

ADVERSE OUTCOME CASE

JUSTICE SYSTEM SUPPORT PROGRAMME

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1. Introduction

This guidance is issued by the Prosecutor General of Punjab, under section 10 of the Punjab Criminal Prosecution Service Act 2006.

It sets out the steps to be taken by prosecutors when a criminal case concludes (in an acquittal or discharge) in the following circumstances: as a result of section 249-A or 265-K of the Code of Criminal Procedure (Cr. P.C.) or at the end of a trial or dismissal of a prosecution Appeal or Revision.

Initially, this procedure is to be followed in cases involving charges of murder (section 302 PPC), financial offences (sections 403, 406, 420, 468, 471 PPC) and Sexual and Gender Based Violence offences (sections 336 A, 354, 354 A, 365 B, 376, 377, 496 A of the PPC).

2. Purpose of this Process

Justice may not be served where a case concludes in a conviction such as the when the trial process demonstrates that the accused was not involved in the criminality. In the right circumstances, an acquittal/discharge may not be an adverse outcome in a trial as it may serve the ends of justice. Cases resulting in an acquittal/discharge are termed AOC. If the case involves more than one accused and results in an acquittal/discharge of some of the accused, then the AOC procedure is still to be followed.

There may be many reasons for an adverse outcome and it is important to ascertain these. In its 2015 Annual Report, the Punjab Monitoring Service noted that in rape cases (which involve some of the most vulnerable victims) the conviction rate was under 5%. In murder cases the conviction rate was higher at 30%. Both of these rates are unacceptably low. The AOC process is intended to better understand why and how a case concluded as it did. As such, the prosecutors will need to liaise with other agencies involved in the case to determine the answers to these questions. It is hoped that this engagement will ensure the fullest review of the issues in the case, greater understanding of the specific concerns of all the agencies and improve the links and professional cooperation as between them.

Ultimately, the objective of the process is to learn from the case and where appropriate work with other criminal justice agencies and authorities to implement necessary changes. For example, it is the duty of the Senior Police Officers to ensure that the grounds for acquittals and discharges are documented to ascertain and address the flaws in the investigation process (Police Rules 1934, Rule No. 25.18).

3. Forms

There are three forms covering different roles and circumstances:

- i. FORM AOC1: This form is **to be completed by the prosecutor** in the case. It concentrates on the specifics of the case as set out under the various headings in the form. Once completed, one copy of this form must be provided to the relevant District Public Prosecutor (DPP) and one copy must be kept on the Prosecution File¹. More specific guidance on how the prosecutor is to complete the AOC1 is on the form itself.
- ii. FORM AOC2: This form is **to be completed by the DPP**. This form will reflect the comments, issues, concerns as identified by the prosecutors in the AOC1 forms provided to the DPP during the course of a specified period². In addition to the identification of the trends and patterns, the DPP will also set out the remedial action that may be appropriate and the impact of the action undertaken. Once completed, one copy of this form must be provided to the Prosecutor General and one copy must be kept on the prosecution file. More specific guidance to DPPs is on the form itself.
- iii. FORM AOC3: This form is **to be completed by the appellate prosecutor** in the case. It is to be completed if a prosecution appeal is dismissed in the High Court or the Supreme Court. The form is to be provided to the Prosecutor General and one copy must be kept on the prosecution file. More specific guidance to the appellate prosecutor is on the form itself.

It is fully appreciated that Prosecutors and DPPs' have significant workloads. For this reason, the form has been kept as brief and succinct as is reasonably practicable. These two forms will be subject to review and revision based on feedback received from those completing them and those considering them.

¹ The Prosecution File is the file which is required to be maintained by the prosecutor and is separate from the judicial and police file.

² DPPs of Lahore and Faisalabad should complete this form when they receive 50 AOC1 forms, or at the end of a quarter, whichever comes first. All other DPPs should complete this form when they receive 20 AOC1 forms, or at the end of a quarter, whichever comes first.

4. Benefits

It is hoped that the remedial actions identified as a result of this process will assist prosecutors and investigators in the long run by reducing the repeat issues that they may be facing.

The process should also improve interagency cooperation and understanding, enhance justice and the rights of the victim by reducing the number of AOCs.

CONFIDENTIAL PROSECUTION DOCUMENT

ADVERSE OUTCOME CASE FORM 1 (AOC1)

(To be completed by the Prosecutor in the case)

<u>SECTION 1</u>		
<p>Guidance and instructions:</p> <p><i>(Once this form is completed it should be provided to the relevant District Public Prosecutor)</i></p> <p><i>(If it is a case involving more than one accused resulting in the acquittal/discharge of some of the accused, then this form still needs to be completed, in respect of those acquitted/discharged)</i></p> <p><i>(Do NOT quote the judgement in full or extensively. The</i></p>	<p>FIR Number:</p>	<p>Magistrates' Court Case Number:</p>
		<p>Sessions' Court Case Number:</p>
	<p>ACCUSED(S) DETAILS:</p>	
	<p>Date of Adverse Outcome:</p>	
	<p>Offences:</p>	
	<p>Prosecutor:</p>	
<p>Summary of Facts <i>(A brief account of the case, identifying the key issues):</i></p>		

summary should in most cases consist of 3 or 4 short paragraphs. Cogent reasons will need to be provided by the prosecutor if the summary is longer than this)

(This should be a short statement setting out the type of adverse outcome involved)

(It is very important to accurately record the views of individuals from other agencies involved in the case – the investigators, analysts, experts etc. It is for the prosecutor to decide how best to obtain their views. It would be good practice to share the text with the outside agency before including it here)

ADVERSE OUTCOME: (i.e. clarify if AO was the result of acquittal/discharge under section 249 A, 265 K, or at the end of a trial)

Who has been consulted in the preparation of this report? (i.e. the police, the PFSA, anyone else? Explain who they were and how they were consulted – e.g. in a face to face meeting, by email etc.)

<p><i>Failing to anticipate obvious lines of defence, such as self-defence, consent</i></p>	
<p><i>Handling of the accused? Such as unlawful arrest and detention, obtaining of confession in breach of procedures.</i></p>	<p>What actions could the prosecution have taken to improve their handling of the case? Would any of these have changed the eventual outcome? YES/NO</p>
<p><i>Identity issue? Such as conduct of ID parades</i></p>	<p>If YES, give details:</p>
<p><i>Forensic issues?</i></p>	
<p><i>Procedural issues including violation of rules for collection and recording of evidence/exhibits (such as DNA samples, ballistics)</i></p>	
<p><i>Disclosure issues? Such as failure to share information with the accused under section 265C CRPC</i></p>	
<p><i>Special measures in accordance with the Witness Protection Act 2018?</i></p>	
<p><i>Witness resiling and failure to attend court?</i></p>	
<p><i>Issues specific to the offence under consideration (e.g. consent in rape cases)</i></p>	
<p><i>Etc.)</i></p>	

CONFIDENTIAL PROSECUTION DOCUMENT

ADVERSE OUTCOME CASE FORM 2 (AOC2)

(To be completed by the District Public Prosecutor – DPP)

	<u>SECTION 1 – DATA</u>	
<p>Guidance and instructions:</p> <p><i>(Once this form has been completed by the DPP, it should be sent to the Secretary Prosecutions and/or the Prosecutor General)</i></p> <p><i>(This should simply state the data in numbers. No narrative is needed)</i></p>	DISTRICT:	PERIOD COVERED:
	DISTRICT PUBLIC PROSECUTOR:	
	Number and Nature of Adverse Outcomes: <i>(i.e. specify the number of AOC1s received and their nature, i.e. clarify how many AO were the result of acquittal/ discharge under section 249 A, 265 K, or at the end of a trial))</i>	
	Which were the relevant offences: <i>(i.e. list how many of the adverse outcome cases involved each if the following offences - murder (section 302 CRPC), financial offences (sections 403, 406, 420, 468, 471 CRPC) and Sexual and Gender Based Violence offences (sections 336 A, 354, 354 A, 365 B, 376, 377, 496 A, CRPC)</i>	

<p><i>(Confirm the number of AO against each of the specified offences – no narrative is needed)</i></p>	<p>Appeal/Revision: How many of the AOCs were considered for appeals/revisions and how many appeals were lodged?</p>
<p><u>(This is an important section.)</u></p> <p><i>The DPP is required to assess the data included in section 1 above and provide a narrative assessment of the emerging trends. The emphasis is on the DPP utilising his experience to set out the different type of issues he has identified in cases in his District, as well as the actions that could have been taken by</i></p>	<p><u>SECTION 2 – DPP's ANALYSIS</u></p> <p>What trends and patterns emerge from this data?</p> <p><i>(This should include, but not be limited to:</i></p> <ul style="list-style-type: none"><i>• Comparison with the last period's figures, to enable an assessment to be made whether the number of AOs is increasing or decreasing;</i><i>• Comparison of the issues that are emerging, such as identity of suspect, forensic evidence related problems, witness attendance issues etc.;</i><i>• Assessment of problems arising in specific offences, such as consent in rape cases etc.</i><i>• Assessment of the types of remedial action that could have been taken in cases by the police and/or the prosecutor to rectify some of the problems which led to the Adverse Outcome etc.)</i>

*the police
and/or the
prosecutors to
rectify the
problems)*

What actions has the DPP undertaken to remedy the issues highlighted?

***(This is an
important
section, as it
demonstrates
the DPP's
proactivity in
resolving***

(This would include, but not be limited to the following matters: liaison with the police PFSA etc. to resolve issues; considering training of staff if issues have arisen due to gaps in knowledge of prosecutors; liaising with the court if problems have arisen due to listing issues etc.)

<p><i>issues)</i></p>	
<p><i>(Confidential matters should be recorded separately)</i></p>	<p><u>SECTION 3</u></p> <p>General Comments:</p>
<p><i>(DPP should identify any significant issue</i></p>	<p>LEARNING POINTS AND ANY ASSISTANCE SOUGHT:</p>

which requires the input of, or assistance from other arenas of the criminal justice system, which would have an impact and reduce the AO results – this could include, higher level liaison between agencies, specific PG guidance to assist prosecutors, input from Secretary Prosecutions, statutory reform etc.)

DPP

Signed & Dated:

CONFIDENTIAL PROSECUTION DOCUMENT

ADVERSE OUTCOME CASE FORM 3 (AOC3)

(To be completed by the Prosecutor in the case)

SECTION 1	
<p>Guidance and instructions:</p> <p><i>(This form should be completed when a prosecution appeal against an order of acquittal is dismissed)</i></p> <p><i>(Once this form is completed it should be provided to the Prosecutor General - PG)</i></p> <p><i>(If it is a case involving more than one accused resulting in the acquittal of some of the accused, then this form still needs to be completed, in respect of those acquitted)</i></p>	<p>FIR Number:</p>
	<p>Magistrates' Court Case Number:</p>
	<p>Sessions' Court Case Number:</p>
	<p>Appeal Number/Murder Reference Number:</p>
	<p>ACCUSED(S) DETAILS:</p>
	<p>Date and details of Adverse Outcome: <i>(i.e. the details of the judge and the appellate court)</i></p>
	<p>Date and details of the judgement appealed against: <i>(i.e. the court which made the original decision leading to this prosecution appeal)</i></p>
	<p>Offences:</p>

	Prosecutor:
	Summary of Facts <i>(A brief account of the case, identifying the key issues):</i>
<p><i>(Do NOT quote the judgement in full or extensively. The summary should in most cases consist of 3 or 4 short paragraphs. Cogent reasons will need to be provided by the prosecutor if the summary is longer than this)</i></p>	
<p><i>(i.e. was the appeal dismissed on legal grounds – e.g. procedural irregularity, admissibility of evidence, statutory interpretations and/or on factual basis such as credibility of witnesses, alibi issues, failing to take note of key evidence etc.)</i></p>	Reason for Acquittal: <i>(Legal and/or factual)</i>

	<p>Appeal: Is an appeal against the Adverse Outcome being considered?</p> <p>YES/NO</p>
<p><i>(If YES, then please If YES, give details and clarify the issues that were considered by the appellate court which raise new issues/grounds of acquittal)</i></p>	<p><u>SECTION 2</u></p> <p>Indicate if the appellate court has specified, commented on or concluded on an aspect which differs from any points raised on the AOC1.</p> <p>If YES, give details:</p>
<p><i>(Include here anything you wish to add, which does not come within any of the headings listed above)</i></p>	<p><u>SECTION 3</u></p> <p>General Comments</p>

	<p>Prosecutor's Signature & Date:</p> <p>Date Submitted to the PG:</p>
<p><i>(To be completed by the PG)</i></p> <p><i>(Confidential matters should be recorded separately)</i></p>	<p>COMMENTS & LEARNING POINTS</p> <p>Date received by the PG:</p> <p>Signed & Dated:</p>

Schedule – VIII

PUNJAB PUBLIC PROSECUTION (E & D) RULES, 2021

(SUGGESTED BY THE COMMITTEE OF DPP OFFICE MULTAN)

1. Short title, commencement and application.-(i) These rules may be called Punjab Public Prosecution Service (E &D) Rules, 2021.

(ii) They shall come into force at once and shall apply to all Public Prosecutors below the B.S-19.

2. **Definitions.-** *In these* rules, unless the context otherwise requires ;-

(t) "Accused" means a Public Prosecutor who is to be proceeded against under these rules;
Against law

(ii) "Authority" means authority competent to award punishment as per Schedule;

(iii) "misconduct" means conduct prejudicial to the prosecution or discipline in the Public Prosecution Department, or contrary to Government Servants (Conduct) Rules or unbecoming part of a Public Prosecutor and a gentleman, any commission or omission which violates any of the provisions of law and rules regulating, the function and duty of a Public Prosecutor to bring or attempt to bring political or other outside influence directly or indirectly to bear on the Government or any Government Officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of a Public Prosecutor ;

(iv) "punishment" means a punishment which may be imposed under these rules by the authorities as indicated in the Schedule;

(v) "Schedule" means the Schedule, inclusive of explanatory notes given there under, and annexed to these Rules.

3. Grounds for punishment. Where a Public Prosecutor upon the recommendation of the Prosecutor General Punjab or District Public Prosecutor, in the opinion of the authority----

(a) is inefficient or has ceased to be efficient, or

(b) is guilty of misconduct, or

(c) is corrupt, or may reasonably be considered corrupt because-

(i) he is, or any of his dependents or any other person through him or on his behalf, is, in possession (for which he cannot reasonably, account) of pecuniary resources or of property disproportionate to his known sources of income, or

Punishment.-(1) The following are the minor and major punishments, namely :-

(a) Minor punishments :-

(i) Censure.

(ii) Forfeiture of approved service up to 2 years.

(iii) Withholding of promotion up to one year.

(iv) Stoppage of increment for a period not exceeding 3 years without cumulative effect.

(v) Fine to any amount not exceeding one month's pay:

(d) Major punishments :-

(i) Reduction in rank or pay;

(ii) Compulsory retirement;

(iii) Removal from service; and

(iv) Dismissal from service.

(2) Removal from service does not but dismissal from service does disqualify for future employment.

In case a public prosecutor is accused of corruption, inefficiency or misconduct, the authority may require him to proceed on leave.

4. Punishment proceedings.- The punishment proceedings will ordinarily be of three kinds i.e.,

(a) Summary Punjab Public prosecution Service Proceedings, (b) General Punjab Public prosecution Service Proceedings for which the procedure shall be as under,-

(1) The authority shall decide on the facts of each case whether procedure of summary or general proceedings shall be adopted.

(2) In case the authority decides that the misconduct is to be dealt with in Punjab Public prosecution Service Summary Proceedings it shall proceed as under --

(i) The accused officer liable to be dealt with in the Punjab Public prosecution Service Summary Proceedings shall be brought before the authority.

(ii) He shall be apprised by the authority, orally, of the nature of the allegation against him.

The substance of his explanation for the same shall be recorded and if the same is found unsatisfactory he may be awarded one of the minor punishments mentioned in these rules.

(iii) The authority conducting the Punjab Public prosecution Service Summary Proceedings may, if deemed necessary adjourn them, ordinance, for maximum period of 7 days.

(3) If the authority decides to hold Public Prosecution Proceedings, the procedure shall be as under :-

(i) The authority shall determine whether in the light of facts of the case or In the interests of justice, a departmental inquiry, through an Inquiry officer, is necessary. If it decides that it is not necessary, it shall-

(a) by order in writing inform the accused of the action proposed to be taken in regard to him and the grounds of the action, and

(b) give him a reasonable opportunity showing cause against that action ;

(4) If the authority decides that it is necessary to have departmental inquiry, it shall appoint for this purpose an Inquiry Officer who is senior in rank to the accused.

(5) On receipt of the finding of the Inquiry Officer or where no such officer is appointed on receipt of the explanation of the accused; if any, the authority shall determine whether the charge has been proved or not. In case the charge is proved, the authority may award one or more of the punishments which as per Schedule, it is competent to impose.

5. Procedure to be observed by the Inquiry Officer.-(1)*Where an Inquiry Officer is appointed, the authority shall-

(a) frame a charge and communicate it to the accused together with Statement of the allegations explaining the charge and any other relevant circumstances which are proposed to be taken into consideration;

(b) require the accused, within 07 days from the day the charge has been communicated to him to put in a written defence and to state at the same time whether he desires to be heard in person;

(2) The Inquiry Officer shall inquire into the charge and may examine such oral or documentary evidence in support of the charge or In defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him.

(3) The Inquiry Officer shall hear the case from day to day and no adjournment shall be given except for reasons to be recorded In writing and where any adjournment is given;

(a) it shall not be more than a week; and

(b) the reasons therefore shall be reported forthwith to the authority.

(4) Where the Inquiry Officer is satisfied that the accused is hampering, or attempting, to hamper, the progress of the inquiry, he shall administer a warning and if, thereafter, he is satisfied that the accused is acting in disregard of this warning he shall record a finding to that effect and proceed to complete the departmental Inquiry ex parte-

1. If the accused absents himself from the inquiry on medical grounds, he shall be deemed to have hampered or attempted to hamper the progress of the inquiry, unless medical leave, applied for by him is sanctioned on the recommendation of a Medical Officer nominated by the authority for this purpose;

Provided that the authority may, in his discretion, sanction medical leave up to seven days without the recommendation of the Medical Officer.

(6) The Inquiry Officer shall within 10 days of the conclusion of the proceedings or such longer period as may be allowed by the Authority, submit his findings and grounds thereof to the authority.

2. Powers of Inquiry Officer.-(I) For the purpose of departmental Inquiry under these rules, the inquiry Officer shall have the powers of a civil Court trying a suit under the Code of Civil Procedure, 1908 (Act of 11708) in respect of the following matters namely ;-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents.

(2) The proceedings under these rules shall be deemed to be judicial proceedings within the meaning of sections 193 and 21-8 of the Pakistan Penal Code (Act XLV of 1860).

(b) where the authority competent to impose a major punishment is satisfied that, for reasons to be recorded in writing by that authority, it is not reasonably practicable to give the accused an opportunity of showing cause.

3. No party to any proceedings as under the rules before the authority or Inquiry Officer shall be represented by an Advocate.

8. Appeal.-(a)*An appeal shall lie only against the order of dismissal, removal from service, compulsory retirement, reduction in rank or time-scale, forfeiture of approved service and imposition of fine;

(b) There shall be one appeal only from the original order and the order of the appellate authority shall be final;

9. *Repeal.*- Any *Disciplinary* Rules previously applicable to Public Prosecutor to whom these rules apply are hereby repealed but the repeal thereof shall not affect any action taken or anything already done or suffered there under.