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ICJ Submission to the Universal Periodic Review of Pakistan
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Introduction

The International Commission of Jurists (ICJ) welcomes this opportunity to contribute to the Human Rights Council's Universal Periodic Review of Pakistan. The ICJ submission raises the Government of Pakistan's failure to fully and effectively ensure and protect human rights and the rule of law in the fight against terrorist acts and to protect people against terrorism. This submission also addresses the issue of the Government's attacks on the rule of law, the independence of the judiciary, and the legal profession over the last nine months, and especially since 3 November 2007. The Government's declaring a State of Emergency, dismissing Supreme Court justices, detaining lawyers and introducing laws and practices to maintain martial law, have inflicted severe, long-term injury to the judiciary and to civil society. These concerns should be addressed as a matter of priority in the Human Rights Council's Universal Periodic Review of Pakistan.

I. Failure to fully and effectively protect against terrorism

In recent years terrorist acts has become a serious and acute threat in Pakistan, as evidenced by a sharp increase in bombings, killings, and suicide attacks on hotels, public transportation, and targets of political and religious significance. The ICJ is concerned that the State of Pakistan is facing difficulties in protecting its citizens against terrorism and is not doing its utmost to fulfil its responsibility to protect its citizens against acts of terror.

Notably in the tribal areas, the response of the Pakistan government to terrorist acts has been equivocal. The result is that the Pakistani government has been unable to protect its citizens against a rising tide of acts of terror, resulting in a profound destabilization of Pakistan's nascent democracy and a growing loss of life. The military authorities have alternated between large-scale military operations and seeking agreements with militants.¹ Military operations have tended to result in high civilian casualties, alienating the local population, while the agreements have weakened the enforcement of the law by state authorities and the increasing penetration of irregular fighters in

¹ ICJ, "Eminent Jurists Panel on Terrorism, Counter-Terrorism, and Human Rights," Press Release, 7 March 2007, p. 2;

society.² Additionally, the tribal areas have yet to be integrated into the nation-wide system of justice, making it difficult to investigate and try terrorism cases and furthering the problem of lack of state authority. The application of anomalous laws such as the Frontier Crimes Regulation³ further hampers the administration of justice. Of particular concern is the 1997 Anti-Terrorism Act (ATA), which provides for trials before special Anti-Terrorism Courts and awards the executive power of the State increased investigatory and prosecution powers. These courts have brought extremely few high-level cases to trial, nurturing suspicions about the use of extra-legal means to address terrorism. Lower-level cases are brought with more frequency, and conviction rates are high, but many convictions are overturned on appeal. The prosecution of cases in these courts often suffers from a lack of professionalism, lengthy delays, and failure to respect basic procedural norms of justice called for under international law.⁴ More generally, the failure of the justice system to combat terrorism has resulted in its decreasing legitimacy in the perception of the public, and an increase in terrorist attacks.

Assassination of Benazir Bhutto

The recent assassination of the former Prime Minister Benazir Bhutto has further fuelled the level of violence in Pakistan. Dozens of people were killed in the post-assassination violence and the country's economy was damaged. Pakistan lost one of its most popular politicians: a high-profile candidate in the upcoming parliamentary elections, which, due to her death, had to be postponed. The government's response to the assassination has been chaotic and ineffective, with different officials citing different causes of death and speculating widely as to the individuals and organizations suspected to be behind her death. No autopsy was conducted nor was the crime scene investigated before being cleared.⁵ The government's failure to credibly identify suspects in the weeks after Ms. Bhutto's killing has furthered the climate of insecurity and unpredictability in the country. This has led to further violence and legitimate doubts about the government's political will in combating acts of terror.

Enforced Disappearances

Due in part to the failure of the legal system to effectively address the issue of terrorism, the authorities have increasingly engaged in detaining terrorism suspects without warrants and holding the detainees incommunicado for long periods, in some case for years, without bringing charges or releasing information on their whereabouts. Some of its practices can amount to enforced disappearances. An ICJ Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, which met in Pakistan in March 2007, elicited confirmation from the Pakistani authorities that such enforced disappearances are illegal and must be investigated.⁶ They undertook to expedite investigations into the disappearances of all the persons presented to them by members of the panel; however, such an investigation has not been forthcoming and the practice of enforced

² Ibid;

³ Federally Administered Tribal Area, "Administrative System," www.fata.gov.pk/index.php?link=3;

⁴ ICJ, Press Release, 7 Mar 2007, p. 3;

⁵ Witte, Griff. "Masses Mourn Bhutto as Unrest Spreads." *The Washington Post*, 29 Dec 2007;

⁶ ICJ, Press Release, 7 Mar 2007, p. 2;

disappearances has been increasing in recent months. Pakistan has yet to accede to the International Covenant on Civil and Political Rights and to the International Convention for the Protection of All Persons from Enforced Disappearance, both of which would help clarify Pakistan's legal obligations on the issue, although the Universal Declaration of Human Rights preclude arbitrary detention and under customary international law, the practice of enforced disappearance is absolutely prohibited.

II. Systematic attacks on the rule of law and independence of judiciary

The ICJ is gravely concerned by the Pakistani military and civilian authorities' attacks on the rule of law and judicial independence since March 2007. These attacks seem calculated by President Musharraf's Government to prevent the courts, especially the Supreme Court, from investigating and prosecuting cases unfavourable to the government, including charges of corruption and arbitrary detention and enforced disappearances, and resolving constitutional questions of primary political importance. The attacks have included President Musharraf's suspension of Supreme Court Chief Justice Iftikhar Muhammad Chaudhry in March 2007 - the first such suspension in the history of that court - and his subsequent dismissal and arrest of the majority of Supreme Court justices. They have also included the arrest or threatened arrest of the two UN Special Rapporteurs, Asma Jahangir and Hina Jilani, as well as thousands of lawyers and dozens of judges, the majority of whom were later released without being charged.

The ICJ deplores that thirteen judges of the Supreme Court, dismissed after refusing to take a new oath of office after 3 November, along with their families, were not free to move, and some of them still remain under arbitrary house arrest and cannot be visited.

President Musharraf's worst attacks on the rule of law took place during the six-week "state of emergency" he declared on 3 November. Thousands of lawyers were arbitrarily arrested, most because they protested the dismissal of Supreme Court justices and the suspension of the Constitution. Many were beaten, some held incommunicado, others have been charged with sedition which, under the amendments to the Army Act, could be tried by a military court behind closed doors.

President Musharraf also unilaterally amended the Constitution to exempt himself and authorities for liability for any official action made during the emergency,⁷ thus precluding justice for human rights violations committed during this period and setting a dangerous precedent for amending the Constitution through decree backed by military force rather than through democratic means.

The amendments made to the Constitution also mean that, despite the end of the state of emergency, many "emergency measures," such as an Amended Bar Council Act allowing the Supreme Court, now packed with Musharraf appointees, to suspend

⁷ Constitution of the Islamic Republic of Pakistan, Arts. 270AAA, 270C;

lawyers' licenses, and an expansion of the jurisdiction of military courts to a wide range of civilian offences, remain in place.⁸

All of these actions have done grave damage to constitutional order in Pakistan. They have weakened the courts' ability to guarantee basic human rights to the people of Pakistan. Lawyers and judges risk administrative or criminal sanctions if they investigate enforced disappearances or other human rights violations and acts of official corruption. The result has been increasing impunity for authorities that engage in human rights violations, and a furthered climate of lawlessness. The chaos in the courts and the use of the police as agents of repression rather than law enforcement has reduced the ability of the justice system to address even ordinary criminal offences. Pakistanis have increasingly become victims of street crime.⁹ The attacks on the judicial branch of the state and on lawyers have also brought into question the government's commitment to holding free and fair elections, since the courts will be reluctant or unable to rule on disputes over election results and limitations on freedom of speech and assembly during the campaign. As a general rule, the electoral process must be overseen by an independent, civilian judiciary, which operates under the constitution, with lawyers freely able to bring challenges to court. Free and fair elections also need a free media, yet journalists and media houses have been subjected to restrictions and closed down.

Relationship between attacks on the rule of law, judicial independence and terrorism

The weakening of the justice system not only allows government officials to commit human rights violations with impunity but also creates more room for the operations of terrorists. The general breakdown in operations of the law enforcement system means that terrorist attacks are less likely to be investigated and prosecuted. The expanded use of special Anti-Terrorism Courts and military courts has created a dangerous parallel system of justice that weakens the rule of law. These courts magnify the problems with professionalism and transparency found throughout the Pakistani justice system, and impede the efforts of Pakistani rights advocates and persons accused of terrorism to challenge the use of improper procedures, illegal methods of interrogation, and flawed evidence. Their increasing use in non-terrorism-related cases such as those concerning peaceful opposition to the Government, stifles democratic debate and undermine the rule of law, law-enforcement efforts and the legitimacy of Pakistan's fight against terrorism. The same is true regarding the use of laws, such as the Army Act and the Anti-National Activities Act, whose original purpose to combat terrorism has been changed through the addition of vague wording prohibiting activities such as "making statements conducive to public mischief."¹⁰ This in turn impedes the authorities from using these laws and legal institutions for the purpose for which they were originally constituted, namely combating terrorism.

⁸ "KARACHI: AI urged to declare ex-CJ a 'prisoner of conscience.'" *Dawn* (Karachi) 18 Jan 2008, "UK/Pakistan: Brown Should Press Musharraf on Rights." *Human Rights Watch* 26 Jan 2008;

⁹ Statistics Division, Government of Pakistan, available at www.statpak.gov.pk/depts/fbs/statistics/social_statistics/social_statistics.html (accessed Jan 28, 2008);

¹⁰ ICJ, "Pakistan: Further dismantling of rule of law," Press Release, 13 Nov 2007;

III. Conclusions

The ICJ therefore calls on the Human Rights Council to:

- Express its concern at the violations of human rights and the breach of the rule of law in Pakistan, including administrative detention of the UN Special Rapporteur Asma Jahangir, and the arrest warrant issued against her colleague Hina Jilani;
- Repeal the amendments to the Constitution and laws passed during State of Emergency, including post-Emergency laws reaffirming or continuing emergency measures;
- Release all judges and lawyers remaining in detention, reinstate the justices and judges dismissed during the State of Emergency, and restore the licenses of all lawyers suspended or disbarred during the State of Emergency;
- Restore all rights under the Constitution, withdraw charges arising from peaceful protest and lift restrictions on the media;
- Withdraw any charges made against peaceful protesters under the Anti-Terrorism Act, restrict the use of special counter-terrorism legal procedures to legitimate terrorism suspects only, and refrain from the use of counter-terrorism measures against the peaceful political opposition in order to suppress protests or dissenting opinions;
- Encourage Pakistan to accede to the International Covenant on Civil and Political Rights, Convention against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance;
- Request its Special Rapporteurs on the independence of judges and lawyers, arbitrary detention, freedom of opinion and expression, human rights and terrorism and torture to assess the current human rights situation, including by immediate visit to the country, and to urge the Government to ensure their full and unhindered access to the country;
- Conduct a full and impartial investigation into the assassination of former Prime Minister Benazir Bhutto.

Comment [11]: I added this bit based on Asad Jamal's comments.