

Pakistan

Amnesty International Submission to the UN Universal Periodic Review

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Key Words: constitution, role of the judiciary, women's rights, death penalty, tribal areas, arbitrary arrest and detention, extrajudicial executions and enforced disappearances, domestic violence, freedom of religion, freedom of expression, excessive use of force

In this submission, Amnesty International provides information under sections B, C and D (as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*¹):

- In section B, Amnesty International raises concerns over frequent setting aside of the Constitution and human rights provisions in it; the lack of independence of the judiciary; laws affecting the rights of women; the death penalty and other cruel, inhuman or degrading punishments; national human rights institutions; and failure to ratify key human rights treaties.
- In section C, we describe concerns about the human rights situation in the tribal areas, arbitrary arrest and detention, extrajudicial executions and enforced disappearances, excessive use of force, torture and deaths in custody, lack of protection of rights of women and religious minorities, and violations of the right to freedom of expression and assembly.
- In section C, Amnesty International makes a number of recommendations in the areas of concern listed.

When presenting its candidature for election to the Human Rights Council in 2006, the Government of Pakistan made a number of human rights pledges, some of which are reflected in the text below.

B. Normative and institutional framework of the state

Constitution

1. The Constitution of Pakistan and human rights protection provided by it, have been arbitrarily amended, suspended and abrogated several times in Pakistan's history. In November 2007, a state of emergency was declared by the Chief of Army Staff in disregard of constitutional provisions. The Constitution was suspended and replaced by the Provisional Constitution Order (PCO) which empowered the President to amend the Constitution. The PCO suspended fundamental human rights, including the rights to life or liberty; to fair trial, including *habeas corpus*; to freedom of movement; to peaceful assembly; to form associations and unions; to freedom of speech and expression; and to equality before the law. The President made several amendments to the Constitution which placed legislative, administrative and other actions taken during the period of emergency outside the scope of judicial review, even after the lifting of state of emergency.

2. When the state of emergency was lifted on 15 December 2007 the damage done by a series of unlawful acts taken during emergency rule was not redressed, leaving the Constitution weak and vulnerable to further unilateral interventions at the expense of human rights protection and the rule of law.

3. When standing as a candidate for the Human Rights Council in 2006, Pakistan pledged to uphold fundamental rights including as enshrined in Articles 9-29 of the Constitution of Pakistan. Amongst these, Articles 9, 10, 15, 16, 17, 19 and 25 were expressly set aside under the PCO, while the Constitution as a whole was suspended. The government also pledged to work for sustainable democracy through good governance. Given the illegal acts taken during the emergency, including the arbitrary suspension of rights and mass arbitrary arrests of activists and judges, the government must act swiftly to give effect to this pledge.

Judiciary

4. The lower judiciary, often inadequately trained and resourced, has been known to submit to political pressure and to accept bribes. During 2007, the higher judiciary, the country's four provincial High Courts and the Supreme Court, increasingly departed from their traditional subservience to the executive and adopted a human

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I, adopted 27 September 2007

rights perspective on several issues. In particular, they dealt with hundreds of habeas corpus petitions with some vigour, giving the hundreds of relatives of disappeared persons hope that they might be traced.

5. In March 2007, the Chief Justice was suspended by the President for alleged misconduct; however, he was reinstated in July when the Supreme Court upheld the Chief Justice's petition against the suspension. Under the state of emergency in November 2007, the Chief Justice and some 45 other judges of the Supreme Court and provincial High Courts were dismissed, either through not being invited to take a new oath of office to abide by the PCO or by having refused to take such an oath. The most senior judges were placed under de facto house arrest. The new judges appointed were those willing to take the new oath of office under the PCO which required them to uphold the illegally-issued PCO including provisions suspending human rights and denying the very courts they serve any right to take judicial steps against human rights violations committed under the PCO. Some of the serving judges also took the new oath under the PCO.

6. There are several court systems, often working in parallel, with different procedures and unequal protection for defendants. Special courts set up under the Anti-Terrorism Act, 1997, to try alleged terrorists often fail to provide a fair trial as the speedy trial procedures undermine the safeguards of fair trial provided in the Pakistan Criminal Procedure Code and Law of Evidence, as well as in international human rights law and standards. In November 2007, the Army Act, 1952, was amended to allow the court-martial of civilians suspected of treason, sedition and undefined "statements conducive to public mischief". The amendment was applied retrospectively to January 2003. Though no new trials under the expanded Act have as yet been reported, Amnesty International considers that such trials would be inherently violating international human rights standards of fairness: defendants do not have full legal representation as counsels can only assist the defendant in the capacity of a "friend"; the hearings are not public; investigation, trial and review are conducted by military officers; and appeal to the civilian higher judiciary is barred.

7. In the designated tribal areas of Pakistan, government-appointed Political Agents combine executive and judicial functions and try and sentence people, after perfunctory trials, to imprisonment, fine or house destruction. Most fair trial guarantees are absent, and the principle of collective responsibility is applied such that families or communities may be punished for offences committed by a single member. In addition, the authorities have failed to curb informal bodies (e.g. *jirgas* or *panchayats*), which apply unfair and obscure procedures and cruel punishments, and in particular discriminating women, from unlawfully assuming judicial functions. Though declared unlawful by the Sindh High Court in April 2004, such bodies continue to enjoy official patronage.

Laws affecting the rights of women

8. In November 2006, the *zina*² law was amended. It is noteworthy that the national statutory Commission on the Status of Women and women's rights groups had called for the *zina* law's abolition because it is discriminatory and facilitates abuse. The amended law continues to criminalize heterosexual consensual sex outside marriage and imposes cruel, inhuman or degrading punishments on convicted offenders. As amended the law establishes a special procedure for the admittance of complaints by the courts.³ The law also bars the police from registering or investigating offences of consensual sex outside marriage, and leaves the matter entirely with the court. Before the law was amended police frequently arrested couples who had married partners of their own choice, and were therefore not deemed lawfully married by their relatives, who then charged them with fornication. The amendment also banned charging a woman with fornication if she had complained of having been raped, but was unable to prove this allegation. In the past, this possibility had been a strong disincentive to seeking redress for rape. However, the retention in law of the punishment of stoning to death for consensual sex outside marriage by a married person contributes to incidents in which persons believing themselves to act in accordance with Islamic standards, have stoned to death both men and women for allegedly committing this offence.

² Men or women commit a *zina* offence if they have consensual sex outside of marriage. Under Pakistan law for extra-marital sex two terms are used: It is called "*zina*" in the law introduced under Islamic provisions and "fornication" in the Penal Code. The two offences differ with respect to the number of witnesses to the offence as do the punishments. If there are four adult, male, Muslim eye witnesses the offence is called "*zina*" and if there are only two witnesses, irrespective of their gender and religion, it is called "fornication".

³ The complainant and the eye witnesses of the alleged offence are to be examined by the relevant court before it can formally admit the complaint. The court has discretion to sentence the complainant and the witnesses for filing a false complaint of adultery or fornication

The death penalty and other cruel, inhuman or degrading punishments

9. The Islamic Republic of Pakistan has a mixed legal system with Islamic provisions mandatorily prescribing the death penalty (1) for extra-marital sex by a married person (in the form of stoning to death), (2) for robbery with murder, (3) for blasphemy, and (4) for murder if proven through the testimony of specified eye witnesses, through confession of the accused, for act of murder amounting to "mischief on earth", and additionally at the discretion of the court in cases that do not fall within the above categories. In addition, the death penalty can be imposed under other provisions within the Penal Code for a range of offences against the state as well as for rape and gang-rape.

10. At present there are some 7,500 persons under sentence of death, mostly for murder. Every year several hundred persons are sentenced to death and in 2007 at least 100 were executed. Amnesty International has learned that the death sentence for murder is frequently imposed by lower courts on the basis of inadequate evidence in the expectation that the sentence will not be executed as families are likely to reach a compromise, forgive the offender and so release the alleged perpetrator. Sometimes negotiations over compensation continue while the convict stands ready to be hanged. Amnesty International's concern about the large number of death sentences in Pakistan is heightened by the fact that many appear to be imposed in unfair trials, including by special courts. The law on murder and physical injury based upon the principles of *qisas* and *diyat* (retribution and "blood money" in the form of financial compensation) are in practice discriminatory: the rich and powerful usually have the means to obtain the pardon of the victim's family and thereby obtain their release, whereas the poor and powerless are often executed.

11. The punishment of 100 lashes is provided for sex committed by unmarried persons when proved through the testimony of four adult, male, Muslim witnesses or through the confession of the accused.⁴ Flogging can also be inflicted as the maximum punishment for making a false accusation of extra-marital sex, or for alcohol consumption. Limb amputation is the maximum Islamic punishment for theft or robbery and can also be inflicted for physical injury under the principle of *Qisas* (retribution). All such corporal punishments amount to torture or other cruel, inhuman or degrading punishment, which are prohibited absolutely under international human rights law.

12. Bills were introduced in the National Assembly to extend the law of blasphemy to all prophets apart from the prophet of Islam and to make apostasy a capital offence; however, these lapsed when the National Assembly was dissolved in November 2007.

National human rights institutions

13. In early 2006, the government announced plans to set up an independent National Human Rights Commission; this pledge was repeated in April 2006 when Pakistan presented its candidature to the Human Rights Council. Amnesty International submitted recommendations for its mandate, but the government's pledge has so far not been taken forward.

Outstanding ratifications of key human rights treaties

14. When presenting its candidature for the Human Rights Council, Pakistan stated its commitment to early ratification of core human rights treaties. However, it has yet to ratify the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, as well as the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the International Convention for the Protection of All Persons from Enforced Disappearance.

15. Ratification is an important first step; however, human rights treaties must be incorporated into domestic law and fully implemented. The Juvenile Justice System Ordinance, promulgated in July 2000 to bring provisions in the Convention on the Rights of the Child relating to children in the criminal justice system into domestic law, was declared unconstitutional by the Lahore High Court in December 2004. In February 2005 the Ordinance was provisionally reinstated pending a ruling on appeals against the Lahore High Court decision by the Supreme Court. The appeal has not been heard since then.

16. The implementation of provisions in the Convention on the Elimination of All Forms of Discrimination against Women is equally incomplete. The legal protection of women's rights remains inadequate and the state has consistently failed to exercise due diligence to prevent and prosecute violence against women perpetrated by non-state actors (see below).

⁴ Witnesses can be non-Muslims if the accused is a non-Muslim.

C. Promotion and protection of human rights on the ground

The human rights situation in the tribal areas

17. In the designated tribal areas, along the border with Afghanistan, Islamist groups are suspected of hiding foreign fighters. The government has deployed some 90,000 troops to the region who have, on several occasions, apparently failed to protect civilians. The army often resorts to excessive use of force in violation of the right to life, including bombing villages from the air. In one incident on 7 October 2007, jet fighters bombed suspected "militant hideouts" in North Waziristan, killing some 250 people, reportedly including civilians. Over the past few months thousands have fled the area. Missiles were dropped from unmanned US drones allegedly originating in Afghanistan, unlawfully killing dozens of people. Government officials described the victims as "militants", but the use of firearms were apparently a last resort in self-defence or following failed attempts to arrest them. Local people regularly report that women and children are among the victims. As journalists are barred from the area it is difficult to ascertain the facts about such incidents.

18. Local and foreign Taliban supporters have consolidated their hold in the tribal areas and also in adjacent provincial territories, including Swat in the Northwest Frontier Province. They have set up quasi-judicial structures and have "tried", "convicted" and "punished" people according to their interpretation of Islamic law. Several people were publicly and unlawfully killed, execution-style, for "un-Islamic" behaviour; others were unlawfully killed for allegedly cooperating with the government or the security forces. Bodies were found with tags attached to them warning others of a similar fate if they collaborate with the government.

Arbitrary arrest and detention, extrajudicial executions and enforced disappearances

19. Arbitrary detention is widespread, often intended to punish or intimidate people, and often at the behest of powerful persons. An unknown number of individuals, including children, in the tribal areas are being held under the collective responsibility clause of the Frontier Crimes Regulation, 1901 which allows the detention of relatives of suspects for up to three years. It is believed to be widely used to punish tribal people for allegedly accommodating terrorist suspects or collaborating with them.

20. During demonstrations, mass arrests are frequently carried out. Detainees are often held without reference to any law; in 2007 this included the unlawfully dismissed senior judges who had not taken the oath of office to an illegal order replacing the Constitution (see above.) The judges were placed under de facto house arrest and denied access to family and lawyers though no charges were brought against them. Others were detained for alleged breach of Section 144 Code of Criminal Procedure which prohibits the gathering of more than four persons in public without police authorization, in violation of their rights to freedom of expression, association and assembly. Government opponents are also subjected to preventive detention, including under the vaguely worded Maintenance of Public Order Ordinance, 1960 (MPO), which allows detention without trial for up to six months for different suspected offences "with a view to preventing any person from acting in any manner prejudicial to public safety or the maintenance of public order". Among those held in November 2007 under the MPO was Human Rights Commission of Pakistan chairperson and UN Special Rapporteur on freedom of religion or belief, Asma Jahangir, whose house was declared a sub-jail. A 90-day detention order issued against Hina Jilani, UN Special Representative of the Secretary-General on human rights defenders, was not enforced upon her return to the country.

21. In addition, the application of so-called "blind FIRs" (First Information Reports) is used to curb protests. Under such measures, people at large can be at risk of arrest without being named as suspects in police reports. During the 2007 state of emergency, this power was extensively used to arrest, or threaten to arrest, lawyers and political activists. After Benazir Bhutto's assassination, hundreds of "blind" complaints were registered with the police in Sindh province implicating thousands.

22. Extrajudicial executions were reported particularly from Balochistan where armed political groups stage periodic attacks as part of a campaign against alleged economic exploitation of the province's resources by the central government, and the army. Domestic human rights organisations, including the Human Rights Commission of Pakistan, documented dozens of extrajudicial executions in the province; such cases are also reported from other parts of the country.

23. Ever since Pakistan declared its support in the US-led "war on terror", thousands of people suspected of links to terrorist groups have been arbitrarily detained. Many of them have become victims of enforced disappearance. Domestic custodial safeguards have routinely been ignored as they have been arrested without warrant, detained without reference to any law, held in undeclared places of detention, denied access to lawyers, family and courts, and often subjected to torture and other ill-treatment. Hundreds have been transferred to the custody of other countries, mostly the USA, in circumvention of the Extradition Law and international standards which prohibit *refoulement* to countries where people may be at risk of serious human rights violations. The practice

of subjecting suspected terrorists to enforced disappearance was later used by the government against Baloch nationalists, Sindhi activists, journalists and others. State officials, called to court in habeas corpus hearings, consistently denied any knowledge of their whereabouts and denied they were in their custody. However, shortly before his unlawful dismissal in November 2007, the Chief Justice, Iftikhar Choudhry, asserted that there was "irrefutable proof that the missing persons are in the custody of secret agencies" and that those responsible would be prosecuted. Since the beginning of 2007, around 100 victims of enforced disappearance have been traced, most on the orders of the Supreme Court. Some were too ill or too frightened to report in whose custody and where they had been held; others reported that they had been detained by intelligence agencies in undeclared places of detention, and been tortured or ill-treated. Hearings of hundreds of habeas corpus petitions of the victims of enforced disappearances are still pending in the Supreme Court, but have not progressed since the removal of 12 Supreme Court judges in November 2007. The fate and whereabouts of hundreds of persons remain unknown. Relatives who pursue their cases have been harassed and intimidated.

Excessive use of force, torture, deaths in custody

24. During protests, security forces often use unnecessary or excessive force against peaceful demonstrators. Participants in protest rallies in 2007, including lawyers, journalists and other members of civil society, were injured, sometimes seriously, when police officers, many in plain clothes, beat them with batons. Journalists too were targeted and injured and thus unable to report on the rallies. In October 2007, the Supreme Court had ruled that the deployment of police officers in plain clothes to crowd control operations was illegal.

25. Torture in police custody, and to a lesser degree in jails, is endemic and inflicted on both political detainees and criminal suspects. It leads to several deaths in custody annually. The possibility of legally securing immunity under the *qisas* and *diyat* concepts has enabled most perpetrators to go unpunished.

Domestic violence, including honour killings

26. Domestic violence, including murder, maiming, rape and harmful traditional practices, continues virtually uncurbed as the state has failed to prevent and prosecute such offences. Hundreds of murders of girls and women, but also men, who are believed to have damaged their family's "honour" by their "inappropriate" behaviour, are reported every year, often after decisions by informal local councils (*jirgas*). Though, as noted, *jirgas* were banned as unlawful by the Sindh High Court in 2004, they continue to enjoy official support. Often women are targeted for such killing if they seek a marriage partner of their own choice or if they "disobey" their husbands by seeking a divorce. In some cases, killings for other reasons are concealed as "honour" killings on the basis of the conviction that the perpetrators would not be prosecuted, or else would not be harshly punished.

27. A 2005 amendment to the law relating to murder, did not remove the powers of the victim's family members to forgive a perpetrator of an "honour" killing so that the perpetrator can escape punishment.

28. Courts have begun to take action in cases of *swara*, the handing over of girls and women to settle a dispute or as compensation for a murder. The practice was made punishable by up to 10 years' imprisonment by a 2005 amendment to the Penal Code, but its scope was confined to compensation deals in murder cases. The practice continues. Criminal prosecution is rare, particularly if powerful individuals are implicated.

Lack of protection for religious minorities

29. The vaguely defined blasphemy laws have been consistently misused to persecute members of religious minorities, including Ahmadis and Christians, and to prevent them from practicing or preaching their beliefs. People continue to be sentenced to death under the blasphemy laws, e.g. section 295C of the Penal Code, which criminalizes the insult of the name of the prophet Mohammad and provides the mandatory death penalty for this offence. In all cases known to Amnesty International, those convicted did not commit the acts they were accused of; instead the law was used to take revenge or to imprison an opponent in disputes about property, jobs or other unrelated matters. The organization regards those charged, tried and convicted for blasphemy, when they sought to peacefully exercise their right to freedom of expression, or religious belief, as prisoners of conscience. The government also often fails in its duty to provide protection against attack on religious grounds. Every year people of minority faiths are killed as police fail to prevent or to investigate such murders. Minority women are considered easy prey for exploitation, humiliation and sexual advances, often leading to rape and other forms of sexual violence.

Violations of the right to freedom of expression and assembly

30. The rights to freedom of expression, association and assembly are inadequately protected in Pakistan (see above under arbitrary detention). During the emergency period in 2007, the media curbs made it impossible for journalists to carry out their professional duties. Journalists have been banned for years from reporting from the tribal areas making it difficult to ascertain human rights violations committed there.

D. Amnesty International recommendations to the government

The wide range and seriousness of human rights violations reported in Pakistan constitute key challenges which the government must address to uphold its commitment to human rights, including as a member of the Human Rights Council:

- The authorities must take measures to ensure that the Constitution and constitutional protection of human rights are not arbitrarily set aside. Legislative measures must be taken to undo the distortion of the Constitution over recent years and to prevent such distortions in the future;
- The independence of the judiciary, which is a key guarantor of human rights protection, must be fully secured. Procedural guarantees, including strict rules for the appointment and removal of judges, should be put in place, including through constitutional amendments or other legislation. Those judges who were extra-constitutionally removed from their offices during the recent emergency rule should be reinstated.
- The government must strengthen the protection of human rights by ratifying, incorporating into domestic legislation and implementing the international treaties mentioned above and ensure the full implementation of those to which Pakistan is already a party.
- The government must end all arbitrary detention and release those currently detained arbitrarily. Relevant laws must be amended to prevent their abuse, including preventive detention legislation and the practice of using "blind FIRs" to detain government opponents.
- All torture and other ill-treatment must cease and the perpetrators brought to justice in accordance with international standards for fair trial.
- The government must put an immediate end to all acts of enforced disappearance, immediately release all persons held in secret, incommunicado detention or transfer them to official places of detention where they should have access to lawyers and courts, be charged with a criminally recognizable offence and remanded by an independent court. The government must further ensure that suspected perpetrators are prosecuted, in fair proceedings, as well as ensure full reparations to the victims of enforced disappearance and their families;
- The government should join the worldwide trends towards the abolition of the death penalty, including by declaring an immediate moratorium on all executions, with a view to the eventual abolition of the death penalty.

Appendix: Amnesty International documents for further reference

Pakistan's constitution and judiciary

- *Pakistan: Fatal erosion of human rights safeguards under emergency*, AI Index: ASA 33/040/2007.
- *Pakistan: Recommendations for an effective National Human rights Commission*, AI Index: ASA 33/019/2005.

Arbitrary detention, disappearances.

- *Pakistan: Human rights ignored in the "war on terror"*, AI Index: ASA 33/036/2006.
- *Pakistan: Working to stop human rights violations in the "war on terror"*, AI Index: ASA 33/051/2006.

The death penalty

- *Pakistan: Unlawful executions in the tribal areas*, AI Index: ASA 33/013/2006.

Juveniles

- *Pakistan: Protection of juveniles in the criminal justice system remains inadequate*, AI Index: ASA 33/021/2005.
- *Pakistan: Amnesty International's comments on the Lahore judgment of December 2004 revoking the Juvenile Justice System Ordinance*, AI Index: ASA 33/026/2005.

General Background

- Annual Report entries, 2004-2006