



ASIAN LEGAL RESOURCE CENTRE

AN NGO WITH GENERAL CONSULTATIVE STATUS WITH THE ECOSOC OF THE UN
19 Floor, Go-Up Commercial Building, 998 Canton Road, Kowloon, Hong Kong
Tel:+(852)2698-6339 . Fax: +(852) 2698-6367 . E-mail: alrc@alrc.net . Web: www.alrc.net

Submission by the Asian Legal Resource Centre to the Human Rights Council's Universal Periodic Review concerning human rights in Pakistan

document id: ALRC-UPR-2-005-2008

Hong Kong, February 2008

1. **Introduction:** Human rights, security of the person, the rule of law and respect for constitutional order have been increasingly under threat over recent years in Pakistan, with developments in recent months reaching nothing less than a crisis level. Pakistan is a founding member of the Human Rights Council (HRC), however it has not ratified key international instruments, such as the ICCPR and the CAT. It has only signed the IESCR (2004). These instruments protect most fundamental rights, many of which continue to be violated on a regular and widespread basis in the country. Pakistan has ratified CEDAW (1996), the CRC (1990), CERD (1966), although implementation of the provisions contained therein in reality remains negligible.
2. Many ongoing violations of human rights, including torture and forced disappearances, place Pakistan amongst the worst rights abusers in South Asia and the world. Recent attacks on the independence of the judiciary and the unconstitutional imposition of a state of emergency have further aggravated the situation. The credibility of the Universal Periodic Review (UPR) process will be gravely impaired unless it is able to strongly condemn these actions by the government and produce credible, relevant and strong outcomes that reflect the gravity of the situation in the country. Beyond this, the implementation of these outcomes by Pakistan must be ensured without delay. The current worsening of the situation of human rights and democracy in Pakistan can only be seen as being the result of the attempts by Pervez Musharraf to hold onto power by any means possible,
3. **Gross and widespread violations:** Pakistan has been the scene of numerous grave human rights abuses in recent years, as well as increased insecurity resulting from the country having become a front in the so-called "war on terror." While it is known that under the auspices of this "war" the country has been involved in the torture and/or disappearance of hundreds individuals,ⁱ it would be a mistake to view Pakistan's violations of human rights as being solely a product of this "war." Instead, it must be understood that the lack of functioning institutions of the rule of law, and the prevalence of insecurity and impunity have led to the country becoming such a front. Serious violations of the range of rights can be witnessed in Pakistan, including violations of women's rights, religious discrimination, deplorable conditions of detention, and violations of the rights to adequate housing and food, to name but a few. 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 instead increased in 2007. Minorities continue to be threatened with blasphemy laws and several young men and women have been arrested and punished under these laws without evidence. Despite the wide range of possible issues for discussion, the Asian Legal Resource Centre (ALRC) wishes to focus on several key violations here:

4. **Torture:** In the international discourse on torture, the practice is often thought of as being one that is used under extreme circumstances or only by certain rogue elements. In Pakistan, however, torture is widespread and persons in detention even for common crimes run a high risk of being subjected to such treatment. It may be thought that in Pakistan torture it is used predominantly in counter-terrorism, as much attention has been given to the subject. While it is true that the military are engaged in torture and that every major military cantonment, even those in major cities, has a so-called torture camp, in which persons are frequently illegally detained, tortured and even disappeared or extra-judicially killed, the police are also routinely engaged in using torture. Torture by the police is used to replace proper investigations, to force confessions, as a method of intimidation, as punishment and even arbitrarily and without discernable purpose. It must be recalled that, according to Article 14 of the Pakistani Constitution, sub article (a): "No person shall be subjected to torture for the purpose of extracting evidences."
5. One case amongst many documented by the ALRC's sister-organisation, the Asian Human Rights Commission (AHRC), which illustrates the brutal nature of torture in Pakistan is that of 24-year-old Hazoor Buksh Malik, who was arrested on January 26, 2007, for not carrying his national identity card. Four policemen in an obviously drunken state, including the station head officer (SHO) Muhammad Khan Tunio, from the Market police station in Larkana, Sindh province, reportedly severed the victim's penis with a broken tea cup. The victim's attempts to file a case of torture and attempted murder against the perpetrators have been thwarted because the perpetrators are allegedly being protected by the federal minister for anti-narcotics.ⁱⁱ
6. The number of reported torture cases increased from around 1000 in 2005 to 1319 in 2006, with the total in 2007 expected to be higher still. This however only represents a fraction of the actual figure, as many cases are never reported out of fear of further reprisals. During 2007, the practice of torture in custody has again risen mainly in conjunction with mass arbitrary arrests carried out during protests held around the country, with professionals such as lawyers and journalists also being subjected to torture by the police and army intelligence agencies.
7. **Forced disappearances:** Pakistan is, sadly, at present one of the world-leaders in perpetrating forced disappearances. The ALRC and others have previously communicated this fact to the Human Rights Council, yet the Council has yet to take any serious steps to address the situation prevailing in the country.ⁱⁱⁱ It is hoped that the UPR process will not also result in such failure. Forced disappearances have increased dramatically since the military government took power in 1999 and even more since the September 11 attacks in the US. In Southern Balochistan, more than 4000 persons disappeared following arrest in 2005 alone, according to the government itself. No list of those arrested was provided and very few arrestees have been produced before

court. In Sindh province about 100 persons, mostly nationalists, have disappeared, while in the North Western Frontier Province (NWFP) more than 1000 persons have been disappeared since the beginning of the “war on terror.” It has also become impossible to ascertain the exact 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.^{iv}

8. The Supreme Court and the Sindh High Court had been starting to put tangible pressure on the military government and intelligence agencies to release any such disappeared or arbitrarily detained persons. Subsequently many who had ‘disappeared’ were found thrown—either dead or alive—on the roadside by their captors. As we will see in the following section, following 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 the State’s intelligence agencies has been removed.
9. **Independence of the Judiciary:** Without a functioning, independent judiciary it is impossible to see human rights respected, protected or enjoyed. During 2007, an increasingly independent Judiciary has had to face repeated and draconian attacks by the military government in Pakistan. As seen above, these attacks stem in part from the fact that the Judiciary was increasingly putting pressure on the military government of Pakistan and the Army concerning the arbitrary arrest, torture and disappearance of individuals. Furthermore, the Supreme Court, notably the Chief Justice, was becoming an increasing threat to General Musharraf concerning his desire to hold onto power once his constitutional term expired on November 15, 2007.
10. When General Musharraf sacked the Chief Justice of the Pakistan Supreme Court on March 9, 2007, widespread demonstrations were met with mass arrests and violence, leaving many injured and dead. Protests continued until July 20, 2007, when the Supreme Court of Pakistan ordered Chaudhry reinstated as Chief Justice and dismissed the proceedings against him as being illegal. The repression of lawyers began anew when General Musharraf declared a state of emergency and suspended the Constitution of Pakistan on November 3, 2007, on the false pretext of countering terrorism. The suspension resulted in fundamental human rights being repealed, 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 were also repealed, including the right to counsel.^v More than 3500 lawyers, including the Chief Justice, were arrested and many lawyers including retired judges and office bearers of Bar associations were tortured in custody. Some judges have been attacked by the police and prevented from

entering the courts.^{vi} About 8000 people were arrested after the imposition of the state of emergency, among them members of human rights organizations, political parties and trade unions. Hundreds still remain behind bars on fraudulent, non-bailable charges of 'terrorism'.^{vii}

11. The High Commissioner for Human Rights issued a strong statement denouncing these actions and stressing the State's responsibility to respect fundamental rights at the time, as well as expressing concern for Special Rapporteur Asma Jahangir who had also been arrested.^{viii} The ALRC believes that Pakistan should be ousted from the Consultative Group that will select future Special Procedures mandate-holders, as a result.^{ix} The arrest of Asma Jahangir and threats to Special Representative Hina Jilani indicate the contempt with which member-Pakistan holds the Human Rights Council. Asma Jahangir's daughters were more recently also assaulted and threatened by the authorities.^x
12. Chief Justice Choudhry has now been illegitimately ousted for the second time in a year and the Supreme Court has been filled with cronies. Under amended laws, military courts can 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). The resulting absence of an independent judiciary violates the fundamental duty, accepted as *jus cogens* and binding on Pakistan, to afford at all times, including during legitimate states of emergency, "all the judicial guarantees which are recognized as indispensable by civilized peoples." The non-derogability of judicial independence is a requirement of common sense and is also the foundation of all international and domestic human rights, including the ICCPR, the UDHR and the Basic Principles on the Role of Judges.
13. Without an independent judiciary, there can be neither free and fair elections nor trials in Pakistan. The thousands of charges laid in the aftermath of the murder of Benazir Bhutto cannot be lawfully determined unless and until judges removed in November are reinstated and proper safeguards of their independence are recognized by the government of Pakistan. To be lawful and legitimate the imposition, duration and removal of emergency measures by Pakistan or any other state, must meet the 10-principle test of the United Nations standards. The November 3 *Proclamation of Emergency* fails to meet all 10 of the UN criteria for legitimate emergency measures, notably concerning: legality, proclamation, notification, time limitation, existence of exceptional threat, proportionality, non-discrimination, compatibility, concordance and complementarity with international law and preservation of non-derogable rights. Access to judicial safeguards of non-derogable rights remains an absolute requirement during emergency measures. Actions that compromise or destroy judicial independence, such as those taken by the Musharraf regime, render even emergency measures that meet UN standards, illegal. All laws brought into force and all state actions taken in reliance on the legitimacy of the Proclamation of Emergency of November 3, 2007 must be considered as enacted and done without legal authority and therefore as null and the appropriate remedies must be taken to restore the law and redress violations.^{xi}

14. **Freedom of expression and the media:** On November 3, 2007, the popular MAST FM103 Karachi radio station was invaded by the authorities and was forced to shutdown transmission and all broadcast equipment was confiscated. Strict restrictions have been imposed on the media through amendments to the Pakistan Electronic Media Regulatory Authority (PEMRA). 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 and at least six journalists were killed and 73 injured in 2007.^{xiii} Musharraf has since claimed that Pakistan's media is the freest in the world.

15. **Recommendations:** The Human Rights Council is called upon to make use of the Universal Periodic Review to urge the Government of Pakistan to:

15.1. Immediately and unconditionally release all persons being detained as under preventative detention measures following the November 3, 2007 declaration of state of emergency;

15.2. Strictly adhere to all laws in force in Pakistan prior to November 3, 2007 and to applicable international standards protecting the independence of lawyers and judges and those governing the humane treatment of prisoners, including the universal non-derogable prohibition against torture and denial of due process;

15.3. Immediately re-instate and adhere to the Constitution of the Republic of Pakistan;

15.4. Repeal all laws that came into force under the authority of the November 3, 2007 Proclamation of Emergency Declaration, the Provisional Constitutional Order No. 1 of 2007 and the Oath of Offices (Judges) Order, 2007;

15.5. Prior to elections, reinstate all judges removed from office subsequent to the Emergency Declaration and remove from office all judges appointed in their stead;

15.6. Ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance as a priority, as well the relevant optional protocols enabling individuals to make complaints at the international level, and ensure that their provisions are implemented in domestic laws and practices.

ⁱ See further details in Annex I, the Pakistan section of the AHRC's Annual report, page 25

ⁱⁱ See Annex II, AHRC statement AS-034-2007

ⁱⁱⁱ See Annex III, a written statement to the HRC and Annex IV an oral intervention before the HRC

^{iv} See further details in Annex I, the Pakistan section of the AHRC's Annual report, pages 25 and 26

^v See Annex V, a joint statement concerning the need to release detained lawyers

^{vi} See Annex VI, statement on the state of human rights in Pakistan in 2007

^{vii} See Annex V, a joint statement concerning the need to release detained lawyers

^{viii} See Annex VII, a statement release by the High Commissioner, forwarded by the AHRC.

^{ix} See Annex VIII, an oral intervention before the 6th session of the Human Rights Council by the ALRC

^x See Annex IX, a statement by the AHRC

^{xi} See Annex X, a joint statement concerning the legitimacy of the state of emergency

^{xii} See Annex XI, a forwarded statement from the Pakistan Federal Union of Journalists

