



**Submission of the Commonwealth Human Rights Initiative (CHRI) for the Universal Periodic Review of Pakistan**  
**February 2008**

## **A. Consultation process**

The government is yet to hold consultations with civil society on the Universal periodic Review. CHRI's UPR submission has been made on the basis of its own work in respect to Pakistan, along with consultations with prominent Pakistani civil society members.

## **B. The current normative and institutional framework of the country under review**

*The overall institutional framework within Pakistan is authoritarian, leading to the corruption of all normative national frameworks, thereby robbing them of basic human rights guarantees. The Principle of Separation of powers, particularly independence of the judiciary, has been totally undermined. Security services have been given excessive powers. Institutional human rights violations have been reported. Freedom of expression has been undermined and the media has been restricted. Civil society, including UN Special Procedure mechanisms, faces severe threat. Electoral institutions have been undermined. Public confidence in the government has been eroded.*

### ***1. Constitutional Framework***

The integrity of Pakistan's Constitutional framework has been severely undermined. Emergency measures, un-checked supremacy of Presidential Orders over the Constitution, executive interference, arbitrary suspension and undemocratic amendment of the Constitution have been the main reasons for this. Examples include, the 3 November 2007 Proclamation of Emergency that suspended the Constitution and fundamental Constitutional rights, the Provisional Constitutional Order No.1, 3 November 2007, the Constitution (Amendment) Order, 21 November 2007 and the Constitution (Second Amendment) Order, 14 December 2007. All such Orders passed during the emergency were legitimised, their validity extended beyond the period of emergency and made immune from scrutiny by the Revocation of Proclamation of Emergency order, 15 December 2007.

These Orders have not only openly subverted the Constitution, but also enabled the authoritarian regime to institutionalise and legitimise abusive normative structures and practices. The short period of emergency enabled the government to corrupt the normative structure of the Constitution, continue sabotaging judicial independence unhindered, increase military powers, mute the media and suppress dissent.

## ***2. Judicial framework***

The current normative framework in Pakistan does not allow for the independence of the judiciary. The President has persistently subverted the course of justice by arbitrarily interfering with the judiciary through Presidential Orders.

During 2006 and 2007, allegations of government-enforced disappearances in Pakistan underwent scrutiny by the Supreme Court of Pakistan. On 9 March 2007, the President took steps to declare the Chief Justice of the Supreme Court non-functional and ordered an enquiry into alleged misconduct by the Chief Justice. The Chief Justice was thereafter sent on forced leave while another judge was appointed as acting Chief justice. A wide cross-section of Pakistani civil society believes this to have been a government attempt to prevent court scrutiny of enforced disappearances especially those of the armed services' intelligence agencies.

There was mass public outrage against this Government action. However, on 20 July 2007, the Supreme Court of Pakistan set aside Presidential Orders as illegal and re-instated the Chief Justice.

On 3 November 2007, the President as Army Chief suspended the constitution and proclaimed emergency to pre-empt a Supreme Court verdict on the President's eligibility for re-election while holding an office of profit (Chief of the Army). Under emergency, the President passed a series of Presidential Orders mentioned above in section B. 1, along with the Oath of Office (Judges) Order, 3 November 2007. These orders were designed to subvert the independence of the judiciary. Following Emergency, while the Constitution was being amended new Presidential Orders ensured that all serving judges in superior courts (Supreme Court, the Federal Shariat Court and High Court) were removed. The Executive thereafter handpicked out of those so removed a set of judges who could pledge to subordinate the role of the judiciary vis-a-vis the executive. The removed judges included the Chief Justice and 12 other judges of the Supreme Court (total strength 17), and the Chief Justices of Sindh and Peshawar High Courts.

Independence of the judiciary is paramount for a stable democratic constitutional framework. It is also imperative for the rule of law and is an important pillar of the Common law system that Pakistan follows.

## ***3. Framework of fundamental freedoms - Civil society space and human rights defenders***

Civil society space has little or no room in the current normative framework of Pakistan. Presidential Orders and Ordinances have the power to arbitrarily restrict civil society freedom in the absence of independent judicial scrutiny.

Freedoms of expression, assembly and association have repeatedly been barred and presently restricted in Pakistan. Promulgation of emergency, and several Presidential Orders and Ordinances have ensured the arrest of hundreds of political leaders, human rights activists, and lawyers for expressing dissent. This includes prominent members of the civil society such as Asma Jahangir, UN Special Rapporteur on Religious Freedom and the Chairperson of the Human Rights Commission of Pakistan - who was placed under house arrest and released after around two weeks. Such threats to civil society have been accompanied by the curbing of the freedom of association - many peaceful demonstrations have been attacked by the government, further on 4 November 2007, the offices of the Human Rights Commission of Pakistan were raided and 55 people attending a meeting were detained.

Media freedom has also been curbed. Several attacks were launched on the media for covering the executive's interference with the judiciary during March 2007. On 3 November 2007, all non-government TV channels (including BBC and CNN) were put off the air. These channels were allowed on cable network under stringent terms and a popular channel, Geo, was allowed on cable after 77 days. Indian news channels have long since been blocked. The electronic media is regulated by an ordinance of 2000, which has been made tougher vide Ordinance No. LXV, 3 November 2007 (passed at the time of the proclamation of emergency). The Ordinance places arbitrary restrictions on the media. Newly inserted clauses 20 (k)<sup>1</sup> and 20 (m)<sup>2</sup> are examples of wide and arbitrary restrictions in the Ordinance - such restrictions grant the executive wide discretionary powers to abuse media freedom. Similar restrictions have been added to the Press, Newspapers, News Agencies Ordinance [Date] that regulates the print media. A total ban on live coverage of "incidents of violence" has also been imposed.

#### **4. Security Framework**

Emergency measures and Presidential promulgations have arbitrarily and excessively strengthened security forces - primarily under the pretext of countering terrorism. Air Force and ground forces have been battling militants in the northern tribal areas and causing heavy losses to and displacement of civilian population. In the absence of effective oversight mechanisms<sup>3</sup> and failed police reforms,<sup>4</sup> the current normative framework of the Pakistani police services is inadequate to check abuse of fundamental freedoms.

Pakistani military and paramilitary forces have been given increased powers over civilians. The Pakistan Army (Amendment) Ordinance, 10 November 2007 (passed during the emergency), grants military tribunals powers to try civilians retrospectively from 2003 onwards. This ordinance has further strengthened an already abusive intelligence structure of the army that is among others known to have been involved in large scale enforced disappearances. It is also to be noted that retroactive trial of civilians by military tribunals violates accepted norms of international law and international humanitarian law.

Judicial scrutiny was the only way to check abuses by security forces. However after the recent executive tampering with the judiciary (described in Section B.2), security forces now operate unchecked and with full impunity.

#### **5. Electoral framework**

Constitutional provisions regarding the Election Commission are inadequate to ensure its independence. In the current situation, the Commission has become more controversial and its credibility is seriously doubted. The Commission is headed by a former Judge of the Supreme Court – chosen by the President in his discretion - and is assisted by four sitting judges of the provincial High Courts. The latter are judges who took oath under the Provisional Constitutional Order promulgated by the President on 3 November 2007, bringing their independence into question. The judiciary conducts the election process with judges acting as election officers in every constituency. The issue of

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<sup>1</sup> 20 (k) stipulates that media should "ensure that no anchor person, moderator or host propagates any opinion or acts in any manner prejudicial to the ideology of Pakistan or sovereignty, integrity or security of Pakistan"

<sup>2</sup> 20 (m) stipulates that media should "not broadcast anything 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;"

<sup>3</sup> Page 73-74, 'Feudal Forces: Democratic Nations, Police accountability in commonwealth South Asia' Commonwealth human Rights Initiative, 2007, at [http://www.humanrightsinitiative.org/publications/police/feudal\\_forces\\_democratic\\_nations\\_police\\_accountability\\_in\\_cw\\_south\\_asia.pdf](http://www.humanrightsinitiative.org/publications/police/feudal_forces_democratic_nations_police_accountability_in_cw_south_asia.pdf)

<sup>4</sup> *Ibid.* Page 44-45

independence of the judiciary is, therefore, more pronounced in the forthcoming elections on 18 February 2008.

Several complaints of preparations towards a rigged election have been received. A majority of these complaints remain unaddressed by the Election Commission - especially those from opposition parties. The Chief Election Commissioner ignored complaints by the Pakistan People's Party on over 20 million voters who went missing from the electoral rolls. It was only after a Supreme Court order [Date] that this error was rectified.

Pre-poll rigging has been extensive and includes posting and transfer of police and other officers at the behest of the ruling party; credible complaints have been received by civil society regarding deficient voters lists, ghost polling stations, and use of local government officers for supporting the pro-Musharaf candidates.

The conditions surrounding the use of an identity card for voting, has denied the right to vote to a large number of people (nomads, bonded labour, and women in rural areas) who do not have these cards. No steps have been taken to prevent denial of voting rights to women by male patriarchs and candidates.

The care-taker government<sup>5</sup> was installed by the President and consists of persons who are known for their affiliations with him and his political allies. The President, himself, has campaigned for the PML (Q)<sup>6</sup> (pro-President party) across the country at state expense. This Party continues to use state facilities in its campaigns, while officials continue to be transferred to suit the pro-government candidates.

Violence, particularly the assassination of Benazir Bhutto on 27 December 2007, and the killing of five workers of the PML<sup>7</sup> the same day, is a constant threat to opposition candidates, severely restricting their campaigns. International observers are also hindered by the volatile situation.

### **C. The implementation and efficiency of the normative and institutional framework for the promotion and protection of human rights**

A bill to establish a national human rights commission has been a perfect example of the government's resolve to implement human rights. The Bill was tabled over two years ago in the National Assembly. The government has still not pressed for its adoption.

As elaborated above, the current institutional and normative frameworks in Pakistan are geared towards abuse of human rights. The main reason for this has been the continuation of quasi-military rule, which has no respect for democracy and fundamental freedoms and the distortion of the constitution to ensure personal power.

### **D. Cooperation of the country under review with human rights mechanisms**

In its pre-election pledges to the UN Human Rights Council, Pakistan committed to actively participate in the Council and assist it in implementing its mandate. CHRI's analysis of Pakistan's

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<sup>5</sup> Intermediate government that oversees elections.

<sup>6</sup> Pakistan Muslim League (Q)

<sup>7</sup> Pakistan Muslim League (Nawaz Sharif's party)

performance at the Council has shown that Pakistan consistently played a negative role in the Council.<sup>8</sup>

In its pre-election pledge to the Council, it further promised to ratify ICCPR, ICESR and CAT.<sup>9</sup> In the pledge it also promised to establish an independent national human rights institution. To date, none of these pledges have been fulfilled. CHRI's analysis has shown that Pakistan failed to fulfill several such key pledges made to the Council.<sup>10</sup>

Pakistan's non-cooperative attitude towards UN Human Rights mechanisms is clearly evident in the fact that it chose to keep the UN Special Rapporteur on Religious Freedoms under house arrest for around two weeks.

**E. Key national priorities as identified by NGOs, initiatives and commitments that the State concerned should undertake, in the view of NGOs, to overcome these challenges and constraints and improve human rights situations on the ground.**

1. Free and Fair elections should be held and a democratically elected government should be allowed to function without hindrance. The power of the President to dismiss the government under the constitution must be revoked.
3. Constitutional supremacy must be restored; amendments made by the military ruler must be nullified.
2. Independence of the judiciary should be restored. As a first step, the deposed judges of the superior courts should be reinstated and the senior lawyers, including the President of the Supreme Court Bar Association, be released.
3. Civil society freedom has to be guaranteed, including freedom of the media.
4. Police services must be reformed to make it non-partisan and respectful of human rights; the armed forces should have a no role in civilian affairs. The National Security Council should be disbanded.
5. Pakistan should change its negative approach to human rights at the UN Human Rights Council, cooperate with UN human rights mechanisms in improving its domestic human rights situation.

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<sup>8</sup> Pages 49-50 'Easier Said than Done: A Report on the Commitments and Performances of the Commonwealth Members of the UN Human Rights Council', Commonwealth Human Rights Initiative, 2007 at [http://www.humanrightsinitiative.org/publications/hradvocacy/easier\\_said\\_than\\_done.pdf](http://www.humanrightsinitiative.org/publications/hradvocacy/easier_said_than_done.pdf)

<sup>9</sup> International Covenant on Civil and Political Rights (ICCPR), International Covenant on economic, Social and Cultural Rights (ICESR) and Convention Against Torture (CAT)

<sup>10</sup> See generally Pages 49-53 'Easier Said than Done: A Report on the Commitments and Performances of the Commonwealth Members of the UN Human Rights Council', Commonwealth Human Rights Initiative, 2007 at [http://www.humanrightsinitiative.org/publications/hradvocacy/easier\\_said\\_than\\_done.pdf](http://www.humanrightsinitiative.org/publications/hradvocacy/easier_said_than_done.pdf)