

## PAKISTAN A LONG MARCH FOR DEMOCRACY AND THE RULE OF LAW 2007 - 2008

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, self-governing or under any trust, non-





# Foreword

This report on the situation of human rights in Pakistan was prepared by Délou BOUVIER, judge, and Fatma-BOGGIO COSADIA, human rights lawyer, both mandated by FIDH.

It was compiled from interviews conducted in Pakistan from February 24 to March 2, 2008 by both mission experts, which met with judges, lawyers, journalists, representatives of civil society engaged in defending human rights, diplomats, members of political parties in the cities of Lahore, Islamabad and Karachi (see Annex I: List of those interviewed). The report is also the result of an analysis of books, academic publications, reports, national and international articles on Pakistan (see Annex II: Bibliography), and information communicated regularly by defenders encountered, with whom the mission remained in touch.

This report deals with the situation of human rights during 2007 and the first half of 2008. Given the importance of the issue, the authors have worked to limit the content to violations of the principles of the rule of law and human rights violations committed by the State during the period covered. The authors do not underestimate the abuses committed by non-state actors, which are discussed in Chapter III (Attacks on the integrity and security of persons). They want to demonstrate nevertheless that the policy of violating fundamental rights and principles led by Pakistani state authorities contributes to strengthening the non-state actors, responsible for abuses.

The authors warmly thank everyone who contributed to this report, for their testimony and for the hospitality and confidence they have shown. They thank the entire team of the Pakistani organisation Human Rights Commission of Pakistan (HRCP) for the organisation of their mission, their ongoing assistance throughout the duration thereof, and for their valuable assistance in collecting information. They wish to thank Ms. Asma Jahangir, Ms. Hina Jilani, Ms. Zohra Yusuf, Ms. Nazoora Ali, Ms. Lourdes, Mr. I. A. Rehman, Mr. Najam U Din, Dr. Mehboob Khan, Mr. Muhammad Ejaz Ahsan and Mr. Asef.

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# List of abbreviations and acronyms

AHRC	Asian Human Rights Commission
AI	Amnesty International
ATA	Anti Terrorism Act
BNF	Baluch Nationalist Front
BNP	Baluchistan National Party
BRC	Baluch Rights Council
CEDAW	Committee on the Elimination of Discrimination against Women
CHRI	Commonwealth Human Rights Initiative
CIA	Central Crime Investigation
CSIS	Center for Strategic and International Studies
DCHD	Democratic Commission for Human Development
DHR	Defence for Human Rights
DHRC	Defence of Human Rights Council
ECP	Electoral Commission of Pakistan
EU	European Union
FAFEN	Free and Fair Elections Network
FATA	Federally Administered Tribal Areas
FIA	Federal Intelligence Agency
FC	Frontier Constabulary
FCR	Frontier Crimes Regulation
FIA	Federal Intelligence Agency
GCO	Green Circle Organisation
HRCP	Human Rights Commission of Pakistan
HRW	Human Rights Watch
HRWF	Human Rights Without Frontier
ICG	International Crisis Group
IDMC	Internal Displacement Monitoring Centre
IFES	International Foundation for Election Systems
IFJ	International Federation of Journalists
ILO	International Labour Organisation
IRIN	Integrated Regional Information Networks
IRO	Industrial Relations Ordinance
ISI	Inter-Services Intelligence
ITUC	International Trade Union Confederation
LPP	Labour Party Pakistan
LUMS	Lahore University of Management Sciences
MEMRI	Middle East Media Research Institute

MMA	Muttahidda Majlis-e-Ama
MPO	Maintenance of Public Order
MQM	Muttahida Quami Movement
NCJP	National Commission for Justice and Peace
NWFP	North West Frontier Province
PATA	Provincially Administered Tribal Areas
PCO	Provisional Constitutional Order
PEMRA	Pakistan Electronic Media Regulatory Authority
PFUJ	Pakistan Federal Union of Journalists
PML-N	Pakistan Muslim League Nawaz
PML-Q	Pakistan Muslim League Quaid-e-Azam
PPP	Pakistan People's Party
PTV	Pakistan TV
PWA	Protection of Women Act
SDPI	Sustainable Development Policy Institute
SPO	Strengthening Participatory Organisations
TTP	Tehrik-i-Taliban Pakistan
UNHCR	United Nations High Commissioner for Refugees
UTP	Under-trial prisoner
WAF	Women Action Forum

# Introduction

Since its independence in 1947, Pakistan has gone through dark periods of military dictatorship, punctuated by brief periods of democracy that still witnessed various human rights violations.

Installed as the head of state by the coup he perpetrated himself on October 12, 1999, President Musharraf has worked over the years to roll back, little by little, the fundamental freedoms of the people of Pakistan. Human rights defenders have always denounced these attacks. However, 2007 marked the beginning of a confrontation between the judiciary and the executive power, an unprecedented event in the history of Pakistan. It continues today. The country has experienced discrepancies between these two powers in the past, but the conflict has never been so tenacious or received such popular support.

The outcome of this conflict is crucial; the separation of powers serves as a guarantee of democracy and the rule of law, and the independence of the judiciary from the executive branch is a necessary condition for absolute respect for and safeguard of fundamental rights.

The year 2007 was particularly dangerous for rights and freedoms in Pakistan. Violations by the executive branch were widespread and systematic, and covered all fields. In addition to undermining the independence of the judiciary, the executive power has seriously attacked other rights and freedoms guaranteed by the Constitution. Attacks to the integrity and security of people were also very serious. Excesses of power and disproportionate measures have proliferated, as have serious failures of the state in its mission to safeguard public order and the security of its citizens. Discrimination, a long-standing problem, intensified as a result of the violation of other fundamental rights.

In this context, the results of parliamentary elections on February 18, 2008, hailing the victory of opposition parties against the regime of President Musharraf, represent great hope. But that hope is fragile. Fundamental rights and freedoms are in danger in Pakistan, and their defenders are in need of support more than ever to continue their peaceful struggle for democracy and the rule of law.



# I -Attacks on the independence of the judiciary

## 1 - The genesis of an unprecedented confrontation between the executive and judicial branches

The judicial branch of Pakistan was for a long time complicit towards military power, particularly under the pretext of "State Necessity."<sup>1</sup> However, under the decisive impetus of the president of the Supreme Court, Chief of Justice Iftikhar Muhammad Chaudry,<sup>2</sup> the Court has, since 2005, taken many decisions in sensitive areas to protect fundamental rights. This worries the executive branch, who sees the decisions as worrying and disturbing for its political and economic interests.<sup>3</sup>

### 1.1 - Sensitive Supreme Court cases

In a complaint challenging his dismissal on March 9, 2007, Chief Justice Chaudry listed sensitive cases that the Pakistani justice branch tried over the past year.<sup>4</sup> The Supreme Court was asked to deal with more than 6,000 cases of human rights violations during one year. These cases included hundreds of forced disappearances, violence and serious abuses of power by the police, forced marriages or gifting of women and girls ordained by community and tribal assemblies, abduction of entire families, detention of minors, especially in Baluchistan, and suspicious releases on bail. In the economic sphere, the Supreme

Court has dealt with the fraudulent privatization of national enterprises, the allocation of land to elders or officials of the regime, and environmental damage caused by building projects<sup>5</sup> or conversion of national parks into commercial complexes.<sup>6</sup>

The vigilance of judges, including those on the Supreme Court, has therefore been exerted during the past two years in litigation relating to multiple violations of fundamental rights.<sup>7</sup> Several sensitive issues at the end of 2006 exacerbated the military and President Musharraf, whose management of the country, methods and legitimacy are compromised by the decisions and judicial investigations carried out, namely:

- the cancellation of the privatization of *Pakistan Steel Mills*, the largest industrial complex in Pakistan.<sup>8</sup> In its decision on June 23, 2006, the Supreme Court annulled the state sale of *Steel Mills* to an international consortium that included generals of the army, arguing that the sales process<sup>9</sup> was conducted with inexplicable haste, under opaque conditions and at an undervalued price. For the military, this decision represents an affront to its prerogatives and authority in the economic sphere;
- the judicial treatment of the situation of disappeared persons, on motions before the Supreme Court from the association *Defense for Human Rights* (DHR)<sup>10</sup> and the NGO *Human Rights Commission of Pakistan* (HRCP), or upon self-referral (*suo motu*) by the Chief of Justice. With the monitoring of these explosive

1 State necessity, or *Rechtstaat*, is a theory of public law inspired by the work of Austrian lawyer Hans Kelsen which formed the basis for decisions of the Pakistani Supreme Court to validate new orders from the constitutional coup d'état, see *State v. Dosso*, 1958. On the complex issue of constitutional control in the history of justice in Pakistan, see *Judging the state - courts in constitutional politics in Pakistan*, Paula R. Newberg, Cambridge University Press, First South Asian Edition, 1995 or "Coups and courts: the Pakistan Supreme courts' judgments on usurp regimes in the past have led to constitutional debate across the world" V. Venkatesan, *Frontline*, vol. 24, November-December 2007.

2 Upon taking office on June 30, 2005, Chief Justice Chaudry created the Human Rights Branch, (or Human Rights Cell) competent to hear any violation of fundamental rights - Article 184 (3) of the Constitution. This chamber will play a fundamental role in new confidence in justice for victims of these violations and add to the increasing recourse to the Supreme Court (more than 4,000 cases were recorded by the HR Branch from 2005 to June 2006).

3 The daily journal *Nation* welcomed the first year of operation of the Supreme Court under the chairmanship of Chief Justice Chaudry in these terms: "A year of actual progress - The SC has given a great sense of security to the people," *Nation*, Islamabad, July 1, 2006.

4 Petition n° 21 of 2007, under article 184(3) of the Constitution of Pakistan 1973, seeking to challenge the Reference dated 09-03-2007, whereby the petitioner, Chief Justice of Pakistan Mr. Justice Iftikhar Muhammad Chaudry, was suspended.

5 Such as New Murree.

6 Such as CDA Mini Golf Course and the Multiplex Venture.

7 See in particular the importance and the multiplicity of the decisions taken by the Supreme Court in its latest report, *Report Supreme Court of Pakistan*, Golden Jubilee Edition, January 2005-June 2006.

8 "Govt asked to refer issue to Council of Common Interests - Court scraps PSM deal", N. Iqbal, *Dawn* Islamabad, June 24, 2008; N.Aftab, "Privatisation of Pakistan Steel Mills," Karachi, Pakistan, May 2005.

9 Conducted under the supervision of the Privatization Commission and the Cabinet Committee on Privatization (CCOP), headed by the Prime Minister's Office, Shaukat Aziz.

10 *Defense for Human Rights*, a coalition of associations of families of the disappeared, was founded in 2005 by Amina Janjua, the wife of Masoud Janjua, who has disappeared since July 30, 2005.

cases provided by the *Human Rights Branch* of the Supreme Court, applications by litigants are increasing<sup>11</sup> and hearings were multiplied at the end of 2006. The Supreme Court thus asked military authorities and the heads of secret services for the records on forced disappearances. The number<sup>12</sup> of the disappeared is increasing, according to a census conducted by human rights defenders. The judges summoned the branches involved to bring those abducted before justice, produce charges against them and evidence of their terrorist activities, and justify the legal framework for their arrest. Such decisions are perceived by the military as a threat to its practices under the guise of its “war on terror,” which is actively supported by the United States. These practices allow military to summon citizens, students, workers, civil society activists and political opponents for questioning, in defiance of *habeas corpus* and the right to a fair trial. In response to these judicial orders, the Minister of the Interior and Defence and the secret services denied responsibility for these disappearances and replied, in 2007, by returning several “found” persons, released a few at a time. On October 30, the Chief of Justice threatened secret service officials with prosecution if they failed to defer to Supreme Court<sup>13</sup> decisions. The hearings on forced disappearances have been interrupted since November 3, 2007 and the *Human Rights Branch* of the Supreme Court has stopped its work. The families of the victims of forced disappearances and human rights defenders, now deprived of any recourse to justice, continue to question and challenge those in power and the army on this critical issue.

The present conflict between the executive and judicial branches resulted from the first decision contrary to the tripartite separation of powers, on March 9, 2007, and

from the beginning of a confrontation that is unparalleled in the history of Pakistan.

On March 9, 2007, President Musharraf demanded, under the pretext of alleged corruption,<sup>14</sup> for Chief Justice Chaudry to submit his resignation. After the latter refused,<sup>15</sup> he was suspended the same day by presidential order<sup>15</sup> for “misuse” of his office and was illegally detained in residence. Several days later, the chief magistrate of the country was treated in a humiliating manner and physically manhandled by the military.<sup>16</sup> However, he did not yield to this pressure, did not resign, and he brought a petition before the Supreme Court challenging the presidential order of suspension and “forced layoff”<sup>17</sup> and called for a public hearing.

This presidential *coup de force* led to an unexpected movement of popular protest. Led by lawyers, civil society revolted and demanded the return of the Chief Justice of the Supreme Court, who had become a symbol of judicial resistance. The various rungs of Pakistan united in a general strike in support of Iftikhar Muhammad Chaudry, increased demonstrations and protest meetings to ensure his return, with the media relaying the successive stages of this challenge to the military power.

To discourage this popular movement, the military did not hesitate to use violent methods, particularly against lawyers, human rights defenders, journalists, political opponents, and anyone else who dared to express their support for the Chief Justice. There were serious attacks to the integrity of persons and the rights of freedom of expression and assembly.

The testimonies collected by the mission experts are numerous and consistent, with reports from human rights associations, Pakistani and foreign newspapers widely reported.<sup>18</sup> Those in power instrumentalise sectarian violence, and terrorize human rights activists, lawyers,

11 See the observations made in this direction in the 2005-2006 report of the Supreme Court: “*The approach and methodology of the Chief Justice of Pakistan is gaining popularity among the masses, which is apparent from the press comments on the actions taken by him. More and more people are sending their grievances to the Chief Justice of Pakistan and getting relief from the concerned quarters under the orders of the CJ. In consequence, the work in the HR Branch is increasing at a tremendous space.*”

12 Despite the difficulties in identifying the disappeared, the cases of missing persons before the judiciary until November 3, 2007 amounted to more than 400 people, according to figures produced by HRCP and DHR. In March 2008, the number of cases of missing persons submitted to the judiciary would amount to 529, according to DHR.

13 D., October 30.

14 Charges brought against the president of the Supreme Court in a letter sent by a lawyer.

15 Reference dated 09-03-2007, notification n° F I (2) 2005, A II dated 9-03-2007.

16 Members of his team were arrested, disappeared for several days for interrogation, his home telephone lines and the connection to the television were cut, the insignia of his office removed, and rare visits were possible only with military authorization. The Chief Justice, physically abused by soldiers on March 13th during his appearance at a hearing – which was postponed – with the Superior Council of the Magistracy, complained about the violence. The Supreme Court condemned several senior officers of the Islamabad police to sentences of imprisonment for the mistreatment of Chief of Justice Chaudry.

17 P. Musharraf used forced through an order from 1970.

and the population in order to dissuade people from supporting the president of the Supreme Court.<sup>19</sup>

Despite this context of extreme violence exerted by those in power and the para-military, judges of the Supreme Court cancelled the suspension Chief of Justice Chaudry at his request in a historic decision on July 20, 2007. President Musharraf complied with the court ruling.<sup>20</sup>

The work by the Supreme Court on forced disappearances was not interrupted, despite the suspension of the president of the high court. On April 27, the Supreme Court ordered the appearance (before the court) of the secretaries of Defence and the Interior and the head of the national crisis cell<sup>21</sup> to indicate the whereabouts of missing persons. On May 5, a judge of the same Court asked the Minister of the Interior for written explanations on 56 people who were “recovered” according to the authorities. In June, Senior magistrates self-referred new cases of forced disappearances, ordered medical examinations of prisoners sentenced by a military court, and summoned military secret services again to present those detained illegally. In addition to individual decisions for release and other measures to protect the right to a fair trial,<sup>22</sup> the Court expressed a desire to pursue all those responsible for forced disappearances, but also the need for Parliament to adopt legislation governing the activities of the intelligence services.

Chief of the Supreme Court, Chaudry who, since his return to office, took over the course of hearings devoted to human rights violations, including forced disappearances, said that he was now convinced, in light of the evidence collected, that all those disappeared are held by secret services. He set October 11, 2007 as a

deadline for the government to regularize these situations that violate fundamental rights; otherwise, said services officials and the Minister of Interior would be brought to justice to answer for these disappearances. The conflict between the military power and the judiciary hierarchy is thus at its climax. The fact that all hearings on forced disappearances have been interrupted since November 3 confirms the importance attached to this judicial interference in its illegal practices.

Other initiatives undertaken by judges have disturbed those in power. It was under these circumstances that an assault took place on July 10, 2007, by military forces, on the Red Mosque (*Lal Masjid*), which resulted in dozens of deaths. Human rights defenders<sup>23</sup> have condemned the disproportionate use of force by government troops and the massacres committed under the pretext of counter-terrorism. The Supreme Court has taken over the case, scheduled to be heard from August to October, to order<sup>24</sup> compensation (*dyat*) from the government for the families of the victims and the location of missing students. But the judicial process has been suspended since November 3, 2007.

Another particularly sensitive issue in 2007 is the challenge before the Supreme Court on the eligibility of General Musharraf, a candidate for presidential elections set to take place on October 6. The Supreme Court has been seized by several petitions challenging Pervez Musharraf’s eligibility for the Presidency of the Republic, under constitutional provisions,<sup>25</sup> which combines the functions of chairman and chief of the armed forces. On October 6, 2007, Pervez Musharraf was re-elected with a majority 56% of the members of the electoral college.<sup>26</sup> However the validation of the new presidential

18 Among the reference reports of this period include, *inter alia*, *Annual Report - State of Human Rights in 2007*, HRCP, published in 2008, the mission report “*Defending Dictatorship: U.S. Foreign Policy and Pakistan’s Struggle for Democracy*” of the *National Lawyers Guild / LUMS Rule of Law Project* (January 2008), *Destroying Legality: Pakistan’s Crackdown on Lawyers and Judges*, Human Rights Watch report published on December 19, 2008, the *International Federation of Journalists (IFJ), Emergency in Pakistan*, February 2008.

19 See the invasion by the police of the Association of the Bar of the Lahore High Court on March 16, 2007, the “Karachi carnage” committed by the *MQM* on May 12, 2007, the murder in Islamabad in July 2007 of twelve people, under the pretext of counter-terrorism, in part devoted to violations of freedom of assembly and association, in Part II-2 of the report devoted to the violation of freedoms of assembly and association and Part III-2 on the failures of the State in its mission of safeguarding the public order and safety of persons.

20 For more details regarding the reasons of renunciation by General Musharraf of the proclamation of a state of emergency during the summer of 2007 in response to this ruling, see an article by Gilles Boquérat, resident researcher at the Institut d’Etudes Stratégique Islamabad and associate researcher at the Centre for Studies of India and South Asia in Paris: “*The press reported that a phone call from Condoleezza Rice on August 6 in the early hours of the morning was deterred. The U.S. administration was clearly anxious not to jeopardize the outcome of ongoing negotiations for several months on a power-sharing agreement between Pervez Musharraf and Benazir Bhutto that she supported. The main concern of Washington was to reconcile the respectability of a democratic and liberal civil governance and efficiency in the war against terrorism that only the maintenance of a strong political involvement of the military would ensure.*” G. Boquérat, “*Pakistan, From One crisis to Another*,” *EchoGéo*, 2007, online on December 19, 2007, <http://echogeo.revues.org/index2081.html>

21 *National Crisis Management Cell*.

22 In his statement proclaiming a state of emergency, General Musharraf accused the judges of having released 61 dangerous terrorists.

23 HRCP, July 11, 2007.

24 NF, October 19, 2007.

25 This combination of functions is prohibited, according to the complainants, by the combined application of article 41 paragraph 2: “The President must meet all the eligibility requirements for a member of parliament” and Article 63 § 1 of the Constitution “The provisions relating to the qualifications of members of parliament exclude those who hold an office of profit.”

26 Electoral college composed of members of the national assembly, senate and four provincial assemblies. The PPP had opted to boycott the ballot.

term is disputed, and is still pending before the Supreme Court. This prohibited the Electoral Commission to publish the results of the vote and adjourned its verdict as to the eligibility of the President on November 9.<sup>27</sup> On November 3, General Musharraf suspended the Constitution and established a state of emergency. The impending verdict of the Supreme Court on the legality of his election (an issue which remains unresolved) has without a doubt sounded the death knell of the attempted conquest by the judiciary of a new independence.

## 1.2 - The establishment of an anti-constitutional order

The state of emergency was imposed on November 3, 2007 by General Musharraf, as head of the armed forces. Under this proclamation, the Constitution of the Islamic Republic of Pakistan is “suspended” “in abeyance.” However, the president has the right, under Article 232 of the Constitution, to declare a state of emergency only if the security of the country is threatened by war, external aggression or internal disturbances uncontrollable by a provincial government. The proclamation of a state of emergency by the head of the armed forces is clearly unconstitutional.

Meanwhile, General Musharraf has promulgated the *Provisional Constitutional Order* (PCO),<sup>28</sup> which suspends the constitutionally guaranteed fundamental rights of freedom of movement, assembly, association, trade, business or profession and speech as well as property rights.<sup>29</sup> The *PCO*, just as unconstitutional as the declaration of a state of emergency to which it refers, allows the president to amend the Constitution by ordinance.<sup>30</sup> Human rights defenders and many observers denounce what they perceive, rightly, to be a coup on the

part of General Musharraf and a declaration of martial law.

The target of military power is clearly the judiciary, which threatens its interests and its omnipotence. To be convinced, one can simply consult the text of the declaration of the state of emergency,<sup>31</sup> in which P. Musharraf violently denounced the growing interference of certain judges in government policies, particularly those affecting economic development, their constant interference in the prerogatives of the executive branch, including economic policy, price control, and reduction of business. He accuses judges of helping terrorism by opposing the executive and legislative branches and counter intelligence services in their activities. He requests proof for the responsibility of the Minister of the Interior and the leaders of intelligence services engaged by the justice branch and the orders of the Supreme Court requesting them the accounts of forced disappearances. He claims that the humiliating treatment of members of the government by some judges has demoralized the civil bureaucracy and senior civil servants who took refuge in inaction in order not to be harassed by the judiciary.

The Supreme Court thus attempted, by a decision on the same day,<sup>32</sup> to oppose the new order that is being put in place by recalling constitutional principles, the pillars of the rule of law. The Court affirmed that any appointment of new judges by the government would be illegal and urged judges not to take an oath to the new order.<sup>33</sup> Two thirds of judges of High Courts,<sup>34</sup> or 62 judges, including 12 of the 16 judges of the Supreme Court, refused to take an oath<sup>35</sup> under the *PCO* on November 3, 2007. This unprecedented declaration of war declared by those in power against the justice branch was accompanied by the immediate suspension of the President of the Supreme Court, Chaudry, including his house arrest, with members of his family, by the army. Resistant judges

27 Meanwhile, on August 23, 2007, the Supreme Court, referring to the inalienable right of every citizen of Pakistan to reside in his or her country, authorized the return to Pakistan of the Sharif brothers, including Nawaz Sharif, former prime minister and leader of the *Pakistan Muslim League - N (PML-N)*, overthrown in October 1999 by General Musharraf. Despite this judicial decision, he was not authorized to leave the airport in Islamabad on September 10 and had to take a flight to Saudi Arabia before returning to Pakistan through the competent Saudi authorities. Nawaz Sharif is considered a particularly embarrassing rival by General Musharraf for the presidential elections to come. The party of the president, the *PML-Q (Quaid-i-Azam)* was founded in 2001 from the formation of the former PML of Nawaz Sharif. Both parties share the same political base and their electoral bases are broadly comparable. The President of the *Pakistan Peoples Party (PPP)*, Benazir Bhutto, was allowed by the government to return to Pakistan on October 18. See analysis G. Boquérat in his article, cited above.

28 *Provisional Constitutional Order No. 1 of 2007 § 2 (1)*, Nov. 3, 2007. <http://www.pakistani.org/pakistan/constitution/>

29 Art. 9, 10, 15, 16, 17, 19 and 25 of the Constitution of the Islamic Republic of Pakistan. [www.pakistani.org/pakistan/constitution/](http://www.pakistani.org/pakistan/constitution/).

30 Article 239 of the Constitution does not provide for the possibility of an amendment unless two-thirds majority of both parliamentary chambers is established.

31 “*Text of Pakistan emergency declaration*” BBC News Online, November 3, 2007, <http://news.bbc.co.uk/2/hi/south-asia/70771.stm> ; “*Emergency to End Judicial Activism*”, The Dawn, November 4, 2007. <http://dawn.com/2007/11/04/top12.htm>.

32 Decided by 7 votes against 3.

33 *Supreme Court Order*, § 2 and 3, November 3, 2007.

34 The Supreme Court, composed of 16 councillors, the four high courts of Lahore, Baluchistan, Sindh and Peshawar, the provincial level (*Provincial High Courts*) and the *Federal Shariat Court*.

35 *Oath of Office (Judges) Order*, 2007.

were immediately relieved of their duties,<sup>36</sup> in complete violation of their statute.<sup>37</sup> Ten judges<sup>38</sup> of the Supreme Court were arrested by the army and intelligence services and placed under house arrest, some with members of their families. Thirty-seven judges were forced to retire for refusing to take an oath. An *ad hoc* justice branch was implemented in the following days. It was still in the process of being formed as of July 2008 and represents a major problem for the future of the justice branch and, more importantly, for the emergence of a democratic Pakistan.

Repressive and exceptional legislation, old and new, confirmed the illegitimate order of November 3, 2007. The *Maintenance of Public Order (MPO) Ordinance* of 1960 authorizes emergency measures<sup>39</sup> when public safety or maintenance of public order is undermined. Since the beginning of the state of emergency on November 3, thousands of lawyers and opponents of the regime have been detained, sometimes for months, for spreading false news (*dissemination of rumours*), pursuant to section 16 of the MPO.<sup>40</sup>

The *Anti-terrorism Act* of 1997<sup>41</sup> completes the legislation on terrorism dating back 70 years. It enshrines a system of emergency and an accelerated procedure<sup>42</sup> to prevent and suppress terrorism, sectarian violence and appeals to hatred.<sup>43</sup> The unclear definition of terrorism, the principle of presumption of guilt, the shift of the burden of proof, the inflation of offences under this text, the severity of sanctions, ranging from five years' imprisonment to the death penalty, and the possibility for the government to create new offences without intervention of parliament make the ATA a formidable weapon in the hands of

successive powers. P. Musharraf makes extensive use of the ATA to persecute political opposition to his regime. The FIDH delegates were able to verify with their interlocutors as to the misuse of these laws in an attempt to curb popular movements. The laws have been used to charge, since November 3, many lawyers, trade unionists and human rights defenders, and detain a number of them under the pretext of terrorist activities.<sup>44</sup> In early March 2008, at the end of the FIDH's mission, activists and lawyers were still being "charged" under the anti-terrorist law without having received any judicial process and without having been entitled to a trial.

The *Sedition law*<sup>45</sup> punishes by a maximum sentence of life imprisonment any person who, by statements, written or oral, by signs or by any visible representation or any other means, incites or attempts to incite hate or contempt, or causes or attempts to cause disaffection against the government, federal or provincial.<sup>46</sup>

In November 2003, under the guise of a state of emergency, President Musharraf set out to increase amendments to existing legislation by way of ordinances, restricting individual liberties and expanding the civil jurisdiction of military courts.

The 2007 LXVI ordinance, amending the 1952 military code of Pakistan,<sup>47</sup> dramatically increases the competence of military courts, before which civilians can now be prosecuted, after an investigation conducted by the military and tried in hearings behind closed doors, according to procedural rules of emergency, for many offences which before fell within the jurisdiction of non-military courts.<sup>48</sup>

36 95 judges were in office in these high courts.

37 Article 209 § 6 of the Constitution only allows the removal of judges on the advice of the Supreme Judicial Council.

38 Judges Nasirul Mulk, Sardar Mohammad Raza, Shakerullah Jan, Rana Bhagwandas, Ghulam Rabbani, Khalilul Rehman Jilani, Jamshed Ali Shah, Tassaduq Hussain Jilani, Raja Fayyaz and Falak Sher. Some of them will be held until the lifting of the state of emergency. Chief Justice Chaudry was released in March 2008.

39 Deriving from the former colonial legal system and strengthened since then, the MPO authorized the arrest and up to 6 months of detention for a list of offences endangering public safety or maintenance of public order. The MPO has been widely used by the authorities and successive dictatorial regimes in Pakistan, in particular against political opponents.

40 Section 16 of the MPO, entitled "*Dissemination of rumours*," prohibits speech that frightens or alarms the public or likely to do so, or speech that encourages or is likely to encourage any activity prejudicial to public safety or maintenance of public order.

41 The *ATA*, adopted under the government of Prime Minister Nawaz Sharif, is a legislative instrument applicable to minors as well as majors, which has enabled successive powers, including that of Pervez Musharraf, to muzzle political opposition to the regime in place, as well as entrust the anti-terrorist magistrates to themselves. See statements to this effect at Human Rights Watch, made by a prosecutor of the anti-terrorist court in Lahore: "*Filing of false cases against politicians is routine. The ATA is another tool in power to harass opposition*" in HRW report, *Destroying Legality: Pakistan's Crackdown on Lawyers and Judges*, December 2008.

42 Four special anti-terrorists courts were created in each province of Pakistan. The duration of the preparatory investigation is set at 8 days by the *ATA*. The duration of the trial, once before the special court, is also 8 days, and the appeal period is 7 days; See *Terrorist unless proven otherwise - Human rights implications of anti-terror laws and practices in Pakistan*, Najam U Din, HRCP, Lahore, February 2007.

43 *ATA*, Preamble, 1997.

44 See 2.1 and 2-2.

45 Section 124-4 of the *Pakistan Penal Code*, or *PPC*, from 1860, under the British colonial empire, [www.pakistani.org/pakistan/legislation/1860/acXLVof1860.html](http://www.pakistani.org/pakistan/legislation/1860/acXLVof1860.html)

46 Several lawyers were charged under the *Sedition Law*. Makhlood Javed Hashmi, a leader of the opposition, was sentenced under Musharraf to 23 years imprisonment: he was released in August 2007 by the Supreme Court.

47 *Pakistan Army (Amendment) Ordinance, November 10, 2007*, <http://www.app.com.pk/en/index2.php?>

48 <http://www.fidh.org/spip.php?article4886>

The 2007 LXIX ordinance, amending the legislation governing the activity of the bars,<sup>49</sup> increases the powers of the Attorney General in his capacity as chairman of the council of order, to punish, including imprisonment, any lawyer convicted of professional misconduct or bad conduct, with no possible appeal of decisions made. The ordinance also includes the possibility for the court, now composed of “PCO judges,”<sup>50</sup> to punish those lawyers, including those in the Bar.

Finally, by order on November 21, 2007,<sup>51</sup> the head of the armed forces P. Musharraf amended the Constitution to self-validate unconstitutional acts taken. Thus, article 270AAA(1) validates the proclamation of a state of emergency, the PCO order, ordinances, laws, amendments and decisions taken during the suspension of the Constitution, by excluding any possibility of legal recourse against the measures taken under the PCO.

In parallel, in addition to this legislative series of emergency laws, the government set up an “ad hoc” justice system by imposing an obligatory retirement or by dismissing the judges of the Supreme Court and High Courts who refused to take an oath under a state of emergency. The provisional constitutional order was “endorsed” during the last session of the legislature by a National Assembly deserted by any opposition, and then by the new Supreme Court judges. The only judgement on November 23, 2007 from the reconstituted Supreme Court demonstrates allegiance to those in power for those who are now called in Pakistan “PCO judges.”

The Supreme Court, in its composition issued on November 3, 2007, in order to reject the complaints filed by the judges removed from office, held that acts of extremism, terrorism, suicide bombings, and kidnapping of foreigners was deteriorating the image of Pakistan and affecting the economic development of the country. The Supreme Court added that despite the principle of separation of powers, some judges of the judicial hierarchy unfortunately transgressed, with their “judicial activism” and their decisions, constitutionally set limits

and blocked the state machine, particularly the legislative and executive branches of government, rendering necessary the declaration of a state of emergency by the head of the armed forces/president in order to avoid the disastrous consequences of the situation, comparable to those in Pakistan in 1977 and 1999. However, the Supreme Court attempted to be reassuring: it noted that the 1973 Constitution was not repealed but only suspended (held in abeyance).

Within the framework of this legislative and judicial arrangement, General Musharraf resigned from his position as chief of the armed forces and appointed General Kayani<sup>52</sup> to replace him on November 28, and gave an oath as the next civilian president the following day.

### 1.3 - Repression of defenders of the independence of the judiciary

In declaring the state of emergency, the government revealed its awareness of the capacity for resistance and rebellion of a civil society, eagering for social justice and democracy.<sup>53</sup> On November 3, a state of terror hit the country and neutralized any possibility of a real confrontation, or at least attempts to do so, until legislative elections in February 2008. The private television channels were banned, and journalists were threatened and prohibited in carrying out their activities.<sup>54</sup>

FIDH delegates met with dozens of civil society representatives who testified the scale and the systematic character of abuses.

The delegation met with lawyers both juniors and seniors, including all newly elected members of the Lahore Bar Association and the advisor of Chief Justice Chaudry, former judges and the president of the Supreme Court<sup>55</sup> and High Courts, as well as one of the judges of the Supreme Court dismissed in November 2007.<sup>56</sup> All

49 Ordinance n° LXIX of 2007, *Legal Practitioners and Bar Councils Act, of 1973 (Amendment)* <http://www.app.com.pk/en/index.php?>

50 Ironic expression in Pakistan describing judges who pledged to the PCO on November 3, 2007.

51 *Constitution (Amendment) Order, 2007*. <http://www.app.com.pk/en/index.php?>

52 Who until this point was the head of *Inter Services Intelligence (ISI)*, the dreaded and all-powerful Pakistani intelligence agency.

53 Civil society had been relatively passive during the coup d'état of October 1999, when the military put an end to a decade of democratically elected governments but was then denounced for its corruption.

54 See II – 2 .1, on the muzzling of the media.

55 Former *Chief Justice Saeed-uz-Zaman* and *Justice Rasheed A. Razvi*, currently member of the Bar of the High Court in Karachi, both courageously refused to take an oath in 2000.

56 The senior judge wished his testimony to remain anonymous, both for ethical and security reasons. This meeting, like those with other judges and lawyers interviewed by the mission experts, allowed them to measure the determination and courage of the Pakistani justice professionals engaged in this exhausting wrestle with the political-military power for the necessary independence of the judiciary, to build the rule of law.

of those met described arbitrary, violent and humiliating methods used against them because they were preferred targets of military power for their role in the popular movement.

Several hundred lawyers were imprisoned or placed under house arrest. Some of them were tortured, wounded or sick,<sup>57</sup> with no access to medical care. The mission met with, among other, victims of this wave of repression, one of the leaders of the movement of lawyers, Justice Tariq Mehmood, a lawyer and former judge, the day following the lifting of his house arrest on February 27, 2008.<sup>58</sup> Imprisoned in Sahiwal jail and later placed under house arrest, Justice Tariq testified as to his conditions of detention,<sup>59</sup> the deterioration of his health because of confinement lasting more than three months, and the absence of any judicial procedure to justify his deprivation of liberty. As all judges, lawyers and members of civil society interviewed by the FIDH mission, during the interview Justice Tariq reaffirmed the importance for the fate of Pakistan of returning judges who were dismissed by the Armed Forces to their duties. He asks nothing of the “military dictatorship” in place, but rather addressed the political forces of the opposition, following their electoral success of the February 18, 2008,<sup>60</sup> to ensure that this vital institutional issue is treated as a priority.

The FIDH mission also received testimony on February 29, 2008 from the lawyer Athar Minallah, who represented the President of the Supreme Court, Justice Chaudry, who was still under house arrest and prohibited from any communication, not even by telephone, with the outside world, including with his lawyer. The detention regime designed to force the senior judge to resign from his duties violates the right to defence, access to a judge, absence of legal proceedings initiated against him, and can be likened to inhuman and degrading treatment. The Chief Justice has thus been imprisoned since November 3, 2007 with his wife and their three youngest children on simple verbal instructions from President Musharraf. Everyone, including the school aged children of the judge, was prohibited from leaving the residence,

which is surrounded by barbed wire and high military surveillance. His youngest child, eight years old and handicapped, no longer had access to medical treatment.<sup>61</sup>

The house arrest of the President of the Supreme Court was not lifted until March 24, 2008, with the arrival at the head of the coalition government of the new Prime Minister of Pakistan, Yousuf Raza Gilani. Gilani released all judges still under house arrest the same day he was elected.<sup>62</sup>

Suppression, arrests, and violent deaths have hit large parts of civil society, especially those who, by their activities in defence of fundamental rights, would normally be discouraged from any sort of confrontation to support the revoked judges.

Arrests, deaths, violence and ill-treatment by the military and intelligence services continued well after the lifting of the state of emergency by P. Musharraf on December 15, 2007.<sup>63</sup> Those in power intensified abuses against human rights defenders<sup>64</sup> in order to curb the strength of civil society and try to influence the outcome of parliamentary elections, postponed to February 18, 2008 following the assassination of Benazir Bhutto. The number of dissidents and civil society members arrested during this period is estimated to be at more than five thousand.

The declaration of war against the judiciary by those in power is a first in the history of Pakistan, for both the methods used and for the resistance of judges against the military *diktat*. Those in power had overturned civilian governments on many occasions in the past by asking the Supreme Court to validate new constitutional orders put in place, but they never had taken such proportions<sup>65</sup>. Judges met by the FIDH delegation, lawyers as well as judges, expressed their surprise but also their grief to have seen constitutional principles of separation of powers and independence of the judiciary violated, and the adoption of many texts and practices that violate fundamental rights and perpetrate extreme violence. For the people of Pakistan, November 3, 2007 violates justice and the rule of law for large parts of civil society, who have been

57 See the detailed report by HRW on the mistreatment of lawyers arrested, including leaders of the movement, Malij Munir, Tariq Mehmood, Aitzaz Ahsan and Ali Ahmed Kurd. *HRW report "Destroying Legality: Pakistan's Crackdown on Lawyers and Judges, already cited.*

58 "Justice Tariq released, vows to continue struggle", *The News*, February 27, 2008.

59 Justice Tariq was forced to remain in his office for several days, surrounded by soldiers before being allowed to walk in other areas.

60 On February 29, the date of the mission's meeting with Justice Tariq, the coalition government had not yet been appointed.

61 For more on the conditions of arrest and detention, see the open letter from Chief Justice Chaudry, January 31, 2008, to the President of the European Parliament, various heads of state and the international community.

62 The house arrest was extended after the elections and will be lifted without any judicial decision, with weeks until the release by the new prime minister of those last placed under house arrest.

63 AFP, December 15, 2007.

64 During this long period of suppression, the FIDH mission collected testimony from the human rights activist, Tahira Abdullah, who was arrested, imprisoned and abused on February 10, 2008 by the military during a protest by civil society for the independence of the judiciary, in front of the residence of Chief Justice Chaudry, Islamabad, "Don't trample the national flag - Civil society activist arrest," Arshaf Sharif, *Dawn*, February 10, 2008.

65 In 2002, 5 judges of the Supreme Court, including the former Chief Justice, who refused to take oath under the Musharraf presidency, were dismissed and jailed during another wave of repression followed by several incidents.

harassed by serious abuses of military power and socio-economic difficulties. The popular movement to support the judges, led by lawyers of the country, went far beyond the issue of returning dismissed judges; it also illustrates a genuine desire for democracy and a profound rejection of state terrorism reinforced by active support of the United States from which the people of Pakistan have suffered since the seizure of power by General Musharraf.

## 2 - The uncertain future of the Pakistani judiciary after the elections of February 18, 2008

Despite the climate of extreme tension and pressure under which the elections took place on February 18, 2008, the defeat of the party supporting President Pervez Musharraf, the Muslim League-Q (PML-Q), was indisputable.<sup>66</sup> PML-Q leaders and Ministers lost the parliamentary elections (National and Provincial Assembly Elections), and the coalition of Islamist parties (*Muttahidda Majlis-e-Ama-MMA*) collapsed. The two main opposition parties, the Pakistan People's Party (PPP), led by the husband of Benazir Bhutto, Asif Ali Zardari, as well as the Pakistan Muslim League (PML-N) of former Prime Minister Nawaz Sharif, triumphed. The PPP and the PML-N formed, after laborious negotiations, a coalition government, led by the current Prime Minister, Yousuf Raza Gilani.

Nevertheless, hopes that were raised by election results and the hand-over to a civilian government coalition are fragile. With no clear answer to the crucial question of the dismissed judges, the conditions necessary for the affirmation of an independent judiciary and the protection of individual freedoms and fundamental rights are not met.

### 2.1 - Dismissed judges: a key unresolved issue

As of late June 2008, the fate of the justice branch was still entangled in a worrying wait. Chief Justice Chaudry, who had become the symbol of the resistant judiciary, had still not regained his post. "PCO judges" were still in place, and trials relating to forced disappearances and the eligibility of P. Musharraf were suspended. Massive privatization was free to move ahead without the risk of judicial scrutiny. Exceptional legislation, strengthened since the declaration of the state of emergency, armed military justice with new competence on civilians, severely undermine the right to a fair trial. Lawyers, human rights defenders, trade unionists, and opponents remain under the threat of charges brought against them during the past year, with successive raids and arrests.

Discussion and current projects on issues surrounding the justice branch, political parties (in particular the PPP), and compromises on the subject of international powers generate anxiety about the future.

The independence of the judiciary is nothing more than a claim that is void of meaning and effectiveness if judges are dismissed of their duties or required to "co-exist"<sup>67</sup> with judges who have pledged allegiance to the new unconstitutional order. There has been little progress in the debate, which has emerged since late February on the legal process for their resettlement (which is a decision for the Minister of Justice, voted in by parliament<sup>68</sup>). The extreme difficulty of delivering justice serenely, while keeping the judges who have acquired power in their place, will undoubtedly create a deep crisis for higher courts, especially the Supreme Court.<sup>69</sup>

But P. Musharraf did not want to see a return of Chief Justice Chaudry or the dismissed judges because they would take on the legal question of the validity of his election as President of the Republic. The new government<sup>69bis</sup> has not been able to resolve this thorny issue.

66 For an analysis of election results and the resulting political situation, see "Pakistan, the most difficult still to be done," JL. Racine, *Le Monde Diplomatique*, February 28, 2008; "Post election hope" Muzaffar Iqbal, *The News*, February 22, 2008. <http://www.monde-diplomatique.fr/carnet/2008-02-27-Pakistan>.

67 At the Supreme Court, if the twelve dismissed judges were placed back in office, the PCO judges would remain the majority with fourteen. This illustrates the dead end in which the highest court of the country finds itself.

68 With the constitutional rule of two-thirds majority vote from both chambers and hope hardly concealed by some proponents of this solution of a Senate where Musharraf's party remains the majority vote against the return of the judges.

69 At the Supreme Court, if the twelve dismissed judges were placed back in office, the PCO judges would still be the majority with fourteen. This illustrates the dead end in which the highest court of the country finds itself.

69bis The ambiguity of political parties on this issue has been denounced by civil society since the beginning of this institutional crisis. The PPP does not hide its hostility towards the popular movement to support the dismissed judges. The Ministers of PML-N, headed by Nawaz Sharif (who has now made the return of these judges the condition of keeping his party in the coalition government), withdrew from the government in May 2008.



The international community also contributed to the wait, undermining the assertion of an independent judiciary. The United States did not want to see Pervez Musharraf ousted, as they have always supported him and believe him, wrongly, to be an obstacle to the rise of fundamentalism in Pakistan and one of their major assets in the “war on terror.” As for the Member States of the European Union, their silence regarding the need for the return of “dismissed” judges speaks for itself. For diplomatic reasons, such a claim by Europeans would disavow President Musharraf and weaken his position. In a press release on February 15, 2008,<sup>70</sup> the presidency of the European Union, in a minimalist position, demanded the release of “political prisoners,” including judges and lawyers, “essential to the restoration of confidence in the independence of the judiciary, the rule of law and the democratic process,” but was careful not to claim that the removed judges should be returned to duty. This support by the international community to the illegitimate institutional order in place, explicit or implicit, heavily mortgages hopes for the return of dismissed judges, which is an undeniable prerequisite to the assertion of a legitimate and independent judiciary and, more generally, to the construction of a state of law in Pakistan.

## 2.2 - Institutional reform projects: a threat to the judiciary for the future

In addition to the highly contested creation by President Musharraf of a fifth high court in Islamabad,<sup>71</sup> institutional reform projects, disturbing in their practical implementation, are under consideration.

Following the depart of General Musharraf and the elections, a draft institutional reform is currently proposed by PPP with provisions that are incompatible with the independence of the judiciary and the emergence of a judicial institution capable to fulfil its mandate as the guardian of fundamental rights.<sup>72</sup> While the reform of an illegitimately amended Constitution by successive

dictatorships is essential, it is possible that PPP could propose to reduce the powers of the Supreme Court by limiting them to declaratory decisions on matters of “public importance” relating to violations of fundamental rights (without the possibility of compensating victims for these violations). It is also possible that a case could be self-referred to the Federal Shariat Court to try and invalidate a law contrary to Islam. Equally worrying is the proposal to replace the current the Supreme Judicial Council<sup>73</sup> with a “judicial commission” composed of former “non-politicized” judges, which would also be responsible for the development of a new code of conduct for judges and superior courts.<sup>74</sup>

## 2.3 - Civil society: a long march to democracy

The vigilance of civil society did not stay dormant; the reality is quite the contrary, as demonstrated by the protests for the anniversary of March 9, 2008 and the popular success of the “Long march” on June 1, 2008.

The primary and persistent claim of civil society, institutionally, is the return of Chief Justice Chaudry and other dismissed judges, and the departure of the “PCO judges”. This is legitimate and indisputable, as the independence of the judiciary, both in the manner of appointing its statue and its daily functioning, is essential for the protection of human rights, civil and political as well as social and economic. The people have come to understand this, as seen in the recent surge of cases in superior courts and the Supreme Court. The Pakistani people, victims of multiple violations committed by a military oligarchy supported by large landowners and high-level bourgeoisie, have resorted increasingly to the courts. The brazen corruption of government officials, both federal and provincial, and the abuse of power by the police, army, and the prison administration created a deep feeling of revolt in the most disadvantaged social classes and awakened the consciousness of the middle class. A

70 Declaration by the Presidency on behalf of the European Union on holding legislative elections in Pakistan, February 15, 2008.

71 The decision of the Lahore High Court on December 17, 2007, which opposed the creation, was overruled on December 25, 2007 by the PCO Supreme Court.

72 For an analysis of the draft constitutional reform of the PPP, see “*HRCP’s study of the proposed constitutional package*,” Press Release, June 7, 2008.

73 The Supreme Judicial Council, which is comprised of the President of the Supreme Court, the two deans of the SC and two presidents of high courts, has jurisdiction in disciplinary matters on the removal of judges convicted of misconduct.

74 It should be recalled that the Chief Justice Chaudry and other dismissed judges are accused of politicization and activism by P. Musharraf and by the *ad hoc* judges that he put in place (see the text of the declaration of a state of emergency, November 23, 2008). In addition, lawyers who are very active in the movement to support CJ Chaudry are former senior judges in retirement. The accusations of the politicization of judges, whose decisions threaten the executive power, is a recurring universal history of the justice branch.

75 Chief Justice Nasir Aslam Zahid Zahid, quoted by Arif N. Khan, *Unmitigated Miscarriage of Justice*.

former president of Supreme Court<sup>75</sup> recently revealed that more than 1.5 million procedures are pending before the courts in Pakistan, all mixed litigations. The lawyers, exasperated by the freezing of the judiciary, have been engaged in a strike and a boycott of “PCO justice.” This is economically disastrous for them, but their courageous commitment is part of a substantive claim of a state right for Pakistan at a key moment of its history.

On March 9, 2008, the anniversary for the lawyers’ movement, marked the occasion in Pakistan of a major demonstration demanding the release of the Chief Justice and denounced the persistence of those in power not to reinstate the dismissed judges.<sup>76</sup>

The latest remarkable event of the popular movement for the return of the dismissed judges and for democracy, the *Long March* of June 13, 2008, undoubtedly marked the history of the Pakistani people, who no longer accept the denial of human rights and the military dictatorship under which they have suffered since 1999, against a backdrop of emerging Islamic activism, of terrorism and American

interventionism. Four hundred thousand, opponents to the P. Musharraf regime, led by lawyers and supported by the people throughout their peaceful march, travelled hundreds of kilometres to reach the capital, Islamabad, from June 13 to 16, 2008. The marchers demanded the return of the dismissed judges,<sup>77</sup> the departure of Pervez Musharraf, and protested against the government’s inability to bring this crisis to a satisfactory outcome.<sup>78</sup>

Underestimating or ignoring the popular movement, which is supported by thousands of lawyers, would undoubtedly be a serious error of judgement on the part of both the current leaders of Pakistan and the international community. As Chief of Justice Chaudry rightly stated after his release, the administration of justice and the protection of people’s rights are impossible without the independence of the judiciary.<sup>79</sup> The people of Pakistan, despite their suffering, intend to assert their need for justice and democracy and pose as non-negotiable the condition for the return of those judges ousted by the military. It is a long march toward democracy that the state policy of terror will not stop.

76 Asif Ali Zardari, the new leader of PPP, and Nawza Shariff announced the establishment of a Charter for democracy but are already divided on the issue of judges returning to their duties. “Musharraf foes strike a unity pact - Opposition seeks to reinstall judges and cut presidential powers,” J. Perlez, March 9, 2008, “Musharraf foes reach power-sharing agreement,” International Herald Tribune, March 10, 2008.

77 Sabihuddin Ahmed, the dismissed president of the Sind court of appeals, while addressing the marchers, said : “Judges have come out to protect the country and the constitution,” quoted by John Parker, in “Pakistan Lawyers on Long March to reinstate top judges,” The Lawyer.com, June 16, 2008, <http://www.thelawyer.com/cgi-bin/item>

78 On the history of the *Long March*, see “A historic Long March that fell short of picketing parliament-Lawyer ‘s leadership on the road from resistance to reconciliation”, Tariq Farooq, spokesman for the Pakistan Labour Party, United Europe without Borders , June 18, 2008. <http://www.europe-solidaire.org/spip.php?article10548>.

79 Justice Chaudry, “The dispensing of justice and protection of the rights of the people is impossible without the independence of judiciary,” in “Independence of judiciary a must for democracy,” South Asian New Agencies, Lahore, June 12, 2008 <http://www.sananews.com.pk/news.php?>

# II -Attacks on other rights and freedoms guaranteed by the Constitution

## 1 - Attacks on the right to safety

An essential right in any democratic society, the right to security<sup>80</sup> is the right not to be arbitrarily detained. The right to safety is the “shield” that allows people to live freely and to exercise all other public and political freedoms.<sup>81</sup> It is divided into two principles, the first being the right of any person arrested to defend him or herself, namely to be informed of the cause of their arrest, to be brought promptly before a judge and tried within a reasonable time, and to have the right to an appeal before an independent tribunal, assistance from a lawyer, and all necessary conditions for a fair trial. The second principle is the right of any person to only be arrested or placed in detention according to legal procedures, and only in cases defined by law. Although the Pakistani Constitution affirms the right to safety,<sup>82</sup> respect for human dignity and the prohibition of torture,<sup>83</sup> reality in Pakistan is quite different.

Aggravated by anti-terrorist laws and courts<sup>84</sup> and practices systematized by the “war on terror,” and encouraged by policies pursued by the United States in Pakistan for over thirty years and particularly since September 11, 2001, forced disappearances, torture and inhuman and degrading treatment, illegal detention and maltreatment in prisons currently constitute violations of the right to safety committed on a daily basis by the army, police, intelligence services, prisons and other state

officials. Rather than responding to the rise of terrorism used by fundamentalists to oppress the population, these practices fuel a total loss of confidence of people in the state, promote the use of violent responses, and severely undermine any democratic alternative, all while decimating defenders of public and individual freedoms.<sup>85</sup>

### 1.1 - Forced disappearances: a tragic “routine” in Pakistan

Forced disappearances, an extremely sensitive issue in Pakistan, are now a daily practice of government services under the regime of Pervez Musharraf. The abduction by Pakistani secret services and the disappearance of anonymous citizens, political opponents and human rights defenders affects large parts of civil society and leaves many families in mourning.

It is very difficult to quantify these disappearances because of the pressure exercised against those who dare to expose them, the difficulty to provide evidence and information on those responsible and places of detention used, and lastly because the disappearances are more prevalent in areas prohibited to access by human rights defenders, as in Baluchistan. In a recent report, “*Human Rights Commission of Pakistan*” (HRCP), “*Defence for Human Rights*” (DHR),<sup>86</sup> representatives of political

80 Article 8 of the Universal Declaration on Human Rights.

81 G. Lebreton, *Libertés publiques et droits de l'homme*, Editions Armand Colin, 7ème éd., 2005.

82 Pakistani Constitution, article 10 (1) and (2): “No person who is arrested shall be detained without being informed, as soon as may be, of the grounds for such arrest, nor shall be denied the right to consult and be defended by a legal practitioner of his choice.

Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest.”

83 Pakistani Constitution, article 14(1) and (2): “The dignity of man and subject of law, the privacy of home, shall be inviolable. No person shall be subjected to torture for the purpose of extracting evidence.”

84 In October 1974, special courts were set up to deal with acts of sabotage, subversion and terrorism, with expedited procedures, *Ordinance XVIII, 1974; Suppression of Terrorist Activities (Special Courts) Act, 1975; Anti-Terrorism Act (ATA), 1997*. The principle of the presumption of guilt was affirmed, procedural guarantees were reduced, investigations and hearings were required to be conducted within fourteen days, and confessions passed during the police were admitted as evidence. The ATA is applicable to minors, and the list of crimes within the jurisdiction of special courts has increased over the years; see *Terrorist unless proven otherwise - Human rights implications of anti-terror laws and practises in Pakistan*, Cited above.

85 Most victims of forced disappearances are persons suspected of engaging in terrorist activities. Among the latter there are suspected fundamentalists, but also defenders of minority rights, such as the Baluchis, that the Pakistani state accuses of terrorism. A significant number of disappearances concern Baluchi nationalists.

86 HRCP and DHR are two Pakistani organisations mobilized on the issue and have filed suits before the Supreme Court since August 2006. The FIDH mission met with HRCP staff in Lahore, Karachi and Islamabad, including the lawyer Asma Jahangir. Mrs. Jahangir personally assisted former disappeared persons and families of disappeared persons, in a climate of threats. Amina Masood Janjua (wife of Masood Janjua, disappeared in 2005) is the founder of DHR, which leads a tireless campaign for the release of disappeared persons in Pakistan (*Campaign for the Release of Missing Persons*). Mounir Imran, a former disappeared person, agreed to testify in detail before the Supreme Court on the location of detention of Masood Janjua, still alive as of January 2007.

87 Baluchistan is particularly affected by military repression. The members of HRCP and many Baluch representatives interviewed by the FIDH mission demonstrated the tragic situation in this region, decimated by the forced transfer of populations, military bombings, forced disappearances and obstacles to human rights defenders and outside observers. HRCP is mobilized, among many other cases, to secure the release of a militant nationalist, Dr. Safdar Sarki, who was kidnapped in Karachi on February 24, 2006, severely beaten by intelligence services, is still incarcerated in a prison in Balochistan, despite the deterioration of his health and the decision of bail imposed by the court on November 2, 2007. This example is indicative of the many violations of court rulings by state agents.

parties in the province of Baluchistan<sup>87</sup> during their meetings with the FIDH mission, and the *Asian Human Rights Commission* (AHRC),<sup>88</sup> estimated the total number of persons disappeared since 2001 to be several thousands.<sup>89</sup> Forced disappearances, a weapon of state policy of terror practised for many years, have become “routine” in Pakistan since “September 11.”<sup>90</sup> Accused of anti-terrorist activities, the persons abducted are detained and tortured in illegal places of detention or are handed over to U.S. authorities.

The families of the disappeared are organizing themselves. Assisted and supported by human rights defenders, they began filing claims before the higher courts. Again, the media played an important role that those in power could no longer ignore, by disseminating accurate information on the abductions. Though passive for a long time, the justice branch, under the impetus of Chief Justice Chaudry, seized the issue. The Supreme Court conducted investigations and ordered the government to “take the matter seriously.”<sup>91</sup> It also ordered the appearance of the disappeared and the production of charges and evidence.<sup>92</sup> From late 2006 to November 3, 2007, because of proliferating hearings and court orders (see above), the Ministry of the Interior and the intelligence and military services involved in these disappearances were held accountable to the judiciary and, while denying any liability for the facts,<sup>93</sup> “found” the disappeared.<sup>94</sup> Some of them reappeared after being released. Testimony will be brought before the Supreme Court, reported by the media, and collected by human rights NGOs, revealing the existence of centers and places of illegal detention, inhuman and degrading treatment suffered, and confessions extracted under torture. Saud Memon, released on April 28, 2007 and hospitalized, on an order from the Supreme Court, weighed eighteen kilos when he was found not far from his home, after four years of disappearance: he could no longer talk or walk and had lost his memory. He died shortly afterwards as a result of the abuse.<sup>95</sup>

This investigation to find information is particularly difficult and dangerous for those who dare to speak or assist those who speak. The victims of these practices are threatened, before being released, with reprisals. While families speak and act before their loved ones are released, they are silent once the disappeared are found, out of fear of permanently compromising their freedom.<sup>96</sup>

Khalid Kwaja, of the organisation Defence of Human Rights Council (CHRC), an assistance programme for the missing, was himself abducted by civilians on January 28, 2007, interrogated and handed over to the police before being released on bail a few months later. The atmosphere of threat and tension targeting people active on these sensitive issues was very vibrant in interviews conducted by the FIDH mission.

However, thanks to the involvement before November 3, 2007 of the Pakistani justice branch and the collection of testimonies by national human rights defenders and the media, cross checked information confirms the involvement of the army and state services in those forced disappearances. The Asian Human Rights Commission revealed in a report published on June 5, 2008,<sup>97</sup> which is not denied by the authorities, that fifty-two illegal detention and torture centres have been identified throughout Pakistan, including a dozen in Baluchistan. It appealed to the United Nations Human Rights Council and international human rights NGOs for the release of hundreds of anonymous, human rights defenders, journalists, members of nationalist formations and policies. The departments involved include the Military Intelligence (MI), the Inter Service Intelligences, the Federal Intelligence Agency (FIA), the Pakistan Rangers and the Frontier Constabulary (FC).<sup>98</sup>

It appears from the evidence collected that the missing “reappeared” in Guantanamo prison, which raises serious

88 AHRC, *Report on torture on the UN international day in support of torture victims*, June 2008, <http://material.ahrchk.net/pakistan/AHRC-SPR-001-2008.pdf>  
89 According to a human rights NGO, 4,000 to 6,000 persons have been disappeared. In its appeal on May 15, 2008 laying out, in vain, a new ultimatum for the government to resolve the issue, DHR provided a list of 529 persons formally identified as missing.

90 In the words of the chairman of the Senate Committee on Foreign Affairs, Senator Musahid Hussein, quoted by HRCP report 2007.

91 “To take the matter seriously,” DI, January 23, 2007.

92 On February 13, 2007, the Senate Functional Committee on Human Rights stigmatized the inadequate and insufficient responses the government made to the judiciary and urged it to ensure the appearance before the Supreme Court of disappeared persons. For the Senate committee, this issue affects the image of the country both nationally and internationally.

93 A lawyer for the State who complained at a hearing about the Supreme Court’s lack of cooperation from the Ministry of the Interior was immediately withdrawn.

94 In its 2007 report, HRCP reported that 99 of 198 disappeared persons for whom the organisation appealed to the Supreme Court have been found thanks to the decisions of the high court.

95 His crime is that he owned the field in which the body was found of the British journalist of the Wall Street Journal, Daniel Pearl. No evidence has been produced regarding the involvement of Saud Memon, who was arrested in 2003 in South Africa by the FBI and sent to Guantanamo before being delivered to Pakistan in 2006. He has never been able to defend these accusations.

96 A HRCP staff in Karachi testified in the case of young Saleem Baloch, who had the courage, at a press conference in December 2006, held on the premises of HRCP, to describe the circumstances of his abduction and detention, and was then again abducted in retaliation by the intelligence services.

97 AHRC, “Pakistan: 52 illegal torture and detention centres identified”, June 5, 2008, <http://www.ahrchk.net/statements/mainfile.php/2008statements/>

98 The “Frontier Corps” and the “Rangers” are paramilitary forces, see “Armée pakistanaise : le business des casernes”, F. Chipeaux, Le Monde, February 19, 2008.

questions about the U.S. involvement in the phenomenon of forced disappearances in Pakistan. In addition to the question about the United States' role played in the disappearances, transfer and detention to Guantanamo Bay in the absence of any judicial decision,<sup>99</sup> several dozen Pakistani<sup>100</sup> confirm the co-operation of American and Pakistani military power.

The fact that the handling of cases on forced disappearances by the Pakistani justice branch has been suspended since November 3, 2007 demonstrates the importance of defending the fundamental rights of the dismissed judges to return, in conditions that ensure their independence and allow them to continue their mission as guardians of individual liberties.

## 1.2 – Systematic use of torture and inhuman and degrading treatment

Despite the constitutional prohibition of torture to obtain confessions, no provision in the Pakistani Penal Code prohibits the use of such practices by members of law enforcement. Impunity, disciplinary as well as judicial, is almost absolute. Through the development of modern techniques of inquiry and investigation, torture, physical as well as psychological, is a method frequently used by police forces, intelligence services and military investigators to extract confessions. These practices violate the right to life and to the integrity of the person and are encouraged by indifference or even complicity by the highest military and civilian authorities. In the absence of a witness protection system and a judicial assistance, victims of such abuses do not dare complain or ask for justice. The use of torture, known and regularly denounced, is in no way opposed by the government.

Some television reports<sup>101</sup> demonstrate the violent methods used during interrogations and the feeling of impunity for law enforcement officers who use it. The

complete lack of reaction from the government to these revelations on the television illustrates support at the highest level of the state for systematic use of torture by its agents and the trivialization of such processes.<sup>102</sup>

Torture and other types of inhuman and degrading treatment are used in Pakistan as a method of investigation by the police and military authorities, but they are also used as an instrument of repression of civil society and the political opposition. Lawyers and judges have endured depressing experiences since the birth of the movement on March 9, 2007. Arrests without legal bases, or on the basis of fake offences and evidence, have increased under P. Musharraf. They target political opponents, human rights defenders, trade unionists, community activists, journalists, workers, members of religious minorities or regional voters, and now justice professionals because of their commitment to the defence of fundamental rights.

Since March 2007, the worldwide media has circulated images of extreme violence used by the military and police against the social movement for the independence of the judiciary and the rule of law and protests against the state of emergency. The hidden component of this crackdown, including arbitrary arrests, torture, and ill-treatment inflicted on thousands of lawyers and judges, has been the subject of numerous detailed testimonies and evidence.<sup>103</sup> The use of charges under exceptional laws, including anti-terrorism laws, the new jurisdiction of military courts against civilians, house arrests or imprisonment in detention centres with a simple verbal order against a number of lawyers, judges and journalists posed persistent threats to their physical integrity and their freedom to practise their profession.

One particularly disturbing finding of the post-election period in Pakistan is that, despite the sacrifices made by civil society since March 2007 for the emergence of democracy and the rule of law, and despite the arrival of government opposition parties and the permanence of the social movement, state terror continues to reign.

99 Guantanamo Bay, Cuba is a detention centre for suspected terrorists, used by the United States since the attacks of September 11, 2001. The methods used at Guantanamo, including torture and ill-treatment, are now the subject of public and judicial debate; see *AFP*, "The U.S. Supreme Court and Guantanamo," June 12, 2008.

100 Although not confirmed by the Pakistani government, the media reported that around forty Pakistani are held in Guantanamo in May 2007, including Saifullah Pirachu, with heart problems, arrested in Thailand on July 5, 2003, and Majid Khan, abducted in Pakistan in March 2003. Upon request of the wife of the latter, the Sindh High Court asked the government on February 14, 2007 to intervene with U.S. authorities to secure the release of Pakistani detainees at Guantanamo. The federal government has never responded to this judicial injunction. Abdul Aleem Siddiqui was detained for five years in Guantanamo before being imprisoned upon return to Pakistan at the Adiala prison, HRCP report 2008, cited above.

101 One of the journalists interviewed by the FIDH mission was threatened and professionally suspended until the end of February 2008 for information and reports he had made on the movement of lawyers.

102 The private television station GEO TV notably aired, in the broadcast "Lyari gang war," images of the torture of a suspected offender, who was hanged by his feet and beaten with sticks and iron bars before giving his "confession," GEO TV, <http://www.youtube.com/watch?v=4CLCFJzCPHY>

103 On the violence and abuse of rights, refer to the annual reports and missions published in 2007 and 2008 by Human Rights Watch, Asia Human Rights Commission, the National Lawyers Guild, Actionaid International, the International Federation of Journalists, Amnesty International and the numerous Pakistani human rights defender associations, including the Human Rights Commission of Pakistan, listed in the annex.

As an example of the continuing arbitrary and violent methods and the instrumentalisation of the anti-terrorist laws against civil society, it is worth mentioning the arrest, on April 18, 2008, of a trade unionist from Faisalabad, Lala Niaz Kamoka, accused of terrorist activities. His only crime was attempting to negotiate a minimum monthly salary of 6,000 rupees for workers in the textile industry of the region he represents.<sup>104</sup> On May 28, 2008, in Karachi, during a peaceful demonstration against nuclear testing that took place in Baluchistan in May 1998,<sup>105</sup> two anti-nuclear activists, Ghulam Mohammad and Abdul Wahab Baloch,<sup>106</sup> were arrested by intelligence services. Human rights activist Mohammad Khan Lund has been incarcerated since December 27, 2007 in the Deeplo prison (Sindh) as part of a fifty-seven count criminal complaint filed against him by a powerful landowner in the region, former Prime Minister of Sindh province. He has still not been brought before a judge.<sup>107</sup> On June 24, 2008, HRCP denounced the persecution by the courts, currently in place, against human rights defenders working against “bonded” labour.<sup>108</sup>

These examples, among many others, illustrate the situation of defenders of civil and social rights during the complex post-election period in Pakistan. Rights abuses against them remain high on the agenda.

### 1.3 - Treatment of prisoners: a miscarriage of justice

The legal situation in Pakistani prisons is regularly denounced by observers and experts on prisons as a condition which may be likened to a true denial of justice.

Criminal overcrowding,<sup>109</sup> torture and mistreatment, corruption of and brutality by prison administrations, serious deficiencies in hygiene and health characterized the situation in prisons, but the criminal justice system, particularly law enforcement, continues to incarcerate countless people, often from the most disadvantaged social classes. The body of law of criminal sanctions, inherited from the colonial system, suppressive legislation, the use of imprisonment without alternatives to incarceration<sup>110</sup> for women, children, political prisoners, members of regional and religious minorities, foreigners, and perpetrators of less serious offences are all characteristics of the penal situation of the country.

The right to appear as soon as possible before a judge in a fair trial is denied. 67% of prisoners in custody, are awaiting trial. Most of these defendants (“*under-trial prisoners*,” UTP) have been imprisoned or have failed to pay a bond. UTPs wait for months, even years,<sup>111</sup> for their appearance before a court, and many of them are incarcerated for minor offences. Due to the prison administration’s lack of means of transport, defendants are not taken to court and have to pay their agents (in a system where corruption for access to the most basic rights is prevalent) to be brought before the judge early, before the adjournment of the hearing.<sup>112</sup>

The government does not ensure the safety of detainees during their appearance before the courts (attacks or violence against them are common), and hearings within prisons are increasing. This raises questions about the impartiality of the judge, publicity of the debates, equality of arms and the right to a defence in this “relocated” justice branch. During 2007, several trials were held by video,<sup>113</sup> in just as objectionable conditions for the right to a fair trial.

104 On April 24, more than a thousand workers blocked the roads leading to Faisalabad and went on strike to obtain the release of their representative: Lala Niaz will be released on bail only after the intervention of the province’s Minister of Labour. Europe Solidarity Without Borders, April 28, 2008.

105 Tenth anniversary of the six nuclear tests in Pakistan in May 1998, including Chafi in Baluchistan, which caused health problems among the local population.

106 Respectively officials from the *Baluch Nationalist Front* (BNF) and the *Baluch Rights Council* (BRC). Abdul Wahab Baloch was taken to a location of the Central Crime Investigation (CIA) before being taken to an unknown location. At the time of writing, he remains missing. Ghulam Mohammad Baloch, already arrested and severely tortured in 2006 in various military camps, was also led to the CIA and then to a police station. Accused of subversive speech against nuclear testing, he was later released on bail. AHRC, *Urgent Appeal “PAKISTAN: Anti nuclear demonstrators arrested, one remains missing activist,”* May 30, 2008.

107 Known for his commitment to Hindu agricultural workers in Sindh and the release of many people from the “private prison” of landowners, D. Rahim, the author of the complaint, Mohammad Khan Lund was persecuted for these actions and arrested 42 times during the nine-year regime of P. Musharraf. He was subjected to torture during these detentions. See AHRC, *Urgent appeal, December 28, 2008* and AHRC *Report on torture on the UN international day in support of torture victims*, June 2008, cited above.

108 The secretary general of HRCP, Dr. Haider, denounced the release of the perpetrator of a “bonded” work crime and abduction and the recent issuance of an arrest warrant by the High Court of Sindh for Akter Baloch, a member of HRCP active in defending farm workers and injured “bonded” workers, “*HRCP condemns harassment of human rights defenders*,” HRCP Blog, June 24, 2008.

109 The rate of overcrowding is 133%, with 95,018 prisoners officially identified in 2007 in a location with a capacity for 40,825 people, HRCP 2008 report, cited above.

110 Apart from liberation upon bail, alternatives to incarceration discriminate against the poorest.

111 Mustafa Ismael spent 17 years in detention, the prison administration having lost the information concerning his case: he was acquitted and released in August 2007 thanks to the publicity about his situation by the press.

112 According to a report on August 4, 2007 from the Government of Sindh, 80% of defendants appear only to witness a postponement of their trial, as their case is not ready to be judged. The rate of defendants (on remand- provisional detention) is 80% in the prisons of Sindh. The High Court of Sindh has officially called for the centralisation of transportation issues and safety of UTP in a single administrative department in order to address these bureaucratic obstacles to access to justice. On September 22, 2007, the same court of appeals ordered the administration to explain the reasons for the non-appearance of the accused awaiting trial.

113 Including a trial in Lahore, for blasphemy, punishable by death (February 21, 2007).

In the death row cells, some surrounded by iron nets, devoid of light, with physical and psychological suffering of death row prisoners awaiting execution,<sup>114</sup> sometimes for years, conditions are even worse. Regularly denounced by human rights associations,<sup>115</sup> violations of the right to a fair trial and inequality before the law for prisoners who face the death penalty are flagrant. Most prisoners belong to the most disadvantaged social classes or to ethnic or religious minorities. Involved in often questionable circumstances, with confessions extracted under frequent beatings and torture, many litigants are not given an adequate defence. To defend these cases, lawyers appointed *ex officio*<sup>116</sup> receive 200 rupees per hearing (less than 5 U.S. dollars). Often young and inexperienced to deal with procedures not respecting the minimum fair trial guarantees, these lawyers are not in a position to ensure the mandate entrusted to them.

Hope for reforming the effectiveness of the prison system is high, despite incomplete or dormant reforms, especially with the arrival at the head of the Pakistani government of Yousuf Raza Gilani, a former prisoner who suffered torture and increasingly degrading prison conditions.

The path ahead to ensure the right to safety in Pakistan is immense, and must include not only the ratification and the application of international human rights instruments,<sup>117</sup> important constitutional and legislative reforms, the abolition of the death penalty and the repeal of discriminatory laws, but also access to a humanized justice and effective protection of human rights. Without such a change, violence in all its forms, which is rampant in the country and often created or enhanced by the abuse of power, at all levels of government, can only persist and increase.

## 2 - Violations of individual and collective freedoms

Since his seizure of power in 1999, President Musharraf has repeatedly rolled back individual and collective

freedoms, justifying his actions to muzzle these freedoms with the imperatives of the fight against terrorism and the need to restore order, particularly when he declared a state of emergency on November 3, 2007.

The year 2007 was particularly difficult for freedom of expression, freedom of assembly and the right to free elections. Despite the victory of opposition parties in the legislative elections of February 18, 2008 and the development of small pockets of freedom of expression that have arisen, individual and collective freedoms are still threatened by an arsenal of repressive laws and by presidential ordinances from P. Musharraf still in force (See Section I, Attacks on the independence of the judiciary).

### 2.1 - The muzzling of the media

Freedom of the press is probably the area in which P. Musharraf's intervention was the most subtle. The president's strategy has been, under the guise of liberalisation, to develop a particularly severe censorship.<sup>118</sup>

Prior to his seizure of power on October 14, 1999, there were virtually no private television channels. An order on March 1, 2002 broke the monopoly of the only national television channel, PTV. It established a legal framework for the regulation of private channels, and thus enabled the development of private TV and radio stations. It set up an authority responsible for the regulation of electronic media, the PEMRA (*Pakistan Electronic Media Regulatory Authority*) and put this single government agency in charge of distributing licenses.

Soon after the euphoria of liberalisation, journalists and human rights defenders realized the restrictive nature of these measures and the muzzling manoeuvres carried out by those in power against them. During 2002 alone, in addition to the ordinance establishing the PEMRA, an arsenal of suppressive ordinances were adopted with an ordinance on the registration of news organisations, newspapers and publications, PNNBRO (Presses, Newspapers, News agencies and Books Registration Ordinance), an ordinance on the Press Council of

114 As of June 2008, 7,000 detainees, including 40 women, are currently sentenced to death. Pakistan has one of the highest numbers of death sentences and executions in the world. In 2007, 309 people were sentenced to death and 134 were hanged. Currently, 26 crimes are punishable by death in Pakistan, which in 1947 was only a penalty for murder and treason.

115 See, *inter alia*, the January 2007 report of FIDH and the HRC "Slow march to the gallows - Death penalty in Pakistan" and, most recently, "Letter to Pakistan's Prime Minister to abolish the death penalty," HRW, June 12, 2008. In response to the letter from HRW, Pakistani Prime Minister Yousuf Raza Gilani announced on June 21 a plan to commute the death penalty to life sentences for thousands of convicts, AFP, June 21, 2008.

116 Voluntarily enrolled on the "Pauper Counsel List."

117 Pakistan ratified the International Covenant on Economic, Social and Cultural Rights on April 17, 2008 and signed it the same day, but has not yet ratified the International Covenant on Civil and Political Rights. Pakistan signed on April 17, 2008 (but has not yet ratified) the Convention against Torture and other cruel, inhuman or degrading treatment, and has not yet acceded to the International Convention for the Protection of All Persons against Enforced Disappearances.

118 Natasha Garyali, *The Farce of media freedom in Pakistan*, February 1, 2008, [www.asiamedia.ucla.edu](http://www.asiamedia.ucla.edu).

Pakistan (Press Council of Pakistan Ordinance), and a law on freedom of information (Freedom of Information Act), to name a few.<sup>119</sup>

General Musharraf's government has always used carrot-and-stick techniques, using economic pressure to bring the media in line with it. 50% of the media's revenue comes from companies in the military-industrial complex of Pakistan. The latter has not hesitated to make budget cuts for media opposition.<sup>120</sup> In addition, economic pressure is exerted more and more on chain-owners, who are businessmen more concerned about financial profitability than freedom of expression. As a result of these restrictions, self-censorship by journalists remains a reality.

While English media broadcast freedoms were relatively tolerated by the authorities, the Urdu language media has been seriously affected by restrictions imposed and economic pressures because of their ability to reach a larger part of the population.

During 2007, journalists experienced particularly violent reprisals for acting in solidarity with the lawyers' movement, and for trying to provide objective information about events and atrocities committed. Many people who took part in demonstrations in favor of the return of judges and the establishment of the rule of law have been subjected to intimidation, threats, anonymous phone calls, and attacks. During the bloody events in Karachi on May 12, 2007, three journalists, including the president of the Federal Union of Journalists of Pakistan (PFJ), Mazhar Abbas, found an envelope containing a bullet stuck to their vehicle.<sup>121</sup> The local Aaj TV and Jang Press, who covered the events, were attacked. During the state of emergency, more than 200 journalists were arrested.

General Musharraf proceeded on November 3, 2007 to amend the PEMRA and PNNBRO ordinances. Now, they prohibit the print and dissemination of information "which defames or brings into ridicule the Head of State, or members of the armed forces, or executive, legislative or judicial organs of the state." Penalties include up to three years imprisonment, a fine of 10 million rupees, suspension of the issuance of a licence, confiscation of

equipment and premises, and a publication ban during a period of 30 days. A new section 5A introduced in the PNNBRO and section 20 of the Ordinance amended PEMRA to prohibit the publishing and distribution of images of people perpetrating suicide attacks, terrorists, bodies of victims, and statements by militant terrorists likely to encourage and promote terrorist activities.<sup>122</sup>

At the proclamation of the state of emergency, General Musharraf suspended the dissemination of all radio stations and private television channels. The latter were forced to sign a code of conduct, drawn up by PEMRA, to circulate again. The television channel Geo TV continued to broadcast by satellite from the United Arab Emirates until the Pakistani government used extraterritorial powers to prohibit its dissemination. After a ban of more than two months, the channel was authorized again, on the condition that journalists Shahid Masood and Hamid Mir, respectively leaders of political broadcasts *Meray Mutabiq* and *Capital Talk*, known to provide a space for critical free speech against the regime, do not appear on the screen. When he resumed his duties in late February after several months of suspension, Hamid Mir continued to receive orders of censorship for certain remarks made during his show. On June 13, 2008 the authorities of the UAE informed the channel that it should stop distributing *Meray Mutabiq* and *Capital Talk* or face the penalty of having its licence revoked.<sup>123</sup>

In terms of censorship, journalists met by the mission affirmed - regarding the storming of the Red Mosque by the army on July 10, 2007 in Islamabad (see chapter III) - that "they had it cleaned before allowing journalists' access to the site." The government also banned the media from showing pictures of the wounded and dead in the hospitals. Journalists had been allowed to show that ambulances went to the scene.<sup>124</sup>

In addition to the danger weighing on journalists for their opposition to the dictates of President Musharraf, their situation has also greatly weakened as a result of Pakistan's decision to take part in the fight against terrorism. Journalists now undergo a double threat: the authorities and the fundamentalist groups. When venturing into areas decreed prohibited, such as Baluchistan, Kashmir, and Waziristan, they face retaliation by government

119 See FIDH, *In Mala Fide, Freedoms of expression, of association and of assembly in Pakistan*, January 2005.

120 National Lawyers Guild and LUMS Rule of Law Project, *Defending Dictatorship: US Foreign Policy and Pakistan's Struggle for Democracy*, January 2008.

121 The News, May 24, 2007.

122 See the report of the International Federation of Journalists (IFJ): *Emergency in Pakistan, Crisis Mission Rapid Assessment*, January 2008.

123 The Financial Express, June 13, 2008, <http://www.financialexpress.com/news/Dubai-asks-Geo-TV-to-drop-shows-or-lose-licence/322327/>

124 Hassan Abbas, *The Road to Lal Masjid and its Aftermath*, Belfer Center for Science and International Affairs, Harvard University, July 19, 2007, <http://belfercenter.ksg.harvard.edu/>



authorities and secret services: destruction of equipment, threats, and violence. It is rare that objective information comes from these regions today.

When journalists are able to enter lawless areas, they become the target of extremist groups. From 1999 to 2007, 31 Pakistani journalists were killed, the majority in tribal areas.<sup>125</sup> Only a small minority were killed during attacks that did not personally target them. Most were victims of actions directed against them. 315 others were injured, 387 arrested or kidnapped, 193 intimidated and 109 banned.<sup>126</sup>

## 2.2 - Denial of the rights to freedom of assembly and demonstrations

The declaration of the state of emergency on November 3, 2007, suspending individual and collective freedoms of the Constitution, dealt a fatal blow to the freedoms of assembly and association guaranteed by articles 16 and 17 of the Constitution.

On the night of November 3, 2007, while human rights defenders gathered on the premises of HRCP in Lahore to decide what action to take regarding the declaration of the state of emergency, police officers broke in and arrested and detained 55 lawyers and human rights defenders, including the director, the secretary general and former Chairman of the HRCP, respectively AI Rehman, Iqbal Haider and Afrasiab Khattak, on the grounds that they were holding an “unlawful assembly.”<sup>127</sup> The FIDH fact-finding mission collected testimonies of lawyers arrested during the meeting. All those interviewed reported police brutality, prolonged arrests, and difficulties for family visits because they were placed in far-away detention centres.

Asma Jahangir, a lawyer and the Chairperson of the HRCP, as well as the United Nations Special Rapporteur on freedom of religion, was subjected to house arrest, placed under a preventive detention order for 90-days, issued against her by the Home Department of the Government of Punjab, for delivering “inflammatory speeches.”

Across the country, many universities ordered students not to participate in demonstrations and to show no

sympathy or solidarity with the demonstrators, under penalty of being expelled or being denied their diplomas. 14 academicians from the University of Punjab were accused of sedition because they took part in a demonstration against the state of emergency and for the restoration of the Constitution and judges.<sup>128</sup>

Beyond injunctions and arrests, violations of freedom of assembly have manifested with extreme violence. The government of General Pervez Musharraf simply authorized the use of force and terror to prevent events: launching tear gas, beating people, etc. On March 16, 2007, police entered the premises of the Association of the Bar of the High Court of Lahore, sprayed those lawyers present with tear gas and beat them, causing serious injuries. On the night of May 4 in Sawihal, gasoline was thrown on lawyers demonstrating peacefully by procession to the torch. Dozens of them were seriously burned.<sup>129</sup> The President of the Bar accuses police of being behind these planned acts.<sup>130</sup>

The government of President Musharraf uses all means to stifle freedom of assembly, including granting impunity to the MQM political party for the carnage<sup>131</sup> in Karachi on May 12, 2007. The MQM, allied with the PML-Q presidential party, prevented a large popular demonstration of support for the independence of the judiciary and open fired on the crowd who had come to wait for the Chief Justice. More than 50 people were killed and 150 others were wounded. That day, there were no government or law enforcement officials to intervene (see § III.2.2 Collusion with sectarianism).

## 2.3 - Sabotage of the elections

The legal framework governing elections in Pakistan is based on the 1973 Constitution and laws and regulations from 1974. This legal framework is discriminatory against candidates who do not have higher education. The only presentable candidates are those with a university degree (BA degree) or a diploma from an institution of religious education (Madrasa). Discrimination also exists against voters: members of the Ahmadi community have an obligation to register on a separate list.

125 The Pakistani Federal Union of Journalists (PFUJ) published a list of journalists killed on their website: [www.pfuj.org](http://www.pfuj.org)

126 Source : Intermedia cited in *NGOs Report on Pakistan for the Universal Periodic Review under the UN Human Rights Council Session May 2008*.

127 See the press releases of the Observatory for the Protection of Human Rights Defenders (FIDH/OMCT) and FIDH appeals to the Pakistani government to release lawyers and defenders.

128 HRCP, *Annual Report, State of Human Rights 2007*.

129 *NGOs Report on Pakistan for the Universal Periodic Review under the UN Human Rights Council Session, May 2008*.

130 Dawn, *Four district bars rally against police: Solidarity with Sahiwal lawyers*, May 8, 2007.

131 HRCP, *Carnage in Karachi, A City Under Siege*, May 12, 2007.

The Electoral Commission of Pakistan (ECP) also has a questionable appointment system. Articles 213 to 221 of the Constitution state that apart from the Commissioner, who is a Supreme Court judge appointed by the Chief Justice of the Supreme Court, the other four members of the Commission are judges of the High court appointed by the President, without consultation with political parties. Workers in the polling stations are employees of the administration and the public sector, and are therefore exposed to strong pressure and incentive for fraud.

The parliamentary elections (*National and Provincial Assembly Elections*), originally scheduled for January 8, 2008, were postponed until February 18 following the assassination of former Prime Minister and PPP candidate Benazir Bhutto on December 27, 2007.

Before the campaign began, many sources were already reporting irregularities, beginning with the proclamation of a state of emergency, the banning of rallies and the arrest of human rights defenders and political activists. The state of emergency was not lifted until a day before the beginning of the campaign. On November 12, 2007, the candidate for the PPP, Benazir Bhutto, was placed under house arrest following her decision to undertake a long march to Islamabad calling for the state of emergency to be lifted and for the imprisoned lawyers to be released. At the same time, in Lahore, the police proceeded to arrest a hundred activists and supporters of her party.<sup>132</sup> Following a series of attacks, including that on Karachi in January 2008, the Pakistani government did not hesitate to brandish the threat of terrorist attacks to persuade the parties to avoid large gatherings. The leader of the PML-N, Nawaz Sharif, denounced this warning as an intention to prevent political parties from campaigning and gathering voting intentions.<sup>133</sup>

The elections were held in a climate of fear and intimidation, following a series of arrests and arbitrary detentions that occurred during the state of emergency, and as a result of deadly attacks, including one directed against Benazir Bhutto. During the campaign, 50 people died during clashes between activists of different parties.<sup>134</sup> Despite this, voters went courageously to the polls, demonstrating their quest for democracy and their

commitment to fundamental rights and the rule of law. Many leaders of Baluchistan nevertheless called for a general boycott because of fraud.

The election observation mission of the European Union,<sup>135</sup> national observers such as FAFEN, and opposition parties were the objects of manipulation and frauds. All deplored the use of state resources and machinery by candidates supported by President Musharraf. According to Senator Mohammad Ishaq Dar, a member of the PML-N, the candidates of the President's PML-Q party acted in complicity with the government, the police, and the *Nazims*<sup>136</sup> to orchestrate a fraudulent election.<sup>137</sup> Regarding the latter, the EU mission gathered evidence of misuse of their positions and public resources to support family members in the electoral process.

In the polling stations, many irregularities were noted: offices opening or closing after the official time of the election, absence of staff and security forces, mismanagement of polling stations, particularly in the provinces of the North West Frontier and Baluchistan, all with the consequence of many voters left unable to vote.<sup>138</sup> In some districts, polling stations responsible and state agents prevented election officials from entering the premises, and even sealed the ballots themselves.

Among the most egregious malpractices, observers cite the purchase of votes and the fabrication of fake voters by candidates of the PML-Q, as well as erroneous ballot lists (either incomplete or with the same names listed twice). Following a Supreme Court decision in 2007, the PCC was forced to identify 26,000 voters more than it had originally counted, raising the total number of voters to around 81 million people. However, many of them, especially those living in rural areas, were people living in poverty, and a significant number of women could not take part in the election because they had no identity card. At 75 rupees, the card remains inaccessible for a large part of the population.

The election was also characterized by intimidation and violence. Many attacks were committed against voters by the polling staff. In Gurjanwala, the PML-Q candidate open fired on supporters of his PPP opponent, injuring 4

132 Dawn, November 13, 2007.

133 IFES, January 18, 2007.

134 EU, *Elections Observation Mission Final Report*, April 16, 2008.

135 Op. Cit.

136 Nazim is an Urdu word that means the mayor or the person in charge of city affairs. He or she is a representative elected by the local government (district, Tehsil, the village council, etc.).

137 PML-N press release of 24 February 2008: *Pakistan Muslim League (N) files complaints seeking recount, re-examination or re-poll*.

138 SPO, *Election Observation Cell First Consolidated Report*, 2008.

people.<sup>139</sup> In another polling station, gunmen burst in and left with boxes. Many women were banned from polling stations, particularly in the NWFP, and were subjected to threats and intimidation from religious fundamentalists.

Only a small number of polling agents presented the results of each constituency with a detailed counting of the results of individual polling stations. In many

constituencies, the staff responsible for counting votes did so behind closed doors, and some went so far as to refuse the presence of the EU observers.

The ECP, in ignoring this evidence of massive fraud and violations of voting rights, has clearly demonstrated its bias.

139 Op. Cit.

# III -Attacks on the integrity and security of persons

## 1- Excessive power under the guise of the war on terror

As an ally of the United States, Pakistan has been engaged in the war on terrorism since September 11, 2001. This commitment has deeply upset the already fragile balance of security and peace in Pakistan. At first, it began as a period of notorious interference by the United States in the domestic politics of Pakistan, so it is now legitimate to question the degree of freedom for the Pakistani nation regarding its American guardian. The entry of Pakistan into the war has also led to the use of disproportionate responses vis-à-vis the so-called terrorist elements, whose civilian population is also victim. Finally, it has intensified the crackdown against Baluch nationalism.

### 1.1 - American interference in internal Pakistani politics

The history of relations between Pakistan and the United States is turbulent. It is marked by periods of understanding and close cooperation as well as tension. In the 1980s, Pakistan became an ally of the United States against communism. The United States supported the resistance of the Afghan *Mujahideen*<sup>140</sup> fighters against the Russian invasion of Afghanistan in 1979. These combatants, from various factions and parties, were welcomed by Pakistan and established their backup bases there. Upon the withdrawal of the Soviet army in 1989, Afghanistan was abandoned to its fate in a second deadly war between various *Mujahideen* factions. As for Pakistan, which had embarked on a nuclear programme, its relations with the United States deteriorated. Feeling

the threat of Russian influence in Afghanistan once more, in particular through its support of the Northern Alliance, the United States financed and supported the Pakistani secret services and *Taliban*<sup>141</sup> religious students educated in *madrasas* and refugee camps in Pakistan. The attacks of September 11, 2001 inaugurated a radically different strategy. The United States entered into war against those who they had supported in the past, bringing Pakistan in their wake. Pakistan became a main ally in the United States' war on terror.

Since September 11, 2001, the United States has given Pakistan 10.58 billion dollars in aid. According to a study by the American think-tank *Center for Strategic and International Studies* (CSIS):<sup>142</sup>

- 60% was allocated to support the coalition (*Coalition Support Funds*). This fund was intended to reimburse Pakistan for the costs of its assistance in the war against terrorism.
- 15% was dedicated to security assistance (purchase of weapons, surveillance systems, etc.).
- 15% is related to budget support for the Pakistani government. It was intended to promote macroeconomic stability and to release funds for social spending. However, the mechanism of monitoring these funds and their deployment was completely devoid of transparency.
- 10% was dedicated to humanitarian aid and development assistance.

A reading of these figures shows that three quarters of the aid granted today by the United States concerns the fight against terrorism, and the proportion allocated to social spending and development is marginal. According to the conclusions of CSIS, American aid was not the result of an in depth analysis. It does not address the root causes of religious fundamentalism.

140 A Mujahid (plural *mujahideens*) is one who fights on behalf of his religion, meaning a fighting jihad in Arabic. The term was used by combatants of the *Front de Liberation Nationale* (FLN) during the Algerian War of Independence. It spread to the West during the first war in Afghanistan, between the Soviet Union and Afghanistan. This term is also used by the People's Mujahideen of Iran, an armed opposition movement to the regime in Iran, operating from a base on the territory of Iraq.

141 A Taleb (plural: *Taliban*) is a person belonging to a Sunni Muslim fundamentalist movement. During the war against the Soviets, millions of young Afghans were educated in Pakistani madrasas. These are originally from the *deobandi* school of thought in India, which advocates very strict and conservative Islamic traditionalism. But soon thereafter they found themselves influenced by the ideology of *Wahhabism*, imported from Saudi Arabia. Wahhabism advocates a return to the original purity of Islam. It condemns the practice of popular culture (music, entertainment...), orders the erasure of women from public life, and denies any reproduction of "the image." In contrast to the warlords from different Afghan factions and mujahideen parties, who are also Islamists and who advocate an Islam primarily political (they wish to establish a state governed by the precepts of Islam), the Taliban are neo-fundamentalists. They wish to establish a "pure" Islam and therefore focus on the re-islamization customs. The form of the state is not important. What counts is to be in perfect conformity with divine law, hence the importance given by Taliban to anything that affects everyday life, especially privacy. See the works of Michael Barry (*Le Royaume de l'Insolence, L'Afghanistan 1501-2001*), Ahmed Rashid (*Islam, Oil and the New Great Game in Central Asia*) and Olivier Roy (*Généalogie de l'islamisme*).

142 *A Perilous Course, US Strategy and Assistance to Pakistan*, CSIS, August 2007.

In exchange for this aid, Pakistani authorities granted the United States:

- permission to fly over Pakistani airspace to and from Afghanistan.
- the right for U.S. troops to have access military bases in Pakistan.
- protection by Pakistani troops for these bases, and for American ships stationed in the Indian Ocean.
- logistical support from Pakistan for military operations in Afghanistan, including the provision of fuel and access to ports to refuel.
- the deployment of 80,000 Pakistani soldiers along the western border to wage war on Taliban and Al Qaeda militants trying to cross the Afghan border.
- permission to access information held by its secret services.<sup>143</sup>

In the war on terror, Pakistan has adopted the same strategy as the United States, namely the denial of fundamental rights to persons suspected of terrorism, in particular their right to a fair trial. Pakistani prisons have often served as the anteroom for Guantanamo. In his biography *In the Line of Fire*, President Musharraf indicated that Pakistan has handed over 369 suspected terrorists to the United States.<sup>144</sup> Secret prisons have been identified near the cities of Kohat, Miran Shah and Wana in North Waziristan, and Banu.<sup>145</sup>

Through their support of the Pakistani army, the United States has assumed the power to interfere in the internal politics of Pakistan without precedent. This interference is also openly claimed. Wendy Chamberlin, former U.S. ambassador to Pakistan, has not hesitated to assert that the United States has its place and role in the domestic politics of Pakistan.<sup>146</sup>

Feeling the political unpopularity of President Musharraf and the need to give the appearance of more democracy, Washington organized the return of political opponents Nawaz Sharif and Benazir Bhutto, banned by General Musharraf from their own country, so that they could participate in legislative elections.<sup>147</sup> The United States advised President Musharraf to relinquish his role as head of the army to run for elections.<sup>148</sup>

The United States Secretary of State Condoleezza Rice stated that the restoration of democracy following the elections of February 18, 2008, was an excellent opportunity for the United States to establish a new partnership with Pakistan.<sup>149</sup> Despite the victory of the PPP and PML-N, and the incessant demands of the Pakistani people for President Musharraf to step down, the United States continued to grant him unconditional support. The U.S. Secretary of State delegate John Negroponte visited Pakistan several times during the year to reiterate support.<sup>150</sup> He also announced before the U.S. Senate that the United States did not have a statement on the return of the dismissed judges.<sup>151</sup>

This concurrence of power, deemed to be governed by democratic principles, as well as the flagrant violations of the rule of law, can only be unacceptable to the people of Pakistan. In an interview with the Washington Times, Aitzaz Ahsan, president of the Association of the Bar of the Supreme Court, asserted the responsibility of President George Bush's administration for ignoring repeated calls of the people of Pakistan. He claims that the world will pay the price for this "disability" of the American administration.<sup>152</sup>

## 1.2 - Disproportionate military operations

With 80,000 soldiers deployed along the western border with Afghanistan, Pakistan has conducted military operations against Taliban militants and Al Qaeda since 2001. These operations have had serious consequences on the lives of the people in the areas where fighting takes place. The fighting, formerly limited to tribal areas, has spread to other regions, such as Swat Valley, but also to the capital Islamabad since July 2007.

The first consequence is the number of casualties. Following the takeover of Swat valley by the Taliban in July 2007, 25,000 troops were deployed in the region. 300 people were killed, mostly civilians.<sup>153</sup> In Islamabad, the

143 CSIS, Op. cit.

144 USA Today, November 28, 2007.

145 Neue Osnabrücker Zeitung, September 29, 2006.

146 New-York Times, *Salvaging U.S. Diplomacy Amid Division*, Helene Cooper and Steeven Lee Myers, December 28, 2007.

147 See the analysis of Larry Chin, *Anglo-American Ambitions behind the Assassination of Benazir Bhutto and the Destabilization of Pakistan*, December 29, 2007, <http://www.globalresearch.ca/>

148 Asian Political News, *Bush urges Musharraf to restore civilian rule, give up army post*, November 10, 2007.

149 C. Rice, *Rethinking the National Interest*, Foreign Affairs, July - August 2008.

150 Interview with Ahmed Rashid, Democracy Now, June 10, 2008, [www.democracynow.org](http://www.democracynow.org)

151 Herald Tribune, February 29, 2008.

152 Daily Times, *US deaf to Pakistani voices: Aitzaz Ahsan*, July 4, 2008.

153 CNS News, June 6, 2008.

government of President Musharraf ordered the storming of the Red Mosque, funded by religious fundamentalists, on July 10, 2007. Official sources estimate the death toll at 58 people, but many observers agree that this assessment is widely underestimated. Anticipating the attack, religious fundamentalists in the mosque used women and children as human shields. After July 10, many families were not able to find their children, who were studying in the religious institutions and who were present on the day of the assault. HRCP condemned the disproportionate use of force and numerous civil society organisations have asked the government to ascertain accountability for the operation.<sup>154</sup>

President Musharraf's regime continues to pursue an opaque policy regarding military interventions. So far, there are no reliable statistics on the number of people killed and injured during these operations. The most recent operations took place in regions where journalists have no access and where telecommunications are deficient. Pakistan has multiple mobile phone networks, but the wireless network does not operate in the tribal areas.

Under its agreement with Pakistan, the United States has access to Pakistani military bases for their operations on Afghan soil, while operations on Pakistani soil are carried out by Pakistanis. But the boundary between the two remains unclear. On June 13, 2008, the U.S. military carried out a deadly air offensive on the Taliban in the region of Mohmand, located in FATA. The attack killed 27 people, including 13 Pakistani soldiers, and injured 60 others.<sup>155</sup>

In addition to the growing number of dead and wounded, military operations have caused massive population displacement.

In Swat valley, where the initial population was approximately 1.5 million people, conflict between groups opposed to the regime and the army caused the largest displacement in Asia in 2007. Between 400,000 and 900,000 people were forced to flee their homes.<sup>156</sup> Most of the destruction was caused by attack helicopters on villages suspected of harbouring militants.<sup>157</sup>

In northern Waziristan, following the resumption of fighting in October 2007, an estimated 80,000 people fled their homes. In Baluchistan, tens of thousands of people remain displaced. While the government provided assistance to the displaced victims of the 2005 earthquake so that they could return to their villages, it has provided no assistance to persons displaced because of military operations.<sup>158</sup>

HRCP estimates the number of internally displaced persons at 1.5 million.<sup>159</sup> The toll is expected to rise with the number of Afghan refugees forcibly displaced from camps in which they were living. The Pakistani government has set out to destroy Afghan refugee camps harbouring known terrorists. In April 2008, the Jalozzai camp located in NWFP, where 80,000 refugees were living, was destroyed *manu militari*. Many people were consequently homeless or displaced. According to figures provided by the UNHCR, only 6,000 refugees from Jalozzai camp have agreed to be repatriated to Afghanistan since March.<sup>160</sup>

### 1.3 - The war waged against nationalists in Baluchistan

Baluchistan is the largest province in Pakistan and claims the lowest population density (5% of the population of Pakistan). 55% of the population is composed of Baluchis and 29% of Pashtuns. Rich in natural resources, including gas, Baluchistan has several geo-strategic assets, including its access to the Sea of Oman.

Since independence of Pakistan in 1947, the central government has been in perpetual conflict with Baluchi nationalists, who demand autonomy for their province, which is currently neglected by Islamabad. The literacy rate, as well as the number of schools, is the lowest of all the provinces. The Baluchis do not benefit from the development resulting from the exploitation of their resources. For example, of the 26 districts that form the province, only 4 benefitted from the gas that is extracted there.<sup>161</sup> The Pakistani government creates projects of economic exploitation without consulting local

154 HRCP, Op. cit.

155 The News, June 13, 2008.

156 IDMC, Pakistan : Displacement ongoing in a number of regions, May 15, 2008.

157 Op. cit.

158 IDMC, Op. cit.

159 HRCP, Annual report 2007.

160 IRIN, April 22, 2008.

161 IDMC, Op. cit.

leaders. This was particularly the case in February 2007, when it granted a lease to a Chinese company for the administration of the port of Gwadar.

Baluchistan served as a ground for nuclear testing in May 1998. The government has celebrated the anniversary in Quetta on May 28, 2008. However, for the Baluchis, the anniversary is still a dark day.<sup>162</sup> The Chagai District is still a victim of deforestation, water pollution, and destruction of fauna and flora from the consecutive tests, and the population has still not been compensated for the damage.<sup>163</sup>

While the repression of the P. Musharraf regime is terribly violent vis-à-vis political opponents, it is even more so towards Baluch nationalists. Violence is, so far, the only response to demands for autonomy. 35,000 paramilitary troops are currently stationed in Baluchistan, and since 2005 military operations against opponents have resumed.

In August 2006, the Pakistani army assassinated the Baluch nationalist leader, Nawab Akbar Khan Bugti. In November 2006, former minister Sardar Akhtar Mengal, the leader of the BNP Baluch National Party, was arrested with 14 of his companions. In a clearly anti-terrorist Court,<sup>164</sup> his trial took place not in a court but a prison in Karachi, in inhuman and degrading conditions. Iqbal Haider, Secretary General of the HRCP, was among the few people allowed to visit him. He denounced the inhuman and degrading conditions of incarceration and the trial of the Baluch leader, during which the latter was in an iron cage and had no access to his lawyer.<sup>165</sup> Accused of the crime of treason, Sardar Akhtar Mengal and the BNP Secretary General Habib Jalib were finally acquitted by the High Court of Baluchistan in May 2008 for insufficient evidence.<sup>166</sup>

Numerous abuses against opponents continue: arbitrary arrests, torture, forced disappearances, etc. HRCP estimates that about 600 people disappeared in Baluchistan in 2007.

The displacement of the population is difficult to quantify. Since December 2005 at least 84,000 people, mostly from the Bugti and Marri tribes, have been displaced in the districts of Dera Bugti and Kohlu alone.<sup>167</sup> Humanitarian organisations are not allowed to operate freely and are controlled by those in power. In June and July 2007, a hurricane and unprecedented floods ravaged the province of Sindh. According to humanitarian organisations, the government's response has been slow and far below what is needed.

The situation in Baluchistan is becoming progressively weaker, especially because of its proximity to Afghanistan and the intensification of the insurgency there. Baluchistan is now accused of harbouring terrorist camps operating in Afghanistan.<sup>168</sup>

## **2 - Failures of the state in its mission to safeguard public order and the security of persons**

The military power and the state are closely linked in Pakistan. The army, and the paramilitary groups associated with them, has a dominant role in conducting all of the country's affairs, political and economic.<sup>169</sup> This army-state collusion is a determining factor in the analysis of power relations as well as domestic and foreign policy in Pakistan. However, there is a new rise in irregular armed groups, which are based on national and ideological claims and use violence and terror. Among these ideologies, religious fundamentalism and sectarianism are particularly threatening, and were able to prevail with the support, and even the complicity, of the state. This necessarily raises the question of the failure of state authority and its responsibility for the rise of these movements.

<sup>162</sup> Dawn, May 29, 2008.

<sup>163</sup> Mag the Weekly, June 7-13, 2008.

<sup>164</sup> Pakistani anti-terrorist courts are the result of a series of laws and ordinances from the 1970s, established to suppress terrorism and judge those accused of terrorism without guarantees of a fair trial. For a history of anti-terrorist legislation and provisions currently in force, refer to a book by Najam U Din, published by HRCP, *Terrorist unless proven otherwise. Human rights implications of anti-terror laws and practices in Pakistan*, Lahore, February 2007.

<sup>165</sup> Dawn, Ardeshir Cowasjee, *The Man in the Iron Cage*, January 14, 2007.

<sup>166</sup> Associated Press of Pakistan, May 21, 2008.

<sup>167</sup> ICG, *The Forgotten Conflict in Baluchistan*, October 22, 2007.

<sup>168</sup> During a visit to the region, President Musharraf stated that 65 terrorist camps were destroyed in Baluchistan, Dawn, May 11, 2007.

<sup>169</sup> See Section IV-4.1: The Pakistani army: a predatory economic force.

## 2.1 - Allegiance to religious fundamentalism

Since Pakistan's entry in the war on terror, religious fundamentalism has risen. Pakistan, despite its military operations, is a heaven for the Taliban operating in Afghanistan. Until recently, Pakistani society was relatively protected from attacks and intimidation, but today, as a neighbour to Afghanistan, Pakistan is experiencing a Talibanisation, namely the imposition of ideology adopted and spread by the Taliban.<sup>170</sup> Pakistan lives under constant threat of widespread terrorist attacks or targeted attacks against girls' schools, women, non-governmental organisations, journalists, and all those whose way of life, liberty, or expression does not conform to the precepts dictated by religious fundamentalists.

The year 2007 was the most deadly since 2001. 56 suicide attacks were perpetrated, an average of one per week, including 23 in FATA, 21 in NWFP, 9 in Punjab, 2 in Baluchistan and 1 in Sindh. 15 suicide attacks were committed between July 14 and 31 in response to the onslaught of the Red Mosque.<sup>171</sup> 800 people died in these attacks during the year 2007 alone.<sup>172</sup>

On February 25, 2008, people attacked the premises of the NGO *Plan International* in Mansehra and killed 5 people, injuring ten others.<sup>173</sup> This attack followed a series of others that occurred in 2007 against several NGOs working in areas affected by the earthquake. In May 2007, a coalition of religious groups threatened to attack any United Nations vehicle or NGOs with women on board.<sup>174</sup>

Women are the first victims of this radicalization. During the legislative elections of 2008, many of those willing to vote were intimidated by religious leaders. Many schools for girls continue to be burned today, especially in the NWFP. On February 20, 2007, the Minister of Social Affairs of Punjab, Zille Huma Usman, was murdered in public by a fundamentalist accused of killing four other

women and injuring a dozen others several years ago; he was acquitted for lack of evidence.<sup>175</sup> In April 2007 a Sharia Court was established in the Red Mosque in Islamabad. It issued a fatwa against the Minister of Tourism, Nilofar Bakhtiar, after a newspaper broadcasted of a photograph of her embracing her instructor after a parachute jump in France.<sup>176</sup> She was forced to resign after pressure was exerted on the government by fundamentalists.

The Red Mosque was the scene of a bloody attack in July 2007 that deteriorated the image of the Pakistani army because of the methods used and the victims it caused.<sup>177</sup> However, the government was also criticized for failing to put an end to earlier violent acts and attempted violence by the religious leader of the mosque, Maulana Abdul Rashid Ghazi: attacks on music shops, kidnappings, etc. In early 2007, female students of *Jamia Faridia*, a seminar for women incorporated into the institution, took control of a children's library adjacent to the mosque complex. A few months later, they kidnapped 6 women of Chinese nationality on the grounds that they were engaged in immoral acts. Equally inexplicable is the passivity of the Pakistani government to face up to Abdul Rashid Ghazi's weapons within the mosque. Many people wonder about the involvement of intelligence services in acquiring such weapons.<sup>178</sup>

The question raised by these events is necessarily the capacity of the authorities to prevent them, despite the importance of financial and logistical resources in their disposal since September 11, 2001. In the light of the facts, the possibility of governmental passivity towards or even allegiance to religious fundamentalists, if not overt support, cannot be easily dismissed.

Between 10,000 and 40,000 madrasas continue to operate in the country without any control.<sup>179</sup> In the city of Islamabad alone, 16,000 students are enrolled in seminars peddling religious fundamentalism.<sup>180</sup> The Pakistani government has withdrawn funding from the education sector, leaving it in the hands of religious institutions or private institutions from the military-industrial complex.

170 See § III.1.1 American interference in internal Pakistani politics.

171 Lionel Baixas, *Chronology of Mass Violence in Pakistan, 1947-2007*, Online Encyclopedia of Mass Violence, <http://massviolence.org>

172 AFP, January 10, 2008.

173 The News, February 26, 2008.

174 IRIN, May 9, 2007.

175 Dawn, February 20, 2007.

176 Dawn, April 9, 2007.

177 See § III.1.2 Disproportionate military operations.

178 See the article by scholar Hassan Abbas, *The Road to Lal Masjid an its Aftermath*, Belfer Center for Science and International Affairs, Harvard University, July 19, 2007, <http://belfercenter.ksg.harvard.edu/> Hassan Abbas is also the author of a book on extremism in Pakistan: *Allah, the Army and America's War on Terror*.

179. IDMC, op. cit.

180 Daily Times, July 7, 2007.



In 2006, the Pakistani government signed a controversial agreement with the heads of the North Waziristan tribal allies to the Taliban. It was decided to pay over 200 million rupees to 500 people to compensate for the loss of Taliban killed in military operations. Large sums have been paid to 150 Taliban leaders.<sup>181</sup> The agreement provides for the departure of Pakistani troops from parts of the region. It allows insurgents to arm and train with impunity and to intensify their attacks in Pakistan and Afghanistan.

In order to put an end to suicide bombings for a mourning Pakistan, Prime Minister Yousuf Raza Gilani announced in March 2008 the government's decision after the parliamentary elections of February 18 to pursue a policy of national reconciliation with the Taliban; April 21, 2008 marked the release of Taliban leader Maulana Sufi Muhammad, held since 2002. The Tehrik-i-Taliban Pakistan (TTP), which oversees a number of Taliban movements, is now a recognized political entity with which the government carries out negotiations. The Taliban now have total control of tribal areas. They have funded major cities in NWFP and are now preparing to take Peshawar, the capital of the province.<sup>182</sup>

After deadly clashes between militants loyal to the religious leader Maulana Fazullah and government troops in July 2007, the districts of Swat and Malakand in NWFP are now in the hands of the Taliban. Following an agreement signed between them and the government on May 11, 2008, there will be an exchange of prisoners on both sides, the withdrawal of the Pakistani army in the region, and the halt of attacks by the Taliban. In exchange for this, the Taliban earned the right to apply Sharia law to 7 districts of NWFP,<sup>183</sup> representing 45% of the province, as an alternative to civil justice. This state within a state is preparing to apply corporal punishments such as amputation and stoning.<sup>184</sup>

Such a concession is unacceptable. It demonstrates the failure of President Musharraf's regime in its mission of protecting Pakistani citizens against terrorist threats and the Talibanisation of society. Controlling the Taliban's

weapons supply, regulating madrassas, investing in the education sector, and guaranteeing a fair trial for those suspected of terrorism could have been an option from the beginning. Instead, the policy adopted focused on the tip of the iceberg and employed systematic repression, thus allowing the multiple causes of the problem to proliferate and leading to resentment among the people directly affected by this policy of terror to develop. It can therefore lead to one conclusion: this policy encouraged if not supported radicalisation.

The government of Yousuf Raza Gilani, which profits from stopping attacks by fundamentalists against the Pakistani people, endorses this policy. So far the violence has not ceased. Proof of this is the bomb attack which caused six deaths in Mingora on June 29, 2008.<sup>185</sup> Today, the threat of enforcement of iniquitous laws burdens all of Pakistani society.

## 2.2 - Collusion with sectarianism

The history of Pakistan shows that its rich cultural and ethnic diversity could be a source of conflict under the impetus of sectarian policies, promoting or disadvantaging any particular group.

Founded by the Mohajir community<sup>186</sup> settled in Karachi, the *Mohajir Qaumi Mazhaz* (Mohajir National Movement) was mobilized in the early years of its inception for better representation of Mohajirs in public life. It further claimed that the Mohajirs should be regarded as an ethnic group, such as the Baluchis or the Pathanes.

With paramilitary units, the MQM has taken control of the cities of Karachi and Hyderabad with methods of urban guerrilla warfare.<sup>187</sup> It has been involved in violent clashes with other communities, and in cases of gangsterism and trafficking in arms and drugs during the 1990s, activities which were severely punished by the Pakistani authorities.<sup>188</sup> The MQM has since split into various factions. One faction, led by Altaf Hussain, emerged and took the name Muttahida Quami Movement (United National Movement), abandoning his reference

181 Tufail Ahmad, *The Taliban Stand to Gain Most From the New Pakistani Policy of Dialogue*, MEMRI, May 1, 2008, www.memri.org

182 International Herald Tribune, *Taliban are poised to take over big Pakistani city*, Jane Perlez and Pir Zubair Shah, June 28-29, 2008.

183 Malakand, Swat, Shangla, Kohistan, Lower Dir, Upper Dir and Chitral.

184 Tufail Ahmad, *Pakistan Takes Steps Towards Shari'a State In Seven Districts*, May 16, 2008, www.memri.org

185 Dawn, June 29, 2008.

186 The Mohajirs represent about 7 million people from India that settled in Pakistan after the independence and partition of the two countries in 1947. They constitute the Muslim minority in the plains of northern India. The Mohajir identity is characterized by a strong sense of having contributed to the Pakistani national destiny, or even to have been the preferred holders of it.

187 Baixas, Op. cit.

188 Operation Clean-up.

to the Mohajir identity in order to avoid limiting its membership to within its community.<sup>189</sup> The MQM is still driven by the need to control territory, especially in Karachi, and continues to use violent terrorist methods.

Under the guise of a political alliance between the MQM and PML-Q, the regime of President Musharraf has clearly lent its support to the MQM. The events of May 12, 2007 illustrate this fact.

The Chief Justice had planned to visit Karachi on May 12, 2007 for the fiftieth anniversary of the High Court of Sindh province, and was scheduled to speak to supporters about the independence of the judiciary, but the MQM announced a rally on the same day. Fearing clashes, the Prime Minister of Pakistan called for the cancellation of the MQM rally.<sup>190</sup> But the latter decided to go on with its demonstrations as planned.

To prevent traffic in the city, the MQM placed vehicles in numerous crossroads and deflated many of the tires of a large number of vehicles to prevent them from being moved.<sup>191</sup> Upon arrival at the airport in Karachi, the Chief Justice, and lawyers, judges and human rights defenders accompanying him were not allowed to leave the airport. At the same time, armed MQM supporters took control of the city and fired on the crowd who had come to receive the Chief Justice.

The authorities had announced the deployment of 16,000 law enforcement agencies. However, that day, the police

and army were largely absent from the roadblocks. Police officers had been assigned to three courts where lawyers had gathered, but they failed to ensure their protection. The Rangers paramilitary force, under the control of the army, also failed to provide protection. When it arrived to nearby areas of shooting, it did not intervene.<sup>192</sup>

The events of Karachi are unprecedented in the history of Pakistan. An entire city of nearly 15 million people was taken hostage by people assumed to be private citizens.

The Sindh government denies any responsibility for these bloody events. Under public pressure, the Pakistani Minister of Justice ordered an investigation under the supervision of the High Court of Sindh, with the collaboration of the Bar Associations of Karachi. The hearings conducted show that a series of meetings were held at a high state level concerning the scenario that could have occurred on May 12, 2007, but there is no longer any evidence of these meetings.<sup>193</sup>

HRCP has commissioned its own investigation and established a number of abuses, leading them to demand, following the example of other organisations, a parliamentary committee of inquiry made up of different independent political parties to shed light on events and prosecute culprits.<sup>194</sup>

For the HRCP, “May 12, 2007 will be remembered as the day the State withdrew.”<sup>195</sup>

189 Michel Boivin, *Karachi et ses territoires en conflit : pour une relecture de la question communautaire*, Herodote, N°101 –2001/2.

190 HRCP, *Carnage in Karachi, A City Under Siege*, May 12, 2007.

191 Op. cit.

192 Op. cit.

193 Dawn, *KARACHI: SHC urged to supervise May 12 investigation*, Shujaat Ali Khan, September 4, 2007.

194 *Carnage in Karachi*, Recommendations.

195 Op. cit.

# IV -Discrimination

## 1 - Lack of legal protection in tribal areas

With an estimated population of 5.7 million inhabitants, the tribal areas of Pakistan are located along the Durand Line, the 2,400 kilometre border with Afghanistan, set by the British. Their legal status is also a relic of the British Empire. Faced with the insubordination of Pashtun tribes, the British granted them autonomy and allowed them to manage their affairs according to their own tribal customs and traditions. The Maliks or tribal leaders were granted these favours in exchange for good and loyal service, such as peacekeeping on the border, especially in strategic business areas such as the Khyber Pass. Fifty years of independence from Pakistan has in no way altered the status of these regions.

### 1.1 - Discriminatory treatment codified in the Constitution

According to its federal system, the Pakistani Constitution of 1973 distinguishes between PATA (*Provincially Administered Tribal Areas*) and FATA (*Federally Administered Tribal Areas*) in order to differentiate the powers under provincial and federal governments. In reality, these are the same geographical entities. The tribal areas are organized into administrative units called agencies.

Under Article 247 of the Constitution, executive power of the federal and provincial governments extends respectively to the FATA and PATA. In contrast, acts of the federal parliament and provincial assemblies are not applicable to them; the president's consent is required. Under this principle, the tribal areas are not subjected to laws passed by the parliament and provincial assemblies, nor the Constitution, especially the fundamental rights and freedoms that it guarantees. The situation is the same for the Supreme Court and High Courts. Under section 247(7), these courts can not exercise their powers in tribal areas unless the Parliament votes a law specifically

authorizing them to do so. However, the applicability of the laws of parliament is itself subject to authorization by the president.

As a result of these provisions, tribal areas are amputated by the prerogatives of the legislative and judicial branches of government, benefiting only from a most powerful executive branch who reigns supreme through a "political agent" that combines all powers.

### 1.2 - Criminal legislation contrary to principles of justice

Under the Frontier Crimes Regulation (FCR), established in 1901, still in force to administer criminal justice in the tribal areas, the political agent has judicial power in addition to executive: that of the prosecutor, investigator and judge. It may order detention for a renewable period of three years.<sup>196</sup> A defendant submitted to the RCF has no right of appeal against the decisions of the political agent.

RCF also recognizes the doctrine of collective responsibility, which is contrary to the guiding principle of individual responsibility in criminal justice. The entire family or tribe of a person suspected of having committed an offence may be subject to penalties of imprisonment, seizures, but also cruel and degrading punishments such as the demolition of their homes.<sup>197</sup> Children are also likely to be imprisoned for offences committed by members of their family.<sup>198</sup>

In addition to establishing exceptional criminal laws, the established system, "tailored" to the tribal areas, uses tribal justice and allegiance to customary laws, whose logic escapes the rules of fair trial. For example, under the principle of reciprocity for any document issued in the *Pachtounwali* or Pashtun customary code of honour, vendettas are a common practice and are passed on from generation to generation. These honour practices affect all parts of society and endanger the right to security for everyone.

<sup>196</sup> Sections 43, 44 and 45.

<sup>197</sup> Sections 33 and 34.

<sup>198</sup> Zarmina, aged two years, was imprisoned with her family because of an indictment of her father. See Newline, Justice Denied, December 2004.

Under RCF, the suspect is tried by a tribal council which submits recommendations about the conviction or acquittal of a suspect to the political agent. The latter is not necessarily obliged to follow these recommendations. The system, traditional justice governed by its own laws and a unique plenipotentiary character, leads to a miscarriage of justice.

Despite these dark periods of dictatorship that eroded democratic principles and fundamental rights, Pakistan has built itself upon democratic ideals and has established institutions based on the separation of powers. It is therefore unacceptable that in the face of this reality, Pakistani tribal areas remain second-class citizens living in territories of non law.

In decisions involving the RCF,<sup>199</sup> courts have not hesitated to use all means to stop its implementation. On June 29, 2007, the Peshawar High Court ordered the administration of the Kurram tribal agency to release 11 tribal leaders who were arrested on the orders of the political agent, and threatened contempt of court if denied.<sup>200</sup>

The Prime Minister of Pakistan formally announced in April 2008 that the government would repeal the RCF.<sup>201</sup> A committee was set up to start working on this issue. However, it is hoped that the repeal will be effective and will not give rise to alternative legislation that would still be discriminatory. Indeed, recent developments at the legislative level authorizing the application of Sharia in only 45% of the NWFP necessitates greater vigilance.

## 2 - The iniquitous legal status of women

The legal inferiority of women is a reality in Pakistan. It is the result of several combined factors: a patriarchal system, archaic customary practices, a restrictive

interpretation of Islam, etc. It is obvious in all spheres of social, economic, cultural, and family life, both public and private.

### 2.1 - A waiting game for positive law

Pakistani law is responsible for this situation because it fails to ensure a legal framework in accordance with constitutional principles of equal rights of all individuals (article 4), and with the Convention for the Elimination of All Forms of Discrimination against Women, ratified in 1996.

The history of Pakistan shows that instead of progress, Pakistani women have experienced an unprecedented erosion of their rights, with the promulgation in 1979 of five of *Hudood Ordinances*<sup>202</sup> by General Zia-ul-Haq.<sup>203</sup>

Until the enactment of these orders, the Pakistani Penal Code did not include any punishment for women who had sexual relations outside of marriage. An ordinance establishing the *Zina* crime concerning rape, adultery, prostitution and crimes of abduction, criminalized sexual relations outside marriage. Well beyond that, it assimilates rape with adultery. Thousands of Pakistani women were imprisoned and charged under this ordinance, and a large number of complaints of rape were converted into accusations of *zina*, turning victims of rape into criminals.<sup>204</sup>

In 1980, General Zia transferred jurisdiction of judgments for Hudood Ordinances from the high courts to the Federal Islamic court established for that purpose, the Federal Shariat Court, whose decisions are binding on the high courts.

In order to ensure its popularity, and under pressure from civil society and the international community, President Musharraf's regime promulgated on November 30, 2006 a

199 In 1979, the High Court of Baluchistan called the RCF legislation discriminatory and anti-Islamic. On July 29, 2002 the High Court of Lahore said that the RCF had no reason to exist, following the judgement of the High Court of Baluchistan in 1979, and that therefore any detention under the influence of the RCF was illegal.

200 Dawn, PHC orders release of 11 tribal chiefs, June 30, 2007.

201 Dawn, April 25, 2008.

202 In Muslim law, Hudood law is Islamic criminal law preventing and punishing crimes said to be serious.

203 The five ordinances are:

- Ordinance on damage to property, such as theft or armed robbery
- Order on sexual crimes or Zina, rape, adultery, abduction
- Ordinance on false accusations of Zina, called Qazf
- Ordinance on the penalties for consumption and trafficking of drugs or alcohol, called Hadd
- Ordinance on the implementation of flogging

204 See article by Asma Jahangir "What the Protection of Women Act does and what is left undone" in HRCR, State of Human Rights in 2006

law to protect women (Protection of Women Act or PWA), whose vocation was to reform the Hudood Ordinances. This long-awaited law was a big disappointment, given the speech and the intentions of those in power.

The law has the merit to abolish the iniquitous assimilation between rape and the crime of sexual relations outside marriage (adultery), and established procedural changes, but it continues to criminalize sexual relations outside marriage and makes no changes to other existing discriminatory laws.

For example, Evidence laws (*Qanun-e-Shahadat*) of 1984 remain unchanged. The testimony of a woman counts for half of that of a man.

Section 7 of the *Muslim Family Law Ordinance* allows a man to divorce unilaterally and without an explanation, while a woman must file a lawsuit. She must also return her wedding gifts to her husband.

According to legislation on parental custody (*Ward Guardianship Act*, 1890), women are not original custody-holders of their minor children. This right is naturally the father's.

Women do not enjoy the same inheritance rights as men.

According to the 1951 Pakistani law on nationality, the *Pakistan Citizenship Act*, a woman of foreign nationality may acquire Pakistani nationality if she marries a Pakistani national. In contrast, a woman of Pakistani nationality can not acquire foreign nationality by marrying a foreigner. In 2007 the Government of Pakistan justified this discrimination with an imperative to control migration, and the possible misuse of this procedure for acquiring Pakistani citizenship by, among others, Afghan refugees or Biharis or Bangladeshis.<sup>205</sup>

In addition to these provisions and many others that still remain discriminatory, legislation has not evolved in any way to fight violence against women. Physical domestic violence, forced marriage, child marriage (*vani*), mutilation, self-immolation, forced prostitution and trafficking are widespread in Pakistan. Worse, the legislation is careful not to condemn and ban traditional practices to punish women in the name of honour, such as rape, murder, or

reparations for an injury of even a simple act contrary to the tribal customs, by gifting a woman or girl. In 2007, the *jirga* in the village of Allah Bakhsh Mehar, near the town of Daharki in Sindh province, condemned Manzur and I.Z. for having married on their own will and ordered the Manzur family to pay a fine of 300,000 Rupees and to offer two girls, aged three and five.<sup>206</sup>

In 2007, the PML-Q introduced a bill on the prevention of discriminatory practices against women in the National Assembly, but human rights organisations reported that the proposed provisions were unsatisfactory to solve the problem of discrimination and violence against women.<sup>207</sup>

## 2.2 - Community and tribal injustice

Mukhtar Mai was condemned by the traditional council from her village to undergo gang rape to pay for the damage allegedly caused by her brother, who was seen with the daughter of another clan. Her story was heard around the world in 2005, and triggered a huge protest movement. But how many more women suffer the same fate today? In communities where state justice does simply not exist, governed by traditional tribal justice or laws made by the decision assemblies (*jirgas* and *panchayats*), many women are daily victims of unfair sentences and inhuman and degrading treatment, and more often because of acts which can not be attributed to them personally. Having no right to be present at these meetings, where they are represented by a male member of their family, they have no right of appeal against their decisions.

State justice mostly exhibits indifference vis-à-vis these practices, illustrated by the case of Naseema Labano. In January 2007, Naseema, aged sixteen years, was sentenced to parade naked in her village and to be raped by eleven men because one of her cousins was accused of having seduced a young woman from another clan. After filing a complaint, and out of fear for their safety, Naseema and her family had to take refuge in Karachi. Despite the publicity surrounding the case and the protests by human rights organisations, one person was arrested by the police and he was later released on bail.<sup>208</sup>

205 The Biharis are Sunni Muslims from Bihar state in India. Upon independence from Pakistan, approximately one million Biharis left India to settle in East Pakistan (now Bangladesh). During the Bangladeshi war of independence, many Biharis were on the side of Pakistani government forces. In 1971, when Bangladesh gained independence, they were accused of collaborating with Pakistan. The Biharis currently living in Bangladesh are victims of serious discrimination and live in camps. Many of them want to live in Pakistan, which has so far never taken a clear and concrete decision about hosting them.

206 HRCP, *Annual Report 2007*.

207 HRCP, *op. cit.*

208 HRCP, *op. cit.*

More serious than the indifference of the judiciary is the laxity of the law. Thus, killing a woman in the name of honour remains a widespread practice in Pakistan. Called *Sia-Kiri* in Baluchistan, *Karo-Kari* in Sindh and southern Punjab, and *Tora-Tor* in north-west Pakistan, honour crimes affect around 1,200 to 1,800 women per year. This practice is approved by the law. The Qisas<sup>209</sup> and Diyat<sup>210</sup> Ordinances, enacted in 1990, clearly endorse it. It recognizes and rewards bloodshed as a means of resolving disputes and provides for a significant difference between murder and manslaughter.

Section 300 of the Pakistan Penal Code states that “culpable homicide is not murder, if the offender whilst deprived of the power of self control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.”

Such provisions recognizing the right to revenge and the compensation of crime are a private matter and legitimize crimes of honour.

They erase any distinction between customary and positive law, which itself has incorporated Sharia. These three systems – state law, customary law and Sharia law – act in collusion regarding women’s oppression and continue to cause injustice and flagrant violations against women.

### 3 - Religious discrimination

The dominant religious identity in the young state of Pakistan, Islam, was sanctioned by successive constitutions, laws, and judicial organisations. Despite the willingness of the founders of Pakistan to respect other faiths, Pakistani law is characterized by discrimination against religious minorities in the country, such as the Hindu, Christian, Sikh, Buddhist, Parsi, Kalashi, and

Bahai but also against the Ahmadi Muslim community.<sup>211</sup> The body of discriminatory legislation and lack of protection for religious minorities accounts for the rise in physical violence, death threats, forced conversions, destruction of places of worship, school closures and other abuses against members of these communities, which are the preferred targets of fundamentalist and sectarian movements.<sup>212</sup>

#### 3.1 - The law and religion of the state

The 1973 Constitution, while affirming freedom of religion, paradoxically states discrimination against non-Muslims by defining and differentiating a Muslim and a non-Muslim in Article 260. It stipulates that Islam is the state religion<sup>213</sup> and that the Head of State must be a Muslim.<sup>214</sup> The oath on the basis of his faith that the prime minister must give<sup>215</sup> – “in finality of the Prophet-hood of Muhammad (PBUH), Quran and Sunnah” also suggests that the latter must be Muslim.<sup>216</sup>

Article 227 of the Constitution, prohibiting the application of any law inconsistent with Islamic injunctions, states that a *Council of Islamic Ideology* should ensure compliance with this provision. In addition, the *Federal Shariat Court*<sup>217</sup> has the power to declare any law contrary to Islam non applicable and to propose amendments. The judges of the Federal Shariat Court must be Muslims, and non-Muslim lawyers cannot plead before it. According to evidence laws,<sup>218</sup> the testimony of a Muslim woman or a non-Muslim man accounts for only half of that of a Muslim man. Specific laws relating to personal status (marriage, divorce, etc.) are applicable to religious minorities. Dating from the colonial period and influenced by Islamic law,<sup>219</sup> they are denounced by human rights NGOs for their archaic character and violations of women’s rights.

209 *Qisas* means causing similar damage to the offence under sentence.

210 *Diyat* is monetary compensation that the victim accepts.

211 Members of the *Qadiyani Group* or the *Lahori Group*.

212 On the alarming rise since 2007 of religious intolerance, the “Talibanisation” of Pakistani society, and the failure of the State, see the HRCP 2008 report, already cited, the Second *Shadow Report* published on April 15, 2007 by *Shirkat Gah-Women’s resource centre “Talibanisation and poor governance-Undermining CEDAW in Pakistan”* and the *Human Rights Monitor-2007 - A report on the religious minorities in Pakistan!* published on March 20, 2007 by the *National Commission for Justice and Peace (NCJP)*.

213 Article 2.

214 Article 41(2).

215 Article 91(3)

216 The draft submitted by the PPP in June 2008, to explicitly state this condition in the constitution for the election of the prime minister, is a worrying sign of the consecration of state discrimination against religious minorities.

217 Created in 1980 and composed of eight judges, including three ulemas, the *Federal Shariat Court* is also competent to hear appeals of rulings by lower courts on the basis of Islamic laws.

218 The Islamic laws applied by the *Federal Shariat Court (Shariat Act, and Zina Hudood Ordinances, Qisas and Dyat)* are characterized in family law and in fiscal and criminal matters by their discriminatory nature and often violate fundamental rights, particularly against women. The penalties set out in the *Qisas* and *Dyat* have been integrated since 1990 into the penal code.

219 Adultery, punishable by stoning to death and a maximum sentence of 25 years imprisonment, is a major cause of dissolution of Christian marriages.

Blasphemy laws<sup>220</sup> are a true instrument of institutional violence and suppression on behalf of the state religion. Under Article 295 C of the Pakistani Penal Code, anyone who desecrates the name of the Prophet Muhammad faces the death penalty. Members of religious minorities are harassed, tortured by the police or by inmates or guards while in prison, physically assaulted during trials, and heavily sentenced each year by the judiciary. The sentences are often based on false accusations and slanderous denunciations.<sup>221</sup> Even Muslims are victims of this fallacious legislation each year.<sup>222</sup> The vague definition of criminal blasphemy<sup>223</sup> justifies serious violations of freedom of thought, conscience, religion and expression, censoring any criticism of the dominant religion.<sup>224</sup> The laws on blasphemy, relentlessly criticized by human rights advocates in Pakistan, fuel and condone religious intolerance, acts of violence and social exclusion against religious minorities and those who defend them. According to Asma Jahangir, Chairperson of HRCP and herself a victim of death threats from religious fundamentalists for her role as a defender of victims of this legislation, “blasphemy laws have reached their ultimate goal: they have triggered religious terrorism. They invite people to divert the law to their advantage and they undermine the legal system, making judges flee.”<sup>225</sup>

## 3.2 - Discriminatory treatment of the Ahmadis

Religious discrimination is not limited to non-Muslims: Muslim Ahmadis,<sup>226</sup> who are considered heretics, are

particularly persecuted and ostracised,<sup>227</sup> including by the establishment of separate electoral lists (see above).

Article 298 of the Penal Code prohibits Ahmadis to use epithets, descriptions and Muslims titles as well as to declare themselves Muslims.<sup>228</sup> Particularly heavy convictions (long-term imprisonment or death penalty) for offences against religion, especially for blasphemy, have multiplied over the years against the members of this religious minority. The Ahmadis, prosecuted for blasphemy, remain in custody for several years before being exonerated by the trial court. Procedures fabricated by the police are frequently set up against them, Ahmadi publications are regularly confiscated, and journalists or printers are harassed or have their premises closed.<sup>229</sup> The authorities use blasphemy laws to “harass” the Ahmadis and to settle personal or professional accounts.<sup>230</sup>

The treatment reserved by the State for religious minorities in Pakistan, along with its close interaction with the alarming rise of societal violence against them, led to thousands of people fleeing the country.<sup>231</sup> Religious minorities, which after the creation of Pakistan in 1947 accounted for 30% of the population, did not constitute more than 3% in 1998.

Finally, the weakening of the judiciary since March 2007 by military power has been used by the Taliban and fundamentalists since 2007 to increase violence committed against members of religious minorities and the establishment of a religious justice without any legitimacy.<sup>232</sup> The future of Pakistani society, taken hostage by state terrorism and religious activists, is

220 Blasphemy was introduced into the Penal Code in 1982 by President Muhammad Zia-ul-Haq. It is defined and punishable under articles 295-B § C, 298 A, B and C of the Pakistan Penal Code.

221 For an example, see the case of Younis Masih, a Christian sentenced to death for blasphemy on May 30, 2007 by the High Court in Lahore. Y. Masih was found guilty in 2005 of having made derogatory remarks against the Prophet Muhammad during a religious ceremony organized by a Muslim dignitary, while he argues that he merely asked the neighbour to make less noise. His lawyer, Parvez Aslam Choudhry, was the victim of an assassination attempt, threatened and harassed because of his role as defence attorney in the case. During his trial before the court, Younis Masih testified, for security reasons, through a video device. He appealed the decision, Amnesty International, <http://web.amnesty.org/library/Index/FRAASA330122007>.

222 833 people were accused of blasphemy from 1986 to 2006. On the numbers and concrete examples of suppression and social justice resulting from charges of blasphemy, see the 2008 HRCP report and the 2007 NCJP report, already cited. The 2004 reform, which requires a thorough investigation conducted under the supervision of a “superintendent of police,” did not have a moderating effect on the application of these laws.

223 Under section 295C of the Pakistan Penal Code, anyone who “by his words or his writings, or by visible representations, or by any imputation with direct or indirect reference, desecrates the sacred name of the Holy Prophet (the Peace be upon him), shall be punished by death or a life sentence with a fine.”

224 Amnesty International considers them, correctly, to be “prisoners of conscience, people imprisoned under laws relating to blasphemy when they have merely exercised their right to freedom of opinion and expression.” <http://web.amnesty.org/library/Index/FRAASA330122007>

225 Hearings on cases of blasphemy, regarded as the most serious, are held in prison to avoid attacks during the hearing. In this context of growing social pressure on judges, the right to a fair trial is violated.

226 See the study of the Directorate of Research, Canadian Immigration and Refugee Board, Ottawa, 2007.

227 From 1986 to 2006, 35% of people accused of blasphemy were Ahmadis. Information provided by *Human Rights Without Frontiers (HRWF)* and the *National Commission for Justice and Peace*.

228 The XX Ordinance of April 26, 1984 amended the Pakistan Penal Code by adding Articles 298-B-C and 298 targeting Ahmadis.

229 Freedom House, 2007.

230 According to the *International Religious Freedom Report 2007*. The report, which covers the period July 2006 to June 2007, includes many examples of judicial measures taken against the Ahmadis.

231 A thousand Pakistani Hindus have fled the country for India since 2002.

232 See the article from June 28-29, 2008 in the *International Herald Tribune* on the take-over announced by the Taliban of Peshawar, the third largest city in the country, which is located 16 kilometres from the tribal areas in a province neglected by successive governments. In a strategy involving terror and social alternatives to the negligence of state power, including the ousting judges of the courts and urging neighbouring people to bring their disputes before them, the Taliban installed a prison in the city of Mishini, bombarded with stones and sieged polling stations for women, kidnapped people in their bazaars and homes, and terrorized the most disadvantaged populations, financially unable to flee the region, *International Herald Tribune*, June 28-29, 2008.

heavily mortgaged by the discriminatory policies pursued for many years and in particular by the regime of P. Musharraf.

## 4 - Economic insecurity and absence of social rights

The serious institutional crisis facing Pakistan occurs in a context in which the military's controls the economic resources of the country since 1999. Deprived of the most basic social rights and kept in extreme poverty, workers live in conditions from another time; they are devoid of any hope of social justice.

### 4.1 - The Pakistani army: a predatory economic force

In addition to the pre-eminent political role that the army played in the creation of Pakistan, namely making and defeating governments, it is now also an undisputed economic power.<sup>233</sup> With the methodical appropriation of Pakistan's industrial, commercial and financial resources, the army enjoys the support of large landowners and business that see an ally in it. The army is able to overcome, with force, any hint of rebellion by the population.

Under the presidency of General Musharraf, senior officers have appropriated the resources of the nation far beyond the already considerable budgets devoted to national defence.<sup>234</sup> The current military-industrial complex works through three major construction firms<sup>235</sup> and public works, transport and telecommunications, and hundreds of smaller enterprises, service stations, bakeries, grocery stores, and restaurants. Five major foundations<sup>236</sup> of the Army operate more than one hundred enterprises and banks, real estate agencies and schools. Finally, the state grants officers many

generous pensions and benefits, farmland, property<sup>237</sup> and offers many jobs in the civil administration posts of ambassadors and even Vice-Chancellor of universities or key positions in the public sector.<sup>238</sup>

The mass privatization of national companies and financial institutions under the regime of Pervez Musharraf is, in a context of massive corruption, a true economic disaster for the country;<sup>239</sup> it has resulted in the loss of jobs of several thousand workers. According to *Anti privatization Alliance Pakistan*, the cost of corruption linked to the privatization process since 1999 amounts to 1.550 billion rupees, or 2.384 billion U.S. dollars. The June 23, 2006 Supreme Court decision to cancel the privatization of *Pakistan Steel Mills* has therefore been seen as a dangerous and unacceptable interference in the lucrative judicial privatization policy pursued by the military so far with impunity.<sup>240</sup>

Recognizing the growing unpopularity of the military-economic power, the new chief of the armed forces of Pakistan, General Ashfaq Kayani, announced that the army should now focus on its mission of maintaining order and controlling borders, which is largely neglected in favour of business.<sup>241</sup> Will such a "refocusing" of an army that has become an economic predator be effective? Will it set aside Pervez Musharraf's military, which has become too cumbersome, and initiate a retreat of the army from political life? Nothing is certain, given the enormous privileges and benefits of this "business," with the all-powerful military oligarchy unwilling to give them up.

### 4.2 - Social rights denied

A result of the colonial system and of unequal distribution of wealth between India and the new state of Pakistan at its inception in 1947, the economy of the country, despite its progress and relative growth of its industry, has not overcome the root causes of its fragility. The absence or failure of reforms, the endemic corruption of various

233 In his book, *Military Inc. Inside Pakistan's Military Economy*, Ayesha Siddiqi, an expert on military issues, analyzes the various mechanisms through which the Pakistani army has become a social class that is totally invested in the economic sector, Oxford University Press, 2007.

234 The armed forces "assumed an average of 30% GNP, a figure which includes the pensions and certain expenses that are not directly military," while the government spends 75% of the budget on national defence, Ayesha Siddiqi, "Mainmise des militaires sur les richesses de l'Etat," *Le Monde Diplomatique*, January 2008.

235 *Frontier Works Organisation (FWO), National Logistics Cell (NLC) and Special Communications Organisation (SCO)*.

236 Created primarily for the welfare of military pensioners, these foundations, Fauji Foundation, Army Welfare Trust, Shasheen Foundation, Bahria Foundation and Pakistan Ordnance Factories are now real conglomerates.

237 Indeed General Musharraf has a dozen properties acquired through his membership in the army.

238 Since the arrival of P. Musharraf, 1,200 officers were hired by the civilian sector. Nine of the country's twelve electricity companies are run by the military.

239 The figures delivered on November 12, 2007 by former Prime Minister Shoukat Aziz demonstrate the broad privatization process under P. Musharraf: 417 billion rupees have been "earned" by the country, according to him, in place of 57 billion rupees by the previous civilian government.

240 See "The corruption in Privatisation: Pakistan Steel Mills case," Tariq Farooq, March 26, 2008.

241 See article by Françoise Chipaux, "Armée pakistanaise : le business des casernes", *le Monde*, February 19, 2008.



regimes, and the weight from weapons spending have severely strained its economic development. Agriculture remains the key sector of Pakistan's economy, and the country is dominated by vast land. The legacy of British colonialism passed on the legacy of *zamindari* to the government of Pakistan, described as "most outdated and most degrading for Men, soil and farming tools."<sup>242</sup> In addition, East Pakistan so far suffers from a holding type of neo-colonialism by West Pakistan. A portion of agricultural resources of East Pakistan is put at the service of industrial development that takes place mainly in western Pakistan.

In rural areas, despite the land reform initiated in the fifties by the military and revived by Prime Minister Ali Bhutto twenty years later, a few large families still share huge properties, despite the emergence of the middle class. In this system, terrible social inequalities persist.<sup>243</sup> At the bottom of the social ladder are hundreds of thousands of farm workers, subject through bonded labour, who are deprived of any rights because of the debts rendering them liable to exploitation of fierce owners. A form of modern slavery according to the International Labour Office (ILO), debt bondage forces workers to repay the advance made by the owner, with their debt steadily increasing as a result of inflation or lower production, and the debt sometimes even transfers to the children of these farm workers.<sup>244</sup> Despite efforts by NGOs to finance the "liberation" of these modern-day slaves and ensure their autonomy by building villages, this alienation persists in Pakistan in rural areas, especially in the province of Sindh.<sup>245</sup> Furthermore, this phenomenon extends to other sectors of the economy of Pakistan. The fact that large landowners, virtually feudal lords, dominate the political life of the country with their omnipresence in the exercise of executive and legislative branches,<sup>246</sup> explains the involvement of the state in

the permanence of this socio-economic exploitation.<sup>247</sup> Although a 1992 law prohibits bonded work, the reality is quite different. Large landowners continue to use bonded work with impunity, using their armed gunmen and their own illegal prisons, where they incarcerate workers.<sup>248</sup> Rebellious workers are often beaten and tortured. Influential owners also use the repressive apparatus of the state, the judiciary and the police to harass activists working for the protection of agricultural workers.<sup>249</sup>

In the industrial sector, recently created, the expansion of recent years<sup>250</sup> has not improved the condition of workers, but rather the contrary. Industrial fabric, which dominates the textile industry, has diversified over the past fifteen years, but a few large family groups<sup>251</sup> still hold the majority of companies. The deplorable working conditions of employees of enterprises, under-paid or illegal, are the tragic consequence of the lack of social rights and a brutal policy of the repression of unions.

Women and children are the two social groups most affected by poverty and underdevelopment in this system of socio-economic inequality and lawlessness. In addition, the absence of public policy in education<sup>252</sup> reinforces these serious socio-economic inequalities. Children from the poorest classes cannot access private institutions, the expensive schools run by the army,<sup>253</sup> or study abroad, all reserved for the privileged classes. This two-tier education system strengthens the influence of *madrassas*; these religious schools, often invested in by fundamentalists, are gathering the poorest children.<sup>254</sup>

Observers of this system of exploitation of labour and social inequalities agree that a third of the people of Pakistan live below the poverty line.<sup>255</sup>

242 According to Max-Jean Zins, author of "*Pakistan, la quête de l'identité*", La documentation française, Paris, 2002.

243 Ibid.

244 According to the ILO, "regarding slavery, the ordinary meaning of the term is to make people work without pay, either by using force or under the cover of social or cultural traditions" ... "As for the "bond labour" phenomenon, that affects millions of workers throughout the world," reports the ILO, "the trap works as follows: the employer pays an advance to a worker. This is supposed to be repaid with his future salary, but it is obviously incapable of doing that and, often, his debt only increases. He is thus bonded to his employer until the end of his life. In some cases, his children or his grandchildren will also be forced to work for the same creditor to repay the family debt" ... "This practice is especially common in South Asia and Latin America, for example in India or Pakistan (where it is called *pesghi*) and Peru (*enganche*), the "victims" are generally recruited "among the poorest people, often of tribal origin," ILO, 1993 report.

245 Today, 80 percent of bonded workers in Sindh, Frontier Province of India, are of Hindu origin, from the untouchable caste, and they belong to a religious minority enhancing their social vulnerability, Radio France Internationale (RFI), site, April 2008.

246 On the pessimism of workers to boost capacity for change by the ruling class, see the article by Pierre Barbancey, "Le 18 février 2008 - Désillusions pakistanaïses" *L'Humanité*, February 18, 2008.

247 See analysis of the current extension of "bonded" labour by the researcher Zulfiqar Shah, of the research institute PILER, quoted in the article by Nadia Blétry, "*Esclavage moderne au Pakistan*," *Alternatives* 2008, vol. 14, No. 9, June 2008; also refer to the HRCP 2008 report, Op cited.

248 See HRCP 2008 report, Op cited.

249 See Part II-1 of the present report on violations of the right to security.

250 Industry now contributes to nearly a quarter of the GNP.

251 The Bhutto family, in particular. New venues have been added to the initial "twenty-two" large families, including the family of former Prime Minister Nawaz Sharif and a few others, see J. Zins, "Pakistan, the quest for identity", cited above.

252 The government of Pakistan only spends 2% of its budget on education, *Le Monde*, February 19, 2008.

253 Education represents a major and profitable activity run by the military. Fauji Foundation, Bahria Foundation and Shaheen, see the article by F. Chipeaux, "*Armée pakistanaïse : le business des casernes*," cited above.

254 HRCP 2008 Report; see also article by William Dalrymple, "Voyage à l'intérieur des madrassas pakistanaïses," *Le Monde Diplomatique*, March 2006.

255 See "*Pakistan, la quête de l'identité*," cited above and Human Development Report 2007/2008, [http://www.undp.org.pk/documents/HDR\\_20072008\\_EN\\_Complete.pdf](http://www.undp.org.pk/documents/HDR_20072008_EN_Complete.pdf), According to the report, Pakistan is rated on the 136<sup>th</sup> position on 177.

As for other human rights violations identified in this report, the state is an accomplice for serious attacks on social and trade union rights. Despite the fundamental ILO conventions ratified by Pakistan<sup>256</sup> and affirmed in the Constitution on freedom of association,<sup>257</sup> the 2007 report of the International Trade Union Confederation (*Confédération syndicale internationale* - CSI) on Pakistan is damning: “The strongly restrictive laws on labour, combined with the almost total absence of bodies responsible for enforcing the law, have led to gross violations of trade union rights by employers and businesses in the state. Despite promises of longstanding commitment to the ILO, the government has not made any progress towards the amendment of national legislation and compliance thereof with international standards; it persists, moreover, to prevent workers in many economic sectors to exercise their rights. The provincial government of Sindh has declared the teachers’ union illegal, while various public undertakings and entities under the control of the army have continued to prohibit any trade union activity.”<sup>258</sup>

Legislative reform enshrined in the 2002 Ordinance on Labour Relations (the industrial relations ordinance, known as IRO 2002) excludes broad sectors of activities from its scope, depriving workers of freedom of association and the right to conduct collective bargaining. The IRO 2002 limits the possibilities of applications for temporary repairs with the National Industrial Relations Commission (NIRC) or the Labour Court. In addition, the amendment by the government of five labour laws has been translated into a reality by an increase in working hours and reduced workers’ protection. The government has the right to ban any strike that could cause serious difficulties for the community or prejudice to the national interest. The crime of riot (civil commotion) as defined by the Ordinance of 1999, is treated as an act of terrorism and includes any internal disturbance in violation of the law, including illegal strikes such as picketing,<sup>259</sup> which is now punishable by seven years’ imprisonment. Anti-union violence, repression by police forces of social movements, arrests, detentions and killings of workers and trade unionists, and unfair dismissals have multiplied in

2006 and 2007. The services of the Ministry of Labour are sometimes banned from official inspections, as in Punjab,<sup>260</sup> or corrupted by employers refusing to register the workers, thus depriving them of access to social security card.<sup>261</sup> In 2008, in response to the promise of the new government to abolish restrictions on union activities and establish a minimum wage, repression in the work world increased dramatically. Employers, using the police or their own militias, increased violence and abuses against workers and trade union activists to try to stem the current social demands.<sup>262</sup> But the social movement, exacerbated by food insecurity, price increases and the desire for social justice, is growing.<sup>263</sup>

## Conclusion and Recommendations

The popular movement, in motion for over a year for the return of dismissed judges and the departure of a despised president, marks the profound aspiration for the most disadvantaged, and is now joined by the middle class. It has become a social revolution, a request for profound change of a socio-economic situation that has become unbearable.

Ignoring the need for the reintroduction of a legitimate judiciary and a commitment to defend fundamental rights would be a grave mistake. The people of Pakistan, supported by lawyers and relayed by the media and courageous activists, reject nepotism, corruption, and exploitation, which has caused suffering since the inception of this young state. Judicial independence is a necessary condition for the assertion of rights too long denied.

Recourse to a repressive legislative and political response, condoned by American allies in power and claiming

256 ILO Conventions n° 29, 87, 98, 100, 105, 111, 138 and 182.

257 Article 17 of the Pakistani Constitution.

258 “*Rapport annuel des violations des droits syndicaux*”, CSI, 2007, <http://www.ituc-csi.org>

259 1999 Pakistan Anti-Terrorism Ordinance (Amendment) amended the 1997 ATA by adding article 7A “Creation of civil commotion.” “Civil commotion” means the creation of internal disturbances in violation of the law or intending to violate the law, the commencement or continuation of illegal strikes, go-slows, lock-outs, snatching or lifting vehicles, damaging or destroying State or private property, random firing to create panic, charging bhatta, acts of criminal trespass (illegal qabza), distributing, publishing or pasting of a handbill or making graffiti or wall-chalking intended to create unrest or fear or create a threat to the security of law and order or to incite the commission of an offence punishable under Chapter VI of the Pakistan Penal Code (Act XLV of 1860).

260 According to the current Minister of Labour of Sindh province, Ashraf Sohna, during his visit to Faisalabad on May 3, 2008, quoted in the article by Aoun Sahi, “The recent announcement of increase in basic wages has not gone down well with factory owners,” *The News*, May 2008.

261 According to Mian Abdul Quyyum, president of the “*Pakistan Textile Workers’ Union*,” quoted in “The recent announcement of increase in basic wages has not gone down well with factory owners,” *ibid*.

262 For example, see the article by Aoun Sahi, cited above. See also the interview given by Tariq Farooq, spokesman for the Labour Party Pakistan (LPP) Linda Waldron and Ray Fulcher, “Revolutionary eye on Pakistan” July 3, 2008, *Australia Pakistan Solidarity*, <http://www.directaction.org>.

263 According to a report by the World Food Programme (WFP), a United Nations agency, 77 million Pakistanis will be in a situation of food insecurity in the coming months, which is half the country’s total population. The increase in prices of raw materials is one of the main reasons for this insecurity. See the article by Nadia Bletry, “*Au Pakistan, une population excédée par les pénuries*,” *Radio France Internationale news (RFI)*, May 18, 2008. <http://www.rfi.fr/>

to stem the rise of fundamentalism and terrorism, only leads to state terrorism and the disintegration of a people harassed by arbitrary actions. With the results of the elections of 2008, the population has shown that it rejects the obscurantist logic of repression that people in power and religious extremists want to impose. Only a humanistic concept and approach of the rule of law and promotion of human rights will be able to respond to violence resulting from the denial of these rights.

The current social movement is exemplary, in that it transcends traditional divisions of the society. The people of Pakistan began a long march to democracy and the rule of law.

It is now urgent that the Pakistani government respond to this irreversible movement.

## **FIDH urges the government of Pakistan:**

### **Regarding the independence of the judiciary**

- To restore as soon as possible the judges unlawfully removed or retired as of November 3, 2007;
- To take all necessary measures to restore the independence of the judicial branch since the proclamation of a state of emergency on November 3, 2007;
- To promote a reform of the 1973 Constitution that ensures the independence of the judiciary, both in the mode of appointment, career development, and the disciplinary control in its management by an independent body, so that justice is able to maintain its function as the guardian of fundamental rights and individual freedoms;
- To proceed, through legal channels, to a constitutional and legislative reform to ensure the repeal of constitutional provisions and laws, ordinances, amendments and other regulatory provisions unlawfully adopted under the *Provisional Constitutional Order* (PCO) and the state of emergency declared on November 3, 2007;
- To establish an independent Parliamentary Committee to investigate the events of May 12, 2007 in Karachi and bring those responsible for the atrocities to justice; more generally, to

prosecute, in accordance with the rules of fair trial, the perpetrators of intimidation and terror vis-à-vis the population.

### **Regarding the fight against terrorism**

- To ensure, through the promotion of necessary legislative reforms, a restrictive delineation of the scope of emergency laws and of the competence of anti-terrorist and military courts, in conformity with international law;
- to put an immediate end to the practice of enforced disappearances, and criminalize them as well as to take appropriate measures to investigate such abuses and bring those responsible to justice; ratify without delay the International Convention for the Protection of All Persons against Enforced Disappearances;
- To set up an independent and multidisciplinary commission, composed in particular of representatives of civil society, to investigate the issue of enforced disappearances and the responsibilities involved in this issue;
- To prohibit, through the adoption of all necessary legislative and disciplinary measures, the use of torture and other abuses against the dignity and integrity of persons; to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and the Optional Protocol relating to the Convention, which aims to establish a system of regular visits by international and national independent agencies to places where persons are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment;
- To be accountable and inform the people of Pakistan on military operations carried out, and the expenses and victims of these operations.

### **Regarding the death penalty**

- To promote the abolition of the death penalty in Pakistan, in particular through the establishment of a committee of jurists and representatives of civil society responsible for submitting a report on the issue of the death penalty in the country;

- President Zardari should approve as soon as possible the proposal made by the Federal Cabinet on July 2, 2008 to commute death sentences to enforceable penalties of life imprisonment, a proposal that would benefit more than 7,000 people currently on death row in Pakistan.

#### **Regarding conditions of detention**

- Identify, prohibit and close any illegal centre or place of detention in the country; search and punish all those responsible for maintaining and managing these illegal centres or places;
- Submit a prison reform plan as soon as possible, including the adoption of a law providing alternatives to incarceration, remedies against decisions and actions of prison officials and concerning the effective improvement of the prison conditions;
- Appoint an outside and independent prison observer, with the authority and human and material resources necessary to his or her mission of observation and mediation with the competent authorities.

#### **Regarding freedom of expression and peaceful assembly**

- put an end, particularly through legislative reform, to the censorship of the media and to the limits provided by existing legislative texts and practices, and respect the freedom of expression and the freedom of movement of journalists throughout the country;
- Ensure that members of civil society can freely exercise their rights to freedom of expression, assembly and association, and take real and effective measures to ensure the safety of persons from any attack during demonstrations and rallies;
- Adopt legislative, administrative and other necessary measures to ensure the effective guarantee of rights and freedoms of defenders, in conformity with the United Nations Declaration on Defenders of Human Rights of 1998.

#### **Regarding discrimination**

- Establish a multi-disciplinary and multi-religious Committee, composed of representatives of civil society, to define the necessary reform of the Constitution and other regulatory provisions that discriminate against religious minorities or repress on the grounds of blasphemy;
- Ensure that ethnic, religious and linguistic minorities can fully exercise their rights, and promote a public policy to fight against discrimination and to maintain peace;
- Repeal the constitutional, legislative and regulatory provisions creating geographical discrimination, such as the Frontier Crimes Regulation (FCR), and ensure the implementation throughout the national territory of state laws in accordance with the principles of the rule of law and equal access to the law for all citizens;
- Repeal legislation discriminating against women, and adopt legislation and public policy promoting equal rights between men and women and protecting women from violence or discrimination against them;
- Repeal any laws promoting private justice, such as the *Qisas* and *Diyat* Orders, strengthen a state justice that is equal for all, and make it accessible to all under the Pakistani jurisdiction.

#### **Regarding social rights**

- Propose legislative and administrative reforms that would align social and labour legislation with international standards, including those of the International Labour Organisation (ILO);
- Ensure the application of the rights of trade unions without excluding any sector of the labour market or workers;
- Ensure the effective implementation and immediate prohibition of recourse by employers to bond labour or any other form of exploitation of forced labour that is detrimental to human dignity and prohibited by international standards.

## **General recommendations**

- Take all legislative and regulatory measures for a proper, independent and impartial composition of the Election Commission of Pakistan (ECP) and enable all Pakistani citizens of voting age to effectively exercise their right to vote;
- Issue a standing invitation to UN Special Procedures relating to human rights, and invite in particular the UN Special Rapporteur on the respect for human rights in the context of the fight against terrorism, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on human rights defenders, who have asked to visit the country.

### **FIDH urges the European Union to:**

- Address all recommendations in this report as part of its bilateral dialogue with Pakistan, based in particular on the Guidelines of the European Union relating to torture, the death penalty, human rights defenders and violence and discrimination against women;

- Engage in the definition and implementation of policy and European Union programmes to support the promotion of fundamental rights, social justice and peace in Pakistan;

### **FIDH urges the international community to:**

- Promote the establishment in Pakistan of the rule of law, protector of public and individual freedoms;
- Condemn any foreign interference- particularly under the guise of the “war on terror” - likely to destabilize the emergence of a democratic process, based on respect for fundamental rights;
- Redefine financial assistance to the Pakistani authorities to help them address violations of economic and social rights, which provide a fertile ground for strengthening terrorist militant groups;
- Monitor the implementation by Pakistan of recommendations in June 2008 resulting from the Universal Periodic Review by the UN Human Rights Council.

# ANNEX I

## PERSONS MET BY THE MISSION (in alphabetical order by the first name)

Mr. Abdul Hai, Acting Co-ordinator and Field Officer, HRCP  
Mr. Abdul Wahab Baloch, President of Baloch Rights Council  
Mr. Ahmad Awais, Advocate Supreme Court, Former President of Lahore High Court Bar Association  
Mr. Amin Javed, Advocate at the Supreme Court, Secretary General of the Supreme Court Bar Association  
Ms. Amina Masood Janjua, Representative, DHR  
Mr. Amtul Jamil, Project Coordinator, HRCP  
Ms. Anoushey Khan, Representative, PMLN-N  
Mr. Anwar Kamal, Advocate at Lahore High Court, President of Lahore High Court Bar Association  
Mr. Asad Iqbal Butt, Council Member, HRCP  
Mr. Asad Jamal, Lawyer Advocate  
Mr. Asef, HRCP  
Ms. Asma Jahangir, Advocate, President of HRCP, UN Special Rapporteur on Freedom of Religion  
Mr. Attar Minallah, Advocate at the Supreme Court, Counselor of Chief Justice Chaudhry  
Ms. Farida Shaheed, Shirgat Gah, Women's Resource and Publication Centre  
Ms. Feroza Rubab, Advocate at High Court, Finance Secretary of Lahore High Court Bar Association  
Mr. Hamid Mir, Executive Editor, Geo News  
Mr. Haris Khaliq, Chief Executive, SPO  
Ms. Hina Jilani, Advocate, Chairperson of HRCP, Former UN Special Secretary General Representative on Human Rights Defenders  
Mr. Hussain Naqi, District groups in Charge, HRCP  
Mr. I.A Rehman, Director, HRCP  
Mr. Inayatullah, Member, Chairman of HRCP and Council for Social Sciences  
Mr. Irchad Chaudhry, Advocate  
Mr. Kashif Abbasi, Journalist, Ary One World Television  
Mr. Kazim Khan, Advocate at Lahore High Court, Former President of Lahore High Court Bar Association  
Mr. Liaquat Baloch, Former Member of the National Assembly, Deputy-Chief of the Party, Jamaat e Islami  
Ms. Lourdes, HRCP  
Ms Majida, Retired Judge, Ex chairperson of the National Commission on the Status of Women  
Mr. Mazhar Abbas, Deputy Director of Aryoneworld, Secretary of PFUJ  
Mr. Mehboob Kahn, Legal Officer, Fact-finding missions, HRCP  
Mr. Muhammad Idrees Khokhar, Chief Executive Officer GCO, Chief Coordinator Farmers Associates Pakistan  
Mr. Mubarak Ahmad, HRCP, Ibtida (litteracy programme)  
Mr. Muhammad Ejaz Ahsan, Program Coordinator, HRCP  
Mr. Naeem Mirza, Director, Legislative Watch Programme, Aurat Foundation  
Mr. Najam U Din, Research Officer, HRCP  
Ms. Nasreen Azhar, Member of SPO, WAF, HRCP  
Ms. Nazoora Ali, Programme Officer, Center for Democratic Development, HRCP  
Mr. Mian Mohammad Acham, Advocate at Lahore High Court, Vice President of Lahore High Court Bar Association  
Mr. Naseer Bhutta, Lawyer, Newly elected member of the National Assembly, PMLN-N  
Ms. Neelam Hussain, Executive Coordinator, Simorgh, Women's resource and publication centre  
Mr. Peter Jacob, Executive Secretary, NCJP  
Mr. Raja Zulqarnain, Advocate at the Supreme Court of Pakistan  
Mr. Rana Asadullah Khan, Advocate at Lahore High Court, Secretary of Lahore High Court Bar Association  
Mr. Rao Abeid Hamid, Prison in Charge, HRCP  
Mr. Rao Tarik Lateef, Member, Green Circle Organisation (GCO)

Mr. Rasheed A. Razvi, Retired Judge, Advocate at the High Court of Sindh and Supreme Court, Chairman of the executive committee of Pakistan Bar Council  
Mr. Rasool Bux Palejo, President of Awami Tehreek  
Mr. Regis de Belenet, French Ambassador in Pakistan  
Mr. S, Judge  
Mr. Saeed-uz-Zaman Siddiqui, Former Chief Justice of Pakistan  
Mr. Sardar Khurram Latif Khan Khosa, Advocate at the Supreme Court of Pakistan, Member of Punjab Bar Council  
Mr. Shams Mehmood Mirza, Lawyer  
Mr. Syed Mohammad Tayyab, Advocate at the High Court & Federal Shariat Court, General Secretary of Islamabad Bar Association  
Mr. Sylvain Riquier, First Counsellor, French Embassy in Pakistan  
Mr. Tahir Bazenjo, Senator, National Party  
Tahira Abdullah, Development Worker, Rights Activist, Founder-member of HRCP, Member of WAF and SPO  
Mr. Talat, Journalist  
Mr. Tariq Mehmood, Retired Judge, Former President of the Supreme Court Bar, Advocate at the Supreme Court  
Mr. Usman Baloch, National Workers Party  
Mr. Wajihuddin Ahmed, Former Judge at the Supreme Court  
Mr. Waheed Mazahr, Lawyer, Advocate  
Mr. Yusuf Masti Khan, National Workers Party  
Mr. Zaffar Abbas, Resident Editor, Dawn Newspaper  
Mr. Zaman Khan, Complaint Cell in Charge, HRCP  
Ms. Zohra Yusuf, Vice Chairperson, Sindh, HRCP

# ANNEX II

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- Constitution of Pakistan: <http://www.pakistani.org/pakistan/constitution>
- Daily Times: <http://www.dailytimes.com.pk/>
- Dawn: <http://www.dailytimes.com.pkm/>
- Europe Solidaire sans Frontières: [www.europe-solidaire.org](http://www.europe-solidaire.org)
- FIDH: <http://fidh.org>
- HRCF: [www.hrcf-web.org/hrcf](http://www.hrcf-web.org/hrcf) et
- Journal of political studies, <http://www.pu.edu.pk/polsc/jops/>
- Le Monde Diplomatique : <http://www.monde-diplomatique.fr/>
- MEMRI: <http://memri.org/>
- NCJP: <http://www.geocities.com/ncjppak/index.htm>
- Online Encyclopedia of Mass Violence: <http://www.massviolence.org/>
- PFUJ: <http://pfuj.info/site/>
- The News: <http://thenews.jang.com.pk/>

# FIDH represents 155 human rights organisations on 5 continents

keep your eyes open

## Establishing the facts

### investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

## Supporting civil society

### training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

## Mobilising the international community

### permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

## Informing and reporting

### mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

**Fédération internationale des ligues des droits de l'Homme**  
17, passage de la Main d'Or - 75011 Paris - France  
CCP Paris : 76 76 Z  
Tel: (33-1) 43 55 25 18 / Fax: (33-1) 43 55 18 80  
Site internet: <http://www.fidh.org>

Director of the publication: Souhayr Belhassen  
Editor: Antoine Bernard  
Authors: Odette Lou Bouvier, Fatma Cosadia  
Coordination: Emmanouil Athanasiou, Isabelle Brachet  
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PAO: Céline Ballereau

