

NGOs report on Pakistan for the Universal Periodic Review under the UN Human Rights Council Session May 2008

Period under review: 2003-2007

Submitted on: February 8, 2008

This report is prepared by civil society organizations working in Pakistan, who believe in the destiny of the people of Pakistan as honourable, peaceful and responsible nation. The report was prepared through a consultative process, meetings and feedback on the draft prepared by National Commission for Justice and Peace and Democratic Commission for Human Development.

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This report is presented by the following organizations on behalf of the civil society of Pakistan:

1. *Supreme Court Bar Association of Pakistan*
2. *Aurat Foundation,*
3. *Pakistan Federal Union Of Journalists*
4. *Lok Sangat*
5. *National Commission for Justice and Peace*
6. *Democratic Commission for Human Development*
7. *Pakistan Forum for Social Democracy*
8. *Strengthening Participatory Organization (SPO)*

1. National Consultation by the government regarding UPR

A national consultation on the UPR process involving the civil society organizations was not organized by the government in due time till the submission of this report on February 8th, 2008.

2. States commitment to human rights obligations

a) Accession and ratification of important human rights Treaties and of optional protocols

Despite the pledges made during the candidacy for membership of the Human Rights Council in May 2006, the Government of Pakistan (GOP) failed to sign and ratify CAT, ICCPR and the International Convention on the Protection of the Rights of Migrant Workers and their Families. The ICESCR was signed, however, not ratified.

b) Compliance of treaties signed

Government of Pakistan ignored the almost all 18 recommendations¹ made by the Special Rapporteurs on freedom of religion or belief after his visit in 1995 about nondiscrimination on the basis of religion and bringing changes in laws and policies to building a culture of interfaith peace and tolerance, further the observations made by his successor in A/HRC/4/21/Add.1 para 243.

The GOP also ignored the observations made by the Special Rapporteur on Violence Against Women about the protection of human rights defenders². In its 71st session, 2007 ICERD Committee considered country situation in the absence of state party report and postponed the review of overdue periodic reports 15th to 19th as committee granted additional time for the submission of the reports at the request of the GOP. Now the overdue reports submitted by the state party will be considered in 2009. Three reports of compliance of CEDAW treaty were submitted together, two after a delay of six and three years respectively.

c) Human Rights and National legislation

I. The Constitution and other substantive laws

Laws that were discriminatory and against the human rights standards continued to be part of the statute. Moreover the will to implement the existing safeguards and stopping abuse of laws on part of the government seemed lacking.

During the period under review, GOP failed to bring changes in the National laws that violate human rights e.g. Hadood and Zina Ordinance, Qisas and Diyat Ordinance continued to be part of law despite a clear recommendation for a repeal by National Commission on Status of Women³ in 2003 and the Inquiry Commission on Status of women constituted by the government 1997. A women's Protection Act 2006 was passed to amend Hadood laws against the civil society demands for repeal, thus discriminations on the basis of religion in qualification of witness and judges remained in the law.

The following laws and their application denied the right of humane treatment of

¹ E/CN.4/1996/95/Add.1 para 81-98

² Para 71-72, of E/CN.4/2000/68/Add.4

³ The state of human rights 2003, HRCP, Maktaba-e-Jadeed, Lahore, p.231
Report Inquiry Commission on Status of Women, 1997

prisoners, including the universal non-derogable prohibition against torture and due process of law.

II) Allowance of summary, unjust trials and mental torture

Anti-Terrorism Act, 1997 maintains; presumption of guilt or places onus of proof on the accused, does not acknowledge mental torture as torture and in absentia trial, accused statement before the police as evidence⁴ in criminal charges.

III) Arbitrary detentions and lack of due process of law

The Maintenance of Public Order Ordinance⁵ is a violation of legal rights of the detainees under UDHR and ICCPR, thousands of persons were arrested under preventive detentions for months, especially the lawyers heading the movement for rule of law in 2007. Secondly, the law has been grossly abused in application – to arrest political workers and human rights defenders arbitrarily, without stating the ‘reason’ for arrest, without a formal charge and having to prove any offense and in some cases, the detention was prolonged without showing a sufficient cause of detention in a competent court.

IV. Non – discrimination in the political order

Under the circular No. F-1(6)/2001-Cord issued by Election Commission of Pakistan, maintained separate electoral lists for the members of Ahmadi community which is a source of sheer religious discrimination and reason for disenfranchisement of the Ahmadi community.

3. Institutional framework for protection of Human Rights

a) Independence of Judiciary

GOP showed an utter disregard to the International standards protecting the independence of lawyers and judges including those embodied in the UN *Basic Principles on the Role of Lawyers* and the *Basic Principles on the Independence of the Judiciary*. The non-derogability of judicial independence is a requirement and the foundation of all international and domestic human rights and humanitarian law and is secured by many instruments including all four *Geneva Conventions*, (common article 3), *Protocols I and II to the Geneva Conventions*, *ICCPR*, *UDHR* and the *Basic Principles on the Role of Judges*.

The judiciary, usually the most effective institution for protection of human rights remained under attack, physically and by way of interference on part of the executive as shown in following examples;

⁴ Section 19 - 19 (10), Anti Terrorism Act, 1997

⁵ Section 16, Maintenance of Public Order Ordinance,

- The Chief Justice of the Supreme Court was unconstitutionally suspended under fabricated charges in March 2007,
- The interference with Judiciary's work did not stop even after his reinstatement by the Supreme Court in July 2007, raising perks and privileges of Judges of High Court and Supreme Court⁶ and change of retirement age without a sanction of parliament,
- Tempering with Judicial system using unpredicted presidential powers in the period during elections, creating a High Court in Islamabad, without a parliament,
- The civil officers defied the Court orders in a number of cases (disappearances, Manu Bheel, baton charging of journalists and lawyers in Islamabad October 2007),
- Dislodging over a half of Higher and Superior judiciary (55 out of 107 total) on Nov.3, 2007, by imposition of emergency,
- During the lawyers' movement starting in March 2007 for restoration of Chief Justice of Supreme Court Iftikhar Mohammad Chaudhry, the lawyers were subjected to unprecedented police torture and violence in defiance of the fundamental rights guaranteed under the Constitution of Pakistan. On March 16, the police entered the Lahore High Court Bar Association office used tear gas and resorted to ruthless baton charge on the lawyers resulting in serious injuries. In May the GOP demonstrated a tyrannical at Sahiwal when dozens of lawyers were burnt after being dozed with petrol on them. On May 12, 2007 killing of about 40 innocent persons in Karachi to stop the Chief Justice from addressing the High Court Bar Karachi. In July, killing of about 12 persons in Islamabad through terrorism to prevent the Chief Justice from addressing the Bar.
- After imposition of Emergency, the leading lawyers Aitezaz Ahsan Chaudhry Amin Javed, Ali Ahmad Kurd, Munir A Malik, Justice (r) Tariq Mehmood and a large number of lawyers were kept in detention without a legal justification.

b) Imposition of Emergency Rule

Holding the constitution in abeyance was itself a blow to fundamental rights of the citizens however GOP went on to curtail civil and political rights by introducing stringent laws and regulations e.g. Pakistan Army Act, 1952 was amended to allow the court martial of civilians by a military court.⁷

The proclamation of Emergency by an Army Chief lacked legitimacy and violated the

⁶ Salary of Judges of Superior Courts Order 2007 (Order 1 of 2007, August 3rd), Supreme Court Judges (Leave, Pension and Privileges) Order, 2007 (Order 2, 2007, August 3rd) High Court Judges (Leave, Pension and Privileges) Order, 1997 (amended via order 3, 2007, August 3rd)

⁷ Order LXVI of 2007, November 10th

Pakistan as well as international laws.

In a joint open letter⁸ the Lawyers Rights Watch Canada (LRWC), the Asian Legal Resource Centre (ALRC) and the Dutch Lawyers for Lawyers Foundation (L4L) *call for* questioned the emergency on following grounds; 'To be lawful and legitimate the imposition, duration and removal of emergency measures by any state, must meet the 10-principle test of the United Nations standards. The *Proclamation of Emergency* of November 3, 2007 failed to meet all 10 of the UN criteria for legitimate emergency measures: regarding legality, proclamation, notification, time limitation, existence of exceptional threat, proportionality, non-discrimination, compatibility, concordance and complementarity with international law and preservation of non-derogable rights. Access to judicial safeguards of non-derogable rights remains an absolute requirement during emergency measures. Actions that compromise or destroy judicial independence, such as those taken by the Musharraf regime, render even emergency measures that meet UN standards, illegal.'

After milking the political gains the emergency was lifted on December 15, 2007, however irreparable damage was inflicted to the existing institutional framework for protection of human rights. Moreover the several laws and regulations made during the state of emergency were made part of the statute.

c) Lack of human rights policy and implementation mechanism for human rights

GOP failed to make a human rights policy in the country. No effort was made to develop any mechanism for implementation of the commitments under the International human rights treaties and independent assessment of the performance thereof.

4. National Human Rights Institutions

a) National Human Rights institutions do not exist in the real sense (according to the Paris Principles). A promise was made in a Presidential speech in the National Human Rights conference in April 2000 to make a National Human Rights Commission which remained unfulfilled. A bill initiated in the National Assembly in 2004 was never debated in the parliament till 2007.

b) The National Commission on Status of Women (NCSW) was formed in 2001, but its recommendations about repeal of Hudood laws (2003) were never heeded to. The NCSW also lacked; enabling mandate, independence to carry out its mandate, adequate human and financial resource and the powers to investigate and redress the human rights violations.⁹

c) The Directorate of Human rights working under the Ministry of Law and Justice performs merely as a charity wing of the Ministry. The Directorate is run by civil servants and lacks any mandate to advise or supervise and legislation, monitoring of the

⁸ www.lrwc.org; lrwc@portal.ca; alrc@alrc.net; www.alrc.net <http://www.advocatenvooradvocaten.nl>

⁹ www.ncsw.gov.pk, annual report 2001 pp. 45-47

implementation of human rights or investigate human rights abuses.

d) The government also claimed existence of a Minorities Commission, however, it is neither statutory nor a representative and autonomous body. It is composed of a few parliamentarians without a mandate to safeguard minorities' human rights.

e) The GOP showed no inclination to encourage right based NGOs to participate in discourses or policy making.

5. State of General obligations under UN Charter and UDHR

The enjoyment of the right to security and safety of the human person remained an elusive dream as the GOP failed to maintain and promote peace. Militaristic solutions were considered best where the political option could have worked better. Rs. 275 billion, were allocated to defense whereas education received only 39 billion in the federal budget, for 2007-08 year. As meager as 0.51% of the GDP was being spent on health and nutrition. The health expenditure as percentage of GDP remained stagnant 0.7 from fiscal year 2001 to 2003 and further declined to 0.6 in the fiscal year 2005-06.¹⁰ It is no surprise that the experts have expressed apprehensions about the possibility of Millennium Development Goals met by Pakistan.

a) Disappearances

There were complaints of thousands of involuntary disappearances especially in Baluchistan and NWFP during 2005-06. The Human Rights Commission of Pakistan (HRCP), an NGO, filed a petition in the Supreme Court (SC) of Pakistan against forced disappearances in early 2007 with a little over 100 names that swelled to 198 before the emergency was pronounced on November 3rd. Of that list, the government told the court of around 99 disappeared persons that it had 'traced.' Ninety-nine remained unaccounted for. Only half of those traced had actually been released. Those released have alleged torture and inhumane treatment and lack of access to due process, as well as access to lawyers and family.

It was noted in late 2007 that the secret agencies continued to illegally pick up individuals days after the SC urged locating the people missing. With the judicial purge accompanying the Nov. 3rd declaration of a state of emergency, the SC simply stopped hearing the petitions against enforced disappearances.

b) Civil liberties and Freedom of expression

Curbs on peaceful assembly and restrictions brought through an amendment to the laws dealing with media were massively used¹¹. Thousands of lawyers, political workers and human rights defenders were beaten, humiliated and imprisoned during 2007 alone

¹⁰ College of Physicians and Surgeons of Pakistan, www.cpsp.edu.pk/bulletin%archieves/march06/chapter1

¹¹ Section 144, Criminal Procedure Code of Pakistan

for merely exercising their right to free speech and peaceful assembly.

While illegal radio stations run by the local Taliban continued to operate with impunity and the shops selling Music and films were blown with bombs, the legal and open media faced press advices, threats and closures. Pakistan Electronic Media Regulatory Authority Ordinance 2002 was amended via ordinance LXV of 2007, on the November 3rd to suppress to dissenting voices and facilitate the onslaught of emergency.

Between 2000 and 2007, 31 journalists were killed, 315 injured, 387 arrested or kidnapped, 193 intimidated and 109 banned, according to Intermedia.

In 2007, 11 journalists were killed, 215 injured, 325 kidnapped, 79 intimidated and 43 banned. 10 journalists were arrested and 34 booked under Anti-Terrorism law since December 27, 2007 after the assassination of Benazir Bhutto, former Prime Minister of Pakistan. According to the reports the police raided the houses of journalists and arrested 19 in Sindh province alone¹².

According to the Pakistan Federal Union of Journalists¹³, during 2007 the government agencies pressurized the media through new laws and threats. Houses of media personnel were attacked, raided by the police and security agencies using two ordinances against the media after the promulgation of state of emergency in the country. Pakistan's mainstream private television news channels remained under 'official scrutiny' and several received 'Press advices' throughout the year, even before the closure of around 45 TV channels, mainly news channels on November 3, 2007. Beside attacks on journalists, their families were subjected to violence and intimidation. Brothers of two journalists were killed, one reportedly by a non-state actor, another by an unidentified person, the families had to migrate, while dozens in different parts of the country were forced to relinquish the profession.

c) Talibanization (Maintenance of public order, security to life and liberty):

While the government cracked down on the democratic and peaceful citizens organizations the Taliban phenomenon extended itself to northern Pakistan. Apart from Waziristan, the tribal agencies of Bajaur and Mohmand, and areas of NWFP especially the districts of Peshawar, Swat, Malakand, Tank, Dera Ismail Khan, Bannu, Lakki Marwat, Kohat, Mardan, Swabi, Charssada and Buner became centres of the activities of the pro-Taliban elements.

Girls' schools and their female staff, hair-dresser shops, CDs, dish antennas, television and polio vaccination have been target of bomb blasts, suicide attacks, target killing of law-enforcement personnel and innocent civilians.

The Lal Masjid (red mosque) row in Islamabad, the federal capital of Pakistan, in July 2007, exposed the extent of the penetration of religious fanatics. The activities of the

¹² Intermedia Islamabad, www.intermedia.org.pk

¹³ www.pfuj.info

burqa-clad female vigilantes of Jamia Hafsa (girls' seminary) started with a raid on a private residence, going around and telling video shop owners to change their business and finally it enhanced to the extent of kidnapping six Chinese women on charge of indulging in immoral acts. Following an eight-day standoff between the security forces and militants and students holed up in the Lal Masjid-Jamia Hafsa compound, the rebellious cleric Ghazi Abdur Rasheed was killed in a fierce battle in which the government claimed 58 persons including eight soldiers were killed.

Several hundreds of people were killed in the Military operation since 2004 in Baluchistan Province including 80 years old Tribal Chief Nawab Akbar Bugti in 2006 and Balach Mari in 2007. While many like Sardar Akhtar Mengal the former Chief Minister of the Province, journalist and human rights defenders were arrested under flimsy charges, some like Senator Sana Ullah Baloch were forced to live in exile.

The civil society organizations are of the view that the government failed in maintaining law and order and saving Pakistan from Talibalization because it lacked transparency in the counter – terrorism operations, governance by rule of law and popular mandate.

d) Attacks on NGOs

There were at least three major grenade and bomb attacks on the offices and staff of non-governmental organizations working in some of these areas, in 2007 alone. The offices of Strengthening Participatory Organization (SPO) were attacked twice, in September and November 2007, in Dera Ismail Khan and Battagram, respectively, and resulted in massive destruction and serious injuries to the NGO personnel. The Battagram office of Sungi Development Foundation, another NGO, was also attacked with grenades in December 2007, resulting in heavy damage to the building and equipment.

e) Rights to education

50 million (nearly 1/3) of the population is illiterate. It is because the GOP failed to make education its priority, a paltry share of 2.42 percent of the budget was allocated in 2007-08 on public education.¹⁴ A huge disparity exists in the literacy ratio between men and women due to unequal access to education for girls and gender biases in education materials persist.

f) Education in mother tongue and other cultural rights

With regard to cultural rights enunciated in ICESCR¹⁵, CRC¹⁶, and UNESCO Declaration on Cultural Diversity¹⁷, a great majority of children were deprived of their cultural rights as there is no arrangement for imparting school level education in their

¹⁴ www.usaid.gov/pk/education/index

¹⁵ Art. 15, International Convent on Economic, Social and Cultural Rights

¹⁶ Art. 4, Convention on the Rights of the Child

¹⁷ Art. 5, Cultural Rights as enabling environment for Cultural Diversity

mother tongue. Urdu which is mother tongue of merely 7.57 percent of the population is the medium of instruction for nearly 58 percent¹⁸ children (Punjabi, Pushto, Saraiki, Balochi and other), are forced to take instruction which is not their mother tongue.

6. Recommendations to the GOP and Human Rights Council:

1. The GOP should make a national human rights policy, to sign and ratify all human rights treaties of the UN without conditions, chart out an implementation mechanism and submit reports to the treaty monitoring bodies on regular basis;
2. Pakistan government should invite the UN High Commissioner on Human Rights to carry out a fact finding visit to assess the human rights situation and give recommendations to improve the conditions;
3. The human rights situation in Pakistan has a bearing on the peace and security of the whole region. Moreover, national and regional Human Rights mechanisms do not exist therefore a special session of the HR Council should be convened discussed the situation in the country. The GOP should also honour the request made by the Special Procedures to carry out a fact finding visit of Pakistan and invite them without delay;
4. The government formed after the Elections in February 2008 must ensure the independence of judiciary by restoring the pre-emergency judiciary and the Constitution in its pre - 1999 form. The counter – terrorism policies should be debated in the parliament and reviewed to restructure the internal governance;
5. All amendments made in different laws during state of emergency through Presidential Ordinances should either be withdrawn or should be approved only in a due process by the parliament;
6. Curbs on media must be removed and freedom of expression must be ensured, amendments to PERMA Ordinance be withdrawn and laws regulating press be brought in conformity with human rights;
7. The elected GOP should make a human rights policy and legislate to create independent and credible National Human Rights Institutions according to the Paris Principles of the UN;
8. The GOP should ensure allocation of 10 percent of GNP for education and 5 percent for public health in the Federal and Provincial budgets;
9. In order to restore Pakistani society's cultural and religious diversity, the GOP should acknowledge the religious, linguistic and cultural plurality in a federal legislation and to make arrangements to make the mother tongue as medium of instruction as soon as possible;

¹⁸ Population by Mother Tongue, Statistics division, Government of Pakistan,

10. All human rights defenders, political workers, journalists, lawyers and members of the judiciary who were arrested during the emergency must be released immediately. The government should also ensure safety and security for the NGOs, specially for the female workers;
11. The GOP must put an end to involuntary disappearances and make the law enforcement agencies responsible for extra judicial detentions and involuntary disappearances accountable to the law;
12. The GOP must show a commitment to human rights in action, not only in the Human Rights Council and other international forums, but also in all its legislation and in its national policies. All laws that discriminate and are violation of human rights standards should be repealed in light of the recommendations of Commission of Inquiry (1997), National Commission on Status of Women (2003), and the UN Special Rapporteurs and treaty monitoring bodies;
13. We urge the GOP to appoint a Commission of Inquiry to study the impact of blasphemy laws, make the outcome of the study public and review the procedure of investigation, registration of cases and trial to stop the abuse of religion and law.