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Universal Periodic Review of Pakistan: ICJ urges the Government of Pakistan to address the consequences of the rule of law crisis as part of the gradual transition to democracy

The International Commission of Jurists (ICJ), following the review of the human rights record of Pakistan at the 2nd session of the UN Human Rights Council's Working Group on the Universal Periodic Review (UPR), urged the Government of Pakistan to promptly address the consequences of the rule of law crisis culminating in the 2007 state of emergency. Although the delegation of Pakistan engaged in dialogue about how to better ensure respect of human rights in a number of areas, it often denied the prevalence of major human rights concerns. Pakistan's steps towards democracy including legislative amendments to improve human rights were welcomed. But the Council's Working Group failed to offer guidance on how to progress issues relating to the rule of law and the independence of the judiciary.

"The Government is still expected to repeal the emergency decrees and constitutional amendments made under the 2007 state of emergency, reinstate all of the deposed justices and judges, restore the licenses of all lawyers, revoke the limitations on the media and stop the harassment of human rights defenders and lawyers", said Lukas Machon, ICJ Representative to the UN.

Only a few delegations stressed that Pakistan's new Parliament and Government would have to undo the legacy of the attacks on the rule of law and the independence of the judiciary made by the Government of President Pervez Musharraf, culminating in the state of emergency in November and December last year. While the Parliament has refused to recognize the constitutional amendments that the Musharraf government made by fiat, it has not yet decided on a method to clearly repeal those amendments, along with the laws made under them.

"Another source of concern is, that the governing coalition has as yet been unable to conclude a formula to reinstate all of the justices and judges deposed during the state of emergency, including Chief Justice Iftikhar Muhammad Chaudhry", said L. Machon.

Beyond the pressing need for immediate reforms to restore Pakistan's constitutional order, the Pakistani judicial system is in need of profound reforms to promote judicial independence, improve professionalism and transparency, respect human rights, and successfully promote justice and combat crime and terrorism. Pakistan's justice system is fragmented and weak. The increasing use of the police as agents of repression rather than law enforcement has reduced the ability of the justice system to address even ordinary criminal offences. The tribal areas have yet to be integrated into the nation-wide system of justice.

Anti-Terrorism Courts and military courts have increasingly been used in non-terrorism-related cases, applying vague laws such as a criminal prohibition on "making statements conducive to public mischief." The result has been the creation of parallel systems of justice

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that weaken the rule of law, create more room for the operations of terrorists, and have allowed for a significant increase in street crime. In frustration, security forces have resorted to engaging in enforced disappearances, while persons caught up in the justice system are frequently faced with the use of improper procedures, illegal methods of interrogation, and flawed evidence.

It is an imperative to restrict the use of special counter-terrorism legal procedures to real terrorism suspects only, and refrain from the use of counter-terrorism measures against peaceful political opposition or to suppress protests or dissenting opinions. State authorities, when dealing with real terrorism suspects, must also act strictly in conformity with the principles of the rule of law and the international human rights standards, in particular on the deprivation of liberty and fair trial.

Responding to calls to respect human rights, international humanitarian law and refugee law in counter-terrorism, the Pakistani delegation informed of the security forces receiving human rights training not to resort to torture, arbitrary detention or extra-judicial executions in counter-terrorism. "But the Government also has a duty to investigate and bring to justice perpetrators of these atrocities and provide a remedy and reparation to victims of these violations or to their families", added L. Machon.

In further dialogue, state delegations urged Pakistani authorities to prevent continuous discrimination against women and safeguard women's equal rights. Delegations also called on the Government to ensure effective enjoyment of freedoms of opinion and expression, religion or belief, association and assembly as guaranteed by the Constitution. Numerous appeals to protect religious minorities from discrimination were also made. The Government argued that the discrimination of women, religious minorities, and obstacles to the freedom of media and the independence of the judiciary have been already addressed by the legislative amendments, creation of advisory bodies or recent decisions to accede to the relevant human rights treaties.

Nonetheless, the Pakistani Government must recognize and address prevailing concerns at the lack of protection of women against domestic violence, and at criminalization of adultery, excessive application of the provisions of blasphemy and continuous harassment of human rights defenders. "Repealing the Hudood Ordinance that extends the discriminatory practices towards women, making domestic violence a criminal offence, seeking verified evidence of blasphemy and restoring all the human rights guaranteed by the Constitution are imperative", continued L. Machon.

The Pakistani authorities must also ratify the International Covenant on Civil and Political Rights and the Convention against Torture, Other Cruel, Inhuman or Degrading Treatment or Punishment and to accede to the International Convention for the Protection of All Persons from Enforced Disappearance.

Regrettably, the Council did not request its special procedures on the independence of judges and lawyers; arbitrary detention; human rights defenders; extrajudicial, summary or arbitrary executions; freedom of opinion and expression; human rights and terrorism and torture to assess the current human rights situation, including by visiting the country. "The Government must receive these special procedures, many of which have made a request to visit Pakistan long time ago, as it is a basic form of cooperation with the international human rights mechanisms, to which Pakistan as the Council's member is bound", concluded L. Machon.

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