will offend their welfare and future prospects as the State has no credible information regarding their population, hence, exclusion of persons with disabilities from Census (head count) is in violation of right to life and human dignity under Articles 9 and 14 of the Constitution besides being discriminatory under Article 25 of the Constitution.

² Monitoring and Evaluation of Disability-Inclusive Development, United Nations

[illegible]

It is pointed out that information to be collected in the said Form is in the shape of Codes/Numbers because the Form is machine readable. He submits that at this stage new forms cannot be printed and there is no possibility in the existing Form to include the Codes or Numbers which would identify persons with disabilities.

7. Recently through an order of this Court dated 09.01.2017 passed in Writ Petition No.37499/2016 the Bureau agreed before this Court to include the category of “Transgender” under the column of “Sex” in Form-2 (above). Perusal of Form-2 reveals that there is no specific mention of “Transgender” in column 3.

Explaining the position, the Joint Census Commissioner submits that in order to comply with the undertaking given before the Court, the field staff has been instructed to assign Code/Number-3 to “Transgender” in the said column. On the same analogy and in order to safeguard the fundamental rights of the persons with disabilities, information regarding disability can easily be included in Column No.3 pertaining to “Sex” by assigning the following Codes or numbers:

Category	Code/Numbers
Male	1
Female	2
Transgender	3
Male (with disability)	4
Female (with disability)	5
Transgender (with disability)	6

These codes can easily be inserted in the machine readable form with the slight modification in the software and the column pertaining to “Sex” would now include “Sex/Disability” This mechanism would help to collect information regarding the persons with disabilities, as well as, their gender. I am aware of the fact that disabilities have a variety of categories, however, the same cannot be gone into at this stage. Having a general head count of persons with disabilities is far more important than not having any information at all. I am of the view that this mechanism is workable and does not upset the Calendar of the upcoming National Census and also advances the fundamental rights of the persons with disabilities. Therefore, Bureau is directed to immediately

issue instructions to the field staff to insert the above Codes or Numbers, where required in column No.3 of the Form at the time of collection of data starting from 18.03.2017.

8. PEMRA is directed to disseminate this order nationwide at the earliest for the convenience of the people in general and for the field staff of the Bureau in particular. Office is directed to fax a copy of this order to PEMRA.

9. Office will also dispatch a copy of this order to the Media Cell of the Lahore High Court for onward delivery of the said order to Court Reporters for its wide dissemination.

10. Bureau is also directed to ensure that the next population census includes a special column relating to persons with disabilities alongwith their categories.

11. For the above reasons, this petition is allowed.

(Syed Mansoor Ali Shah)
Chief Justice

*M. Tahir**

APPROVED FOR REPORTING