



INTERNATIONAL
COMMISSION
OF JURISTS

UNITED NATIONS HUMAN RIGHTS COUNCIL
14th Session of the Working Group on the Universal Periodic Review
22 October to 5 November 2012

**INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION TO THE
UNIVERSAL PERIODIC REVIEW OF
PAKISTAN**

Submitted April 2012

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

ICJ submission to the Universal Periodic Review of Pakistan

P.O. Box, 91, Rue des Bains, 33, 1211 Geneva 8, Switzerland
Tel: +41(0) 22 979 3800 - Fax: +41(0) 22 979 3801 - Website: <http://www.icj.org> - E-mail: info@icj.org

ICJ submission to the Universal Periodic Review of Pakistan

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's Universal Periodic Review (UPR) of Pakistan. In this submission, the ICJ brings to the attention of the Human Rights Council's Working Group on the UPR (Working Group) and to the Human Rights Council (Council) issues concerning: (1) independence of the judiciary; (2) business and human rights, concerning safety and security for miners; (3) protection of the rights of the child; and (4) international instruments and mechanisms.

INDEPENDENCE OF THE JUDICIARY

2. On 16 December 2009, the Supreme Court of Pakistan declared the National Reconciliation Ordinance 2007 (NRO) to be unconstitutional.¹ The Ordinance effectively quashed convictions and put an end to investigations and prosecutions against approximately 8,000 individuals, including President Asif Ali Zardari. The Court ordered the Pakistan Government to write a letter to the Swiss Government to restore Pakistan's status as a civil party in a pending case in Switzerland that implicated President Zardari and his late wife Benazir Bhutto in corruption and money laundering.

3. The Government has repeatedly flouted the Court's order and, as a result, the Supreme Court issued a contempt order on 16 January 2012 against Prime Minister Yousaf Raza Gillani for failure to implement the NRO judgment. The Prime Minister was formally indicted for contempt of court on 13 February 2012. As at the date of this stakeholder submission, the case is pending before the Supreme Court.

4. Article 190 of the Constitution of Pakistan 1973 obliges all executive and judicial authorities in Pakistan to aid the Supreme Court. Article 204 of the Constitution gives the Superior Courts the power to punish anyone who abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court. The disinclination of the Government to carry out the Court's order also contravenes international standards on the independence of the judiciary, including articles 1 and 4 of the UN Basic Principles on the Independence of the Judiciary.

BUSINESS AND HUMAN RIGHTS

5. Over 100 miners are killed in mining accidents every year in Pakistan.² In March 2011, an explosion in the Sor-Range collieries in the Balochistan province killed 43 miners. Investigation reports showed that there was inadequate supervision of mining activities, including the use of explosives, and that the mine and mining equipment were poorly maintained.³

6. The International Labour Organisation's 2006 *Code of practice on safety and health in underground coalmines* provides that no person should be employed to work at any coalmine unless that person has received the necessary instruction and training so as to be able to do the work competently and safely.⁴ The Code has not been incorporated into national legislation and it is not followed by authorities. In contrast, the current mining legislation in Pakistan does not provide a system for the accountability of mine regulators who are responsible for ensuring the safety and health of miners.⁵ The penalties provided under Pakistan's mining laws do not take account of the gravity of the consequences of violation. For example, violation of the provisions of the Mines Act 1923 that results in the loss of life is punishable by imprisonment for up to one year, or with fine of up to four thousand rupees (approximately \$45 USD), or both.⁶

7. Pakistan has the obligation to protect human rights also against abuse by private actors, including through effective regulation. As a State Party to the International Covenant on Civil and Political Rights (ICCPR), Pakistan is obliged to provide and ensure access to an effective legal remedy when human rights are violated (Article 2(3)). The Human Rights Committee, in its General Comment 31, has explained that this obligation extends to conduct by private actors that impairs the enjoyment of human rights, and includes the “exercise [of] due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons” and that States parties to adopt measures to avoid recurrence of breaches of the ICCPR.⁷

PROTECTION OF THE RIGHTS OF THE CHILD

8. In its 2008 Universal Periodic Review, it was recommended that Pakistan take measures to prevent child abuse and promote the rights of children by adopting the pending Child Protection Bill and formulating a child protection policy.⁸ The Government undertook to adopt a comprehensive National Child Protection Policy and, based on this, to develop a bill for consideration by Parliament.⁹

9. Between 2010 and 2012, the Society for the Protection for the Rights of the Child documented 18 cases of extreme violence inflicted on children by employers, resulting in the death of 13 children and serious injuries to five children. Shazia Masih, a 12 year-old girl working as a domestic servant, died as a result of malnourishment and multiple bodily wounds. The trial court dismissed the case due to lack of evidence, and the Government of Punjab did not appeal the decision. Shazia’s mother launched an appeal,¹⁰ but then withdrew her appeal after receiving threats and being intimidated by Shazia’s employer, an influential and wealthy lawyer. Shan Ali, an 11 year-old domestic worker, was strangled to death by his employer, which was then characterized as a suicide by the employers.¹¹

10. As at the date of this stakeholder submission, Pakistan had not adopted a National Child Protection Policy, nor had it developed a Child Protection Bill. Pakistan has not enacted legislation to prohibit the employment of children as domestic workers. Moreover, there has been no mechanism established to regulate or oversee children working as domestic workers, or protecting them from exploitation or other forms of abuse.

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND MECHANISMS

11. Despite Pakistan’s stated commitment to the cause of human rights and fundamental freedoms when presenting its candidature for membership in the Human Rights Council,¹² Pakistan is yet to become party to several core human rights treaties. Treaties in respect of which Pakistan is not yet a party are:

- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The First and Second Optional Protocols to the ICCPR;
- The Optional Protocol to the Convention on the Elimination of Discrimination Against Women (CEDAW);
- The Optional Protocol to the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT);
- The First and Third Optional Protocols to the Convention on the Rights of the Child (CRC);
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW);

- The Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD);
 - The International Convention for the Protection of All Persons from Enforced Disappearance (CED);
 - The Rome Statute of the International Criminal Court; and
 - The ILO Convention Concerning Decent Work for Domestic Workers.
12. Pakistan has failed to adhere to the following reporting deadlines to the treaty bodies:
- Submission of its initial periodic report to the Committee Against Torture, due on 23 July 2011;
 - Submission of its initial report to the Human Rights Committee, due on 23 July 2011;
 - Submission of its initial report to the Committee on Economic, Social and Cultural Rights, due on 30 June 2010; and
 - Submission of its combined 21st and 22nd periodic reports, due on 4 January 2012, and of additional information, due on 4 March 2010, to the Committee on the Elimination of Racial Discrimination.
13. Although Pakistan has “underscored the critical role played by the human rights special procedures system”, when standing for re-election to the Council in 2008,¹³ it has failed to extend a standing invitation to the Special Procedures, and has pending requests for visits by eleven Special Procedure mechanisms.¹⁴

RECOMMENDATIONS

14. The ICJ calls upon the Working Group and the Council to urge the Government of Pakistan to:

Concerning the independence of the judiciary:

- i). Respect the independence of the judiciary and implement the Supreme Court’s judgment in *Mubashir Hasan v Federation of Pakistan*;

Concerning business and human rights:

- ii). Enact laws to hold business enterprises, whether private or publicly owned, liable for human rights abuses and to provide for effective redress for victims;
- iii). Enact laws to ensure that miners are adequately trained, and that mine owners, operators and contractors are penalized for engaging under-qualified staff;
- iv). Enact laws to oversee the appointment and operation of mine regulators and hold them accountable if they are negligent in carrying out their duties;
- v). Implement existing laws for the protection of labour rights;

Concerning protection of the rights of the child:

- vi). Adopt a National Child Protection Policy to more effectively address the issues of child abuse, child trafficking, sexual exploitation and involuntary servitude;
- vii). Enact legislation to prohibit the employment of children as domestic workers
- viii). Promptly and effectively investigate, and where appropriate prosecute, employers alleged to be responsible for deaths and injuries caused to domestic labourers in their care;

Concerning international instruments and mechanisms:

- ix). Become a party to: the Optional Protocol to the ICESCR, the First and Second Optional Protocols to the ICCPR, the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, the Optional Protocol to the

CEDAW, the Optional Protocol to the CAT, the First and Third Optional Protocols to the CRC, the CMW, the Optional Protocol to the CRPD, the CED, the Rome Statute of the International Criminal Court, and the ILO Convention Concerning Decent Work for Domestic Workers;

- x). Provide without delay its initial periodic report to the Committee Against Torture, its initial periodic report to the Committee on Economic, Social and Cultural Rights, its initial periodic report to the Human Rights Committee, and its combined 21st and 22nd periodic reports, as well as the requested additional information, to the Committee on the Elimination of Racial Discrimination;
- xi). Present to the Council, as soon as possible after adoption of the outcome document for the UPR of Pakistan, a national plan of action for the implementation of accepted recommendations and voluntary pledges and commitments; and
- xii). Present to the Council, two years after adoption of the outcome document, a mid-term progress report on the status of implementation of recommendations and voluntary pledges and commitments.

ENDNOTES:

¹ *Mubashir Hasan v Federation of Pakistan* PLD (2010) SC 265.

² Sustainable Development Policy Institute, *Mine Workers: working and living conditions* 2001.

³ Gas Testing Report of the Rescue Team (2011) and Investigative Report of the Court of Inquiry (2011).

⁴ International Labour Organisation's 2006 *Code of practice on safety and health in underground coalmines*, para 23.1.1.

⁵ Inspectors of mines, mining boards and mining committees are referred to here as "regulators". Their powers are listed in s.6 and s.12 of Mines Act 1923 and include: examination and inquiry into the state of condition of the mine to ensure compliance with all health and safety regulations; requisition of the entire or part of the mine when it may pose a danger to the life of the miners, and subsequent prohibition of employment in that part; inquiry into the occurrence of any accident.

⁶ Section 40 of the Mines Act, 1923.

⁷ Human Rights Committee, General Comment No. 31, *Nature of the General Legal Obligation on State Parties to the Covenant*, UN Doc CCPR/C/21/Rev. 1/Add.13 (2004), paras 8 and 17.

⁸ UN Doc A/HRC/8/42 (2008), Recommendations 106.11 (Belgium) and 106.12 (the Philippines and Switzerland).

⁹ UN Doc A/HRC/8/42 (2008), paras 27-29.

¹⁰ *Nasreen Bibi v Mohammad Naeem* (2010) Criminal Appeal No. 2818.

¹¹ Munawar Nadeem, 'Couple held on charge of killing boy servant', Dawn Newspaper, 6 January 2012, available at URL <http://dawn.com/2012/01/06/couple-held-on-charge-of-killing-boy-servant> (last accessed on 12 April 2012).

¹² Voluntary pledges made by Pakistan in support of its candidacy to the Human Rights Council, 15 April 2008, p. 1 (available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/62/808&referer=http://www.ohchr.org/EN/countries/AsiaRegion/Pages/PKIndex.aspx&Lang=E).

¹³ Voluntary pledges made by Pakistan in support of its re-election to the Human Rights Council for the 2008-2011 term, 15 April 2008, p. 4 (available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/62/808&referer=http://www.ohchr.org/EN/countries/AsiaRegion/Pages/PKIndex.aspx&Lang=E).

¹⁴ Pending requests from the Special Rapporteur on extrajudicial, summary or arbitrary executions (2000, follow-up request 2005, reminders 2008 and 2009); the Special Rapporteur on racism (2004, follow-up request 2006); the Special Rapporteur on freedom of religion (2006); the Special Rapporteur on human rights and counter terrorism (2006, 2008, 2010); the Special Rapporteur on adequate housing (2006, reminder 2008); joint visit by the Special Rapporteur on independence of judges and lawyers and the Special Rapporteur on freedom of expression (2007); the Special Rapporteur on torture (2010); the Special Rapporteur on food (2011); the Special Rapporteur on IDPs (2011); and the Special Rapporteur on freedom of association and assembly (2011).