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C-3/441-C, Janakpuri, New Delhi - 110058, INDIA
Tel/Fax: +91-11-25620583, 25503624
Email: suhaschakma@achrweb.org; Web site: www.achrweb.org

Embargoed for: 8 February 2008

Pakistan: Army as the Judge, Jury and Executioner

[Contribution under the Universal Periodic Review of the Human Rights Council]

The Current Human Rights Situation

Following the suspension of the Constitution in November 2007, President Pervez Musharaff moved to buttress the already excessive powers of the Army. The amendment of the Army Act of 1952 (10 November 2007) awards powers to military courts to try civilians on charges of terrorism, anti-national activities, sedition, attacks on Army personnel and attacks on the President.¹ As in the past these new powers will be interpreted loosely, abused, and the threat of their use will serve as a powerful tool to stifle dissent. In addition to strengthening the institution of the Army, Musharaff continued to disassemble Pakistan's other institutions. The recent suspension of the Constitution, imposition of a State of Emergency, attacks on the rule of law, the judiciary, lawyers, media, rights defenders, and democratic political opposition have removed fundamental checks and balances on abuse of Executive power; most of which remain in place under the "restored" Constitution. In an environment of already high levels of impunity and systematic violation of human rights, removing further checks on abuse would appear likely to provoke a severe downward momentum in the human rights situation.

The President defends repression on the grounds of national security and the fight against terror. This strategy is buttressed by international community's support for Pakistan's 'war on terror'. Despite overwhelming evidence to the contrary, they appear to accept that these new powers will be used only to fight terror.

Pakistan has a very serious security problem that requires a security dimension, but the current response is likely to provoke more rather than less instability. Human rights violations and impunity are one of the central causes of Pakistan's acute security

¹. "Amendment to Army Act only to fight terrorism", The Hindu, India, 12 November 2007

problems. As the State removes democratic means of dissent, and systematically violates the rights of those who protest, its actions will only improve the prospects of those calling for violence.

The situation calls for serious scrutiny by the United Nations Human Rights Council under the Universal Periodic Review. A failure to address human rights violations in Pakistan will have serious consequences for domestic stability as well as regional and wider international security.

I. Key Civil and Political Rights Issues

a. Political repression

Following the imposition of state of emergency on 3 November 2007, President Musharraf launched a brutal crackdown against opposition political parties. Hundreds of opposition leaders and activists have been arrested or put under house arrest. Further from the media attention, in Balochistan, the Baloch nationalist leaders have faced arbitrary arrest and detention. Many have been disappeared.

Prominent among the political leaders detained included Pakistan Muslim League (Nawaz) Acting President, Makhdoom Javed Hashmi and Awami National Party chief, Asfandyar Wali Khan.² On 3 November 2007, Chaudhry Aitzaz Ahsan, President of the Supreme Court Bar Association, and Ali Ahmed Kurd, a member of the Pakistan Bar Council, and Justice (Retd) Tariq Mehmood, former president of the Supreme Court Bar Association were served with illegal detention orders.³ They were released on the night of 31 January 2008 after the expiry of 90-day detention period,⁴ only to be re-arrested on 5 February 2008 with a detention order for 30 days.⁵

b. Right to Life and other Grave Violations of Human Rights

The security forces are responsible for systematic and widespread human rights violations including massive illegal arbitrary arrest, enforced disappearance, extrajudicial killings, illegal detention and torture. These violations are perpetrated with impunity.

The use of torture and ill-treatment in custody is a systematic practice in Pakistan, often resulting in custodial death. For example, on 23 January 2008, Allah Bakhsh was allegedly tortured to death by the police at Nawan Shehar police station in Kabirwala Tehsil near Khanewal in the Punjab after he was arrested for allegedly selling liquor.⁶

² . <http://www.achrweb.org/Review/2007/192-07.html>

³ . KARACHI: HRCP slams govt's 'vindictive policies', The Dawn, 3 January 2008

⁴ . Aitzaz Ahsan finally released, Daily Times, 1 February 2008

⁵ . Aitzaz, Tariq under detention, again, Dawn, 3 February 2008

⁶ . Police 'torture' man to death, Dawn, 25 January 2008

c. Prisoners rights

The condition of prisoners in Pakistan is deplorable. Most jails in Pakistan are overcrowded. The majority of the prisoners are pre-trial detainees. On 14 April 2006, the Interior Ministry stated that there were about 90,258 prisoners in the 90 jails of the country against the sanctioned capacity of 41,365 prisoners leading to 118 percent overcrowding as of March 2006. Out of total 90,258 prisoners, 59 percent were under trial prisoners (there were 53,609 under trial prisoners including 52,587 males and 1,022 females).⁷ Juvenile offenders are routinely detained with adults placing them at high risk of abuse. Torture is part of prison administration. For example, on 3 February 2007, Mr. Ali Nawaz (33) was allegedly tortured to death in the Malir central jail in Karachi in Sindh Province.⁸

II. Violations of ESCR Rights

Minorities are victims of systematic denial of their economic, social and cultural rights. Their lands and properties, including places of worship, have been forcibly taken by the State.⁹

III. Vulnerable Groups

a. Violence against Women and Children

The rights of women are systematically denied by the State. They have been victims of sexual assault, domestic violence and “honour killing”, among many other very grave violations. Between January and December 2007, at least 792 women and 34 underage girls were victims of honour killings.¹⁰ Fuller coverage of this issue is covered by other NGOs.

b. Religious Minorities

Religious minorities – Hindus, Christians and Ahmadis - face systematic discrimination and persecution by the State. Religious minorities have been targeted and victimised under blasphemy laws which, among others provides for punishments including death penalty. Since July 2003, Ahmadis travelling to Mecca for the Hajj must officially denounce in writing the founder of the Ahmadi faith.¹¹ The entire Ahmadi population of Rabwah (the headquarters of Ahmadiya in Pakistan) has been prosecuted under Section 298C of Pakistan Penal Code since 15 December 1989.¹² They are prohibited from

⁷. Pakistani prisons overcrowded by 118 percent, The Daily Times, 15 April 2006

⁸. Available at: <http://www.ahrchk.net/ua/mainfile.php/2007/2214/>

⁹. No construction on temple site: Pak court, Times of India, 18 June 2006, <http://timesofindia.indiatimes.com/articleshow/1656554.cms>

¹⁰. Honour killings show no sign of decline, The Dawn, 13 April 2007

¹¹. <http://www.state.gov/g/drl/rls/irf/2006/71443.htm>

¹². <http://www.thepersecution.org/nr/2006/y2006.html#1>

holding any public conference or gathering. Ahmadi publications are banned from public sale.

Many members of minority communities have been kidnapped and murdered because of their faith. There are regular credible reports of forcible conversion. Abduction, rape and forcible marriage of Hindu minority females by Muslim men are common in Pakistan. When the police arrest the accused, the accused produce certificates issued by any Muslim seminary certifying that the Hindu women voluntarily converted to Islam and the police release the accused.

Religious minorities have been systematically excluded from the new voters list released by the Election Commission of Pakistan on 12 June 2007.¹³ The list placed Ahmadis on a separate discriminatory list.¹⁴ In July 2007, the All Pakistan Minorities Alliance claimed that 20 per cent of non-Muslim voters had been excluded from the new voters' list.¹⁵ About 18 per cent of eligible voters belonging to a minority group have been struck off the new voters' list in North West Frontier Province.¹⁶

c. Ethnic minorities

The insurgency in Balochistan province has escalated since early 2005. Instead of addressing the genuine political and economic grievances of the Balochis, the Military is attempting to impose state control through force. There are credible concerns over the use of systematic disappearance, indiscriminate use of fire-arms and aerial bombings resulting in the deaths of hundreds of civilians.

Increasing disappearances of the Baloch nationalists forced the then Chief Justice of Pakistan to issue *suo motu* notices to the provincial government of Balochistan on 1 August 2007.¹⁷ The Balochi insurgents have targeted civilians in retaliation.

Similarly, the people living in the Federally Administered Tribal Areas (FATA) region have been excluded from Pakistan's mainstream. Under Article 247(3) of the Constitution of Pakistan, no act of the Parliament applies to FATA unless the President so directs.

¹³. Disenfranchise no eligible voters, SC tells ECP, Daily Times, 27 July 2007, http://www.dailytimes.com.pk/default.asp?page=2007\07\27\story_27-7-2007_pg1_1

¹⁴. Ahmadis set to boycott general elections again, The Daily Times, 29 June 2007

¹⁵. Questionable voters' lists, Dawn, 28 July 2007, <http://www.dawn.com/2007/06/28/ed.htm>

¹⁶. 18 per cent minority voters' name missing from NWFP electoral list, Malaysia Sun 27 July 2007, available at <http://story.malaysiasun.com/index.php/ct/9/cid/303b19022816233b/id/268625/cs/1/>

¹⁷. CJP takes notice of disappearances in Balochistan, The Daily Times, 2 August 2007, available at: http://www.dailytimes.com.pk/default.asp?page=2007\08\02\story_2-8-2007_pg7_23

IV. Structural Issues

a. Impunity

Impunity is a primary cause of Pakistan's downward human rights cycle and contributes to increasing instability. The government of Pakistan has provided absolute impunity for the abuses committed by the security forces including extrajudicial killings, illegal detention, torture and enforced disappearances. On 4 September 2007, a bench of the Supreme Court headed by Chief Justice Iftikhar Mohammad Chaudhry ordered the government to release all missing persons stating that there were strong reasons to believe that the missing persons were in the custody of intelligence agencies following the release of Hafiz Abdul Basit, Aleem Nasir and Hafiz Mohammad Tahir from government custody.¹⁸ On 21 September 2007, Deputy Attorney-General Naheeda Mehboob Elahi submitted a report to the Supreme Court reportedly stating that 145 missing persons out of total 416 persons had been traced and efforts were being made to trace the others.¹⁹ No action has been taken to establish accountability by punishing those found guilty. The culture of impunity has been particularly strengthened by the subsequent attacks on the judiciary (see below). With the removal of this fundamental check it is likely that violations will increase.

b. The Judiciary

The independence of the judiciary has been removed. On 3 November 2007, President Musharraf removed Chief Justice Iftikhar Muhammad Chaudhury and handpicked his own Justices in the Supreme Court and the High Courts. Many judges, including Chief Justice Chaudhury who refused to take an oath under the new Provisional Constitutional Order have been placed under house arrest.

c. Human Rights Defenders

Human rights defenders work under very hostile conditions in Pakistan and are regularly subject to threat and violence from the state, insurgents and violent political opposition groups. Following the declaration of Emergency on 3 November 2007 prominent human rights activists including Chairperson of the Human Rights Commission of Pakistan (HRCP) Asma Jahangir were arrested.

d. The Media

Journalists work under constant threat of attack both from the security forces and militants. Journalists faced persistent pressure and threats from the government to censor anti-government protests. Media offices were attacked and put under surveillance by the security forces. Journalists are regularly subjected to torture, kidnapping, illegal

¹⁸. Apex court orders release of the missing, The Dawn, 5 September 2007

¹⁹. 13 more 'missing' traced, SC told, The Dawn, 22 September 2007

detention, beatings, and death threat from the state, insurgents and violent opposition political parties.

On 4 June 2007, the legal environment deteriorated when the State introduced oppressive new legislation the Pakistan Electronic Media Regulatory Authority (Amendment) Ordinance, 2007. It empowers the authorities to confiscate the equipment of broadcasters and seal the premises without consulting a council of complaints.²⁰ Immediately after the declaration of emergency on 3 November 2007 all the private local and foreign news channels were taken off the air.

V. State Obligations

The government of Pakistan should take following measures:

- Take the necessary steps to end grave violations of human rights;
- Revise the draft National Commission for Human Rights Bill in bring it into conformity with the United Nations Paris Principles;
- Immediately release all the judges, political leaders, human rights activists and journalists in the absence of valid charges;
- Reinstate all suspended judges;
- Repeal the Pakistan Electronic Media Regulatory Authority (Amendment) Ordinance, 2007;
- Repeal the Frontier Crime Regulation of 1901;
- Ensure that Pakistan's laws permit freedom of expression ;
- Take appropriate steps to end the practice of "honour killing" ;
- Release juvenile offenders from prisons and provide rehabilitation in juvenile homes.

VI. International Obligations

The government of Pakistan failed to ratify the following main international human rights instruments: the UNCAT and its Optional Protocol; the ICCPR and its two Optional Protocols; Convention for the Protection of All Persons from Enforced Disappearance; CEDAW and its Optional Protocol; ECHR; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Convention on the Rights of Persons with Disabilities, and its Optional Protocol; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography.

Considering that international laws are not self-executing, the government of Pakistan has failed to bring conformity with the ratified treaties at domestic level.

²⁰ . Sweeping curbs on media: •Amended ordinance empowers Pemra to seal premises, seize equipment
 •Protests by journalists, rights activists, The Dawn, 5 June 2007; available at:
<http://www.dawn.com/2007/06/05/top1.htm>

VII Enhancement of the State's Capacity/Technical Cooperation

- Given the failure of domestic remedies the HRC should consider the establishment of a significant OHCHR presence in Pakistan; and
- Provide significant technical assistance to set up a strong and effective National Human Rights Commission to protect and promote human rights;

VIII. Cooperation with HRC, Treaty Bodies and OHCHR

The government of Pakistan has failed to cooperate with the UN bodies. Pakistan's 15th to 19th periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination have been pending since 1998 and 3rd to 4th period reports under Convention on the Rights of the Child have been pending since December 2007. In addition, the government has failed to withdraw its reservations and objections to the Treaties ratified by it including the CRC.