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FIDH - International Federation for Human Rights

and its member organization in Pakistan

Human Rights Commission of Pakistan (HRCP)

**Update for the 8th European Union (EU) – Pakistan Joint Commission’s Subgroup
on Governance and Human Rights**

9 October 2017, Brussels

Key human rights issues of concern

Enforced disappearances skyrocket amid absolute impunity

In 2017, Pakistan has recorded extremely high levels of enforced disappearances by or with the acquiescence of state agents.

According to statistics gathered by the United Nations Working Group of Enforced or Involuntary Disappearances (WGEID), during the period May 2016 - May 2017, Pakistan recorded 220 new cases of enforced disappearances.¹ As of May 2017, there were 723 unresolved cases of enforced disappearances.² In addition, Pakistan has yet to respond to the WGEID’s request to conduct a follow-up visit to its 2012 mission and to implement many of the recommendations made by the WGEID.³

Investigation of enforced disappearances, and associated torture and killings, is either non-existent or ineffective. To date, there has not been any successful prosecution of any member of the Pakistani security forces for enforced disappearances. Families of victims have been denied compensation and have been routinely threatened and intimidated when they attempt to seek justice. In August 2017, 58 year-old Punhal Sario, the head of the organization Voice for Missing Persons of Sindh, disappeared. His abduction was followed by the disappearance of at least three other persons. While the three persons involved in the subsequent abductions have resurfaced, the fate and whereabouts of Punhal Sario remains unknown. The impunity for enforced disappearances and resulting lack of redress is further contrary to the International Covenant on Civil and Political Rights (ICCPR).

Pakistan’s government-appointed Commission of Inquiry on Enforced Disappearances continues to be afforded insufficient power and resources to

¹ United Nations Human Rights Council, 36th session, *Report of the Working Group on Enforced or Involuntary Disappearances*, 31 July 2017, UN Doc. A/HRC/36/39, p 14.

² United Nations Human Rights Council, 36th session, *Report of the Working Group on Enforced or Involuntary Disappearances*, 31 July 2017, UN Doc. A/HRC/36/39, p 14.

³ United Nations Human Rights Council, 36th session, UN Doc. *Report of the Working Group on Enforced or Involuntary Disappearances*, 31 July 2017, A/HRC/36/39, p. 22.

effectively carry out its mandate. Many cases brought before the body remain unresolved and government authorities continue to fail to comply with its orders.

In a bizarre situation in January 2017, military courts [See below, *Fair trial rights denied by military and anti-terrorism courts*] convicted at least five persons classified as missing and whose cases were being investigated by the Commission of Inquiry of Enforced Disappearances. The five were found guilty of various violent attacks resulting in death and, in one case, the storming of a prison. The courts imposed the death penalty for four of the five 'defendants'.

Background

Previously confined to nationalist movements in Balochistan and Sindh provinces, the perpetration of enforced disappearances in Pakistan at the hands of the security forces became a widespread phenomenon after the US launched its 'war on terror' in 2001, and rose sharply from 2009. According to WGEID statistics, there were a total of 694 cases of enforced disappearances from November 2012 to May 2017 in Pakistan - the highest number of reported enforced disappearances worldwide during that period.⁴ It is extremely likely that the actual number of enforced disappearances is significantly higher, as many cases remain unreported due to fear of intimidation and reprisals.

Pakistan has neither signed nor ratified the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), and enforced disappearances are not criminalized under domestic law. Existing legislation, such as the 2011 Actions (in Aid of Civil Powers) Regulations, increases the risk of enforced disappearance. This law allows the army to detain suspects indefinitely, without a warrant or judicial supervision, in secret military internment centers.

Recommendations

- Implement the recommendations made in the WGEID's report following its 2012 mission; allow a follow-up visit in line with the WGEID's request.
- Ratify the ICPPED and effectively criminalize enforced disappearances.
- Restrict the use of force by security forces, including by revising the Actions (in aid of Civil Powers) Regulations 2011, in line with international standards.
- Conduct effective investigations into enforced disappearances and associated crimes, hold the perpetrators accountable, and provide commensurate reparations to victims and their families.
- Grant the Commission of Inquiry on Enforced Disappearances the necessary capacity and support to effectively carry out its mandate.

Pakistan still among world's top executioners

Pakistan has continued to apply the death penalty in contravention of its international obligations, in particular under the International Covenant on Civil and Political Rights

⁴ United Nations Human Rights Council, 27th session, *Report of the Working Group on Enforced or Involuntary Disappearances*, 4 August 2014, UN Doc. A/HRC/27/49, p. 12; United Nations Human Rights Council, 30th session, *Report of the Working Group on Enforced or Involuntary Disappearances*, 10 August 2015, p.12; UN Doc A/HRC/30/38, United Nations Human Rights Council, 33rd session, *Report of the Working Group on Enforced or Involuntary Disappearances*, 28 July 2016, UN Doc. A/HRC/33/51, p. 17; United Nations Human Rights Council, 36th session, *Report of the Working Group on Enforced or Involuntary Disappearances*, 31 July 2017, UN Doc. A/HRC/36/39, p 14.

(ICCPR) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

At least 55 executions were carried out between 1 January 2017 and 15 August 2017. In many instances, death sentences have been imposed for crimes that do not meet the threshold of the “most serious crimes.” Some of those crimes carry a mandatory death sentence. In addition, the death penalty has been imposed on individuals who were minors at the time of the crime and on the mentally disabled. The imposition of the death penalty on children is in contravention of Pakistan’s obligations under the Convention on the Rights of the Child. Furthermore, presidential clemency continues to be denied to those on death row.

Of particular concern is the ongoing use of Article 295(c) of the Criminal Code (‘blasphemy’) [See below *Freedom of expression and association under siege*], under which the death penalty is mandatory for the crime of “insulting the prophet of Islam.” On 10 June 2017, Taimoor Raza, a 30-year-old man, was sentenced to death for allegedly committing blasphemy over a Facebook post. On 14 September 2017, a 35-year-old Christian man was sentenced to death for allegedly sharing blasphemous material on WhatsApp. A 51-year-old Pakistani Christian woman, Asia Bibi, remains incarcerated during the suspension of her death sentence for committing blasphemy in 2009. According to the US Commission on International Religious Freedom, at least 40 people are on death row or are serving life sentences for blasphemy, while hundreds more await trial.⁵ Judges who hear blasphemy cases are reportedly harassed, intimidated, and threatened as a form of pressure to deliver guilty verdicts, as are lawyers to discourage them from representing those accused of blasphemy.⁶

There has also been increasing concern about the lack of safeguards to prevent abuse of the blasphemy law for personal benefit. On 11 August 2017, the Islamabad High Court requested the Parliament to amend Article 295(c) to prevent misuse. However, rather than suggesting that the death penalty for blasphemy be repealed, the Court recommended that the same punishment be applied to those who make false allegations of blasphemy.

Background

Pakistan ended a six-year moratorium on the death penalty in 2014, initially in response to a terrorist attack on a school in Peshawar. Thereafter, the death penalty was extended to a sweeping number of crimes, including all capital offences and blasphemy.

Pakistan has quickly become one of the world’s top executing countries. In 2016, Pakistan carried out at least 87 executions and sentenced at least 360 people to death, bringing it within the top five executing countries globally. At least 6,000 people remained on death row at the end of 2016.

Many executions in Pakistan are the result of unfair proceedings marred by inconclusive evidence and allegations of torture to extort confessions. This is

⁵ US Commission on International Religious Freedom, Annual Report 2017, p 60.

⁶ See UN General Assembly, “Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul” (4 April 2013), A/HRC/23/43/Add.2, p. 13; International Commission of Jurists, “On Trial: The Implementation of Pakistan’s Blasphemy Laws” (November 2015), pp 33 – 34, 38 – 39; UN Human Rights Committee, “Concluding observations on the initial report of Pakistan” (23 August 2017), CCPR/C/PAK/CO/1, para 33.

particularly the case for the military and anti-terrorism courts [See below, *Fair trial rights denied by military and anti-terrorism courts*].

Recommendations

- Reinstatement of the moratorium on the death penalty and ratification of the Second Optional Protocol to the ICCPR.
- Abolition of the death sentence for the crime of blasphemy as an initial step for the abolition of capital punishment for all crimes.
- Ensure that all mandatory death sentences are removed and that under no circumstances is the death penalty imposed on minors or the mentally disabled.

Fair trial rights denied by military and anti-terrorism courts

Pakistan's use of military and anti-terrorism courts continues to contravene international human rights standards, in particular the right to a fair trial under the ICCPR. On 22 March 2017, the jurisdiction of the military courts for trials of civilians accused of certain terrorism-related offences was extended for two more years until 6 January 2019.

The trials of civilians before Pakistan's military courts are held in secret. Defendants are not given an effective right to engage legal counsel or to appeal their cases before civilian courts.⁷ The charges and evidence against them are not made public and written judgments, including the court's findings and legal reasoning, are not disclosed.⁸ Furthermore, the Army Act allows for children to be tried by military courts, notwithstanding the 2000 Juvenile Justice System Ordinance, which gives juvenile courts exclusive jurisdiction over minors and prohibits courts from imposing death sentences on juvenile offenders. Suspects tried by military courts are often detained in secret and without access to their families or a lawyer, which increases the risk of torture.⁹ It is estimated that 95% of civilian convictions by military courts are based on confessions.¹⁰

Anti-terrorism courts, which exclusively have jurisdiction over civilians, also hold certain trials in secret thus raising the same concerns as noted for military courts with regard to procedural safeguards. Concerns have been raised about the admissibility of confessions made in police custody as evidence before anti-terrorism courts, under Article 21(h) of the Anti-Terrorism Act. In addition, under Article 3 of the 2002 Anti-Terrorism (Second Amendment) Ordinance, authorities continue to be granted

⁷ International Commission of Jurists (ICJ) and Human Rights Commission of Pakistan (HRCP), *Joint Submission to the Committee on Torture on the first periodic report of Pakistan*, March 2017, paras 25 and 32; ICJ, *Military Injustice in Pakistan: Questions and Answers*, December 2016, question 4. See also, ICJ, *Military Injustice in Pakistan: A Briefing Paper*, June 2016.

⁸ International Commission of Jurists (ICJ) and Human Rights Commission of Pakistan (HRCP), *Joint Submission to the Committee on Torture on the first periodic report of Pakistan*, March 2017, para 32; ICJ, *Military Injustice in Pakistan: Questions and Answers*, December 2016, question 4. See also ICJ, *Military Injustice in Pakistan: A Briefing Paper*, June 2016.

⁹ International Commission of Jurists (ICJ) and Human Rights Commission of Pakistan (HRCP), *Joint Submission to the Committee on Torture on the first periodic report of Pakistan*, March 2017, para 25.

¹⁰ International Commission of Jurists (ICJ) and Human Rights Commission of Pakistan (HRC), *Joint Submission to the Committee on Torture on the first periodic report of Pakistan*, March 2017, para 24.

discretion to detain those listed on the government's "terrorism list" for up to one year without filing specific criminal charges.

Background

The jurisdiction of military courts was extended in January 2015 to try civilians suspected of terrorism-related offenses, ostensibly due to the backlog of cases in the anti-terrorism courts. As of July 2017, the military courts had sentenced at least 161 civilians to death and at least 21 of them have been executed.¹¹ In 2016, at least 133 people were sentenced to death by the military courts and at least four of them were executed. Children have been tried by military courts since the extension of the courts' jurisdiction to terrorism-related offenses.¹²

The anti-terrorism courts, established under the 1997 Anti-Terrorism Act, are civilian courts that have jurisdiction over certain offenses under the Criminal Code in connection with alleged acts of terrorism. Under the Anti-Terrorism Act the definition of "terrorism" is overly broad and includes committing acts such as "civil commotion". The Act has been expanded through successive amendments to cover offenses involving arms trafficking, kidnapping, extortion, sectarian violence, and targeted political killings. In 2016, the anti-terrorism courts imposed 31 death sentences.

Recommendations

- Remove the jurisdiction of military courts for trials of civilians.
- Ensure that defendants before the military courts are: granted access to legal counsel; entitled to appeal their cases before civilian courts; and that the charges and evidence against them, along with the resulting judgments, are made public.
- Ensure that trials before the military and anti-terrorism courts are not held in secret.
- Ensure that suspects are not held in secret detention and are granted access to their families and to a lawyer.
- Ensure that coerced confessions are not admitted as evidence before either the military or the anti-terrorism courts.
- Ensure that the military and anti-terrorism courts do not, under any circumstances, try persons who were minors at the time an alleged crime occurred.
- Remove the ability of authorities to detain those listed on the "terrorism list" for up to one year without filing specific charges.
- Remove the military and anti-terrorism courts' authority to impose the death penalty on civilians, in particular with regard to minors.

Freedom of expression and association under siege

Pakistan has continued to curtail freedom of expression, the right to privacy and freedom of association, contrary to its obligations under the ICCPR, the ILO Convention concerning Freedom of Association and Protection of the Right to

¹¹ International Commission of Jurists (ICJ) and Human Rights Commission of Pakistan (HRCP), "Joint Submission to the Committee on Torture on the first periodic report of Pakistan" (March 2017), para 31. Human Rights Committee, 120th session (3 – 8 July 2017), Concluding Observations on the initial report of Pakistan, para 23. See also: <https://www.dawn.com/news/1307086>

¹² ICJ, "Military Injustice in Pakistan: A Briefing Paper" (June 2016), pp.17 - 18.

Organize, No. 87, and the ILO Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, No. 98.

Journalists, bloggers, human rights defenders, and political dissidents have been subjected to ongoing harassment and intimidation, arbitrary detention, torture, killing and enforced disappearance as a result of their criticism of the government. In January 2017, five bloggers were subjected to enforced disappearance in a brazen act to stifle online dissent. Three weeks later, they resurfaced.

Online freedom of expression and the right to privacy have been further constrained under the 2016 Prevention of Electronic Crimes Act. This act grants the Pakistan Telecommunication Authority, the state body responsible for regulating telecommunications, the ability to monitor and censor online content, requires service providers to retain mass data which can be accessed by the government with no privacy protection, and allows websites to be shut down on the basis of vague criteria. In addition, the Electronic Media Regulatory Authority, the state body which regulates broadcast media, is subject to insufficient oversight mechanisms or procedural safeguards.

Article 295(c) of the Criminal Code ('blasphemy') is another tool in the government's legal arsenal to curb dissent. The vague provisions of Article 295(c) have been used to target those critical of Islam and members of religious minorities. In March 2017, Prime Minister Nawaz Sharif ordered a ban on all online material deemed to be blasphemous, and requested that social media companies disclose information about those who disseminate such material in order to assist authorities in the identification of blasphemy suspects. On 12 September 2017, four bloggers were indicted on allegations of blasphemy. A number of others have been sentenced to death in 2017 on charges of committing blasphemy on social media [see above *Pakistan still among world's top executioners*].

Freedom of association has equally come under fire in Pakistan. The shrinking space for civil society has been illustrated by the arbitrary closure of human rights non-governmental organizations (NGOs) and ongoing acts of intimidation and harassment against them. These acts included routine visits by security and intelligence agents. In January 2017, authorities shut down four offices of the NGO South Asia Partnership Pakistan (SAPPK) in Punjab. In its order for the offices to be shut down, the authorities accused the organization of writing a report for UN human rights bodies which presented a "very bleak picture" of the human rights situation in Pakistan. Another NGO, Women in Struggle for Empowerment (WISE), received a similar order that barred its staff from working in three districts of Punjab. In addition, NGOs have been subjected to heavy taxation to prevent them from operating.

Background

Freedom of expression has long been stifled in Pakistan, particular with regard to criticism of Islam, the government, and its policies. While the Prevention of Electronic Crimes Act was enacted in 2016, the crime of blasphemy has been incorporated in Pakistan's Criminal Code since 1986 and is punishable by a mandatory death penalty since 1990 [See above *Pakistan still among world's top executioners*].

The 'Policy for Regulation of INGOs in Pakistan' was announced on 1 October 2015. The policy requires international NGOs (INGOs) to register and obtain permission from the Ministry of Interior to carry out activities in Pakistan. It also requires INGOs to be registered for activities in a specific area of work and in specific location. The policy has been used to harass INGOs and to prevent them from functioning.

Recommendations

- Respect the right to freedom of expression and the right to privacy, in particular with regard to online material.
- Take urgent action to protect the lives and rights of journalists, bloggers, human rights defenders, and political dissidents.
- Amend the 2016 Prevention of Electronic Crimes Act to bring it in line with international standards.
- Amend Article 295(c) of the Criminal Code ('blasphemy') to ensure that its provisions are in accordance with international law.
- Put an end to the intimidation, harassment, and arbitrary closure of NGOs and ensure that they can enjoy their right to freedom of association.

Widespread failure to uphold women's rights

Pakistan continues to fail to adequately respect, protect, and fulfil women's rights, in contravention of its obligations under numerous international human rights conventions to which it is a state party.¹³

Violence against women continues and effective access to justice for victims of rape and honor killings remains an unfulfilled objective. On 30 May 2017, the alleged rape of a teenager by a family member led to the victim being sentenced to death by a village council. In July 2017, the revenge rape of a 17-year-old girl was ordered by a village council as a punishment for her brother's alleged rape of a 12-year-old girl. In August 2017, a young couple was separately electrocuted to death in an honor killing by their parents on the orders of a village council in Karachi.

Safeguards in place to protect women from domestic violence also remain inadequate. Prosecution rates for domestic violence remain very low. This is largely due to low reporting rates as a result of the harassment and intimidation of women to discourage them from making complaints.

In addition, the criminalization of abortion continues to lead to high levels of maternal mortality. Voluntary termination of pregnancy is permitted where necessary to save the life of the woman or to provide necessary treatment, but insufficient education surrounding this, both within the general population and the medical profession itself, continues to result in a large number of women seeking unsafe abortion practices.

Finally, 12 million women do not have national identity cards and cannot register to vote in elections.

Background

Pakistan has long taken inadequate and insufficient action to properly protect women's rights. Rape, honor killings and domestic violence, along with acid attacks, have long gone unpunished. The Anti-Rape Law and Anti-Honor Killing Law were adopted in October 2016 following a series of high-profile incidents.

¹³ The International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the ILO Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value, No. 100, and the ILO Convention concerning Discrimination in Respect of Employment and Occupation, No. 111.

Women have long been discouraged from voting in elections. In May 2015, women were warned through mosque loudspeakers against voting in a by-election in Lower Dir District, Khyber Pakhtunkhwa Province and were also prevented from approaching polling booths by armed guards.

Recommendations

- Ensure effective implementation of the 2016 Anti-Rape Law and 2016 Anti-Honor Killing Law and ensure effective access to justice for victims.
- Encourage the reporting of domestic violence, and ensure that effective investigations, prosecutions, and convictions of such crimes occur, and that victims are provided adequate and effective reparations and assistance.
- Revise legislation which unduly restricts access to the voluntary termination of pregnancy; provide appropriate education with regard to sexual and reproductive health; and provide adequate access to contraception.
- Allow all women access to national identity cards.

Child rights remain unaddressed

Abuses of child rights in Pakistan continue in violation of Pakistan's obligations under numerous international instruments.¹⁴

The practice of child marriage and forced marriage remains entrenched in Pakistan. Outside of Sindh and Punjab provinces, the minimum age for marriage is 16 years for girls and 18 years for boys. Child marriage causes significant psychological stress for affected children, often resulting in suicide.

Child sexual abuse remains prevalent and goes largely unpunished despite efforts by the legislature to incorporate more stringent provisions in the Criminal Code.

Children continue to be subjected to forced labor in Pakistan, in conditions that are akin to slavery. This is particularly the case in the brick kiln industry and in domestic labor. Labor laws do not cover domestic workers, including child domestic workers. Due to insufficient labor investigations, perpetrators are rarely brought to justice and victims are denied adequate reparations and assistance.

Such abuses of child rights in Pakistan are facilitated by the very low level of birth registration in the country, which deprives them of legal recognition and the associated rights. In February 2017, the National Assembly passed the National Commission on the Rights of the Child Bill, which aims to establish an independent body to protect and promote the rights of children in Pakistan. The bill is currently being considered by the Senate.

Background

Child rights in Pakistan have long been sidelined. In addition to child marriage and the forced labor of children, a number of juvenile executions have been carried out in the past few years [See above, *Pakistan still among world's top executioners*].

¹⁴ The International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the ILO Convention concerning Forced or Compulsory Labour, No. 29, the ILO Convention concerning the Abolition of Forced Labour, No. 105, the ILO Convention concerning Minimum Age for Admission to Employment, No. 138 and the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No. 182.

Children have also been subjected to torture in police custody. Children continue to be disproportionately affected by sectarian violence, especially through their use as suicide bombers by extremist groups.

In January 2016, a proposal was submitted to Parliament to raise the minimum age for marriage to 18 for both males and females across the country. On 14 January 2016, the proposal was withdrawn following pressure from the Council of Islamic Ideology, which labelled the proposal as “anti-Islamic and blasphemous.”

Recommendations

- Ensure that the minimum age for marriage is set at 18 for girls.
- Ensure that instances of child sexual abuse are properly investigated, that perpetrators are prosecuted and convicted, and that victims are afforded adequate and effective reparations and assistance.
- Ensure enforcement of labor laws and place strict regulations on safe working conditions.
- Put an end to child labor by carrying out efficient labor investigations and prosecuting and convicting those responsible for abuses.
- Ensure that all births are registered, and that children whose births were not registered are subsequently registered and granted identity documents.