

Submission to the Universal Periodic Review of PAKISTAN

8 February 2008

UN Cooperation and ratification

Although a member of the UN human rights Council, Pakistan has not ratified most of the major international human rights instruments, including the international Covenant on civil and political rights and the international Covenant on economic social and cultural rights. The ratification of ICCPR was nevertheless requested by the UN special rapporteur against torture in 1996, but Pakistan failed to comply with its recommendation.

In addition to a very limited number of ratifications, Pakistan has one of the largest records of lack of cooperation with UN special procedures, in violations with its obligations as a member of the UN human Rihts Council. Seven Special procedures have requested to visit Pakistan, following repeated allegations of human right violations. None have obtained satisfaction since 1999. Moreover, the responses to the letters of allegations are scarce, if not insufficient.

Institutional framework

General Pervez Musharraf took power in a military coup in 1999 and adopted the Provisional Constitutional Order which suspended the Pakistani Constitution and stated that presidential orders would henceforth supersede all other legislation and that the military government could not be challenged in court. In 2007, he organised a round of Presidential elections which confirmed his status of President, while the elections themselves were largely criticised for being rigged.

Sate of emergency

On November 3rd, 2007, General Musharraf proclaimed the state of emergency in the country, under the justification of the fight against terrorism. The emergency rule lasted until December 15th, 2007. This period witnessed a grave setback for the situation of human rights in the country. In various provinces of the country, hundreds of opposition activists, lawyers, journalists, trade union leaders and human rights defenders were arrested, detained, tortured or put under house arrest. The majority of the detained were released after a limited period but many are still facing charges under the Maintenance of the Public Order Ordinance (POO) and sections 146, 147 and 148 of the Penal Code which treat rioting.

The Public Order Ordinance (POO) was adopted on Novembre 10th. It amended the Pakistan Army Act (1952) and took effect retroactively from January 1st, 2003. The POO gave military courts the right to try civilians for a wide range of offences, punishable under various pieces of legislation, including the Prevention of Anti-National Activities Act (1974) and the Anti-Terrorism Act (1997) as well as the attempt to commit any of the said offences. This violated the fundamental principle of international human rights law stating that civilians always must be brought to trial in regular courts.

Attacks on the independance of the judiciary

On March 9, 2007, in a blatant interference with the Judiciary, General Musharraf ordered the dismissal of Supreme Court Chief Justice Chaudhry for alleged “misuse of office”. After refusing to resign, the Chief Justice was unilaterally suspended on allegations of misconduct, in violation of the principle of separation of powers. This sparked large demonstrations of lawyers, opposition activists, human rights defenders, which were violently repressed. On May 12, 42 people died in violent clashes instigated by pro-governmental

activists. Following a strong national and international mobilisation, Musharraf reinstated the Chief Justice on July 20.

The declaration of emergency also carried significant attacks to the independence and impartiality of the judiciary. The Supreme Court was about to rule on several hundreds of cases of enforced disappearances and had ordered the government and intelligence services to provide information on the missing people. In addition, the Supreme Court was in the final stage of decision regarding General Musharraf's right to present his candidacy for a new presidential term.

Following the declaration of the state of emergency, five Supreme Court Justices and the Chief Justice refused to recognise the declaration, on grounds of its unconstitutionality. Many other judges of lower Courts similarly refused to recognize the Presidential order. They were subsequently remained under illegal house arrest on November 2, 2007, or arbitrarily detained. Musharraf replaced the arbitrarily fired judges with his own nominees.

Furthermore, dozens of lawyers were arrested, some of them were tortured while in detention or detained in unknown locations, while many of those, whose locations are known, were denied access to their lawyers and their families. An unknown number is still in detention at the end of January, 2008. Among them would be:

- Mr. **Aitzaz Ahsan**, President of the Supreme Court Bar, kept under house arrest until his release on February 1, 2008, and rearrested the day after;
- Mr. **Tariq Mahmood**, former President of the Supreme Court Bar Association, kept under house arrest and released on February 2, 2008 before being rearrested the day after;

In addition, Chief Justice **Iftikhar Mohammad Chaudhry** remains under an illegal house arrest since November 3, 2007, together with his wife and his children. Five other members of the Supreme Court are also subject to the same repression.

Political violence and impunity

A number of targeted assassinations reveal a heavy climate of political violence and remain unpunished at the end of January 2008. Fostering an environment of impunity encourages further targeted assassinations as a means to settling political and legal disputes.

- Syed Hammad Raza, was a former Additional Registrar of the Supreme Court of Pakistan. He had reportedly been very close to Chief Justice Chaudhry. He was killed by unidentified men in his home on the night of May 14, 2007. Despite Raza's position and the current political situation, his murder has been treated as the result of an attempted robbery by the police investigation. Accounts of the murder call this theory into question, and the government of Pakistan should make the best efforts to ensure an in-depth and fair enquiry. In both cases, the government cannot allow these killings to go unpunished.
- Noor Hakim was a reporter for the Urdu-language daily Pakistan and vice-president of the Tribal Union of Journalists. He was killed on June 2, 2007 by the explosion of a bomb in his vehicle. Four others were also killed in the bombing, including a government official. Noor Hakim was in Bajaur on the invitation of the local government and the circumstances of the bombing suggests that he was specifically targeted.
- On December 27th, former Prime Minister and opposition leader Benazir Bhutto was also killed in a targeted bombing, leading to the postponing of the general elections.

Enforced Disappearances

The Human Rights Commission of Pakistan (HRCP) filed a petition before the Supreme Court against the enforced disappearance of 246 people (from the 600 cases that the HRCP had documented) reportedly by security/secret Services and the law enforcement agencies.

A large number of abducted citizens belong to either Nationalist parties, their student wings, post graduate bona fide students studying in various Universities particularly in Sindh and Baluchistan, members of various religious groups/parties (both Sunnis and Shias), working journalists of print and electronic media, scientists and even some of the members of the Armed Forces of Pakistan. Most alarmingly women family members along with minors also disappeared and a number of them were subsequently released after terrifying investigation. The pattern of those who have disappeared shows that this illegal practice is systematic and being patronized by the Federal and Provincial Governments.

The documented victims have usually been abducted by men in civil clothes, suspected to be members of

intelligence agencies. The victims are allegedly held in unlawful custody in "safe houses". Some that have been released made allegations of torture and threats to remain silent.

According to HRCP, those who disappeared but were subsequently released by the state agents have given testimonies of their illegal abduction, prolonged isolation, incommunicado retention and physical and mental torture by law enforcement agencies and in particular by the security/secret services with the object of extracting confessions and evidence against their own self or against their friends and relations. In some cases they were coerced into spying for the intelligence agencies. They also indicated that no legal authority, charge or allegation or the whereabouts of their place of detention were ever disclosed. The forms of torture included deprivation of sleep, stripping the victim naked, severe beatings, use of electric shocks, hanging upside down on the walls and by the ceiling as well as inflicting injuries on vital body parts through various instruments and methods of torture and burning.

Police violence: torture, extra-judicial executions in impunity

The police in Pakistan is still ruled by a culture of violence, intimidation and coercion. Torture is routinely used to extract information or confessions from suspects, and illegal detentions are common. Extrajudicial killings happen frequently. In criminal cases, there is a strong tradition to rely much more on oral evidence than on material evidence (compounded by the serious backwardness of forensic technique and investigation, and the lack of sufficient number of forensic laboratories), which greatly increases the pressure on witnesses, as well as the possibility of testimonies dictated by local or family politics. It is very difficult to have independent witnesses testify, for fear of retaliation against their family, or because of fear of getting involved with the authorities and the police. Coercion or corruption of witnesses can stem from the police, from the powerful local families, from the culprit's relatives, or even from the victim's party.

This jeopardises the right to a fair trial. There is no witness protection programme in Pakistan. More generally, the generally hierarchical and unfair social structure inevitably skews police investigations and judicial proceedings in favour of the wealthy and influential; discrimination pervades the whole system.

The Qisas and Diyat Ordinance has institutionalised discrimination against poorer defendants; one is virtually certain to get away with murder, provided one is rich enough to meet the cost of the compensation demanded by the heirs of the victim. Poorer defendants are also victims of the paucity of legal aid: there is no proper provision for effective legal assistance at the state expense for those who can not afford it on their own.

Religious discrimination

The progressive islamisation of the State has translated into an institutionalisation of religious discrimination. In particular, the laws of blasphemy, which carry mandatory death penalty (in 1990, the Federal Shari'at Court ruled that "*the penalty for contempt of the Holy Prophet (...) is death and nothing else*", and on May 1, 1991, the death penalty became mandatory for persons convicted under 295-C of the PPC), have often been instrumentalised by the religious majority, and inordinately affect religious minorities.

The lack of fair trial in such cases is blatant. As Amnesty International states: "*Trials of people charged with blasphemy have been grossly unfair despite the death penalty being the mandatory punishment for this offence (...).The available evidence indicates that charges were brought as a measure to intimidate and punish members of minority religious communities or non-conforming members of the majority community and that the hostility towards minority groups appeared in many cases compounded by personal enmity, professional envy or economic rivalry or a desire to gain political advantage.*"

Apart from being repeatedly condemned by national and international observers as seriously contradicting freedoms of expression, of belief and of opinion, as it has been used against NGOs, minorities, academics and journalists alike, in a sometimes most arbitrary manner, the provision clearly oversteps international standards on the charges carrying death penalty.

Flawed administration of Justice

Although very few cases of judicial corruption are ever publicised, the judiciary in Pakistan is plagued by systemic corruption. This is, in part, due to the very low salaries of the judges, especially in the lower judiciary. This exposes the judges to pressure and bias - both in "political" cases, or in cases where one of the

parties is wealthy. There is also a pressure from the higher judiciary to dispose of cases, since the judiciary is overburdened in Pakistan. This pressure directly affects fair trial procedures.

The situation in tribal areas is no better: so-called tribal “trials”, called by the local *jirgas*, routinely provide for unlawful executions of defendants. Reports of public executions in tribal areas appear increasingly frequently in the press. The lack of judicial guarantees, of defence, of appeals, combined to deep-rooted cultural prejudice, particularly on “honour”, make such executions singularly inequitable. These “condemned” individuals were denied even the minimal legal safeguards available to persons accused of crimes in the tribal areas of Pakistan.

Human Rights Defenders

During the state of emergency, in violation of the United Nations Declaration on Human Rights Defenders, the authorities ordered the arbitrary arrest, detention or torture of numerous human rights defenders. Ms. Asma Jahangir, the United Nations Special Rapporteur on freedom of religion or belief was placed under house arrest while Ms. Hina Jilani, Special Representative of the United Nations Secretary General on Human Rights Defenders had a detention order issued against her.

Over the past years, pacific demonstrations of human rights activists have increasingly been banned. Human rights defendes have been subjected to death threats, harrassment and other forms of repression, as part of the wave of political violence. All of these attacks remain unpunished.

Freedom of Expression (Article 19 of the UDHR)

Journalists and human rights defenders enjoying these rights have, since the power take-over of Musharraf in 1997, been increasingly exposed to judicial harassment, to economic or social pressure, as well as to outright rough-handed intimidation. This has resulted in massive self-censorship in the media.

Harsh legislation - be it media-specific or general laws -, aimed at curbing free expression in the country has been passed through ordinances (i.e. without parliamentary scrutiny). A number of restrictions to freedom of expression have been imposed by the Anti-terrorism Act, the Official Secrets Act, the Security of Pakistan Act, and certain provisions of the Penal Code.

Publications and media outlets have been banned, when too critical of the regime. The government has also blocked internet sites on politicised grounds.

The police, the army and the intelligence services, have used heavy handed tactics to intimidate journalists perceived to have gone “too far”. It is to be noted that foreign journalists are often limited in their displacements in the country, and there is a prohibition for all journalists to report from parts of the tribal areas, notably Waziristan.

Pressure to force journalists into conformity has been high, such as preventing them from attending press conferences. There is little doubt that the independence of the press is not viewed positively by the authorities, which expect it to be compliant and an instrument of the government’s position. The government does not hesitate to put massive pressure on chief editors and/or journalists to force publication of its own positions, or to prohibit publication of dissenting views.

Following the declaration of the state of emergency, the situation was aggravated. Extremely restrictive regulations for the print and broadcast media were issued on November 3rd, 2007. The Pakistan Electronic Media Regulation Authority (PEMRA) was given unlimited power to revoke media licences and close media offices. Reports on a number of issues, considered as sensitive, were prohibited with the possibility of imposing high fines, prison sentences and confiscating equipment.

Women and the administration of Justice

If it is true that there are far fewer condemned women than men in Pakistan, it nonetheless turns out that they are usually meted out a far harsher treatment than their male counterparts, mainly for cultural reasons. Overall, women have to face much worse treatment than men in court, as they have to face massive cultural prejudice, which often prevents judges from looking objectively and fairly at the decision of sentencing. A criminal lawyer explained for instance that a man killing his wife would often get the mitigating circumstances of provocation, whereas the case of a woman killing her husband would on the contrary get

aggravating circumstances.

The cultural prejudice against women is an aggravating factor in cases of "honour" killings, where it appears that judges often take a lenient view on the murderer(s), especially when they come from the woman's family. The law, in *specie* the Qisas and Diyat Ordinance, is singularly unjust: in such cases, the victim's relatives, who are supposed to decide whether or not to "forgive" the killers, are the very culprits. A 2002 amendment stated that the Court had to decide whether to accept a compromise in such cases.

Death Penalty in Pakistan

Pakistan ranks among the countries in the world which issues the most death sentences. In recent years, Pakistan has witnessed a significant increase in charges carrying capital punishment, in convictions to death, as well as in executions. This is under a period when the international trend has been a decreased use of the death sentence. A clear indication of this was the adoption by the United Nations General Assembly, on December 18th, 2007, of a resolution calling for a global moratorium on the death penalty.

Pakistan's application of the death sentence falls far below international standards. Given the very serious defects of the law itself, of the administration of justice, of the police service, the chronic corruption and the cultural prejudices affecting women and religious minorities, capital punishment in Pakistan is discriminatory and unjust, and allows for a high probability of miscarriages of justice, which is wholly unacceptable in any civilised society, but even more so when the punishment is irreversible. At every step, from arrest to trial to execution, the safeguards against miscarriage of justice are weak or non-existent, and the possibility that innocents have been or will be executed remains frighteningly high.

While at the time of independence, only 2 charges carried death penalty, today, 27 different charges do so, including blasphemy, stripping a woman of her clothes in public and sabotage of the railway system. This goes far beyond the scope of the expression "*most serious crimes*" for which death penalty should be reserved under international law, and which is interpreted as meaning that death penalty should not be awarded for crimes beyond intentional crimes with lethal or other extremely grave consequences.

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