



Universal Periodic Review  
Human Rights Council  
May 5-16, 2008

**11 January 2008**

**JKCHR written input for the second round of Universal Periodic Review  
scheduled for May 5-16, 2008 on Pakistan.**

Pakistan has a higher burden of responsibilities that it accrues as a member of UN, a member of SAARC, a member of OIC and as a member of Commonwealth. The ceiling of responsibility is further raised by the Constitution. The Constitution of the Islamic Republic of Pakistan embeds in it that sovereignty of the Universe belongs to Almighty Allah alone and the authority in the land would be exercised by the people of Pakistan within the limits prescribed by Allah as a sacred trust.

Its leadership failed to discharge this trust and shocked the world on 3 November 2007 when it decided to cascade from the hill tops inhabited by terrorists to the down plains and declared a war against its own people. Commonwealth decided to suspend its membership "pending restoration of democracy and the rule of law".

Musharraf as President of Pakistan violated his second oath under article 42 of the Constitution (he violated his first oath as chief of army staff in October 1999) that ... "he' will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan...in all circumstances, 'he' will do right to all manner of people, according to law, without fear or favour, affection or ill-will" and imposed emergency in the country.

Government of Pakistan has failed to honour its pledge made at UN World Conference on Human Rights. Paragraph 67 entitled "Co-operation, development and strengthening of human rights" bids the member nations, that assistance should be given to "the strengthening of the rule of law, the promotion of freedom of expression and the administration of justice, and to the real and effective participation of the people in the decision making processes".

**Independence of Judiciary**

Leadership did not "do right to all manner of people, according to law, without fear or favour, affection or ill-will". On the contrary it violated Consensus Resolution 1998/35 of the Commission which stipulates that an independent and impartial judiciary and legal profession are prerequisites for the protection of human rights and the prevention of discrimination in the administration of justice.

43 judges were sacked under the garb of Provisional Constitutional Order (PCO) after the President felt threatened by Supreme Court in his bid to become President for the second term while holding office of the Chief of Army Staff.

The State decided to nudge pass the General Assembly resolution 40/32 which has endorsed the Basic Principles on the Independence of the Judiciary. The role of Lawyers, Prosecutors and the important

role of non-governmental organizations, bar associations and professional associations of judges in the defence of the principles of the independence of judges and lawyers have equally been recognised and endorsed in various resolutions.

Human Rights Watch 84-page report entitled ‘Destroying Legality: Pakistan’s Crackdown on Lawyers and Judges’ presents eyewitness accounts of police violence, arbitrary arrests, and mistreatment of detained lawyers across Pakistan since November 3. The report depicts police torture on lawyers protesting peacefully against the government policies. It is the most detailed account of the November crackdown, showing how Musharraf regime used the emergency as an excuse to disempower the judiciary, the legal profession and civil society in the name of fighting terrorism and extremists.

Current President of the Supreme Court Bar Association Aitzaz Ahsan and a political figure of repute, who successfully defended deposed Chief Justice Iftikhar Chaudhry against the presidential reference, former SCBA President Munir A. Malik and two other leaders of the lawyer’s movement, Ali Ahmed Kurd, of Quetta, and Tariq Mehmood, of Islamabad, are also under house arrest. Many thousand lawyers, civil society representatives, journalists, politicians and common citizens are held in detention centres and access to family members has been denied.

Government of Pakistan has failed to respect the duty of the State requiring it to work to secure and promote the independence of the judiciary.

### **Court Martial of Civilians**

At this point in time all are not equal in the eyes of law in Pakistan and all are not treated in accordance with law. Government of Pakistan on Saturday 10 November 2007 decided to increment its repression of freedom of expression and curb on political dissent by amending the Army Act of 1952 to give wide-ranging powers to the Army to court-martial civilians.

Army can now try civilians on charges ranging from treason, sedition and attack on army personnel to “assaulting the president with intent to compel or restrain the exercise of any lawful power” and “giving statements conducive to public mischief”. The unamended Army Act, too, had a provision to hold court martial of civilians but only when at least one of the accused belonged to the armed forces.

Like the supra-constitutional act of proclaiming ‘emergency’ on 3 November, this new measure is Musharraf specific. Its main aim is to victimise, intimidate, coerce dissenting citizens and retain power. In recent years, several members of the extremist Islamic groups have been tried and sentenced by different field court martial, but in all these cases members of the armed forces were also involved. Many of these cases related to abortive attempts on General Pervez Musharraf’s life.

The welfare of Pakistan under article 5(1) (2) is shared as a Constitutional duty of citizens and non citizens living in Pakistan. The country has to learn to entrust itself in the hands of an independent judiciary, supported by a democratic culture based on the free will of the people as a basis of governance, a free civil society, willing to accept pluralism, and an army obedient to the Constitution and ready to obey The Federal Government as provided in article 243 of the Constitution.

Therefore Pakistan needs international support to transform its imperial army and an imperial bureaucracy and work for a conscientious civil society which upholds article 5(1)(2) of the Constitution and an obedient army which is prepared to carry a higher burden of duties under articles 190, 243, 244 and 5 (1)(2) of the Constitution.

### **Rising Islamist Extremism**

International Crisis Group has observed that “Pakistan has experienced three decades of corruption, drugs, military rule, rising Islamist extremism and a general decline in education and health standards.”

Islamist Extremism is a home grown phenomenon and its early beginnings have been documented by Steve Coll Managing Editor of Washington Post, in his book Ghost Wars at page 104. According to this account CIA under the advice of ISI of Pakistan commissioned an Uzbek exile living in Germany to produce translations of Koran in Uzbek language. CIA printed thousands of copies and shipped them to Pakistan for distribution to mujahedin. The move was to cultivate young Muslims to mount violent terrorist attacks inside Soviet Central Asia.

Pakistani establishment failed to gauge the spill over effects of this plan and failed to realise that introducing young Muslims to violent terrorist attacks would outgrow into a phenomenon of Islamist Extremism. It failed to understand that a civil society at ease with itself and in full enjoyment of its Human Rights is the best defence and is the best security to defeat ‘terrorism’ – as a common enemy of all.

Pakistan remains burdened with the politico-ideological baggage of the international anti-Soviet "jihad" of the eighties. However its experiential wisdom has brought the overwhelming majority of Pakistanis to the conclusion that the only way forward is rule of law; that while faith and identity are intrinsic to one's being, the only way for the State to conduct the affairs of society and politics is the legal and constitutional way. The latest PEW-USIP survey has concluded that the majority of the Pakistanis want democracy, madrassa reform, Islam and rule of law.

### **Elections 2008**

Credible and legitimate elections in accordance with internationally recognized criteria have remained a serious issue in Pakistan. The right to take part in the government of his or her country, directly or through freely chosen representatives, that everyone has the right of equal access to public service in his or her country, that the will of the people shall be the basis of the authority of government and that this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures, as provided in Universal Declaration of Human Rights, is robustly agitated by the common man and woman in Pakistan.

Democracy in Pakistan has had a very chequered history. Time and again its sapling has been planted only to be uprooted and replanted by fresh players. Military rulers, totalitarian 'democrats', civilian authoritarian leaders, all have alike shaken the roots of the fledgling democracy.

The cycle of history has taken full revolutions in Pakistan and come back to the same junction where history is rewritten with the imposition of the emergency and Provisional Constitutional Order after holding the constitution in abeyance, withholding basic human rights and an entire gamut of restrictions.

It is therefore important that Government of Pakistan/civil society in Pakistan should be assisted in accordance with UN General Assembly Resolution A/RES/46/137 of 17 December 1991 which provides for “Enhancing the effectiveness of the principle of periodic and genuine elections, so that “the will of the people shall be the basis of the authority of government”.

Department of Political Affairs of the United Nations Secretariat and the United Nations Development Programme in Pakistan should be seriously linked to the a wide range of development assistance activities that are intended to support the efforts of Member State to promote democratic electoral processes and build sustainable capacity to manage electoral systems and processes.

At this point in time the institutional capacity to organize democratic elections that are genuine and periodic and have the full confidence of the contending parties and the electorate is seriously suspect in Pakistan. In this regard HRW has rightly cautioned that in such a repressive political environment, elections scheduled for January 8 (now for February 18), cannot be free and fair. With the well-documented history of election-rigging by the Pakistani agencies, the emergence of an independent judiciary provided the best hope for a free and fair election. A military-backed ruler who dispensed with the Constitution in order to get rid of such a judiciary is unlikely to preside over an electoral exercise that could bring his political opponents to power.

Before her assassination PPP leader Benazir Bhutto in her public gathering address in Jaffarabad Dera Allah Yar on 20 December 2007 had vowed to end the interference of agencies and Army in future politics of the country. It is encouraging to note that the new Chief of Army Staff General Ashfaq Pervez Kiyani while chairing his maiden Corps Commander's Conference, the 105th, on Thursday 3 January in addition to commonplace truths and speechmaker's manual made a significant point of public interest. He stated that the will of the people and their support would be decisive in combating threats to the nation. The elixir in this regard is a representative democracy.

International community should increment the change in the institutional wisdom of army and assure that army facilitates and protects the civilian decision-makers, and does not take them over. Necessary measures are required so that the army can finally move towards its initial role as an impartial and apolitical force that knows its place in the scheme of things and does not have any notions other than that. In strictly ideological terms, Pakistan should be ruled by elected representatives even if they do appear to be ineffective rulers.

A freely expressed culture of politics remains an essential ingredient of UN General Assembly Resolution 46/137 of 17 December 1991. Free will of the people as the basis of governance needs to be robustly supported and safeguarded in Pakistan. The voice of people should remain supreme in electing the representatives of their choice because *Vox populi, vox dei*, "The voice of the people is the voice of God."

The head of EU Election Observer Mission Michel Gahler has said that he had received complaints not only from political leaders but people from all walks of life. The assassinated PPP chairperson and Mian Nawaz Sharif had to gatecrash into the country to be present during the elections and the latter continues to be denied the right to contest elections. There are also complaints about fake lists of voters and preparations to set up ghost polling stations.

President Musharraf ignored the demand for the formation of an independent Election Commission in consultation with the opposition. He refused to accede to the demand to suspend the local government nazims, who are mostly affiliated with the PML-Q. He then set up a caretaker administration which was widely seen to be an extension of the PML-Q. The entire machinery overseeing the election is thus suspect in the eyes of the opposition and human rights groups.

Pakistan's overwhelming majority of usually bitterly divided politicians and citizens has unified around the need for constitutional democracy. It is high time that United Nations and its member nations decide to increment the peaceful instrument of change, that is, the exercise of a free and fair vote. The return of a genuinely representative parliament will initiate the much needed process of dialogue between Pakistan's many contesting groups at home and roller skate the peace process with its neighbour India.

It has started becoming clear that it takes more than guns and bullets to kill a popular leader of the status of Benazir Bhutto. She symbolises a Pakistan at ease with itself and her death has reinforced

that the culture of violence perpetuated to stall democracy and rule of law has no space in today's world. Her legacy would always remind a conscientious person in Pakistan that – Human Rights are for all, we should know them, demand them and defend them.

### **Kashmir – Pakistan administered**

Pakistan is a party to the Kashmir dispute and since 1990 it has remained vocal for its political, moral and diplomatic support to the Kashmiris right of self determination. In fact it has been a self serving support offered to an unaccountable, undemocratic and non transparent political arrangement and a militant amalgam which has failed to execute armed revolution in accordance with international law and in the best interests of the people. The militant amalgam has failed to keep their commitment to human rights principles and honour the attendant human rights responsibilities.

Violence has been inducted as a means to seek compliance and mute any dissent. A Rights Movement which had kept the plural Kashmiri civil society intact has been divided from the middle and it has become communal from either side.

Militancy (security forces, renegades and militants) has resulted in the death of a generation and has precipitated a disturbing turn in the 130 year old Rights Movement. Politics and militancy have turned into a commercial and private enterprise. The two are hesitant to admit that the loss of a generation has caused a serious deficit in living numericals for any count in self determination.

Quebec separatists who wanted their Canadian province to become an independent country lost in final vote tally of - 50.6 percent "no" and 49.4 percent "yes." Voter turnout was 92 percent. Out of 4.67 million votes cast, the two sides were separated by about 50,000 votes.

In fact the trio comprising of Kashmiri politicians, militants and the establishment in Pakistan have killed the Right of Self Determination for a long time to come. At least until the civil society in Kashmir cultivates a generation, legally able to participate in a referendum, the share of 'no' and 'yes' vote remains indeterminate. A true friend of the people and a true friend of self-determination is one who undertakes that right to life precedes any other right.

Two out of the three administrations of the State, namely Azad Kashmir and Gilgit and Baltistan are on its side of LOC. As a provisional measure to administer Azad Kashmir on its side of LOC Pakistan seeks a reliance on its responsibilities under UNCIP Resolutions. However, in just after 8 months of UNCIP resolution in April 1949 Government of Pakistan violated the UNCIP responsibilities in respect of the People of Gilgit and Baltistan.

It has sought an unpopular control of Gilgit and Baltistan through an Agreement called Karachi Agreement of April 1949. The jurisprudence, of these two controls is at variance to each other. UNCIP resolutions provide for an administration run by the local magistrates in accordance with local laws, practices and customs under the supervision of UN in Azad Kashmir.

It embeds a 'free vote', 'popular legislature' and a 'popular and non-communal government', in accordance with para 7 of the Provisional Declaration of 24 October 1947. It also embeds equidistant sentiments of the utmost friendliness and good will towards its "neighbouring Dominions of India and Pakistan".

Article 257 of the constitution of Pakistan allows a freedom of choice to the people of Kashmir. But the establishment in practice does not allow a 'free vote', a 'popular legislature' and a 'popular Government' in Azad Kashmir and Gilgit and Baltistan. There is a gap between life as a process and life as a quality in the two administrations controlled by Pakistan.

The distribution of the people of Jammu and Kashmir and the question of human rights, in particular, the question of a 'free vote', 'popular legislature' and 'popular government', rule of law, good governance in Jammu and Kashmir, Azad Kashmir and Gilgit and Baltistan falls under General

Assembly Resolution 5 (e) which directs that the Human Rights Council “Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States.

Government of Pakistan should be asked to take immediate corrective measures in respect of a restraint placed on the freedom of association under article 4(7)(2) of Azad Jammu and Kashmir Act 1974 which is at war with its accrued obligations under UN Security Council Resolutions and UNCIP resolution of 13 August 1948. The restraint on the freedom of association is a violation of the basic human right.

Government of Pakistan and its agencies should be restrained from carrying a surreptitious campaign aimed to prejudice the rights of those State Subjects who wish to advance the best interests of the people in accordance with the jurisprudence of the title of the people and dare to remain in opposition to the broad spread of secret services operating inside and outside the State.

Pakistan has to demonstrate a just balance between its support of self-determination and its embedded sovereign interest of accession and other interests embedded in the waters/and other natural resources of Kashmir, namely Jammu and Kashmir, Azad Kashmir and Gilgit and Baltistan. It should be reminded that the abuse of its support in Kashmir makes it an accomplice in the “accrued criminal liabilities of politicians and militants”. The scope of associate criminal liability embraces many identifiable surrogate individuals and institutions situated in various jurisdictions, in particular UK, USA, Europe, Middle East and many other countries. It is time to look at persons and their criminal ability in respect of *actus reus* and *mens rea*.