



ASIAN HUMAN RIGHTS COMMISSION

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ALRC Pakistan UPR Report - Annex I

Annex to *ALRC-UPR-2-005-2008*

The Human Rights Situation in Pakistan in 2007

The year 2007 was marked by constitutional and judicial crises; the President as the military leader had used all state power against the judiciary, the Constitution of the country, the legal fraternity and the media. Civil society was the most affected section in the country. Every effort was made to undermine the rule of law.

To promote his autocratic and militaristic actions, General Musharraf, being the chief of staff, has imposed a state of emergency, abrogated the Constitution—the second instance during his tenure—suspended all fundamental rights and issued several ordinances including amendments to the Army Act of 1952, under which any civilian could be court-martialled and military courts constituted as and when needed.

Under the amended law, military courts could hear charges ranging from treason to ‘giving statements conducive to public mischief’. These measures were given retrospective effect by the newly constituted Supreme Court, comprised of those justices who had submitted to the oath of loyalty under General Musharraf’s tailor-made Provisional Constitutional Order (PCO). These justices have not only compromised their personal integrity but the independence of the judiciary as well.

Strict restrictions have been imposed on the media through amendments to the Pakistan Electronic Media Regulatory Authority (PEMRA). Accordingly the print media has been subjected to pre-censorship and the electronic media has been forbidden to discuss the emergency rule. Many media houses have been attacked and their equipment confiscated. More than 1000 media personnel have been arrested and beaten by the police during demonstrations calling for press freedom.

The exercise of the rule of emergency had been aimed at the judiciary and the legal fraternity particularly against the Chief Justice Iftkhar Chaudhry. It was reported that under the state of emergency about 46 judges were under house arrest, but according to the Chief Justice, more than 60 judges of the superior courts have been detained. The children of judges particularly those of Chief Justice Chaudhry and other Supreme Court judges, have also been prevented from attending their schools and colleges.

Besides, under the state of emergency, more than 3500 lawyers have been arrested and many lawyers including retired judges and office bearers of Bar associations have been tortured in custody. Some judges have been attacked by the police and prevented from entering the courts while their cars have been damaged. Chief Justice Chaudhry has also been beaten and

manhandled by the police who pulled him by his hair when he was being produced before the Supreme Judicial Council.

The judiciary, particularly the higher judiciary was targeted mainly for taking *sou moto* action on cases of corruption by the authorities, gross human rights violations, and disappearances after arrest by state intelligence agencies and land grabbing by the Army, ministers and even the President. After a long wait, the courts were finally seen to meet the aspirations of the people and providing them with justice. But this proved too much for the military leadership government.

About 8000 people have been arrested after the imposition of the state of emergency, among them members of human rights organizations, political parties and trade unions. Though some were released later, more than 4000 people were still in jail. For the first time in the history of Pakistan, riot police and plainclothes intelligence agents stormed into the apex courthouses and brutalized thousands of lawyers, students, and citizens whose only crime had been to exercise their democratic rights. Hundreds still remain behind bars on fraudulent, non-bailable charges of 'terrorism'.

The question of disappearances was far from being resolved. After observing that those who had disappeared after arrest should be in military custody, the Chief Justice had ordered higher military officials to be present in court and release the detainees. Even though more than 110 persons were released from army detention through the intervention of the Supreme Court, they had not been formally produced in court; instead they were dumped in a precarious condition on roadsides.

Widespread torture has also been a phenomenon in the country. Hundreds of people have been reported tortured in custody, including lawyers. In one of the most shocking cases to be reported in modern times, a villager had his penis severed under police torture and a federal minister was seen protecting the alleged perpetrators from being arrested.

Women and minorities continue to be heavily discriminated by state policies. Honour killings and the holding of Jirga courts have not been abolished and cases of honour killings have increased. Minorities continue to be threatened with blasphemy laws and several young men and women have been arrested and punished under these laws without evidence.

1. Ailing justice system

The judicial system in Pakistan has always been weak and failed to deliver justice to the people. This weakness can be attributed to the continuous interference by successive governments, particularly military governments. The Pakistani judiciary has traditionally always supported those in power, even if they came to power by ousting elected, civilian governments.

Since 1954, when the then-prime minister was thrown out of power and the chief justice at the time, Mr. Munir, sacrificed the constitutional law for the sake of expediency, the judiciary has been forced into the role of being the blind defender of the armed forces rather than the arbiter of justice. However illegal or unconstitutional its actions may be, under the doctrine of necessity, the army could do no wrong. The doctrine of necessity, which came into being at the time to protect the new powerbrokers, has since been used repeatedly to overthrow elected governments and keep the Constitution in abeyance. By subordinating itself to the military, the judiciary has become absolutely divorced from any notion of independence.

Pakistan's armed forces have used the higher judiciary to do their bidding, and whenever members of the judiciary have attempted to assert themselves, they have been punished; by being transferred to Islamic courts, by references being sent to the Supreme Judicial Council (SJC) to have them punished, by being threatened and even having their services terminated. The higher judiciary has never been able to function independently and to deliver justice to people in the country's history. For instance, there were currently over 20,000 cases pending before the Supreme Court alone. There were more than 3,500 other courts in the country, which in total have over one million cases pending before them. Huge delays and inefficiency further degrade the judiciary's image and its relevance for Pakistan's citizens. Cases pending before the courts, particularly the lower courts, take at least 5 to 6 years to be decided, and if a case goes into the appeal process, it may take between 15 and 20 to decide, especially if it goes all the way to the highest courts.

The executive and judiciary have been separated in theory, for example the 2002 ordinance concerning the separation of judiciary from the executive. However, in practice this has not been the case. Amendments have meant that magistrates have been given executive and administrative powers and duties, reducing their independence and causing further delays. In some cases, pre-trial detainees accused of minor crimes have spent far longer time in detention than the maximum sentence imposed for the crime they were accused of committing.

In addition, Pakistan has a dual judicial system: A traditional, secular system derived from the Indian Act of 1935; and an Islamic or Shariah judicial system, both of which run in parallel to each other, which was frequently the cause of confusion and injustice. Because of the dual legal system, it has been very difficult to achieve justice, especially in an acceptable time-frame. In cases of murder, rape and other serious crimes, interference by Shariah courts was frequent. When Shariah courts make decisions relating to such cases, the judgments by secular court were often superseded, regardless of whether the verdicts were incompatible.

Appointments to the higher judiciary have been performed by the President of Pakistan. This means that, given Pakistan's political instability, the President has often been a member of the armed forces or the civil service. It was rare to find a democratically elected person occupying Pakistan's top job. The judges have been recommended by the Supreme Judicial Council, but were appointed by the President, and the candidates' identities have never been disclosed to the public. These political appointments make judges very much subject to the control of the executive, with profoundly negative repercussions on the functioning of the judiciary as a whole, especially when the military was in power.

2. Shocking violation of judicial independence



The Chief Justice being manhandled by agents of the state (Photo: Dawn)

It was in this backdrop that Iftikhar M. Chaudhry was appointed to an eight-year term as Chief Justice in June 2005. However, contrary to the norm he gradually developed a reputation for judicial independence, making rulings reportedly unpopular with General Musharraf's military junta. For instance, the suspended Chief Justice had taken some remarkable decisions in cases where the government and military had been directly involved, including

irregularities in the privatization of the Pakistan Steel Mills. The Supreme Court had taken up sensitive cases, for example, the issue of land-grabbing by the military and ruling party in Murree, a hill station near the country's capital, as well as disappearance cases. Justice Chaudhry had ordered Pakistan's intelligence agencies to disclose the whereabouts of a number of missing political activists allegedly detained illegally by security forces and also focused attention on the activities of the Army's secret agencies. Reportedly, these actions caused certain tensions and earned the displeasure of General Musharraf who began a campaign through his lawyers against the Chief Justice. Among the actions of the suspended Chief Justice that infuriated the military government the most was the formation of a human rights cell in the Supreme Court, and the continuing issue of forced disappearances. In February 2007, Justice Chaudhry reportedly stated that General Musharraf could not legally continue as army chief beyond his present term as President if he was returned as President by parliament, instead of through a general election.

This heightening of tension between the executive and the judiciary reached a crescendo on March 9, 2007 when General Musharraf suspended the Chief Justice after accusing him of "misconduct, misuse of authority and actions prejudicial to the dignity of office of the Chief Justice of Pakistan." In a report based on a week long field visit, the International Commission of Jurists (ICJ) referred to the suspension, which took place after the Chief Justice refused General Musharraf's request to resign, as "virtually unprecedented in the legal annals of the world" in a country with "well-known and well-documented instances of executive interference in the independence of the judiciary and judicial subservience."

In a 40-page petition filed before the Supreme Court of Pakistan, the Chief Justice revealed shocking details of the manner in which he was requested to resign from his post and when he refused how he was physically restrained from leaving the President's camp office for several hours. It also detailed how a reference was fabricated and filed against him in order to prevent him from sitting as the chief judicial officer of Pakistan.

α. **The Affidavit:** Excerpts from an affidavit tendered by the Chief Justice on May 29, 2007 are worth reproducing as follows:

- On March 9, 2007 the deponent headed Bench No.1 of the Supreme Court as Chief Justice of Pakistan and heard several cases till about 10.30am. The Bench rose briefly and had to reassemble for the day except the deponent who left for the Army House, Rawalpindi to meet the President of Pakistan (hereinafter referred to as "respondent")
- The deponent arrived at Army House, Rawalpindi at about 11-30am along with his staff/protocol staff. The deponent was shown to a waiting room/visitors room. After five minutes of his arrival, the Respondent, wearing his military uniform came into the room along with his MS and ADC. As soon as the respondent took his seat, a number of TV cameramen and photographers were also ushered into the room. They took several pictures and made movie footage.
- While discussing the SAARC Law Conference, SAARC Chief Justices Conference and the concluding session of the golden jubilee ceremony of the Supreme Court, the respondent said that a compliant against the deponent had been received by him (Respondent) from a judge of the Peshawar High Court. The deponent replied that it was not based on true facts as his case had been decided by a two-member bench and that attempts were being made to maliciously involve the other members of the Bench as well. On this the Respondent said that there are a few more complaints against the deponent as well. After saying so, he directed his staff to call the other persons.

- On the direction of the Respondent, the 'other persons' entered the room. They included the Prime Minister, DG-MI, DG-ISI, DG-IB, COS and another official. All officials (except DG-IB and COS) were in uniform. The respondent started reading from small pieces of paper with notes on them which he had in his hand. There was no single consolidated document. The allegations which were being put to the deponent had been taken from the contents of a notorious letter written by Naeem Bukhari with absolutely no substance in them. The deponent strongly refuted these allegations as being baseless and engineered to defame him personally and the judiciary as a whole. The deponent promptly denied the veracity and credibility of these allegations as well.
- On this the respondent said that the deponent had obtained cars from the Supreme Court for his family. The allegation was vehemently denied by the deponent. The respondent went on to say that the deponent was being driven in a Mercedes, to which the deponent promptly replied 'here is the Prime Minister, ask him, he has sent the car himself'. The PM did not reply to this answer even by gesture. Surprisingly the respondent went on to say that the deponent had interfered in the affairs of the Lahore High Court and had not accepted and taken heed of most of the recommendations of the Chief Justice of Lahore High Court.
- The respondent insisted that the deponent should resign. The respondent also said that in case of deponent's resignation, he (the respondent) would 'accommodate' him (the deponent). He also said in the event of refusal to resign, the deponent will have to face the reference which could be a bigger embarrassment for the deponent. The deponent finally and more resolutely said 'I wouldn't resign and would face any reference since I am innocent; I have not violated any code of conduct or any law, rule or regulation; I believe that I am myself the guardian of law. I strongly believe in God who will help me'. This ignited the fury of the respondent who stood up angrily and left the room along with his MS, COS and the Prime Minister of Pakistan, saying that others would show evidence to the deponent. (This has now been admitted by the respondent in his interview given to *AAJ TV*). The meeting continued for not more than 30 minutes.
- The DG-MI, DG-ISI and DG-IB remained behind and continued to sit with the deponent. They did not show the deponent a single piece of evidence. In fact, no official except DG-ISI had some documents with him but he also did not show anything to the deponent. They, however, said that the deponent had secured a seat for his son in Bolan Medical College when the deponent was serving as a judge of Balochistan High Court. They (except DG-IB) insisted that deponent resign while the deponent continued to assert strongly that the allegations were baseless and had been designed for a collateral purpose.
- During the subsequent hours, the deponent was forced to stay in that room. Sometimes, all the persons would leave the deponent alone in that room but would not allow the deponent to leave it. It was obvious that the deponent was being watched by a close circuit camera because whenever he tried to open the door to leave, he was confronted by an officer who prevented his exit. Several times the deponent expressed the desire to leave but was told by military officials to remain.
- Once the deponent was even told that the respondent would be seeing him again. At one point, the deponent requested that at least his staff/protocol officer be called inside the room as the deponent wanted to talk to him but was told that he could not come inside. The deponent then requested that his staff/protocol officer be told to pass on the message to the deponent's family that he was at Army House, Rawalpindi

and that his programme to go to Lahore had been cancelled.

- Despite several attempts to leave the room and the Army House, the deponent was made to stay there on one pretext or the other. His request to bring his car to the porch for departure was also denied. After the first meeting with the respondent which lasted for not more than 30 minutes, the deponent was kept there 'absolutely against his will' till past 5pm.
- After 5pm, DG-MI came in again and told the deponent that his car was outside to drive him 'home'. DG-MI came out of the room and once outside told the deponent, 'this is a bad day, now you are taking a separate way and you are informed that you have been "restrained to work as a judge of the Supreme Court or Chief Justice of Pakistan".'
- When the deponent saw the car of the Chief Justice of Pakistan, he discovered that his car had been stripped of both the flag of Pakistan and the emblem flag. The staff officer of the deponent informed him that Justice Javed Iqbal had taken oath as Acting Chief Justice and it had been shown on TV. The driver also informed the deponent that he had been instructed not to take the deponent to the Supreme Court while on way to the residence of the deponent.
- While on the way, the deponent directed the driver to go to the Supreme Court but an Army official prevented the deponent's car near the sports complex from proceeding further. Meanwhile, Tariq Masood Yasin, SP, also appeared; He ordered the driver to come out of car so that he could drive the deponent and also asked the deponent's gunman to come out of the car as well. The deponent said 'okay, I will not go to the Supreme Court but my driver will drive my car and my gunman will escort me home'. Only then, did Tariq Masood Yasin, SP agree to let the car be driven by deponent's driver.
- The deponent got home at about 5.45pm and was shocked to see police officials and agencies personnel without uniform all over his residence. The deponent also discovered that landline phones had already been disconnected; cell phones, TV cables and DSL had been jammed or disconnected. The deponent and his family were completely cut off for several days from the outside world.
- By 9pm, March 9, 2007, the vehicles which were in official use of the deponent including a Mercedes had been taken away by means of a lifter. Later on, the same night, one vehicle was brought back but the key was not handed over to the deponent or to someone on his behalf.
- On March 10, 2007, the deponent received a 'notice' from Supreme Judicial Council ("Council") whereby the deponent came to know that a Reference (No.43/2007) had been filed by the respondent before the Council. There was also a copy of the Order passed by the Council whereby the deponent had been restrained to function as a judge of the Supreme Court and or Chief Justice of Pakistan. The copy of the aforesaid reference had also been appended with the notice without any annexure or supporting documents for perusal of the deponent.
- It was also surprising for the deponent to note that the aforesaid reference came up for hearing on March 9, 2007 after 6pm in indecent haste. Two members of the Council as was evident from news published in daily *Nawa-i-Waqt* dated March 10, 2007, had been flown to Islamabad in special flights, from Lahore and Karachi simply to participate in a meeting of the Council. In fact, no meeting had been called by the

secretary of the Council namely Faqir Hussain. No one had issued either agenda for the meeting or notice thereof.

- The Council, rather than merely scrutinizing the material, and serving notice on the deponent went ahead and passed an order very detrimental to the interests of the deponent as well as the interests of the institution. The deponent was restrained to perform his functions as a judge of the Supreme Court Judge and or Chief Justice of Pakistan.
- The deponent further states that he had been detained along with his family members including his infant child of seven years from the evening of March 9, 2007 till March 13, 2007. The personal and private life of the deponent and his family suffered a great shock and the concept of privacy appeared as if it was an impotent word. The deponent could not use any vehicle since there was none. The deponent had to walk to the other end of the road when a police officer confronted him and manhandled him.
- The Supreme Court staff attached to the deponent was reportedly missing and had been kept at an unknown place. An attempt was being made to fabricate the evidence through them by coercive means against the deponent. Even other employees working at the residence of the deponent were taken and made to appear before some agency officials. They were released after 2/3 days. The grocery man was not allowed to collect groceries; he was made to wait till an agency official accompanied him to the market and back.
- The chamber of the deponent was sealed and certain files lying therein had been removed and some of them had been handed over to the ISI under the supervision of the newly appointed Registrar. Such an act was contrary to all norms and practices of the judiciary. The deponent being the CJP was entitled to occupy his chamber along with his staff.
- On account of deployment of heavy contingents, no one was allowed to meet the deponent freely, in as much as his colleagues were not allowed access to meet him. Even a retired judge of this Hon'ble Court Mr. Justice (R) Munir A Sheikh was not allowed to meet the deponent. The deponent was not all alone to suffer this agony. Even his children were not allowed to go to school, college and university. The deponent and his family members were deprived of basic amenities of life, i.e. medicines and doctors.
- Even when ordered by the Council, the deponent was deprived of the assistance of his counsel to seek legal assistance regarding legal and factual issues involving the reference. The deponent and his family have been made to go through a lot of mental, physical and emotional agony, torture and embarrassment and words could never be enough to properly and adequately express that.
- All these tactics were used to put pressure on the deponent so that he may tender his resignation from the office of the Chief Justice of Pakistan. But after March 13, 2007 when the deponent succeeded in establishing at least some contact with his lawyers team during a brief appearance before the Council and after March 16, 2007, the on going pressure to 'resign the office' was released to some extent.
- The deponent believes that his entire house has been bugged and at Sindh House which is located opposite the residence of the deponent, the officials of the agencies other than police have established a place therein to keep an eye on those who come

and

visit

me.

- On account of the facts stated hereinabove, the children of the deponents are so scared that they could not go to school or university. As a result thereof, one of my daughters failed to appear in her exams (1st year, Federal Board) whereas my other daughter who is a student of Bahria university is not being allowed to take her examination (1st semester) due to lack of attendance in internal studies. My younger son is also not in a position to attend his school because of circumstances through which I am passing.

The manner in which the military regime has tried to persuade the Chief Justice to resign, the physical restraint exercised against him for five hours in not allowing him to leave and the subsequent reference would all amount to criminal activities if they had happened in any democracy. The executive does not have any power to request the chief of the judicial branch or for that matter any member of the judicial branch to resign. To use such power violates the concept of the independence of the judiciary in a most fundamental manner. While the judiciary has the right after judicial examination to force a government or the chief executive out of power the executive, on the other hand does not have similar power over the judiciary. All that the executive can do, even when there existed extraordinary grounds for the removal of a chief justice or a judge of the Supreme Court, was to follow the procedure of the law and leave the matter in the hands of the courts themselves.

To call the Chief Justice in order to persuade him to resign itself was an act that the executive should be held responsible for. Without the slightest doubt it can be said that this act in itself would amount to contempt of court in the clearest of terms. Suppose the Prime Minister of England or the President of the United States or France were to call the chief justice of the country to their office and make or suggest that he should resign, would that in any way have any other meaning other than a clear affront, not only to the individual concerned, but to the institution of the judiciary itself. What if the judicial officer was further restrained from leaving the executive's office for five hours or for that matter even a few minutes? Clearly any such act in any of the countries mentioned above would lead to an outcry demanding the immediate resignation of the executive who engaged in such an act.

The following words from the Chief Justice's petition demand careful consideration from all persons who support the independence of the judiciary, democracy and human rights: "And this country has indeed seen many a whimsical and arbitrary military head turning in wrath towards independent judges and seeking to subordinate and overawe the judiciary, sometimes to turn around the course of pending proceedings or impending judgments. The entire edifice of the independence of the judiciary would crumble like a house of cards, if contrary view was taken, as any judge about to deliver a judgment against the executive, will run the jeopardy of being effectively and summarily sent home. This has indeed happened in the past in this country in times when the Constitution stood abrogated or had been suspended or held in abeyance.

The move to remove the Chief Justice was unprecedented and unconstitutional. It was a clear demonstration of the complete disregard for the separation of powers within the present military administration of President Musharraf who came to power by a military coup in 1999. After coming into power the President also changed the Constitution to make himself the supreme leader of the country. However, given the complete change of the power structure within the country where the President holds absolute power this decision has been a clear message that the respect for the independence of the judiciary was not part of the political scheme of present day Pakistan. The President clearly wants a judiciary that was subservient to his wishes and under his complete control.

This decision also completely shattered the illusion held by many including some lawyers' associations that independence of the judiciary was still possible in the country. The military dictatorship had completely reshaped the country's legal system and norms. Now it had come within the power of the President to remove the Chief Justice himself without following the usual procedures laid down in the Constitution to ensure that no superior court judges could be removed except through a process of internal inquiries conducted by the Supreme Judicial Council. That model of protection of the tenure of judges from undue interference by the executive was irrelevant within a political scheme in which the President holds absolute power. The present move shows that even the slightest manifestation of independence on the part of judges will not be tolerated by the present regime.

The demand for total subordination was also due to the mass dissatisfaction expressed throughout the country against the military regime, for many reasons. The regime feared that the unrest within the country might lead to various forms of references for judicial redress and thereby open up new avenues for criticism against the existing regime. There was also speculation that the President wanted an extension of the terms of his office and this could lead to challenges in court. In such an event the President would definitely require the assurances of absolute loyalty of the Supreme Court.

β. Country-wide protests to reinstate the Chief Justice

The virtual removal of Chief Justice Iftikhar Chaudhry by President Musharraf and the subsequent curtailing of his freedom of movement by placing him under house arrest resulted in unprecedented protests from lawyers around the country. When he visited the Supreme Court along with his wife and children in response to a call by the Supreme Judicial Council regarding alleged misconduct and misuse of authority which he was accused by the military regime, a large gathering of lawyers greeted him, showering him with flower petals and shouting slogans against the regime. In fact, ever since the Chief Justice was removed, there had been tight security throughout Islamabad with some observing that security arrangements in place seemed as if they were to prevent a major terrorist attack. However it was only in response to the in camera proceedings of the Supreme Judicial Council, which was to hear the charges filed by President Musharraf against Chief Justice Chaudhry.



Thousands of lawyers parade the streets in support of the Chief Justice (Photo: Dawn)

It seemed that the legal profession was unwilling to bow down to the military rulers. In fact they were intensifying their protests around Pakistan. They also vowed to continue their protests until the government withdrew its decision. In some places Bar association members formed human chains around court buildings to express their resolve to uphold the independence of the judiciary. Some provincial Bars called for a deferment of the reference against the Chief Justice and insisted that the action contravened the Constitution of Pakistan.

The massive response from various Bar associations and lawyers all over Pakistan was a clear indication of the legal profession's perception that the judiciary and the legal profession were being seriously threatened by the military regime of President Musharraf. For a long time, there has been a sense of frustration among members of the legal profession who saw this personal attack on the Chief Justice as a blatant attempt by the military regime to complete its grip on power by silencing every form of legal avenue available to the citizens. The demonstrations against the regime were indeed unrepresented in recent history. This was because; so far the military regime has been able to use its power to crush all opposition on the pretext of 'anti terrorism'. However this time around, the protest was by the legal profession itself. Lawyers in Pakistan have a long history of fighting fiercely to maintain their status and the integrity of the system under which they function. What the lawyers saw in the attack on the Chief Justice was a heightened attempt by the military regime to suppress not only the independence of the judiciary but also the independence of the lawyers.

In the neighbouring country of Sri Lanka over two decades of attacks on the independence of the judiciary has virtually destroyed the independence of the legal profession. Reportedly many Sri Lankan lawyers have withdrawn from active use of avenues of legal redress due to the deterioration that has entered the system. Obviously the lawyers in Pakistan have been determined to avoid a similar suppression of their profession.

All these moves by the government indicated that there was a crisis within the government itself on the move taken by General Musharraf against the Chief Justice. It further indicated that unintentionally the government may have provided a reason for the angry public to come forward and to resist the regime's extremely repressive policies.

On March 19 the AHRC reported that the legal community of Pakistan had rejected a government offer for talks, while demanding the withdrawal of the reference against the Chief Justice and the formation of a national government to hold general elections within three months. The convention of lawyers, meeting in Peshawar, the capital city of the North Western Frontier Province (NWFP), also asked President Musharraf to step down and demanded that he be tried for treason under article 6 of the Constitution. The legal conference appealed to all political parties to end their assemblies and join the lawyers struggle to remove the government. They also demanded the immediate release of all missing people who have been abducted by military and intelligence agencies, while lodging formal criminal cases against those responsible for the abductions.

Meanwhile, when the government of Pakistan began to realise that it was losing total control over its citizenry, it started pressurizing the Supreme Judicial Council to delay the proceedings against the Chief Justice in the hope that the legal community would exhaust themselves and their struggle for the restoration of the rule of law would subside. The government also did not allow the Chief Justice to address the lawyers' convention which was being held in different areas throughout the country. While speaking from the Supreme Court on March 22, 2007, a government spokesman threatened Chief Justice Chaudhry not to 'politicize' the reference against him by addressing different Bar associations in the country. The spokesman, Arif Chaudhry said, "It would be in his own interest that such a sensitive issue was not politicized".

Then came the crackdown on the supporters of the Chief Justice: A Supreme Court lawyer, Ali Ahmed Kurd was detained by the Quetta police at the district court. The detention came when after several attempts by unknown persons to abduct him failed. This effort by the government was however aborted by the lawyers who quickly arranged protests all over the country. Mr. Kurd was the lawyer acting on behalf of the Chief Justice in the Supreme Judicial Council. He was also the Vice President of the Pakistan Bar Council (PBC) which was the driving force behind the support for the Chief Justice. The detention came after several failed attempts to abduct him. He was booked on an eight-month-old case which had

never been pursued by the government.

In another violent incident, lawyer, Ghulam Mustafa Kundwal, a Bar association member, was severely beaten by uniformed men and left for dead in a ditch near the Cantonment area in Rawalpindi. It was believed that these two separate incidents were meant as a clear warning to the all Pakistani lawyers to refrain from getting involved in the movement calling for the supremacy of the judiciary over the military government.

The house of Munir Malik, the President of the Supreme Court Bar Association (SCBA) and the lawyer of the suspended Chief Justice, was attacked in the early hours of the morning of May 10, by unknown persons who arrived in a car. The assailants fired so many rounds that 20 bullets struck within the house. His daughter survived as she was studying in her room. Several glass windows were broken and marks of the bullet strikes were found on the outside of his house. This happened just 20 hours after the office of Mr. Malik was sealed by the Building Control Authority of the Sindh government. It was later ordered to be opened by the Sindh High Court.

The house of another senior lawyer, Akhter Hussien, former President of the Sindh High Court Bar Association also came under attack by unknown persons who fired at his house. The attack came at about the same time as the one on the house of Mr. Malik.

However, the lawyers adamantly refused to be cowed down and took to the streets in large numbers to protest this intimidation by the government. They also vowed to continue their protests until the mala fide reference by General Musharraf to declare the Chief Justice non-functional was withdrawn. The lawyers announced in public that they would not bow down to the 'intimidating tactics of the government' and were ready to sacrifice their lives for the independence of the judiciary. This action indicated the high level of discontent in the country, specially the legal community.

The movement to defend the suspended Chief Justice and the independence of the judiciary in Pakistan rapidly gathered momentum in all parts of the country. Soon mammoth crowds congregated to greet him in the streets and everywhere he went. Correspondingly, the military regime also intensified its violent tactics to suppress this movement.

An organised attempt was unleashed against the lawyers and the people who openly showed their dissatisfaction with the military regime and the suppression of their rights. Lawyers were attacked, media stations were silenced and severe restrictions imposed on the discussion of the military's reference against the Chief Justice before the Supreme Court. In this way the military attempted to wrestle with the most potent challenge it has faced to its authority since it came to power through a coup in 1999.

May 12 was the bloodiest day of the movement to reinstate the suspended Chief Justice when about 51 persons were directly fired upon and killed in Karachi. The violence against the protest march on this day raised further alarm about the already deteriorated legal and administrative systems hitting rock bottom. The aim of such an action was for General Musharraf to claim five more years in power without any hindrance from the judiciary.

In June 2007, hundreds of political activists and ordinary citizens were arrested in an attempt to prevent people from participating in a welcoming rally to in honour of the Chief Justice scheduled to visit Faisalabad, an industrial city in the Punjab province. The Chief Justice was to address the Faisalabad Bar Association on the eve of the golden jubilee ceremonies of the Supreme Court. The Bar associations of Pakistan announced that lawyers will bring the Chief Justice in a massive procession to Faisalabad city. Expecting the participation of hundreds of

thousands of people to welcome the Chief Justice, the government arrested more than one thousand activists from different part of the Punjab province.

In an attempt to infiltrate the people's movement by using factions loyal to him the General had been allegedly using military officers and criminals to open fire at protesting people. Proving his talent to subvert fundamental rights equally by clever and crude means, the General soon appeared in public in civilian dress. The General in his speech conspicuously refrained from making any reference to the state and the administration, he allegedly commands and its role in the current crisis. Instead the dictator tried to trivialise the peoples' protest as a fight between government supporters and a disgraced judge. There was not a word about what action would be taken against those who fired at the protesting crowd.

According to the information received through political parties and media reports about 400 people were arrested in Lahore, the capital of the Punjab province, 300 people on June 11, from Toba Tek Singh, Jhang and Faisalabad, 100 from Mutan city, 55 from Bahawalpur, more than 100 from Rawalpindi city and more than 100 activists from Sahiwal, Okara and Jaranwala during the space of a week. Among the arrested persons were some leaders of different political parties including the Peoples Party, Muslim League (N), MMA and the Labour party. The Punjab High Court on June 12 declared as illegal the detention of six political activists from Multan city but the provincial government has still not released them.

A bomb blast in Islamabad, the capital of Pakistan, close to the venue where Chief Justice Chaudhry was scheduled to address lawyers, killed about 20 persons and injured more than 50, six of them seriously. Immediately following the blast the government announced that it was a suicide bomb attack. However, statements, taken at the scene from eye witnesses and shortly afterwards from witnesses in their hospital beds appear to indicate that it was not a suicide bomb as the explosion erupted from beneath the debris of an building under construction, located next to a reception stall set up by a political party.

The blast happened near the district courts, adjacent to the headquarters of the Islamabad police. Dozens of political workers chanting anti-Musharraf slogans were present at the time, while hundreds of lawyers waited inside the convention venue for the Chief Justice, who was a few hundred yards away. Office bearers of the different legal bodies, including the President of the Supreme Court Bar Association, vice chairman of the Pakistan Bar Council and lawyers of the Chief Justice accused the government of sabotaging the lawyers' movement. As a result the lawyers and their associations decided to boycott the courts throughout the country for the next two days.

The government of General Musharraf attacked the Sindh High Court building on September 10, beating several lawyers and using abusive language against the judges on the bench who were conducting an inquiry into the carnage of May 12, 2007 in Karachi, where more than 50 persons were killed. The same day the attackers also shot dead a senior lawyer, Raja Riaz, outside the high court building as he was proceeding towards the court. These attacks were lead by the Mutehda Qaumi Movement (MQM) which has been the leading party of the ruling coalition.

During the last hearing which took place on September 6, at the Sindh High Court full bench, Riaz was threatened by workers of MQM to the effect that he would be killed if he raised the slogan 'go Musharraf go' in court. The Vice President of Supreme Court Bar Association, Khawja Naveed, who has sided with the government after the restoration of the Chief Justice, also had angry words with Mr. Riaz in the High Court Bar room in the presence of other lawyers. Riaz had been threatened to 'behave' or face dire consequences. Under these circumstances there was reason to believe that Riaz' assassination had been planned.

Naeem Querashi Secretary of the Karachi Bar Association was arrested on October 6, near the High Court premises. He was transferred to several police stations during the day and around midnight was taken to the Mari Pur police station in Karachi where allegedly a police sub inspector named Aurang Zeb manhandled him and verbally abused him. The sub inspector had also induced other policemen to assault Mr. Querashi and tear off his clothes. Then, in a perverted turn of events the police took photographs—from different angles—of his naked body. After he was released, Mr. Querashi complained that he and members of his family were constantly harassed by threatening telephone calls in which the callers claimed to be activists of the MQM.

Ali Ahmed Kurd, former Vice President of the Pakistan Bar Council (PBC), the supreme body of lawyers, has been missing after he was taken away by intelligence agents of the Inter Services Intelligence (ISI) on November 5 from the notorious Adiala Jail where he had been detained following his arrest on November 3. Mr. Kurd had been beaten severely while detained in a police lock up following his arrest.

At the time that the Chief Justice was suspended by General Musharraf on March 9, 2007, Mr. Kurd was the Vice President of the PBC. He was one of the leading personalities in the legal community who through their struggle had succeeded in the reinstatement of the Chief Justice. He was known for his fiery speeches against the Army and the General. He was arrested for charges of high treason.

Munir A. Malik, former President of the Supreme Court Bar Association, was arrested on November 3. He was kept first in Adiala Jail, Rawalpindi and then two days later moved to Attock Jail in the NWFP. Mr. Malik had fainted while inside the jail after being severely beaten. He had been taken to a government hospital in Attock City after traces of blood were found in his urine due to the beatings. Despite his condition, he was prevented from seeing his family members and was booked under sedition charges. He was also one of the key leaders of the movement to restore the Chief Justice.

Jawed Iqbal Burqi, a prominent lawyer in Karachi, was arrested from his residence in Nazimabad on November 4. He was detained in the Nazimabad police station for two days and later transferred to the Central Jail in Karachi on November 6. Mr. Burqi has since been undergoing regular medication for injuries he sustained during the stampede which took place after the suicide bomb attack on Benazir Bhutto's caravan in Karachi on October 18. However, he was not allowed to carry medicines with him and was denied medical care. Despite the seriousness of his condition, the jail authorities gave him no assistance; instead, they cruelly suggested that he should seek medicine from the Chief Justice of Pakistan.

Imdad Awan, President of the Sukkur High Court Bar Association, was arrested on November 4 after participating in a protest meeting with lawyers. Later, he had been tortured and was not allowed to obtain medication for his diabetes and high blood pressure. He had also been deprived of sleep. Hasil Nizenjo, chief of the Balochistan National Party and Yousaf Masti Khan, chief of the National Workers Party, were arrested on November 6 from the Karachi Press Club. They were booked under charge of high treason. At the time of their arrest they were holding a meeting with journalists at the press club. Abrar Hassan, President of the Sindh High Court Bar Association, and retired justice Rasheed Razvi have also been denied medication for high blood pressure and diabetes. Reportedly, they were not even allowed to meet with other persons in the jail.

Two female lawyers, Noor Naz Agha and Jameela Manzoor, were arrested on November 3 and 5 respectively. Ms. Agha, a leading lawyer in Karachi, had been tortured by the police and later transferred to the Karachi prison. She had been kept under incommunicado detention and deprived of sleep by the police who switched on a powerful light in her detention cell all

night. Meanwhile, Ms. Manzoor was arrested after a protest meeting in Lahore and charged with high treason. She has been the first female lawyer in the country to be arrested on charges of high treason.

χ. Allowing anarchy and chaos by fundamentalists to divert attention from judicial crisis

In the aftermath of the mass protests throughout the country against the action taken by President against Chief Justice Chaudhry, a radical mosque and its affiliated seminaries have greatly increased their influence in Islamabad, the capital of Pakistan. The male and female students and leaders of Lal mosque and its affiliated seminaries, Hafsa and Fridia, were seen roaming the streets of the capital with sticks, threatening people to observe Shariah laws in their day to day business.

On April 6 after Friday prayers, a group of students and clerics burned audio and video cassettes at a market place and threatened the shopkeepers to close down their businesses or face having their shops burnt down. Before, on March 27 female students of Hafsa seminary abducted three women and a five month-old-baby. Accusing them of running a brothel the women were kept in captivity for three days and severely beaten. The administration of the mosque and seminaries also held two police officers demanding the release of two teachers who had been arrested. The military government had to concede, accept the demands of the seminary officials and release the teachers in exchange for the release of the policemen.

The leader of the Red mosque announced that if the government does not implement Islamic law within thirty days then the mosque will implement Shariah law (Islamic Laws) on its own. Mosque officials also announced that they have constituted an Islamic court and will announce punishments. They threatened that they will instigate suicide squads to enforce Shariah law in the capital. The fact that these Islamic leaders have issued a fatwa against a female minister calling for her death for having hugged a paragliding instructor in public, has been conspicuously ignored by the government and the law enforcement agencies.

On the other hand, sectarian violence has erupted in the northern areas of Pakistan, particularly in Parachinar city of Kurram Agency, close to Afghanistan—represented by both the Sunni and Shi'ites sects. During nine days of bloody fighting and a further six days under continuous curfew more than 50 persons have been killed and the violence has spread to other parts of Kurram Agency.

The situation has led to a sense of insecurity amongst citizens throughout the country. It was deeply shocking that extremist elements have been allowed to enforce their own laws and neither the government nor the law enforcement agencies were taking any steps to prevent them from taking over control of Islamabad. Apparently the government has a friendly relationship with the officials of the Red mosque and its affiliated seminaries and has been allowing them a free hand to challenge the very basis of a civil society.

O federal minister was even seen entering into a written agreement with the female students of Hafsa seminary who took over the children's library of Islamabad in January 2007 in protest against the demolition of illegally constructed mosques. The mosques were built on land illegally grabbed by the leaders of the seminary. According to the agreement reached between the students and Mr. Aijaz-ul-Haq, Minister of Religious Affairs the government will stop demolishing illegally constructed mosques. General Musharraf has been taking military action against the people of Balochistan province since 2001 due to their resistance to the construction of cantonments. However, in complete contrast to this hard line stand he now

announced that his government was willing to negotiate with fundamentalist militants who were demanding Islamic laws in the capital city rather than taking any action against them.

As the judicial crisis spiralled out of control it has become necessary for the government to divert public attention away from the problem. It has allowed extremist religious elements to do as they wish so that sufficient levels of anarchy and chaos can be maintained to justify military rule. It was under these circumstances that the military government has welcomed the intervention of the extremist religious groups to incite greater tension in the capital.

Shariah law taking the place of civil law and Shariah courts taking the place of the country's common law courts has been an even greater attack on the judiciary than the initial attack on Chief Justice Chaudhry. This displacement of the law and its courts by Shariah law and its courts will have far deeper implications for the future of the country than the military regime may have intended. The move has risked the civil liberties of the people of Pakistan. The most affected section would be the women of Pakistan against whom Shariah law has been misapplied to the detriment of their rights. The present crisis was therefore of tremendous importance from the point of view of democracy, human rights and the rule of law in the country.

δ. Historic verdict

Almost four and a half months after the suspension of the Chief Justice and the relentless country-wide protests spearheaded by members of the legal profession, on July 20, 2007 the Supreme Court of Pakistan in a momentous decision declared the suspension of the Chief Justice of Pakistan, Iftkhar Chaudhry, by President, General Musharraf, to be illegal and ordered that he be reinstated.

While saluting the Supreme Court of Pakistan for this bold, upright and historic assertion of the independence of the judiciary, which sets an example for the whole of Asia, the AHRC said that during the last few months the world has seen the courage of lawyers and judges in Pakistan, who have risked everything to defend the integrity of their institutions and professional credibility, in the interests of the entire public. Their stamina and determination will remain indelibly marked upon peoples' memory. They have truly earned the victory that has come today. The AHRC also said:

“It sincerely believed that the enormous trust vested in the Chief Justice by people throughout Pakistan, actively demonstrated in thousands risking and some losing their lives, will be reciprocated by the upholding of the highest traditions of the courts and legal values. There is no alternative. They have made clear that they want their judiciary to be separate from the executive. They will not tolerate the military bulldozing over every other institution in their country. They insist upon institutions for the rule of law and government through real, not fraudulent, legislative power.

“Dictatorship has today been rejected as a viable form of government in Pakistan. But while the Supreme Court judgment must be celebrated, the task now falls on all serious-minded persons to think and act together and build upon this achievement. There remains much to be restored which has been lost under this military regime. The wisdom expressed in the streets and courts of Pakistan in the last few months, culminating in this judgment, must now give rise to a vision for a new Pakistan where democracy and the rule of law will wholly replace tyranny and injustice. Let us all work towards this goal.”

The following is the judgment of the Supreme Court of Pakistan regarding the challenge made by the Chief Justice regarding his suspension from his post and the reference against him by General Musharraf:

Dates of hearing: 15th to 17th, 21st to 25th, 28th to 31st May, 2007, 1st, 4th to 8th, 11th to 14th, 18th to 21st, 25th to 28th June, 2007, 2nd to 5th, 9th to 12th and 16th to 20th July, 2007.

ORDER

For detailed reasons to be recorded later, the following issues arising out of this petition are decided as under:-

(I) Maintainability Of Cop No.21 Of 2007 Filed Under Article 184(3) Of The Constitution

This petition is unanimously declared to be maintainable.

(II) Validity Of The Direction (The Reference) Issued By The President Under Article 209(5) Of The Constitution.

By a majority of 10 to 3 (Faqr Muhammad Khokhar, J., M. Javed Buttar, J. and Saiyed Saeed Ashhad, J. dissenting), the said direction (the Reference) in question dated March 9, 2007, for separate reasons to be recorded by the Hon. Judges so desiring, is set aside.

(III) Vires Of Judges (Compulsory Leave) Order Being President's Order No. 27 Of 1970 And The Consequent Validity Of The Order Dated 15.3.2007 Passed By The President Directing That The CJP Shall Be On Leave

The said President's Order No.27 of 1970 is, unanimously declared as ultra vires of the Constitution and consequently the said order of the President dated 15.3.2007 is also, unanimously declared to have been passed without lawful authority.

(IV) Validity Of The Order Of The President Dated 9.3.2007 And Of The Order Of The Same Date Of The Supreme Judicial Council Restraining The CJP From Acting As A Judge Of The Supreme Court And/Or Chief Justice Of Pakistan

Both these orders are, unanimously, set aside as being illegal. However, since according to the minority view on the question of the validity of the direction (the Reference) in question, the said Reference had been competently filed by the President, therefore, this Court could pass a restraining order under Article 184(3) read with Article 187 of the Constitution.

(V) Validity Of The Appointment Of The Hon'ble Acting Chief Justices Of Pakistan In View Of The Annulment Of The Two Restraining Orders And The Compulsory Leave Order In Respect Of The CJP

The appointments in question of the Hon'ble Acting Chief Justices of Pakistan vide notification dated 9.3.2007 and the notification dated 22.3.2007 are, unanimously, declared to have been made without lawful authority. However, this invalidity shall not affect the ordinary working of the Supreme Court or the discharge of any other Constitutional and/or legal obligations by the Hon'ble Acting Chief Justices of Pakistan during the period in question and this declaration is so made by applying the de-facto doctrine.

(VI) Accountability Of The Hon'ble Chief Justice Of Pakistan

It has never been anybody's case before us that the Chief Justice of Pakistan was not accountable. The same issue, therefore, does not require any adjudication.

All other legal and Constitutional issues raised before us shall be answered in due course through the detailed judgment/judgments to follow.

ORDER OF THE COURT

By majority of 10 to 3 (Faqr Muhammad Khokhar, J., M. Javed Buttar, J. and Saiyed Saeed Ashhad, J. dissenting), this Constitution Original Petition No.21 of 2007 filed by Mr. Justice Iftexhar Muhammad Chaudhry, the Chief Justice of Pakistan, is allowed as a result whereof the above-mentioned direction (the Reference) of the President dated March 9, 2007 is set aside. As a further consequence thereof, the petitioner CJP shall be deemed to be holding the said office and shall always be deemed to have been so holding the same.

The other connected petitions shall be listed before the appropriate Benches, in due course, for their disposal in accordance with law.

Conclusion:

This was indeed a historic struggle by the judiciary and the legal community in Pakistan who having refused to bow down to the extra-constitutional actions of the military regime, have fought to uphold the Constitution, rule of law and supremacy of the judiciary. The struggle of civil society for sanity and against the military cum so called elected civilian dictatorship has become a land mark for other countries in Asia who have also been facing the menace of military hegemony in their civilian affairs. The manner in which the people of Pakistan have supported the movement for the reinstatement of suspended Chief Justice, Iftakhar Chaudhry, from March 9, to July 20, 2007, has demonstrated the people's desire for the rule of law, supremacy of judiciary and civil liberties as well as the freedom of expression and the respect and dignity of human beings. This movement initiated by the lawyers has indeed been a first for the whole of Asia.

Almost every move General Musharraf has made has been for his own political survival that has plunged Pakistan into a greater lawlessness than ever before. Strangely, General Musharraf seems to be convinced that the independence of the judiciary was an obstacle to stability. One of the major reasons for imposing the emergency—which was just another name for martial law—on November 3 has been to render the country's Supreme Court inoperative. Quite openly, he has disposed of the legitimate justices of the Supreme Court and appointed alternative judges who he quite unashamedly expects to confirm his election as President, thereby bringing the courts under his complete control. The complete control of the judiciary apparently seems an imperative in the new political scheme he has introduced to Pakistan.

One day history will judge whether, at the point of Pakistan's final plunge into lawlessness, it was still possible for something to be done to prevent it; whether the international community did everything it could to prevent it or just contributed to the collapse with its silence. The simple test as to whether the complete collapse will occur was dependent upon whether the ousted Supreme Court of the country will be reinstated or not. Under these extraordinary circumstances, the forthcoming elections will hold no legitimacy and offer little hope for resolving Pakistan's grave crisis of governance.

Recommendations:

- The UN Human Rights Council must take this issue regarding the judiciary as well as the government's action against the legal profession seriously. It must forthwith intervene in the matter and pressurize the government of Pakistan to uphold the independence of the judiciary and follow international norms for maintaining the rule of law.
- Emergency rule should be abolished forthwith the situation before November 3 restored. The Constitution of Pakistan should be restored immediately.
- All Judges of the superior courts must be released from house arrest including the Chief Justice of Pakistan. All Judges who have not taken the oath under the provisional constitutional order should be restored to their original positions.
- All lawyers must be released immediately, and those who have been tortured compensated.
- Release all detained journalists, human rights activists and political workers.
- All ordinances, rules and decisions issued during emergency rule by the judges handpicked by General Musharraf should be withdrawn and efforts by the Musharraf

government to make them part of Supreme Court decisions must be prevented.

- In future, no government should be allowed to interfere in the matters of courts and the politicization of the higher courts should be resisted at all costs.
- All successive governments should ensure that lawyers (a) were enabled to perform their professional functions without intimidation, harassment or improper interference; (b) were able to travel and consult with their clients freely both within their own country and abroad; and (c) not suffer or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics. And where the security of lawyers was threatened for discharging their functions, they should be adequately safeguarded by the authorities.
- Lawyers like other citizens were entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion on matters concerning the law, the administration of justice and the promotion and protection of human rights. They should also have the freedom to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognised standards and ethics of the legal profession.”
- We also note the United Nations Standard Minimum Rules for the Treatment of Prisoners, Article 22 (2) which provides that: Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals. Where hospital facilities were provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment for sick prisoners, and there shall be a staff of suitably trained officers. The duty to ensure effective medical treatment was also part of Pakistan’s binding obligation to protect Mr. Malik’s right to life guaranteed by the Universal Declaration of Human Rights (Article 3) which stipulates that everyone has the ‘right to life, liberty and security of person’.

3. Attack on the freedom of media and expression

The year 2007 has also been one of the worst for journalists: Almost all media houses have been attacked by the authorities, hundreds of journalists arrested and several media personnel beaten or tortured while engaging in their professional duties. Also, during the year, seven journalists have been killed. Apparently, together with the judiciary, the media have been targeted by General Musharraf to be dealt with by an iron fist.

Since March 2007 when the Chief Justice was suspended followed by country-wide protests, the government opened new fronts of attack. In April 2007, it attacked a television station that had been airing open discussions on the latest developments in the political situation and also the judicial crisis. For several weeks since the suspension of the Chief Justice and the crisis in the judiciary, the *AAJ* television station had been airing discussion programmes and talk shows on various related issues. Political leaders, lawyers and experts in different disciplines including representatives of the government had taking part in its programmes which have received wide audience participation. All participants were allowed to freely express their opinions during the broadcasts.

Consequently, the TV station was issued a ‘show cause notice’ by the Pakistan Electronic Media Regulatory Authority (PEMRA- Sindh Region), a central government agency, informing its management that it had violated four clauses of the PEMRA code of conduct which denied any party the right to criticize the government. The management of *AAJ*

Television was given three days to show cause as to why they should not be prosecuted. The action of PEMRA was male fide in that out of the four charges only one pertained to the technical aspect of the broadcast and the remaining three were political in nature and a direct interference in the freedom of expression of any media agency. It was quite evident that the government was unhappy and irritated with the openness with which *AAJ* has allowed various opinions to be aired.

Having discussions or debates on the rule of law and constitutional matters was a right guaranteed by the Constitution of Pakistan and no party, be they pro or anti state has the right to refuse any other party permission to express their views. This was an unalienable right guaranteed not only by the Constitution but by international norms and standards. Clearly, the action of the government of General Musharraf through PEMRA was a ploy to avoid responsibility for the crisis that itself had created by making the Chief Justice of the country, non-functional. Furthermore, this was a blatant attempt by the government to curtail media freedom and the freedom of expression.

Dealing a further blow to the freedom of expression, journalists continued to be beaten by the police on a regular basis. One television station was ransacked by the police even in the presence of the Minister for Information who could not stop the attack. The police treated the minister as if he was a person of little value. About 35 journalists were also arrested during and after the protests that involved lawyers, activists, civil society groups, as well as political parties. Even the President of Pakistan has had to apologise to the Geo Television network which was attacked by the police in the capital Islamabad.

On April 8 Abdul Razzaq Gul, a journalist and a bureau reporter of the *Daily Tawar* in Turbat city, Balochistan province was arrested by the police after his office was raided by policemen who came in two jeeps accompanied by several people in plain clothes and in two private cars.

On May 29, three senior journalists received death threats in the city of Karachi, Sindh province. Envelopes containing live bullets were found attached to the driver's side of the windscreen on two of their cars. In a third, a bullet was found on the driver's seat. The journalists who received the first bullets were Mazhar Abbas, Secretary General of the Pakistan Federal Union of Journalists and correspondent of French news agency AFP; Zarrar Khan, attached to the American news agency AP and photographer Asif also of AFP.

The names of the three correspondents were included in a list of 18 threatened journalists and this list was issued by an organisation called Muhajir Rabita Council (MRC), allegedly a sister organisation of Mutehda Qaumi Movement (MQM), a coalition partner of the government. The list declared 18 journalists as chauvinists and threatened them to change their reported views which were unfavourable to General Musharraf and MQM chief Altaf Hussain. The list appeared after the mayhem of May 12, in Karachi in which more than 50 persons were killed during the visit of suspended Chief Justice Chaudhry.

President Musharraf was then seen affording unprecedented powers to PEMRA allowing it to seize the broadcast or distribution service equipment of television and radio channels and suspending their licences. The ordinance which came into effect on June 4 also displaced the Council of Complaints, the body under which complaints against broadcasters were previously referred to. PEMRA could now make up new rules against any stations that might be opposed to the government without informing parliament. There was also a sharp increase in the penalties for transgressing the rules from Rs. one million to 10 million. Internet Protocol TV, radio, mobile TV, and owners of private TV channels were brought under PEMRA regulations. This effectively placed the electronic media under the direct control of the government (through PEMRA).

Subsequently, Prime Minister Shoukat Aziz suspended the implementation of the amended PEMRA ordinance which was issued by President Musharraf. Placing the new ordinance on hold, the PM constituted a six-member committee to review amendments to the new ordinance. The committee consists of three persons from the media and three from the government. This was indeed a victory for the journalists and lawyers, including organisations from civil society who should be congratulated for their successful protests and demonstrations throughout the country against the restrictions imposed on media freedom through the recently made amendments. But the battle was far from won. As the AHRC said in a statement issued on this occasion any discussion on the implementation and amendment of the ordinance would be more fruitful if it were to be withdrawn altogether.

June 17, was a black day for journalists in Pakistan as one was shot dead and another was arrested by law enforcement agents and has been missing since then. Reportedly, Abdul Lateef Gola, correspondent of *Daily Jang* in Jafferabad city, Balochistan province was arrested on June 17 by police officers around 1.00 am from his house. The policemen told his family that Major Ali of army core headquarters in Quetta—the capital—wanted him for some questioning about his reports on military activities in the province. To date his whereabouts have been unknown and the police have denied his arrest.

In another case, Noor Ahmed Solangi, correspondent of the daily, *Khabroon*, in Kingree, in Sindh province was shot dead by six men riding motorcycles. He was struck by nine bullets from an AK-47 and died instantly. It was reported in the local press that he had received threats from the tribal leaders of the Junejo tribe two days before his killing. The leaders of the Junejo tribe were members of the Muslim League Q, a political party of the government of General Musharraf.

The house of a prominent journalist, Nadir Shah Adil was attacked by a group of about 30 policemen who came in an armoured car and two police jeeps on August 21, 2007. Mr. Adil had not been at home at the time. Reportedly, the policemen from Kalri and Baghdadi police stations in Lyari town of Karachi in Sindh province entered the house at 4.30 pm after breaking open the front door. They verbally abused the women in the house in abusive language and beat his sons. They remained in the house for more than one hour searching it thoroughly but failed to produce any legal documents or a search warrant.

The police claimed they had received information that some ‘terrorists’ were hiding in the house. However it can hardly be coincidental that Mr. Adil’s editorial appeared in the *Daily Express* newspaper on the day of attack. Among others things the editorial complained about armed gang warfare in Lyari town between drug barons, in which many young persons had been killed. The editorial mentioned that the police were not providing protection to the inhabitants but rather protecting the war lords. It also mentioned the fact that in so-called police encounters in the area, not one policeman had ever sustained injuries.

Even before the judicial fiasco on March 6, a journalist Lal Malhi who produced a documentary on disappearances was threatened and nearly abducted from his office in Umerkot, Sindh by the Inter Services Intelligence (ISI) of the Pakistan Army. Luckily for him the attempt to abduct him was foiled by local journalists who intervened and also helped him escape. When members of the local community heard what had happened, they began a 4 hour protest throughout the city. There were general strikes in different areas throughout Sindh province including Umerkot city. The protesters agreed to end their strike when local police promised they would charge the intelligence officers concerned; but no such case was filed by the police. In other cases, the Pakistan government allegedly dropped government advertisements from the largest English newspaper *Daily Dawn* since December 2006 due to the newspaper’s open policy on editorials. In its letter to the Council of Pakistan Newspaper Editors on January 16 the newspaper management said, "The government has a long list of

grievances against the *Daily Dawn* pertaining to its reporting and as a result the government departments and public firms were told to drop their advertisements on the *Daily Dawn*". An alleged reason behind this government action was the continuous reporting in Dawn's columns about the incidents and issues in Balochistan province, where the military operations have been ongoing since 2001.

Editors and publishers of media organizations have also been continuously threatened by anonymous callers using unregistered telephone numbers. One of whom, Shakeel-UR-Rehman, chairman of the Jang Group, has been informed by the intelligence agencies that the operation of his organization would now be subjected to restrictions. The Jang Group was one of the largest media organizations. After defying their warnings, numerous threats on his life have been made by unknown callers. He was told by the callers that the entire office of Jang publications, including Geo Television, would be blown up and that they should be ready for suicide bomb attacks.

Responding to pressures from the international community, media organizations and threats of a worldwide protest by the International Union of Journalist and Pakistan Federal Union of Journalist, the government started calling owners and management of media houses. However, the conditions that they laid out in order for the media houses to resume their work has been totally unacceptable that is, that all their news content for broadcast had to be subject to screening.

Ever since the imposition of emergency on November 3, journalists have been holding protests throughout the country supported by people from all walks of life in their quest for freedom of expression and media. In the aftermath of the clampdown on several television channels, the electronic media have now began to conduct their talk shows on the streets in protest against the imposed bans.

After the announcement of the state of emergency on November 3, 2007, the judiciary, lawyers and the media were prime targets of the military government. All private television stations were stopped from broadcasting transmissions through cable operators which ban was still in force. When people utilized other resources such as dish antennas to watch their favourite channels, the government rushed in to stop channels through the PEMRA ordinance demanding that every print and electronic media house give an assurance that it will not publish or broadcast anything against the government. When this method was proved unsuccessful the government used its influence on the government of Dubai to stop broadcasting two popular channels in Pakistan.

Mast FM103 was a radio station with a nationwide network broadcasting news and entertainment programmes round the clock to the masses. Earlier, *Mast FM103* was found to be the most popular radio network in Pakistan as per AC Nielson's market survey. On November 3, 2007 MAST FM103's Karachi station was invaded by PEMRA (Pakistan Electronic Media Regulatory Authority) officials in the company of a heavy police contingency. It was forced to shutdown transmission and all broadcast equipment was confiscated. The grounds for the shutdown as stated by the officials of PEMRA were that *Mast FM103* was broadcasting hourly news bulletins and current affairs programmes, from BBC. It was interesting that Despite there being eight other radio stations that have been allowed to continue broadcasting, only *Mast FM103* was shutdown by the authorities. In the past, PEMRA had sealed *Mast FM103's* Lahore and Karachi stations to silence its independent broadcasts.

As a result of pressure from the government of Pakistan officials in Dubai have ordered that the broadcasts of two popular television channels, *Geo News* and *ARY*, be cut as of midnight on November 16. Both channels were based in the UAE but concentrate on news about

Pakistan. According to press releases by the management of these two channels, the government of Pakistan had used its influence on the authorities of Dubai to stop the transmissions. According to *Geo News*, a leading Urdu-language broadcaster it was shut down because it had refused to bow down to the dictates of President Musharraf. *ARY* made a similar claim. Earlier *Geo* had been asked to submit all its programmes for monitoring by government officials so that no programme would be aired without clearance. When it failed to comply, the authorities applied pressure on the government of Dubai.

After the imposition of emergency rule on November 3 the Musharraf government stopped telecasts of private radio and television agencies through cable operators and simultaneously issued two ordinances against the electronic and print media. Through PEMRA ordinances, it has been pressurizing the media to agree to new conditions before they can reopen under provisional licenses, and some private channels have complied.

Conclusion:

President Musharraf, not unlike previous military leaders, has claimed that during his eight years of government he has provided greater freedom to the media, while for all intents and purposes, squeezing the arm of media. The year 2007 had witnessed attacks on more than five media houses by the law enforcement agencies; their equipment has been seized or destroyed; hundreds of journalists arrested or threatened including live bullets being posted to them. Several have been subjected to torture during detention. Freedom of the media had become but a myth.

The journalists and their organisation, Pakistan Federal Union of Journalists (PFUJ), have been striving for many years to secure freedom of speech and freedom of the press. They have been fighting for many years against the black laws curtailing media freedom. During the tenure of the Musharraf government PEMRA was created to monitor the workings of television channels and to use force against noncompliant media houses. Accordingly, seven media houses have been banned and their offices were attacked by the PEMRA authorities: *Geo*, *ARY*, *Sindh*, *AAJ*, *Apna* television channels and *FM 103*, *FM 96*.

After the imposition of emergency rule on November 3, the military government issued two ordinances one concerning the print media through which any publication can be stopped. The next day a largely circulated evening paper, *Awam* was physically stopped whilst being printed by the authorities of the Ministry of Information under the new ordinance. The second ordinance was an amendment to PEMRA under which almost all private channels were stopped by the government except those who had given the required assurances

Recommendations:

- All black laws curtailing media freedom should be abolished including the latest ordinances against print and electronic media issued after the state of emergency.
- All journalists who have been illegally arrested and detained be released immediately and the fabricated cases against them be withdrawn.
- Those journalists who have been killed or subjected to torture by the authorities be provided with appropriate compensation.
- The ministry of information at federal and provincial levels must be abolished as these ministries are seen as the instrument against the freedom of media.
- The Pakistan Electronic Media Regularity Authority (PEMRA)—consisting of mostly retired military and police personnel— should forthwith be disbanded.

4. Torture most horrible

Pakistan, though enjoying its second year as a member of the UN Human Rights Council, has not signed or ratified the Convention Against Torture (CAT). However as a front runner in the war against terror since 9/11 it continues to enjoyed impunity from the international community and organizations. Not one member of the Human Rights Council has objected to its membership despite its dismal human rights record and the fact that that torture in custody, particularly in cantonments of the Army, has become a part of the rule of law.

Torture continues to be widespread in Pakistan. The number of reported torture cases increased from around 1000 in 2005 to 1319 in 2006. This however constitutes only a fraction of the actual figure mainly due to the intense fear of victims to lodge complaints. During the first half of 2007, the practice of torture in custody drastically escalated with professionals such as lawyers and journalists also being subjected to torture by the police and army intelligence agencies.

Testimonies of victims in courts have confirmed that the intelligence agencies of the armed forces of Pakistan were involved in the practice of torture in their camps even in the major cities. Additionally, hundreds of people have disappeared following arrest and allegedly many have been brutally tortured, sometimes even to death, by law enforcement agencies. A few who have been fortunate enough to escape from torture camps maintained by the armed forces have detailed before courts the methods used to torture them during their captivity. The victims have also complained that they were threatened with death by the military if they revealed details of their captivity.

α. Even the Chief Justice has not been spared

Pakistan has been a country where even the Chief Justice of the apex court, was not spared physical and mental torture by the country's law enforcement agencies. Accordingly, Iftkhar Chaudhry Chief Justice of Pakistan was twice physically abused and manhandled by law enforcement agencies—first in Islamabad and then in Karachi.

After he was summoned to Army house by President Musharraf, on March 9, 2007, the Chief Justice was held in detention for five hours and suffered severe mental torture at the hands of five Army generals who threatened and pressurized him to resign. Subsequently on March 13, a reference against him was made to the Supreme Judicial Council (SJC) by President Musharraf. He was taken into custody by the Islamabad police and as he was en route to making his appearance before court, he was manhandled by policemen who slapped him; pulled at his hair and roughed him up before throwing him into a police van before hundreds of his supporters.

β. Torture of lawyers and judges

During protests against the rule of emergency imposed on November 3 scores of lawyers and judges were arrested and some were subsequently beaten and tortured in custody. More than 70 judges of the higher judiciary including the Chief Justice and other judges of the Supreme Court were kept under house arrest. Their houses were cordoned off by heavy contingencies of armed policemen and military personnel; houses were bugged and their families were denied access to essential medicines. Videos of the private lives of some judges had shamelessly been produced and used to bribe them into taking an oath on the provisional constitutional order of President Musharraf.¹

A prominent human rights lawyer, Syed Hassan Tariq was severely assaulted by the police on instructions allegedly of the provincial chief minister in Nawabshah, Sindh province after he

¹ For further details see AHRC's urgent appeal UP-153-2007.

was arrested on November 8. Mr. Tariq had been one of the thousands of lawyers arrested and detained following the imposition of the state of emergency. As a result he suffered bleeding in his lungs and two fractured ribs. There were torture marks on his back and his physicians opined that his chances of surviving were slim.

Ali Ahmed Kurd, former Vice President of the Pakistan Bar Council was arrested on the day the emergency was announced. He had been taken to a torture camp run by the notorious Pakistani intelligence agency, I.S.I. and tortured. Munir Malik, former President of Supreme Court Bar Association had been tortured in jail and later admitted to a government hospital in Attock, a remote area in NWFP, after traces of blood were found in his urine.²

χ. A French researcher tortured

A French researcher, Florence Nightingale came to Pakistan earlier in the year to write a book on Buddhism and Sufism. On September 22 her bag containing her research papers and other official documents were stolen. When she went to register a complaint with the police of Thatta District in the Sindh province, her request was totally denied. When she informed the French consulate and attempted to follow up filing an FIR, she was assaulted and slapped until she fainted, by the Thatta District superintendent of police inside the police station. . It was only with the intervention of the French Consulate that she was released and her case registered.³

δ. **Other cases of torture:** The following were a few of the thousands of cases of horrific torture that have been reported from around the country.

Forced to bark like dogs: On July 22, eight persons were arrested by the police in Khaipure Mirs District, Sindh province on charges of stealing a motorcycle. Allegedly the police tied rope and chains around the arrestees' necks and forced them to bark like dogs and bite each other like wild bears. When they refused they were beaten until they obeyed. Those arrested were Gohar Ghulam Murtaza Bhanbhro, Ahmed Ali, Manzoor Hussain, Peerano Rajar, Sobho Bhanbhro, Ali Khan Bhanbhro and Meer Hassan One of them, Bhanbhro, was a government engineer working on an oil and gas field and had been arrested at his place of work. The police also said they were among the 13 suspects named in the complaint.⁴

Torture by castration: On January 26, Hazoor Buksh Malik, 24 and a cook by profession was arrested for not keeping his national identity card in his possession. He was taken to the Market police station at Larkana, in the Sindh province, and mercilessly assaulted in order to force him to pay a large sum of money in exchange for his release. Then, while he was in police lock up, four policemen including the station head officer (SHO) Muhammad Khan Tunio approached the victim in an obviously drunken state and severed his penis with a broken tea cup. Later the victim survived to file a case of torture and attempted murder against the perpetrators but ironically the perpetrators were not arrested as it was alleged they were being protected by the federal minister for anti-narcotics. This minister was also said to have been a major hindrance for the victim to obtain adequate medical treatment. Accordingly the victim suffered from continued bleeding for several months. Since, his overall health condition has deteriorated and he has lost his means of livelihood.⁵

² For further details of the prevailing situation in Pakistan see [UG-008-2007](#)

³ For further details see [UA-306-2007](#)

⁴ For further details see AHRC's urgent appeal [UA-249-2007](#)

⁵ To see AHRC's many urgent appeals issued on the case see [UA-032-2007](#), [UP-021-2007](#), [UP-045-2007](#), [AHRC-OL-012-2007](#), [AS-034-2007](#).

Poisoned through the anus: On January 12, Mohammad Ali Mallah 25 was arrested along with his younger brother Waheed Mallah by the Pir Jo Goth police of Khaipur city in Sindh province, on charges of stealing a motorcycle. The police arrest was based on a complaint lodged by Qadeer Memon the Nazim of Kingri town, against four persons including the brothers. But on January 19 he withdrew the case against the Mallahs and accepted that the initial implication of the brothers was due to a misunderstanding on his part. Notwithstanding, Abdul Sami Vesar, assistant sub inspector (ASI) in charge of the Pir Jo Goth police station, refused to release the two men unless he was paid Rs. 50,000 (USD 833). In a bid to forcibly obtain the bribe the ASI began torturing the brothers whilst in police custody and also forced them to confess to the theft of the motorcycle.

On the night of January 24 and during the early hours of the following day Mohammad Ali Mallah was visited by the ASI who strung him up on the ceiling with rope and assaulted him all over his body. Then he was hung upside down and the beating continued. The dreadful ordeal continued endlessly in the course of which the ASI allegedly also forced the victim to drink lime water and also poured the liquid down his anus. The next day, Mohammad Ali Mallah, was taken to the civil hospital in Khaipur District in an unconscious state but with his hands still cuffed. He remained unconscious for four days. Later when the incident was reported by local newspapers, the people of the neighbourhood vehemently protested against this blatant police brutality of an innocent young man. Following the victim's complaints, some high officials of the Sindh police pressured the victim and his family to withdraw the part of his statement detailing how lime water was poured into his anus. They were warned of serious consequences—including against their women and children—if they refused.⁶

Tortured to death in jail: On February 3, a young man Ali Nawaz Khan was tortured to death at the Malir central jail in Karachi by jail officers for allegedly failing to give them bribe money. The victim and two of his friends had earlier been illegally arrested by the Gadap police for no other reason but to extract money from them. They were later falsely charged when the bribe was not forthcoming. Reportedly, the day before he died, the jail officers had threatened his family that unless they pay the required bribe, they would receive the dead body of the victim. Mr. Khan's death was attributed to kidney failure by the official doctors but the family found numerous torture marks on his body. Shockingly, despite the promise of the Sindh provincial government to suspend the superintendent of the jail—the main suspect—he was in fact awarded a new position in the Ministry of Interior of Sindh provincial government, and transferred to another city for his new job.⁷

e. Testimonies of persons discovered after 'disappearance' by the military:

Disappearance after arrests by the law enforcement agencies particularly by the military intelligence agencies has become a massive problem in Pakistan. Since 2001, after the military operations in Balochistan province, the Baloch nationalists became the main target of disappearances. Since 9/11 after becoming the forerunner in the war against terror, in the NWFP alone people arrested on charges of terrorism have simply disappeared—sometimes with their tortured bodies found in nearby places. More than 4000 people have been estimated to have disappeared. A few however have either escaped or released after arrest and they have testified to the severe torture they were subjected to in custody as well as to the thousands of people they saw incarcerated in the military camps in different cities of Pakistan. For instance:

Abid Raza Zaidi, 23, a PhD student at the University of Karachi has been missing ever since he was arrested by the special forces on terrorism on October 4, 2006 in Lahore, the capital city of Punjab province. To date he has not been produced before any court of law. This was

⁶ For further details see urgent appeal [UA-038-2007](#):

⁷ See AHRC urgent appeal [UA-046-2007](#)

also his second arrest by the special forces. Prior to his arrest and his subsequent disappearance, Mr. Zaidi had attended a two-day conference on "disappearances and torture" jointly organised by Amnesty International and the Human Rights Commission of Pakistan at Islamabad. During the conference he had narrated the story of how he was first arrested, illegally detained and tortured in custody in relation to the bombing in Nishter Park, Karachi in April 2006. He had been arrested on April 26 along with 12 others belonging to the Shia sect of Islam and illegally detained for 110 days in various military torture camps. He was never produced before any court of law.⁸

Salim Baloch was arrested for the first time on March 9, 2006 and his whereabouts remained unknown until he was released 9 months later on December 14, 2006. Following his release, he addressed a press conference at the Karachi Press Club where he gave details of his abduction, detention and torture by army personnel at different military cells. The high court disposed of the habeas corpus application filed on his behalf on the basis that it was no longer valid as he had been released. The courts failed to order an inquiry into his torture and illegal detention by the Army or require subsequent action locate the other disappeared persons, who remained in illegal detention at the military torture cells of Rawalpindi.⁹

Following Mr. Baloch's statement to courts however he was once again arrested on December 31 2006 allegedly by representatives of the secret agencies who came in an unmarked red Toyota Corolla vehicle. He was later seen being transferred into a white coloured van bearing registration number 7389 around 6.30 am. Apparently his eyes had been damaged by torture and he could not walk. His whereabouts remain unknown.

f. Methods of torture in custody:

For purposes of obtaining information, forced confessions and/or bribe money from detainees, the Pakistani police have been routinely found to resort to various methods of torture. Detailed below is a sample of the methods commonly applied on detainees in police custody:

- Punching and kicking detainees with bare fists and boots;
- Assault with wooden sticks called "danda";
- Beating with a piece of reinforced leather called "chittar";
- Burning parts of the body with cigarette butts;
- Forcing victims to lie on blocks of ice while someone stands on top of them;
- Verbally abusing victims in insulting and abusive language;

The military has usually been found to use far more intensive methods of torture for much longer durations. For example:

- Forcing detainees to remove all clothing and dance naked before military officials for several hours;
- Forcing detainees to do push-ups the entire night;
- Hanging victims from the roof by their arms or legs;
- Forcing a victim's head under water repeatedly for long durations;
- Putting rats in detainees' pants or pyjamas;
- Forcing detainees to listen and watch audio and video recordings of others being tortured;
- Beating with iron rods;
- Keeping detainees blindfolded for days;
- Stitching of victims lips;

⁸ For further information see AHRC urgent appeals [UA-171-2006](#), and [UP-191-2006](#)

⁹ For more details read [UA-413-2006](#), and [UP-001-2007](#)

- Preventing detainees from going to the toilet;
- Using a combination of beatings with hands, boots, and sticks repeatedly and using abusive language.

Comments

The above were only examples of how Pakistani law enforcement agencies and the military violate domestic law including the Constitution and all international norms absolutely prohibiting torture. According to Article 14 of the Pakistani Constitution, sub article (a): "No person shall be subjected to torture for the purpose of extracting evidences." Pakistan was also a signatory to the Universal Declaration on Human Rights of which Article 5 states that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Nonetheless by being a member of the UN Human Rights Council and the forerunner in the war against terror the military government of Pakistan believes that it enjoys absolute impunity to freely continue with the violation of the human rights of its citizens. Regrettably, with the exception of CEDAW, Pakistan has failed to sign any of the major human rights covenants or protocols of the United Nations including Covenant Against Torture (CAT).

Recommendations

Based on the aforementioned ground we strongly urge the United Nations to withdraw the state's membership from its Human Rights Council and also pressurize the government to at least sign and ratify the ICCPR and CAT conventions. We also urge the international community to stop affording impunity to the government of Pakistan merely because of its membership of the HR Council.

5. Disappearances

Enforced or involuntary disappearances have become a major political issue in the country. Disappearances following illegal arrest has been a common phenomenon in Pakistan since the military government took power in 1999. The situation became worse after 9/11 when the Pakistani state became a major player in the US backed war on terror. Subsequently, the government of General Musharraf has truly believed that it has a free hand to randomly arrest people and keep them incommunicado in secret military cells for months and years on end. Eventually, these persons either disappear from the face of the earth or their tortured and mutilated bodies have been found on roadsides.

Throughout the history of Pakistan there have been few reported cases of disappearances; that is, until now. After about 2000 the phenomenon has become common. In Balochistan province alone, where military action was initiated and relentlessly continue to date, more than 4000 persons have disappeared after arrest; in Sindh province about 100 persons mostly nationalists, disappeared while in NWFP more than 1000 persons have been disappeared in the name of the "war on terror". It has been extremely difficult to accurately estimate the number of people who have disappeared. According to cases filed in different courts—mainly the Supreme Court of Pakistan—a list of about 300 persons has been compiled. But it must be remembered this was only a fraction of those who have disappeared with different political and religious organizations claiming that to date more than 4000 persons remain missing after arrest.

Earlier, due to the courageous and diligent efforts made by the Supreme Court and some other courts like the Sindh high court, the military government and intelligence agencies have been pressurized to release detainees in custody. Subsequently many who have 'disappeared' were found thrown—either dead or alive—on roadsides by their captors. After the abrogation of the Pakistani Constitution and the removal of judges from the higher courts on November 3, 2007 even this check on the illegal activities of state intelligence agencies has been removed, granting the authorities unlimited power to conduct mass arrests and disappearances with added vigour.

Currently there exists little hope that the thousands of persons who remain missing since 2001 will ever be produced before courts of law, released or their whereabouts made known to their families. As a result, the families of victims have lost all hope of finding their missing loved ones. It was also certain that cases of disappearances will increase as there was no authority to hinder the illegal activities of the police and armed forces.

Prior to General Musharraf's military coup in 1999 forced disappearance of political workers and activists was a rare occurrence. However, thereafter and even before 9/11, the process of disappearances began in Balochistan to curb nationalists' resistance to the construction of cantonments in sensitive and poor areas. After 9/11 the government took shelter behind the much hyped about 'war on terror' and had an easy excuse to brutally deal with any resistance against it. As early as 2002 up to one hundred students, political workers and human rights activists went missing after arrest, mainly from Balochistan province. Later, some were released after being tortured in military camps in Quetta the capital of Balochistan and Dera Ghazi Khan bordering Punjab province.

Disappearances of religious extremists began later when resistance started in bordering areas like South and North Waziristan. On December 5, 2005, the interior minister told the national Assembly that the government had arrested 4,000 persons in Southern Balochistan since the beginning of that year. No list of those arrested was provided and very few arrestees have been produced before court. It has also become impossible to ascertain the number of people who have "disappeared" in counter terrorist operations, particularly since 2005 because of the secrecy surrounding such operations and also because the vast majority of the families of those who have disappeared do not publicize their cases fearing intimidation and retaliation.

The Pakistani authorities have also claimed that more than 1,000 alleged terrorists have been arrested since 2001 by its law enforcement agencies. The government has processed only a fraction of the cases through the prevailing legal system. According to reasonable estimates, hundreds of suspects have been handed over to US authorities, often for sizeable bounties with many ending up at detention facilities such as Guantanamo Bay. These handovers of suspects has been in gross violation of the Extradition Act of 1972 which provides detailed procedures to be followed before extradition of suspects including the holding of an inquiry by a judicial magistrate.

In Pakistan, the role of intelligence agencies, both civil and military, including the Intelligence Bureau (IB), Federal Investigation Agency (FIA) and Inter Service Intelligence (ISI) and military Intelligence (MI), has been significant not only in the field of enforcing law and order but also for their political involvement. Political expediency was probably one of the main reasons for enforced disappearances. The cantonments in major cities around the country including Karachi, the main commercial and industrial city, Rawalpindi, Quetta, Lahore and Peshawar, contain torture camps. The existence of these torture camps as well as places where people have been kept in isolation and severely tortured, have been amply described by those who have been fortunate to survive their ordeal and have been released after many years.

Furthermore, of the 240 odd cases before the Supreme Court relating to disappearances, 105 people have been released; and they too claim to have been detained, interrogated and tortured in military controlled torture cells. Questioned by the higher courts, the government has denied the arrests and to date, the whereabouts of many were still unknown.¹⁰

Recommendations:

It was imperative that the UN Human Rights Council, of which the Pakistan was a member, takes notice of the rapidly increasing problem of disappearances and appoint a monitoring body to inquire into and obtain the release or at least production before court of all persons who languish in military detention centres around the country. This problem cannot be solved by merely making requests from the government. Rather, now was the time for stern action by the UN and the international community for the benefit of the people of Pakistan.

6. Military operation in Balochistan

There has been a continuous military operation in the southwestern province of Balochistan since 2001. There have been reports of the military targeting the civilian population using F16 aircrafts and gunship helicopters. Consequently, several people have been killed and more than 200,000 persons have been forced to migrate to other areas or provinces. Another consequence of the military operation has been the indiscriminate arrest and disappearance of people; even women, children and the elderly have not been spared. To date more than 4000 remain missing.¹¹

It was without doubt that President Musharraf and his military have been responsible for the worsening conflict in Balochistan. Tensions between the government and its Baloch opposition have grown mainly because of the government's heavy-handed armed response to Baloch militancy and its refusal to negotiate demands for political and economic autonomy. The killing of Baloch leader Nawab Akbar Khan Bugti in August 2006 sparked riots in the region and was likely to lead to more confrontation. The conflict will continue to escalate as long as the government insists on seeking a military solution to what was essentially a political problem; and especially if the US fails to recognize the price that was involved for security in neighbouring Afghanistan.

Tension with the central government has not been a new phenomenon to Balochistan, given the uneven distribution of power, which favours the federation at the cost of the federal units. The Baloch have long demanded a restructured relationship that would transfer powers from what was seen as an exploitative central government to the provinces. But Musharraf's authoritarian rule has deprived them of participatory, representative avenues to articulate demands and to voice grievances. Politically and economically marginalised, many Baloch see the insurgency as a defensive response to the perceived colonisation of their province by the Punjabi-dominated military.

According to the International Crisis Group, although regional parties still sought provincial autonomy within a federal parliamentary democratic framework, and there is, as yet, little support for secession, militant sentiments could grow if the central government does not reverse its ill-advised policies including:

¹⁰ A list of disappeared persons could be found at AHRC website at http://pakistan.ahrchk.net/pdf/Disapp_PHRC.pdf

¹¹ Details of 400 odd missing people of Balochistan may be found at: http://www.balochvoice.com/information/07-07-25_List_of_Missing_Marri_Baloch_people.html;

- Exploitation of Balochistan's natural resources without giving the province its due share;
- Construction of more cantonments to strengthen an already extensive network of military bases in the area; and
- Centrally driven and controlled economic projects, such as the Gwadar deep sea port, that do not benefit locals but raise fears that the resulting influx of economic migrants could make the Baloch a minority in their homeland.¹²

While Baloch alienation has been widespread, crossing tribal, regional and class lines, the military government insisted that a few sardars (tribal leaders) were challenging the centre's writ, concerned that their power base would be eroded by Islamabad's plans to develop Balochistan. According to the state therefore, it had little option but to meet the challenge head on. This failure to accept the legitimacy of grievances lay at the heart of an increasingly intractable conflict, as does Islamabad's reliance on coercion and indiscriminate force to silence dissent.

Also exacerbating the conflict was the fact that Akhtar Mengal, former chief minister and head of a moderate Baloch nationalist party has been detained for the last one year. He was being kept in an isolated cell in the scorching heat in one of Karachi's prisons since December 2006. He continues to be denied justice through various delaying tactics. The illegal detention of this prominent Baloch politician has also exposed the courts' inability to act without the influence of the executive. Mr. Mengal has not been arrested on corruption charges or for the misuse of power. He was not an industrialist, loan defaulter or involved in any land scam like many other pro-establishment politicians in the country. Nonetheless, he continues to be illegally locked up.

Furthermore, due to the setting up of hundreds of check posts all around the province, the freedom of movement of the provinces' citizens have been vastly restricted. Even journalists have not been permitted to enter any district of Balochistan without the prior approval of the Army and only after being thoroughly searched. Earlier in the year, Nisar Khokhar, a correspondent for BBC and a local newspaper journalist visited the province to investigate the arrest of seven women in April 2007 by law enforcement agents during a raid on a house in a village in the Dera Bugti district. The women had been detained for more than 20 days in an army camp at Sui town and were released in the second week of May. However, when the women attempted to return home people of the area refused to accept them saying that they were 'dishonoured' as they had been in the camp with army personnel. Such social cost of the military operations has simply been ignored.

Conclusion:

According to credible reports more than 5000 people including women and children have been killed by the indiscriminate bombardments and direct firing on citizens by the Pakistan Air Force and Army. The killing of a renowned politician Sardar Akbar Khan Bugti and some 37 of his supporters in a mountain hideout by the Pakistan military on August 26 has thrown the country headlong into a catastrophe that can only be averted by intense international and national efforts.

As the news of the killings in Balochistan spread, so too has violence against the administration, and between communities. The country now faces the prospect of outright war between the armed forces and the people of Balochistan, not to mention leaders and peoples in other provinces who have cause to believe that the only way the government knows how to deal with dissent was through bloodshed. Since the latest killings, and particularly after the

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For a complete report on the situation in Balochistan visit www.crisisgroup.org

killing of one prominent nationalist leader, Baloch Marri, Balochistan has been cut off from the world. In response to the violent reaction of thousands of alienated and frustrated youth, more than 2000 people were reported to have been arrested in the last few days of November 2007 with many later killed by state intelligence agencies.

Recommendations:

The military operation in Balochistan province should be stopped and people of the province should be afforded the right to choose their own government. It was time for the international community to take notice of the situation in Balochistan where several thousand people have been uprooted and have suffered untold miseries due to the continuing military activities of the Pakistani military regime.

7. Police encounters

Police encounters have been the easiest method in which the police could conceal their illegal activities including torture, illegal detention and extortion of victims. In 2007 several people were killed in police encounters and by masked men riding motor bikes and vehicles with no number plates. The police have learnt that the easiest method to close a case relating to a high profile personality was to take the arrested suspect to some remote area, kill the person and claim the death occurred during a gun battle—with no injuries to any policeman involved.

During the year, the majority of deaths due to police encounters was reported from the Punjab and North Western Frontier Provinces—either by the police or unknown persons riding unmarked motorcycles, but commonly believed to be from the police.

For example, on March 27 two boys Akhlaq Hussain Sheikh, 15, and Aijaz Ahmed, 13, were riding a motorbike on Cinema road—a busy commercial area of Dharki city in the Ubaro town council of Sindh province—to distribute marriage invitation cards of one of their close friends. They were both shot separately by policemen in broad daylight. The 15-year-old was killed on the spot while the injured 13-year-old was shot dead at point blank range while in a police van en route to hospital. The Dharki police later attempted to cover up the brutal killings by claiming that the boys were killed during a confrontation with the police.

8. Violence against women

According to Lawyers for Human Rights and Legal Aid (LHRLA) a total of 2226 cases of violence against women have been reported from across the country from January to December 2007. Of these 1739 were acts of physical abuse while 527 included sexual abuse. Of the reported sexual abuse cases—which needless to mention was only a fraction of the actual—295 were rape cases with 160 involving gang rape. In 72 cases, the victims have been brutally murdered after being violated. Among the precious few UN conventions ratified by Pakistan was the CEDAW pertaining to the protection of women. However the continuing high incidence of violence against women has been a clear indication of the lack of commitment to implement any of the fine words contained in the convention.

A few of the reported cases were as follows:

- In January 2007, 16-year-old Naseema L was kidnapped during daytime from her residence in Obara in the Sindh province. She was taken to private premises called “Autaq” and raped by several men. Villagers who rushed to “Autaq” heard the painful cries of Naseema while she was being violated. The perpetrators later threw her out on the street without clothes. The villagers covered her with a shawl and returned her to her home. The police filed a case against the alleged perpetrators only after being pressurized by the local electronic and print media.¹³

¹³

For further details of the case see AHRC’s urgent appeals [UA-039-2007](#) and UP-89-2007

- On January 30, 2007 a 15-year-old girl Asma was gang raped over a period of four days by several men from the Layyah town in the Punjab province. The perpetrators included local influential persons and politicians. In another case in January 2007, a 13-year-old was gang raped in Mehar by a person called Shaban Sheikh who was accompanied by two accomplices who helped intoxicate the victim.
- After the victims filed complaints, the influential perpetrators in both the abovementioned cases threatened their families with grave consequences if they pursued the complaints. The area police showed little interest and reportedly vehemently attempted to stop the victims from seeking justice. The victims' families even claim to have been threatened by the police and this has forced them to leave their homes and villages in fear and seek refuge in Karachi.

Data on violence against women also reveal that from January to August 2007, more than 900 victims have been murdered subsequent to being abused; 809 received serious injuries at the hands of male family members or strangers. Sadly, in many of the reported cases, the media has failed to provide details of the alleged perpetrators.

The data obtained also indicate an interesting pattern; of the total 2226 reported cases, 1244 were against married women and 340 were against single women; 47 victims were divorced while 31 had been widowed. In 604 cases newspaper reports failed to mention the marital status of the aggrieved women. A breakdown of the data according to province shows 1532 cases from Punjab, 542 from Sindh, 179 from NWFP, and 13 cases of violence against women from Balochistan. Major cities reporting violence against their women include Lahore 241; Multan 300; Karachi 222; Sargodha 78; Peshawar 179; Sukkur 115; Gujranwala 161; and Melsi 2007.

Reportedly, President Musharraf has ordered an inquiry into the involvement of a federal minister and local mayor in threatening a rape victim and her family to withdraw their police complaints; but little has come out of it. According to latest information, the child victim was continuously being threatened by the police and politicians to withdraw her complaints. People assisting the victim to file a legal case have allegedly been attacked by relatives of the perpetrators. Although the court had ordered inquiries into the case twice, the police have failed to conduct proper investigations and merely claim the perpetrators were innocent prior to even recording statements from the victim and witnesses. It seems the police have been the major obstacle for women obtaining justice in sexual abuse cases.¹⁴

Protection of Women (Criminal Laws Amendment) Act, 2006: In 2006 President Musharraf signed into law the Protection of Women Bill, which ostensibly placed rape laws under the penal code and did away with harsh conditions that previously required victims to produce four male witnesses and exposed them to prosecution for adultery if they were unable to prove the crime. Ironically, even after the new law, Pakistani women remain no better off than during the existence of the Haddood Ordinance. Currently more than 3500 women were still facing charges under Zina law a part of the Haddood Ordinances which was adopted for the first time in 1979 and made fornication along with adultery a crime against the state, non-bailable and punishable by death.

Conclusion:

¹⁴

For full details of the case see AHRC's website for UA-081-2007; and UP-095-2007.

Though women throughout Pakistan have welcomed the new laws seeking to protect women, the general condition of the majority of women has not changed. Regarding cases of sexual abuse and rape, law enforcement authorities still seem to follow antiquated methods. Courts still apply old methods for registering cases of abuse and rape; women were still asked to provide witnesses for the alleged sexual offence and continue to be booked for adultery. The number of cases of honour killings, gang rape, abduction and killings of women with the connivance of authorities has increased; ministers and powerful people were involved in violence against women.

Honour killings still form part of the law meted out by Jirga courts (private courts in tribal society) and the victims do not have access to normal courts. The women have been controlled by harsh customs and traditions by religious and sectarian groups. There were more than 3000 women jailed under minor charges and lower courts cannot grant the bail because of the pressure exerted by local religious groups. It seems the implementing authorities still under pressure of religious and powerful people. Through the Finance Act the working hours of women have been increased, forcing them to work until late in the night without any break. Through this law, the previous facilities provided in relation to working hours of women were all abolished. They do not have medical facilities even in the formal sector.

Recommendations:

- Women should be afforded all rights in accordance with CEDAW;
- Jirga courts should be abolished forthwith as well as all customs which were repugnant to the basic rights of all Pakistani women;
- The Finance Act should be abolished and women should be provided protection at their work places; labour laws applicable to men should be afforded to women as well and implemented without distinction.

9. Economic deprivation

As in previous years, the displacements, evictions, denial of access to employment, retrenchments and ill conceived economic planning have affected thousands of people during 2007. About 25,000 people were rendered jobless in the banking, power and steel industries. The share of the informal sector in economic activities has been on the increase and this has drastically affected the wage structures and working hours of the masses. The basic wage as fixed by the government of Pakistan has been Rs. 3500 a month but in the informal sector, most workers were paid more than Rs. 2500 per month. The informal sector has also not allowed trade unions, failed to implement labour laws and offered no job security and medical facilities. These practices have affected more than 100 million workers.

The livelihoods of about 500,000 fishermen will be directly and severely affected and approximately 100,000 persons will be displaced by the Pakistan government signing a 99-year lease with a Dubai based foreign company on the twin Islands—Bhudal and Bhuddo in Karachi, in the Sindh province. The affected fishermen were indigenous people who have been living on the islands for centuries. Reportedly, the company plans to build hotels, casinos and residential resorts. However, the government's action was unlawful as it did not conduct an Environment Impact Assessment as required by law, before entering into the contract. . And though Pakistan has one federal assembly, one federal senate and four provincial assemblies, the government has not held any discussion for the approval of the project in any of these legislative fora including the Sindh provincial assembly and its own federal Cabinet.

According to media reports, on October 28, 2007 thousands of Pakistani construction workers in Dubai protested the harsh working conditions and labour shortages at their work places. The Ministry of Labour and employers of the construction and petroleum companies warned them that unless they ceased the disruption immediately they would face deportation without wages and other benefits. Reportedly, more than 1,500 workers have already been served with retrenchment letters and cancellation of contracts by their sponsors.

Four thousand workers, already facing the threat of deportation without their legal entitlements were employed by AI Habtoor Engineering Co, and Sun Engineering & Contracting and Construction Co in Dubai. These companies claim to pay skilled workers USD 177 a month and unskilled workers USD 149; however the workers say that they have not been paid more than USD 150 and USD 100 respectively. On the other hand their working hours have been increased to 12 and 14 hours a day in the scorching sun, their break times reduced from 2 and 4 hours to one hour only. Under these vulnerable circumstances, it was little wonder that workers started protesting for better working conditions.

Pakistan Railways has asked the city district government of Karachi to promptly make arrangements to vacate all land in approximately a 100-foot radius on both sides of its railway tracks. Accordingly, in about 30 localities Pakistan Railways and the city government have called people to vacate lands adjoining the railway tracks. Several newspapers in Pakistan and the Urban Resource Centre estimate that more than 20,000 homes will be demolished by the latest action of Pakistan Railways and the city government, resulting in the displacement of more than 140,000 people—without any compensation or plan for rehabilitation. The people have lived in these communities for 30 to 35 years and have electricity and natural gas connections. Some of them have government titles to the land. Moreover, in 2004 the President of Pakistan announced that shantytowns built since 1985 would become legal communities through the law. Notwithstanding such assurances however, these people have now been asked to leave.

Pakistan Railways has been severely criticised by local people and non-governmental organisations (NGOs) for its perceived intentions to acquire the vacated land for commercial purposes as it has done in the past. For example, there were more than 50 structures already inside the 100-foot radius, such as those of Honda Motors, Karachi Shipyard and Toyota Motors. In addition, several high-rise buildings of private companies, warehouses of multinational corporations and concrete and well-constructed structures of the Pakistan Air force and Army, including a government multi-story building, have acquired land 60 to 90 feet inside the 100-foot radius allocated by the railway company. In some places, the railway company has allowed commercial structures to be built just five feet from the railway tracks. The Railway authorities have not issued any notice nor conducted any survey for the demolition of these commercial structures inside the 100-foot radius of the railway tracks, reflecting the malicious intentions of the company to merely dislodge poor people and sell the land for commercial purposes.

Conclusion:

Recently the government of Pakistan has claimed that poverty in the country has reduced to 28 percent. But independent financial organizations estimate that about 40 percent of the population lived below the poverty line. This partly due to the government's negligence towards the poor and marginalised segments in society; its ill planned policies and the process of privatization without transparency, leaving thousands of people unemployed every year.

Due to the non-availability of opportunities migration from rural areas has increased each year. The overcrowded cities have been unable to cater to the demand for employment and as a result the reports of suicides, attempted suicide as well as crime have been on the increase.

Many suicides however go unreported due to the stigma attached. Moreover, the inflation rate has been out of control due to which basic essentials were out of reach of the common person. Agricultural produce has been generally smuggled out of the country causing a scarcity within.

Thousands of children die each year from starvation or malnutrition related illnesses, but their deaths were rarely reported. There have been at least half a dozen cases where women have committed suicide after killing their children, due to poverty and unemployment.

Recommendation:

- The government of Pakistan should focus its fiscal policies towards eliminating poverty which has been increasing every year according to independent estimates;
- Fishermen should be protected and should be afforded continued access to fishing;
- Every person should be provided shelter; if lands were required for business purposes, before people were displaced, they should be offered with alternate and suitable resettlement.

10. Discrimination against minorities

In Pakistan, citizens belonging to minority sects continue to be discriminated. Religious minorities such as Christians, Hindus and the Ahmedi sect of Islam have been regularly charged under blasphemy laws and their residences and places of workshop have been attacked by Muslim religious parties and their supporters.

During the last six months at least eight cases involving blasphemy have been reported from different parts of the country. The majority of these cases have been reported from Punjab; three have been from Lahore, one each in Faislabad and Gujrat, two from Sindh and one in Islamabad. According to the state department, at least five Ahmedis have been imprisoned on blasphemy charges. In the past year, those attempting to defend persons accused of blasphemy have also received threats. People have also been accused of blasphemy for ulterior purposes. In January 2007, Martha Bibi was charged under the blasphemy laws, allegedly by people who wanted to avoid paying money owed to her. Bibi, a Christian was later released on bail but the charges against her remain to date.

Adding to concerns regarding blasphemy laws has been a draft bill currently before a standing committee of Pakistan's National Assembly that would impose the death penalty for apostasy, or converting from Islam to another religion. The death sentence would be imposed on Muslim men; women would receive a life sentence. The bill, which provides that testimony by two or more adults would be sufficient grounds for conviction, was tabled by Muttahida Majlis-e-Ammal, an alliance of six Islamist political parties. This proposed bill would violate human rights standards because it would criminalize an internationally protected right. Therefore, every effort should be made by the government of Pakistan to ensure that such repressive legislation will not be passed.

Sections 295 B, C and 298, A, B and C, commonly known as the blasphemy laws were added gradually to the Pakistan penal code, between 1980 and 1986 by the Zia regime. The first two sub sections prescribe life imprisonment and capital punishment for offences of insulting the Holy Quran and Prophet Muhammad, respectively. The other sections criminalise the passing of insulting remarks or making signs against the wives, companions and family of Prophet Muhammad—prescribing punishments from three to ten years of imprisonment and a fine.

The last Section 298-C prohibits Ahmedis from preaching their religion and 'posing to be Muslim'.

On May 8, Christian residents of a Muslim colony in Charsadda City, NWFP received a letter allegedly from militants asking them to convert to Islam within the next 10 days or leave the area. A later message written on a wall near the local church on May 18 contained the same message. Consequently, several Christian families of Charsadda city fled their homes while others have been living in constant fear. Police claim to have arrested three suspects in connection with the incident but the residents doubt whether the real culprits have been arrested.

On June 12, Christians of Shantinagar village of Khanewal district in Southern Punjab were shocked to receive anonymous letters, written in Urdu, instructing them to either convert to Islam or leave the area. If not, to get ready to face the consequences. Nobody knew what 'consequences' meant. Then on June 18 pastor Lamual Daniel's son received two telephone calls warning him that the Christians of Shantinagar should take these letters seriously and convert to Islam. The first call was received at 10.40 am from the mobile number 034440146448 while the second call was received ten minutes later from the mobile number 03226208456. Leaders of the village decided to go to Khanewal city and inform government authorities of this latest threat.

The elders also visited the district superintendent of police who forwarded their complaint to the security branch for further investigation. The Christians had also requested to file a first information report (FIR) against the culprits but the police had been reluctant. The police have also failed to trace the mobile phone numbers of the culprits of the threatening calls. Christians feel that they have been an easy target for militant groups. Attacks on Christian churches and religious ceremonies have occurred in the past; but receiving threatening letters was a new development. They suspect a militant religious organization with a centre in Kabirwala, about 14 kilometers in north of Shantinagar, was behind these letters.

In another incident, on June 12, Muhammad Qasim who had been accused of blasphemy was killed by a policeman in Gujrat city. On June 9, Shahdra town police registered a case against a mentally-challenged man, Nadir Ali, under blasphemy laws on the complaint of Shahid Maqbool, a relative of the accused who lived in the upper portion of his house on rent. Later the police confessed it had lodged an FIR against Nadir due to pressure exerted by people of the community and confirmed that the complainant actually wanted to grab Nadir's property. On May 9, Walter Fazal Khan, a 79-year-old resident of Lahore was accused by his adopted son Riaz who lived in the same house, of burning a copy of the Holy Quran. After a case under the blasphemy laws were filed against the elderly man it was discovered that Riaz had actually wanted to grab his property.

According to available data, since 1986, around 400 cases against more than 850 people belonging to different religions—(Muslims = 50%; Ahmedi = 33%; Christian = 11 %) have been registered under blasphemy laws but none of them have been convicted by the Supreme Court of Pakistan. This clearly indicates that most of the cases were registered on personal grudges or disputes. Also the majority of the cases—more than 70 per cent—have been registered in Punjab while Sindh occupies second place with about 25 per cent of the total registered cases. More than 35 per cent of the total accused blasphemers (300 out of 850) belong to districts in Central Punjab of Lahore, i.e. Sheikhpura, Faisalabad, Kasur, Gujranwala and Sialkot. A few cases have been reported from NWFP and Balochistan.

It was interesting that the total number of cases registered from 1947 to 1986—the year in which the strict blasphemy laws were introduced—were only six none of which were about using derogatory remarks about the Holy Prophet or Islam. Ironically, the first case reported

was in Dhaka in November, 1956 against one Okil Ali and others who were accused of chopping down a tree deemed sacred by the Hindu community. The accused were convicted with six months imprisonment and Rs 200 fine each.

The Christians of Shantinagar live in constant fear of being attacked by Islamist militants. The apprehension of people were justifiable as this village has been attacked before—on February 6, 1997 when it was attacked by a mob of about 2000 people resulting in the whole village being razed to the ground while about 300 policemen stood and watched, outside the village. The attack was the result of someone announcing from the mosque loudspeaker that the Christians have insulted the Holy Quran. Within hours about 80 percent of the village was damaged; about 800 houses were destroyed and 2500 people adversely affected. In the attack about 2000 Bibles were also burnt. A judicial inquiry was subsequently conducted but its findings have not been made public. Moreover, though the police arrested 97 persons no one was convicted.

The recent incidents indicate that minorities were indeed not safe in Pakistan. The state's response to the violence and threats against them has also been of serious concern. They question when they will be afforded equal citizen status, guaranteed under the Constitution, Article 25 A; when they will be able to obtain adequate protection and allowed to live without fear?

Comments

The religious minorities in Pakistan have been under increasing pressure from different Muslim religious groups and parties but state authorities have failed to protect them against attacks on their lives and properties. According to the Constitution of Pakistan minorities were afforded equal status with any other citizen and no one can be discriminated by virtue of their faith.

Powerful religious personalities have been found to aid the abduction and sexual abuse of girls from religious minorities for purposes of converting them to Islam or claiming that the abductors have married the girls who have become Muslim. No case of abduction of girls from minority communities has been registered due to pressure from religious parties. It has been a common phenomenon that places of worship belonging to minorities have been destroyed by mobs on the instructions of their leaders; mosques were frequently found to concoct news and instigate feelings against minority groups.

It has been interesting that despite claims by the government that elections were held under the joint electoral system minorities still do not have access to electoral lists. People from the Ahmedi sect have been barred from elections with powerful local groups preventing them from casting their vote. Graves of Ahmedis in common graveyards have been destroyed by the local Muslim leadership. Worse, lower courts have shown an inability to decide independently in cases under blasphemy laws and in other cases in the province of Punjab, and reportedly, decisions were dictated by local Muslim religious groups.

Recommendations

- The religious minorities should be afforded adequate protection in accordance with the provisions of the UN human rights charter and the Constitution of Pakistan.
- The UN human rights council should adopt a special procedure to stop the discrimination against religious minorities in Pakistan.
- Forced marriages of girls belonging to minority religious groups should be stopped and those people involved in promoting such criminal activity should be forthwith brought before the law.

ALRC Pakistan UPR Report - Annex II

Annex to *ALRC-UPR-2-005-2008*

FOR IMMEDIATE RELEASE

AS-034-2007

February 23, 2007

A Statement by the Asian Human Rights Commission

PAKISTAN: The severance of the sexual organ of an arrestee indicates the collapse of police discipline and calls for high level police and government inquiries

The case of Mr. Hazoor Buksh Malik, a young man of 24 years of age whose penis was severed at the Market Police Station in Larkana district, Sindh province, Pakistan on January 25, 2007 should raise grave concerns regarding the act itself and the nature of policing and the nature of the governance in Pakistan.

An act such as this is not accidental but only shows a state of impunity and the resultant state of mind existing in the officers who engaged in this extremely inhuman and cruel act. The fact that the police hierarchy and the government are not gravely shocked by this demonstrates a state of apathy at such behaviour both within the policing system as well as in the government. Such apathy while being an indication of the extent of the collapse of the rule of law also shows a stark absence of respect for ethical and moral values which are taken fundamental to any civilized society.

The details of the case are as follows:

On 22 January 2007, 24-year-old Mr. Hazoor Buksh Malik, a cook by profession, was arrested by the Market police near the ladies shopping market named Resham Gali in Larkana city, Larkana district, Sindh province for not possessing a national identity card while he was shopping. It is reported that Mr. Hazoor Buksh had worked as a cook in the house of Mr. Khan Moummad Tunio, the SHO of the Market Police station some three years ago. At that time, he had been arrested by the SHO on the charge of stealing Rupees 25,000 (USD 417) from the house and severely tortured. He was later released due to lack of evidence. However, the SHO Mr. Moummad Tunio had ordered the victim to leave the area immediately and not to return to Larkana city. The SHO had then allegedly threatened the victim, saying that if he saw the victim again under his jurisdiction, he would be subjected to exemplary punishment.

Late in the night of 25 January 2007, the SHO Mr. Mohummad Tunio arrived at the police station in a state of inebriation and ordered on-duty police officers to fasten the victim with ropes and chains. The officers on duty at that time were Registrar Head Constable (Head Moharar) Mr. Rab Nawaz Mangi, Assistant Sub Inspector Mr. Abtab Abbasi, Head Constable Mr. Abdul Latif, and Head Constable Mr. Ayaz Shahani. The SHO then began to brutally torture Mr. Hazoor Buksh, and at the height of rage, he allegedly severed the victim's penis with a sharp-edged knife. It was around 2:30 am and the victim's hands remained chained behind him.

Early the following morning on January 26, Mr. Hazoor Buksh was found unconscious lying in the police lock-up in a pool of blood. The police took him to Chandka Medical College and Hospital in Larkana district. Since then, he has been under treatment at the Jail Ward of the hospital, chained to his bed and under police custody.

What followed thereafter also shows the depth of degeneration within the police force. The police first attempted to create an impression that the victim himself had done this to himself in a suicide attempt. The police also claimed that the victim is mentally ill. The actions by the police lead to a popular retaliation when the local people and journalists held a protest and went on strike. Such a reaction on the part of the public also indicates the high level of distrust and dissatisfaction at the nature of policing in the country. Such protests and strikes against police brutality are not uncommon in Pakistan.

The reaction of the police to the protest was to appoint a Deputy Inspector General (DIG) to conduct "an inquiry". However, as expected the DIG's inquiry report confirmed the police version. This report led to further protests and a re-inquiry was done by another senior police officer but the report has not been published.

The principal of Chandka Medical College and Hospital, Larkana conducted inquiries and confirmed that the injury could not have been caused by the victim himself but by a third person. The medical report has come despite of the pressures exercised by the police on the medical board to get a verdict in their favour.

The alleged perpetrator, the Station Head Officer (SHO) remains in his post in the police service as well as the other officers who are alleged to have assisted him in this act.

Even more disturbing is a report that for some time the severed sexual organ was placed on display by the police, obviously for the purpose of intimidation and perhaps also for the puerile amusement of the officers.

Any state that respects the rule of law and wishes to maintain a legitimate system of authority should cause an inquiry at the highest level into this matter and take action, not only to punish the perpetrators, but also to address the root causes as to how such actions could happen at all. The responsibility for this inquiry lies with the highest levels of the police at the central and provincial levels. On the other hand this should also be a matter of inquiry by the government itself. The degeneration of the police to this extent is a matter of the highest concern to the political authorities in the country. Thus, the government of President Musharaff should cause a high level inquiry the findings of which should be published. The inquiry of the political authority, which is the government, should not confine itself only to this incident but also to the factors that have made such behaviour and mentality of the police possible. All public opinion makers in Pakistan and those who are concerned with human rights and the rule of law in the country from outside should call for such inquiries to be held both by the police and the government as the political authority.

The demand should be for an immediate and thorough inquiry and a public debate on this matter. The lawyers and human rights groups should also seek the intervention of the judiciary in order to facilitate serious inquiries into this matter. Those who engage in human rights work as well as human rights research should devote the coming months if not years to study the malaise that affects the policing system of Pakistan and make their findings public with a view to campaign and lobby for fundamental changes of this despicable and degenerated system.

ALRC Pakistan UPR Report - Annex III

Annex to *ALRC-UPR-2-005-2008*

September 4, 2007

AL-020-2007

A written statement submitted by the Asian Legal Resource Centre (ALRC) to the 6th session of the UN Human Rights Council

PAKISTAN: Council urged to act as thousands remain forcibly disappeared

In recent years, the Human Rights Council's predecessor, the Commission on Human Rights, placed Nepal at the top of the list of perpetrators of forced disappearances. Following interventions and the establishment of a field office of the Office of the High Commissioner for Human Rights in the country, disappearances have dropped significantly. Information received by the Asian Legal Resource Centre indicates that large numbers of forced disappearances are now taking place in Pakistan. Will the Human Rights Council, which is supposed to be an improvement on the Commission on Human Rights, also take appropriate action concerning disappearances in Pakistan, or will it disappoint?

Enforced disappearances of persons by the State have increased in Pakistan since the military government took power in 1999, with the situation becoming worse in the aftermath of the 9/11 incident in the United States, under the auspices of the so-called war on terror. The government of Pakistan has acted without restraint in arresting people, often arbitrarily, and detaining them incommunicado or disappearing them for months on end. Many such persons either remain disappeared or are found dead on the road-side.

It is very difficult to ascertain accurate numbers of disappeared people in the country - non-governmental organizations face huge risks in carrying out such work - but around 300 cases are before the country's various courts, in majority the Supreme Court of Pakistan. After action taken by Pakistan's judiciary, the military government has been pressured into releasing some of the disappeared who were being detained by the military intelligence agencies. However, it is claimed by different political and religious organizations that more than 4000 persons still remain disappeared.

In 2002, up to one hundred students, political workers and human rights activists, mainly from the province of Balochistan, disappeared following arrest. Up to a year later, around half of them had been released, but reported having been subjected to severe torture in military camps in Quetta, the capital of Balochistan, and Dera Ghazi Khan, bordering Punjab province. Before General Musharraf came to power there were far fewer reported cases of disappearance of political workers and human rights activists. However, these days, the practices of arbitrary arrest, incommunicado detention, torture and forced disappearance are increasingly being reported.

Forced disappearances in Pakistan for the most part occur in the southern provinces of Balochistan and Sindh. Disappearances began in Balochistan before 9/11, as the government began constructing cantonment areas in very sensitive and poor areas to curb resistance from Balochi nationalists. After 9/11 the government has continued using disappearance to crush opposition groups under the guise of the war on terror and have unfortunately received backing from some powerful sections of the international community. The Human Rights Council must take action to rectify this.

Disappearances of religious extremists also followed in areas bordering Afghanistan, such as South and North Waziristan. On December 5, 2005, the Interior Minister told the national Assembly that the government had arrested 4,000 persons in Southern Balochistan since 2005. No list of their identities has yet been provided by the government and since then very few of them have been produced before court. It is currently impossible to ascertain the number of people that have disappeared in counter-terrorism operations, particularly since 2005, because of the secrecy surrounding such operations and the likelihood that the families of some of the disappeared do not publicize their cases for fear of retaliation.

The Pakistani authorities have presented figures suggesting that more than 1,000 alleged terrorist have been arrested since 2001 by its law-enforcement agencies. However, only a fraction of these cases have been dealt with through the legal system. Hundreds of suspects are thought to have been handed over to the United States, often for sizeable bounties, and many of these are being detained in Guantanamo. These acts of wrongful extradition constitute violations of the Extradition Act, 1972, which provides detailed procedures for the extradition of suspects, including the holding of an enquiry by a judicial magistrate.

In Pakistan, the civil and military intelligence agencies, which include the Intelligence Bureau (IB), Federal Investigation Agency (FIA), Inter Service Intelligence (ISI) and Military Intelligence (MI) play a significant role in the disappearances. Military intelligence agencies use military cantonments in the country's major cities, including Karachi, Rawalpindi, Quetta, Lahore and Peshawar, to detain persons incommunicado, torture them and subsequently potentially forcibly disappear them. These have been described in detail by persons who were released from them alive.

Pakistan's Supreme Court has received some 240 cases of disappearances, of which 105 people have been released according to the government. They were detained in military torture cells. Until action by the country's higher courts in the last few months, the government would systematically deny holding such persons.

At present, the whereabouts of thousands of people remain unknown. Please find a list of some of the identities of the disappeared in a report by the Human Rights Commission of Pakistan at: http://pakistan.ahrchk.net/pdf/Disapp_PHRC.pdf

Pakistan has not ratified or signed the International Covenant on Civil and Political Rights but is a member of the UN Human Rights Council, and as such should desist from perpetrating gross violations of human rights and ratify this and all other major international human rights instruments.

The high level of disappearances taking place in Pakistan must become a matter of major concern for the international community, as has been the case in Nepal and elsewhere in the past. Pakistan ranks amongst the worst perpetrators of disappearances in the world and yet continues to be a vocal member of the Human Rights Council. If Pakistan wishes to continue playing a role at the international level it must act in good faith, put a halt to torture, disappearances and illegal extraditions, and collaborate with the Human Rights Council, notably by inviting the Working Group on Enforced or Involuntary Disappearances to conduct a visit to the country. Pakistan should also immediately locate the whereabouts of all reported disappeared persons and launch investigations into their disappearances and any related allegations of torture or extra-judicial killings. The country must also ratify the International Convention for the Protection of All Persons from Enforced Disappearance and enact a law criminalizing forced disappearance. Any persons found to be responsible for carrying out such human rights abuses must receive a fair trial before a civilian court and receive adequate punishment, in line with international standards, and adequate reparation must be provided to the victims or their relatives.

Any failure by the Human Rights Council to act in a swift, appropriate and effective manner concerning the situation of disappearances and the range of associated grave human rights violations currently being perpetrated in Pakistan, will have a negative impact on the credibility of the Council as a whole. The Council needs to meet the challenges it faces early in its existence if it is to become a success.

ALRC Pakistan UPR Report - Annex IV

Annex to *ALRC-UPR-2-005-2008*

September 25, 2007

AL-029-2007

An Oral Intervention submitted by the Asian Legal Resource Centre to the 6th session of the Human Rights Council

PAKISTAN: Human rights situation requires Human Rights Council's attention

Thank you, Mr. President.

I wish to address the Council as both a human rights defender and a victim of human rights abuses in Pakistan. The situation in the country is not gaining the attention it deserves here. The media are being silenced, human rights defenders face grave reprisals, torture is endemic and the country ranks amongst the highest perpetrators of forced disappearances in Asia, alongside Sri Lanka.

The whereabouts of at least 5,000 people disappeared by the State since 2001, including up to 4,000 people from Balochistan province, remain unknown. Of 300 cases before Pakistan's courts, the Supreme Court has secured the release of 105 individuals being held in army torture camps. President General Musharaff has confessed in his autobiography that 600 people have been handed to the USA for detention in Guantanamo Bay since 9/11 in exchange for money, although the total is estimated at 1200 persons.

In 2007, at least 1,100 people have been tortured in custody. Torture is extremely brutal and impunity rules. 24 year-old Mr. Hazoor Buksh Malik's genitals were cut off by the police in Sindh province during torture in January, days before he was to be married. He was arrested for not having identification papers on him. The authorities, including the Federal Minister on Narcotics, have since reportedly colluded to guarantee impunity.

Threats against the increasingly vocal judiciary and Chief Justice, who was recently unconstitutionally suspended for four months for taking up cases of disappearances, are again increasing. Over 2,000 political workers have been arrested before the upcoming presidential elections.

Pakistan still hasn't even ratified the ICCPR and ICESCR. The Council must act to bring an end to mass disappearances.

I myself have become a victim of cruel reprisals. I was able to achieve a resettlement plan for some 300,000 people under threat of forced eviction and displacement resulting from the government's Lyrai Expressway Project, with the assistance from the Special Procedures. However, on November 8, 2004, my son was kidnapped and his tortured, mutilated body was dumped at my office in Karachi two days later. The government has flatly refused to conduct an autopsy on my son. Nobody has been arrested and the investigation has been closed down, while threats continue. My son was kidnapped, tortured and murdered to punish me for my human rights work.

ALRC Pakistan UPR Report - Annex V

Annex to ALRC-UPR-2-005-2008

November 15, 2007

AL-035-2007

A Joint Statement by the Lawyers Rights Watch Canada (LRWC) , the Lawyers without Borders/Québec (LWB) , the Dutch Lawyers for Lawyers Foundation (L4L) and the Asian Legal Resource Centre (ALRC)

PAKISTAN: Canadian, Dutch and Hong Kong lawyers call for release of Pakistan lawyers and return to rule of law

Lawyers Rights Watch Canada (LRWC) and Lawyers without Borders/Québec (LWB) and the Dutch Lawyers for Lawyers Foundation (L4L) and the Asian Legal Resource Centre (ALRC) join to call for:

1. The immediate release of all lawyers arrested under preventative detention measures, including, without limiting the generality of the foregoing, Asma Jahangir, United Nations Special Rapporteur on freedom of religion or belief; Aitzaz Ahsan, President of the Supreme Court Bar; over 50 members of the Human Rights Commission of Pakistan (HRCP) including Executive Director I.A Rehman, Secretary-General Iqbal Haider (former attorney general of Pakistan) and Jawed Iqbal Burqi; Muneer A Malik former president of the Supreme Court Bar Association; Imran Qureshi, of the Women's Rights organization; Ali Ahmed Kurd, former Vice Chair of the Pakistan Bar Council; Tariq Mahmood, Ali Ahmed Kurd, Abrar Hassan, Ahsan Bhoon and others;
2. Strict adherence by the State and state officials to all Pakistan laws and to applicable international standards governing the guarantees, safeguards, rights and freedoms applicable to the role of lawyer, including those embodied in the UN *Basic Principles on the Role of Lawyers*^[i]
3. Strict adherence by the State and state officials to all Pakistan laws and to applicable international standards governing the humane treatment of prisoners, including the universal non-derogable prohibition against torture;
4. Appropriate civil and criminal remedies for violations of the rights of those detained.
5. Dismissal of the warrant for the arrest of United Nations Special Rapporteur in Human Rights Defenders, Hina Jilani.
6. The immediate re-instatement of and adherence to the *Constitution of the Republic of Pakistan* and rescission of the Emergency Declaration of November 3, 2007, the *Provisional Constitutional Order No. 1 of 2007* and the *Oath of Offices (Judges) Order, 2007*

It is apparent that the above named and numerous other Pakistan lawyers have been arrested and detained solely to prevent them from carrying out their professional duty to advocate vigorously against the arbitrary suspension of the rule of law and violation of human rights by the Musharraf regime, and for the restoration of law in Pakistan. Reports indicate that the lawyers arrested have been subjected to a number of serious violations of their fundamental rights in addition to arbitrary arrest and detention, including denial of due process, denial of necessary medical attention, denial of access to legal representatives and visitors and exposure to the possibility of torture and other prohibited inhumane treatment. Recent (November 11, 2007) amendments were made to the law to allow the trial of lawyers and other civilians by military courts for a range of acts including making statements 'conducive to public mischief'.

LRWC, L4L, LWB and ALRC state that lawyers in Pakistan are duty bound to uphold the rule of law and to advocate for justice and against repression. To do so, they must be willing and free to stand between the state and the citizen and to criticize and call into question the actions of the State when human rights are threatened.

Norms of international law establish minimum standards protecting the advocacy rights of lawyers and these standards have been adopted by Pakistan both as a member of the United Nations and the Commonwealth Secretariat. Part VIII of the *Latimer House Guidelines for the Commonwealth*, provides, “An independent, organized legal profession is an essential component in the protection of the rule of law.”^[ii] The UN Basic Principles on the Role of Lawyers, at Articles 16 and 17, require Pakistan to ensure that lawyers are free to “perform all of their professional functions without intimidation, hindrance, harassment or improper interference...” and “where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.” Furthermore, Article 23 of the *UN Basic Principles on the Role of Lawyers* provides that “Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights [...]”

Pakistan is also obligated to respect the prohibitions against torture, arbitrary arrest and detention contained in, *inter alia*, the *Universal Declaration of Human Rights* (UDHR). State practice and *opinio juris* have resulted in these rights becoming part of customary international law. Regardless of the current status of the Pakistani Constitution, the Islamic Republic of Pakistan remains obligated to observe these basic tenants of international law.

LRWC, L4L, LWB and ALRC condemn military president General Pervez Musharraf’s repression of the peaceful efforts of members of the Pakistani Bar to uphold the law and to advocate for the rule of law, the independence of the Pakistan judiciary and adherence by the Musharraf regime, to the *Constitution of the Republic of Pakistan*. LRWC, L4L, LWB and ALRC condemn the extra-legal measures being used to punish the legitimate and lawful exercise of freedom of speech and assembly by lawyers.

LRWC, L4L, LWB and ALRC view the *Emergency Declaration* and subsequent changes to Pakistan law as being illegitimate, prohibited by both the *Constitution of the Republic of Pakistan* and by international law, with a cloak of apparent legality.

Background

When military President Musharraf sacked the Chief Justice of the Pakistan Supreme Court on March 9, 2007, hundreds of lawyers rallied and spoke publicly in support of the Chief Justice and against proceedings brought against him by Musharraf. Protests by lawyers, judges and others continued up to July 20, 2007 when the Supreme Court of Pakistan ordered Chaudhry reinstated as Chief Justice and dismissed the proceedings against him as illegal.

The repression of lawyers by the Musharraf regime recommenced when a state of emergency was declared and the Pakistan Constitution suspended on November 3, 2007. The suspension of the constitution resulted in the repeal of fundamental human rights, including the right to life and liberty, freedoms of assembly, association and speech, equality before and equal protection of the law. Core legal rights related to arrest and detention are also repealed, including the right to counsel. Since then, thousands of lawyers and human rights activists have been arrested and detained.

LRWC, L4L, LWB and ALRC join with other lawyers and human rights advocates in Pakistan and around the world in calling for the immediate remedies set out above.

Sincerely,

Gail Davidson, Executive Director, Lawyers Rights Watch Canada
Judith Lichtenberg, Executive Director, The Lawyers for Lawyers Foundation
Pascal Paradis, Executive Director, Lawyers without Borders Québec
Basil Fernando, Executive Director, ALRC

***Lawyers Rights Watch Canada (LRWC)** is a committee of Canadian lawyers who promote human rights and the rule of law internationally by providing support to lawyers and other human rights defenders in danger because of their advocacy. LRWC is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations. Earlier LRWC statements on Pakistan: www.lrwc.org/pub1.php*

The Dutch Lawyers For Lawyers Foundation (L4L) ('Stichting Advocaten voor Advocaten') is committed to enable lawyers, throughout the world, to practice law without improper interference and to this end, supports lawyers who are under threat or attack in the exercise of their profession while working for the protection of human rights. L4L, established in co-operation with the Dutch Bar Association, the Dutch affiliate of the International Commission of Jurists, and the Dutch Institute of Human Rights, regularly reports on the situation of human rights lawyers.

***Lawyers without Borders Québec (LWB)** is the Canadian branch of the "Avocats sans frontières" world movement. It is a volunteer NGO whose mission is to contribute to the defense of the rights of the most vulnerable individuals or groups in the developing world or in countries in crisis, particularly by supporting the work of lawyers, officials of justice and other human rights defenders. www.asfquebec.org*

*The **Asian Legal Resource Centre (ALRC)** is a Hong Kong-based NGO with General Consultative status with the Economic and Social Council of the United Nations. The ALRC was founded in 1986 by a prominent group of jurists and human rights activists in Asia and is committed to the development of legal self-reliance and the empowerment of people. The Centre promotes the respect of human rights in the region through the strengthening of institutions of the rule of law, notably the police, prosecution and judiciary. It also seeks to strengthen and encourage positive action on legal and human rights issues by the bar and other legal bodies and personnel, at the local and national levels, It seeks to promote rights in the region through advocacy, research and publications, such as Article 2.*

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[ⁱ] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

[ⁱⁱ] Article 3 of the *Latimer House Guidelines*, an Annex to the *Commonwealth (Latimer House) Principles on the Three Branches of Government: Commonwealth Principles on the Accountability of and the Relationship between the Three Branches of Government*: www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7BACC9270A-E929-4AE0-AEF9-4AAFEC68479C%7D_Latimer%20House%20Booklet%20130504.pdf

ALRC Pakistan UPR Report - Annex VI

Annex to *ALRC-UPR-2-005-2008*

AS-283-2007

December 10, 2007

A Statement by the Asian Human Rights Commission

PAKISTAN – the human rights situation in 2007

The year 2007 was marked by constitutional and judicial crises; the President as the military leader used the state power against the judiciary, the Constitution of the country, the legal fraternity and the media. Civil society was the most affected section in the country. Every effort was made to undermine the rule of law.

To promote his autocratic and militaristic actions, General Musharraf, being the chief of staff, imposed a state of emergency, abrogated the Constitution—the second instance during his tenure—suspended all fundamental rights and issued several ordinances including amendments to the Army Act of 1952, under which any civilian could be court-martialled and military courts constituted as and when needed.

Under the amended law, military courts could hear charges ranging from treason to ‘giving statements conducive to public mischief’. These measures were given retrospective effect by the newly constituted Supreme Court, comprised of those justices who had submitted to the oath of loyalty under General Musharraf’s tailor-made Provisional Constitutional Order (PCO). These justices have not only compromised their personal integrity but the independence of the judiciary as well.

Strict restrictions have been imposed on the media through amendments to the Pakistan Electronic Media Regulatory Authority (PEMRA). Accordingly the print media has been subjected to pre-censorship and the electronic media has been forbidden to discuss the emergency rule. Many media houses have been attacked and their equipment confiscated. More than 1000 media personnel have been arrested and beaten by the police during demonstrations calling for press freedom.

The exercise of the rule of emergency was aimed at the judiciary and the legal fraternity particularly against the Chief Justice Iftakhar Chaudhry. It was reported that under the state of emergency about 46 judges were under house arrest, but according to the Chief Justice, more than 60 judges of the superior courts have been detained. The children of judges particularly those of Chief Justice Chaudhry and other Supreme Court judges, have also been prevented from attending their schools and colleges.

Besides, under the state of emergency, more than 3500 lawyers have been arrested and many lawyers including retired judges and office bearers of Bar associations have been tortured in custody. Some judges have been attacked by the police and prevented from entering the courts while their cars have been damaged. Chief Justice Chaudhry has also been beaten and manhandled by the police who pulled him by his hair when he was being produced before the Supreme Judicial Council.

The judiciary, particularly the higher judiciary was targeted mainly for taking *sou moto* action on cases of corruption by the authorities, gross human rights violations, and disappearances after arrest by state intelligence agencies and land grabbing by the Army, ministers and even the President. After a long wait, the courts were finally seen to meet the aspirations of the

people and to be providing them with justice. But this proved too much for the military leadership government.

About 8000 people have been arrested after the imposition of the state of emergency, among them members of human rights organizations, political parties and trade unions. Though some were released later, more than 4000 people were still in jail. For the first time in the history of Pakistan, riot police and plainclothes intelligence agents stormed into the apex courthouses and brutalized thousands of lawyers, students, and citizens whose only crime had been to exercise their democratic rights. Hundreds still remain behind bars on fraudulent, non-bailable charges of 'terrorism'.

The question of disappearances was far from being resolved. After observing that those who had disappeared after arrest should be in military custody, the Chief Justice ordered higher military officials to be present in court and release the detainees. Even though more than 110 persons were released from army detention through the intervention of the Supreme Court, they had not been formally produced in court; instead they were dumped in a precarious condition on roadsides.

Widespread torture has also been a phenomenon in the country. Hundreds of people have been reported tortured in custody, including lawyers. In one of the most shocking cases to be reported in modern times, a villager had his penis severed under police torture and a federal minister was seen protecting the alleged perpetrators from being arrested.

Women and minorities continue to be heavily discriminated by state policies. Honour killings and the holding of Jirga courts have not been abolished and cases of honour killings have increased. Minorities continue to be threatened with blasphemy laws and several young men and women have been arrested and punished under these laws without evidence.

ALRC Pakistan UPR Report - Annex VII

Annex to *ALRC-UPR-2-005-2008*

FS-039-2007

November 6, 2007

A Statement from the Office of the High Commissioner for Human Rights forwarded by the Asian Human Rights Commission

PAKISTAN: High Commissioner alarmed about Pakistan state of emergency

November 5, 2007

United Nations High Commissioner for Human Rights Louise Arbour said today she is alarmed over the suspension of fundamental rights and imposition of a state of emergency in Pakistan.

Pakistan has not ratified the International Covenant on Civil and Political Rights, but the High Commissioner noted that, under accepted rules of international law, fundamental rights, such as the right to life, the prohibition on arbitrary detention, torture and cruel, inhumane and degrading treatment, cannot be suspended even in times of emergency. Such far-reaching restrictions of rights must be proportional and may only be applied to the extent and for the time strictly required by the situation.

"A state of emergency should only be used to deal with a dire security threat to the nation, not to undermine the integrity and independence of the judiciary", the High Commissioner said.

The High Commissioner expressed concern about reports that leading judges, lawyers and political and human rights activists have been detained or placed under house arrest, including United Nations Special Rapporteur on freedom of religion and belief, Asma Jahangir. The High Commissioner called on the Pakistan authorities to clarify the status of those detained and ensure that no one is detained for the peaceful exercise of their political beliefs.

José Luis Díaz
Information Officer, Spokesperson
Office of the High Commissioner for Human Rights

ALRC Pakistan UPR Report - Annex VIII

Annex to *ALRC-UPR-2-005-2008*

December 12, 2007

ALRC-COS-06-005-2007

Oral Intervention by the Asian Legal Resource Centre (ALRC) to the Sixth Session of the Human Rights Council, December 11, 2007, supported by the Dutch Lawyers for Lawyers Foundation (L4L) and Lawyers' Rights Watch Canada (LRWC)

PAKISTAN: Human rights groups welcome Louise Arbour's statement on Pakistan

Thank you Mr. President,

The Asian Legal Resource Centre (ALRC), the Dutch Lawyers for Lawyers Foundation (L4L) and Lawyers' Rights Watch Canada (LRWC) welcome the statement made by the High Commissioner for Human Rights, Madame Louise Arbour, concerning the ongoing, deep political and human rights crisis in Pakistan.

In particular we remain shocked by the fact that a member of the Human Rights Council, notably one that is on the Consultative Group that will select future Special Procedures mandate-holders, has arbitrarily detained Special Rapporteur Asma Jahangir and threatened Special Representative Hina Jilani with arrest if she returned to Pakistan. Furthermore, massive attacks on the independence and members of the judiciary, as well as journalists, will lead to grave long-lasting damage to the enjoyment of democracy and human rights in the country.

We recall that General Musharraf declared a State of Emergency on November 3, 2007, on the false pretext of countering terrorism, and then abused its powers to terminate the country's increasingly independent judiciary. The Supreme Court has been filled with cronies. Under the emergency many fundamental rights have been suspended.

Currently, some 46 judges from the higher judiciary remain under house arrest. Over 8'000 persons were arrested following the State of Emergency, including over 3'500 lawyers and 500 journalists, many of whom remain in detention, and re-arrests continue. Many have been subjected to torture while in detention.

We welcome the High Commissioner's recommendation that all corrective measures be taken to restore confidence in a fully independent judicial system in Pakistan. We would like to ask the High Commissioner to be more specific on what measures are required in order to do this? Madame Arbour, do you agree that the Chief Justice and all other members of the recently ousted judiciary should be released and reinstated without any delay?

Do you agree that we should also go further and ensure that all human rights violations in Pakistan in recent years, which include thousands of forced disappearances and many more cases of torture and other grave rights abuses, are immediately addressed by this Council and the government of Pakistan?

We are of the view that Pakistan's actions require strong condemnation by this Council. The Council must send a team of experts to look into human rights violations in the country that must be given full access, notably to all places of detention. Furthermore, the country should be immediately removed from the Special Procedures mandate-holders selection process. We

also believe that Pakistan's suspension from the Human Rights Council is fully justified and urge the international community to take, in your words, all possible corrective measures with regard to the above.