

# Public Hearing

On

**“Impact of Anti-terror Laws & Policies Adopted in Pakistan, Especially After the Destruction of 9/11 Attacks”**

By

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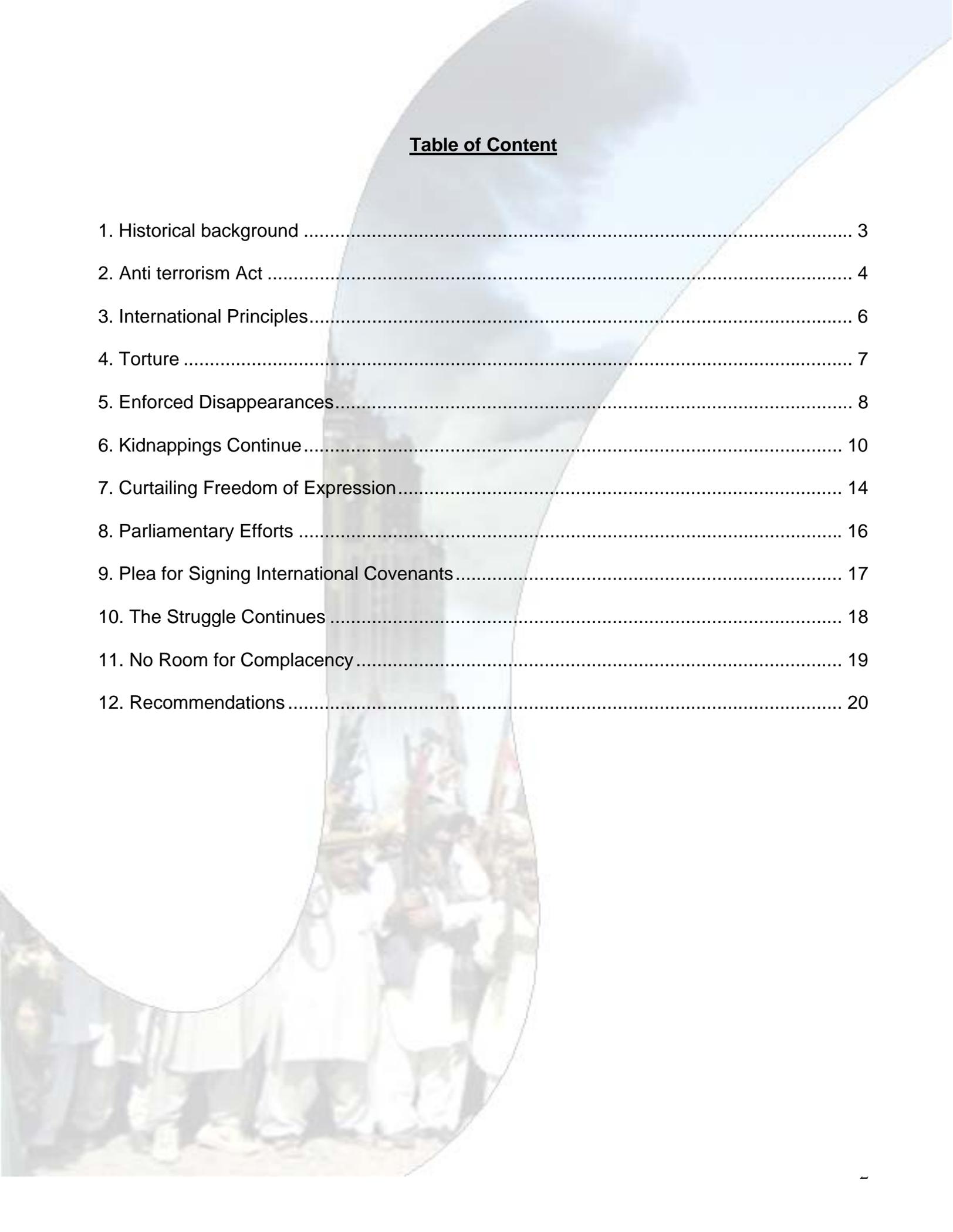
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**Human Rights Commission of Pakistan**

**(HRCP)**

**Benazir Democracy Institute - SBF**

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## 1. Historical background

The anti-terror laws, the anti terror courts and torture in Pakistan pre-date the 9/11 attack. However, it has assumed a new dimension after 9/11.

The superior courts in Pakistan have often resisted moves by the executive to circumvent the process of justice but the executive have also found new ways to overcome judiciary's resistance. In 1977 in the Darvesh Arbey case the full bench of the Lahore High Court of five judges had held that military courts could not be constituted under the Constitution to try ordinary civilians. Years later on another occasion when an ordinance was issued that allowed duly trained magistrates powers to sentence an accused with imprisonment not exceeding three years the Supreme Court observed,

“Ordinances were issued in which the Executive magistrates have been given powers to try cases in which sentences do not exceed three years. It has been made clear time and again in several judgments of this Court that after the separation of judiciary from the executive the executive authority or the Executive magistrates cannot try, adjudicate or pass any sentence against any person. Such act would be Quorum non judice. The executive authorities can pass such sentences or order only if they are properly authorized under law by the High court concerned.”

An Ordinance called Armed forces (Aid to Civil Power) Ordinance was promulgated in 1998 allowing the setting up of military courts to try offenders accused of terrorism. A military court set up under this ordinance sentenced one Ashraf Chakar to death in Karachi. The accused was summarily executed even while a constitutional petition challenging the setting up of military courts and trying civilians by them was pending in the court.

The Supreme Court later declared null and void the setting up of military courts and the trial of ordinary citizens in these courts. But the anti-terror law and the special anti terror courts to try some special offences exist in the statute.

## **2. Anti terrorism Act**

Pakistan adopted the Anti-Terrorism Act, 1997 to 'provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences and for matters connected therewith and incidental thereto.' In 1999 the Act was amended which made it more draconian.

### **Terrorism loosely defined**

In the amended 1999 Anti-Terrorism Ordinance an act of terrorism is defined thus : '6. Terrorist Act – In this Act, 'terrorism' means the use or threat of action if it;

2-g) Involves stoning, brick batting or any other form of mischief to spread panic;

2-m) Involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain him from discharging his lawful duties;

Under sub section 7 (b) 'terrorist' means 'a person who is or has been, whether before or after the coming into force of this Act, concerned in the commission, preparation or instigation of acts of terrorism, shall also be included in the meaning given in clause (a)' (that defines a 'terrorist')

Indeed a large number of criminal acts covered under the Pakistan Penal Code have been termed as terrorist offences.

The right to shoot to kill – Under Section 5(2)(1): '...an officer of the police, armed forces and civil armed forces may: (i) after giving prior warning use such force as may be deemed necessary or appropriate, bearing in mind all the facts and circumstances of the situation, against any person who is committing, a terrorist act or a scheduled offence, and in the event of being fired upon it shall be lawful for any such officer, or any senior officer, to fire, or order the firing upon any person or persons against whom he is authorized to use force in terms hereof...'

The right to be tried in a public place without prejudice to the defendant: Section 15 (2) of the 1997 Anti-Terrorism Act states, 'The government may direct that for the trial of a particular case, the court shall sit at such place including the place of occurrence as it may specify.'

This exposes the defendant to public expressions of outrage, humiliation, anger or even violence for his deeds. It seems intended to deter others through public exposure and does not appear to serve the purpose of establishing truth or do justice in a detached manner.

While the place of trial should not be such as to expose the defendant to public humiliation, at the same time the place of trial cannot be in a place inaccessible to the public, such as a jail.

Section 22 of the 1997 Anti Terrorism Act, 'The government may specify the manner, mode and place of execution of any sentence passed under this act, having regard to the deterrent effect which such execution is likely to have'.

It opens the possibility for public executions of the death penalty.

Indemnity for acts done in 'good faith': Section 39 of the act says: 'No suit, prosecution or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done under this act.'

This is tantamount to providing impunity to the security forces for abuses, including extra judicial killings.

### 3. International Principles

Article 10 of the Universal Declaration of Human Rights, states that everyone is entitled to a fair and public hearing. Holding the trials in camera may deny the guarantee for a fair trial.

Principle 19 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions says: 'In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.'

Principles 9 and 18 respectively require that all such violations be investigated and the perpetrators brought to justice.

Again, Principle 23 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Personnel says: 'Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process.'

Impunity prevents law officials from restraining themselves from committing abuses and encourages a self-perpetuating cycle of violence.

#### 4. Torture

Article 14(2) of the Constitution of Pakistan prohibits the use of torture, though only in the limited context of extraction of confessions: 'No person shall be subjected to torture for the purpose of extracting evidence'.

International standards including the Universal Declaration of Human Rights and the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Declaration against Torture) unconditionally prohibit torture and other forms of cruel, inhuman or degrading treatment or punishment.

Article 12 of the Declaration against Torture states that, 'Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.'

The UN convention on Torture adopted in 1984 defines torture as an act by which severe pain or suffering, physical or mental is intentionally inflicted on a person for purposes such as confession, information, punishing for any act.

In certain emergency situations certain rights may be limited or even suspended but freedom from torture is a right that can never be suspended. It can never be restricted. Places of detention have to be constructed and administered in a manner in which the possibility of torture is diminished and eliminated.

In this connection the UN General Assembly adopted an Optional Protocol to the Convention in December 2002, which allows UN human rights machinery to inspect places of detention. The optional protocol however is not binding on member states that are party to the convention itself.

Pakistan's criminal law does not mention the word torture anywhere. There is no offense known as torture in the Pakistan Penal Code. We do not recognize torture by state agencies

as an offense. Nowhere in the Police Order it has been stated as to what kind of act by a police official holding some body in custody would amount to torture. In case of any definition of torture it is not possible for human rights bodies to monitor incidents of torture.

Constitutional provisions notwithstanding, Pakistani law enforcement officials, to extract confessions from the accused, routinely use torture. Lending greater legal weight to confessions and putting pressure on police to speedily resolve crime may indirectly contribute to the continued and perhaps increased use of torture.

## **5. Enforced Disappearances**

These anti-terrorism laws have resulted in grave violations of human rights including the right to life, the prohibition of torture, the right to liberty and security and the right to fair trial. They also provide for the creation of anti terrorist courts and give wide powers of arrest and interrogation to the police and army.

The existing legal and judicial system is already equipped to deal with offences referred to in the act. The problem then seems to be a lack of implementation, not a lack of laws.

After 9/11 the situation has become even worse. The state has not framed any new law to deal with the new kind of terrorism after 9/11 but it has chosen to act in a manner that is not covered under any law.

Hundreds of citizens have been made to disappear allegedly by state's intelligence agencies without trace. The detainees have been kept incommunicado in secret detention centers without access to lawyers, family members and without even producing them before a court of law.

## **Constitutional/Legal safeguards**

Article 4(1) of the Constitution of Pakistan provides guarantees against arbitrary arrests and detentions by declaring it to be 'the inalienable right' of every one to be treated in accordance with the law, not merely of every citizen but also of 'every other person for the time being in

Pakistan'. "To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being in Pakistan."

Article 10 of the Constitution provides: "(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice. (2) 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 ... and no person shall be detained in custody beyond the said period without the authority of a magistrate."

The Code of Criminal Procedure, 1898, spells out these safeguards in greater detail. Under its provisions, a magistrate decides if a detainee is to be remanded to police custody, which may extend up to 15 days. Once police conclude their investigation and submit a police report, a detainee may be remanded to judicial custody or be released. The detainee has the right to access a lawyer of his or her choice, to meet with family and be seen by a doctor.

The Constitution also provides for preventive detention for anyone posing a threat to the public order, which under the Maintenance of Public Order Ordinance, 1960 (MPO) extends to three months but can be extended further up to one year. Those suspected of terrorism offences can be held for up to one year without trial under the Anti-Terrorism Act, 1997 (ATA), if their name is listed as belonging to a banned group and provided the government is satisfied that "it is necessary so to do".

The higher judiciary has in several decisions ruled that preventive detention orders, whether under the MPO or the ATA, have to fulfil several criteria. The detaining authority must substantiate its order and all the grounds cited with significant material evidence of the detainee's prejudicial activities and it must place all the evidence before a court to allow it to assess the lawfulness of the order

## 6. Kidnappings Continue

Yet people have been kidnapped from their homes, whisked away to secret detention camps and held incommunicado for months and years without being charged with any offence and without producing them before courts.

Examples of miscarriage of justice also abound. In November 2004, two Tajikistani boys, Khalid Maroof and Saeed Akbar were produced before the media in Peshawar as ‘foreign terrorists’. The top military commander in Peshawar then said, "They may look like children who cannot even wipe their own noses but they are the best people to be used for terrorist activities. If dogs could be used for tank busting during the Russian war, children could also be used for terrorist activities". Eighteen months later however the boys could be charged only under the Foreigners Act. They were first handed over to FIA custody and later transferred to a private NGO that provided bail surety for them.

No one knows the exact number of people kidnapped by the agencies during the past five years. The Amnesty International in its latest report has acknowledged the impossibility of knowing the exact number of disappeared. Official statements are incomplete and civil society bodies have not comprehensively reported figures for those arrested and detained arbitrarily.

Interior Minister Aftab Ahmed Khan Sherpao has said that over 600 foreign nationals had been arrested since September 2001. He has admitted that a large number of them have been extradited, 97 have been released, some are under interrogation and number of them killed but has not specified how many Pakistanis had been held.

In his memoirs General Musharraf has revealed how Pakistan earned bounties worth millions of dollars in the war on terror. Pointing out that Pakistan had captured 689 Al-Qaeda members and handed over 369 of them to the US he said, "We have earned bounties totalling millions of dollars. Those who habitually accuse us of ‘not doing enough’ on the war

on terror should simply ask the CIA how much prize money it has paid to the government of Pakistan”

At the seminar held last month (February 2007) in Washington under the auspices of World Sindhi Institute some speakers referred to published reports by Cage Prisoners, Amnesty International and Herald magazine, according to which, around 8,000 persons are missing. In such cases it is not possible to track numbers and figures, not only because the culprits of this crime refuse to acknowledge it, but also because sometimes the families of victims hesitate to report them with fear of further persecution.

The revelation that individuals and agencies personnel have been rewarded millions of dollars for arrests and detention of terror suspects has raised concerns whether the un-audited rewards may actually lie behind arbitrary arrests and enforced disappearances.

Within two days of the book launch however General Musharaf retracted. “I should not have written that and I’m going to amend it in the future copy certainly”, he told newsmen in New York. In the Urdu edition launched in Islamabad the other day therefore the reference to earning prizes had been dropped.

Words that once escape the lips cannot be recalled easily. Revising a subsequent edition does not alter the reality. That the US doled out bounties during the war on terror is not a secret. Leaflets announcing rewards - ranging from 5,000 dollars to 25 million dollars-dropped from American planes in November 2001 were recovered by locals and reporters in the tribal areas of Pakistan. The Pentagon has claimed that the rewards program has ‘helped protecting Americans’ and citizens around the world from terrorists.

State agencies seem to have helped themselves from the bounty program. The report of the Amnesty International on disappearances in Pakistan has documented several cases of captives being sold, citing court proceedings.

In one such case the Tribunal asked a suspect named Algazzar why he thought the Pakistani intelligence agencies would sell him out to the US. "Come on, man, you know what happened. In Pakistan you can buy people for \$10. So what about \$5,000", the victim Algazzar told the Tribunal. When asked 'so they sold you' he replied, 'yes'.

In another case a Bahraini national, Adel Kamil Abdallah, was handed over in December 2001 to US military in Kohat in Frontier province. He has claimed that the US guards told him, "We got you cheap, for only \$5,000". He was taken first to Kandahar and then to Guantánamo Bay. After four years in detention he was released in November 2005 and returned to Bahrain.

There have even been allegations that prisoners in Pakistani jails were groomed to appear as potential terrorists before they were sold to Americans. The Foreign Office has rubbished such charges but allegations persist.

Former Kabul Ambassador Abdul Salam Zaeef's recent book in Pushto about his arrest in December 2001 and handing over to the US is a sad commentary on the intelligence agencies. Another Pushto book by another Afghan writer and a Guantanamo Bay returnee Abdul Rahim Dost making disclosures of ghost detainees for bounties was marketed recently. Within a week of the launching however Dost was again picked up on September 29, 2006 as he was coming out of a mosque in Peshawar. His brother has alleged that Dost was picked up again because of the disclosures made in the book. A habeas corpus petition is now before the Peshawar High Court.

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The HRCP report 2006 that was released to the media last month (Feb 2007) has termed the disappearances as the most serious threat to the civil liberties in Pakistan. The report mentions over 400 disappearances from various parts of the country. It has been noted that

in several instances the courts were unable to offer any relief to the victims' families as the agencies ordered to produce missing persons simply denied detaining them.

Earlier the HRCP also catalogued some of the worst human rights abuses in Balochistan. According to its January 2006 report on conflict in Balochistan, "There were alarming accounts of summary executions, some allegedly carried out by the paramilitary forces". It claimed to have "credible evidence that showed that such killings had indeed taken place". It also listed cases of 'disappearances' including the most disturbing one involving the disappearance of 18 labour union leaders of Pakistan Petroleum Limited (PPL) in December 2005 while they were in Karachi to negotiate their grievances with the authorities.

The Pak Institute for Peace Studies says that media monitoring between January 2002 and May 2006 showed that more than 1,000 al-Qa'ida suspects had been arrested.

According to Amnesty a report prepared by the Pakistani security agencies before President Bush's visit in 2006 provided an overview of what they described as Pakistan's "achievements" in the "war on terror" since 2001. It said that the security agencies had killed 850 alleged "terrorists" and had arrested another 600, including some on the FBI's "most wanted" list. During this period, 350 to 400 personnel of the army, paramilitary forces, subsidiary forces and police were killed, and 760 injured.

## 7. Curtailing Freedom of Expression

Freedom of expression has been gravely undermined in the war on terror.

During the last seven years in Pakistan – from 2000 to 2006 – 19 journalists were murdered. Of the 19 journalists killed during the seven years, five died in the restive tribal areas adjacent to Afghanistan where due to war on terror the government has banned the entry of journalists.

Other statistics also point to an alarming trend of increasing incidents of violence against media during the last seven years as 68 journalists were abducted, arrested or detained; 81 were tortured or injured; 114 were threatened or intimidated; and there were a total of 36 reported incidents of attacks on media property.

Hayatullah Khan was a young and promising journalist. He belonged to the Tribal Agency and keenly observed and faithfully reported the war on terror for the newspapers he worked for. He was kidnapped near Mir Ali town in North Waziristan on December 5, 2005 as he was travelling to cover a demonstration of students against the bombing of tribesmen.

A few days before his kidnapping five foreign militants had been killed in Asoray village in MiranShah on December 1. The Agency's political authorities claimed that the militants died due to an explosion caused by an improvised device they were making inside a house. Hayatullah took pictures of the house. International media quickly identified in the pictures fragments of a US missile. Questions were asked whether the militants had been killed in explosion as was claimed or by US missiles fired from an unmanned aircraft. The pictures seemed to contradict the claims that the militants had been killed in an explosion.

The story was soon picked up. The NBC news reported that a wanted Al Qaeda operative Hamza Rabia, an Egyptian, on the CIA's most wanted men and carrying 5 million dollars bounty on his head had been killed by a CIA missile attack in North Waziristan. When asked

whether the US had helped take out Hamza the US National Security Advisor had to admit, “We have obviously been supporting Pakistan”.

On December 4 the political authorities summoned the owner of the house where the explosion was alleged to have taken place. The notice was served directly on him and not through the tribal elders as is the normal practice. The next day Hayatullah was kidnapped.

The post kidnapping account is no less mysterious. His family claimed that he had been held in the US. The local journalists’ bodies and the international Committee for the Protection of Journalists (CPJ) demanded both Pakistani and US authorities to reveal information about him. Both the Pentagon and FBI denied holding him.

Initially, it was suspected that local militants may have kidnapped him but later suspicion seemed to centre on other quarters. Press reports quoting Hayatullah’s brother said that the local Taliban of the area have written a letter to him saying that they were not behind the abduction. Hayatullah’s account of the December 1 incident also corroborated the allegations of Taliban. It would thus appear unlikely that he was abducted by those very people whose account he had substantiated with pictorial evidence.

The inquiry held into the murder of Hayatullah has still not been made public. Hayatullah’s case is not the only one. Journalists working in sensitive areas in the past have been routinely detained and kept incommunicado by states’ agencies. Those suspected of links with militants have also been detained after 9/11 without due process. A familiar modus operandi has been that the agencies would first deny any knowledge of a disappearance but then quietly release them after the matter is brought to a court.

Lately the state has been responding by either flatly denying knowledge of the disappeared or by keeping silent. The MIT graduate Dr Aafia Siddiqui has been missing for three years. Any knowledge of Baloch sisters missing for the past several years was also completely denied.

## 8. Parliamentary Efforts

Alarmed by these developments political parties raised these issues in the Parliament during the past four years but to no avail. Questions were asked in the Senate whether there was any law that permitted the agencies to detain and interrogate suspects. It was demanded that the law should be placed before the Parliament for discussion and debate. Motions and resolutions were moved to agitate the matter of mysterious disappearances and the need to bring the state's agencies under some law. Unfortunately all these parliamentary initiatives were stopped in the track on the ground that the issues raised were of sensitive nature.

The PPP asked in the Senate On October 20, 2003 a “whether there is any law on the statute and if so to state the law under which the intelligence agency (ISI) is authorized to conduct raids and detain and interrogate suspects”. Within days the questioner was formally informed, “The subject matter of this question is of secret and sensitive nature as it asks for information on matter prejudicial to the integrity and security of the country”. The question was disallowed.

Subsequently a resolution was moved in the Senate saying, “This house calls upon the government to enact suitable legislation to regulate the functioning of the intelligence agencies particularly the ISI with respect to issues relating to raids, detention and arrest of suspects in the country”. This effort too was rebuffed and the mover officially conveyed, “The subject matter of this resolution of secret and sensitive nature” and the resolution disallowed.

One has often been wondering what was so ‘secret’ that the citizens’ disappearances could not be discussed in the Parliament. Was it that the detainees were held incommunicado? Or that they had been dumped in unrecognised detention camps without public record? Or that the victims were denied access to family and lawyers? Or was it that any mention of bounty hunters making millions in our black market of abductions was thought to jeopardize national security? A serpent of doubt has been biting the soul.

## 9. Plea for Signing International Covenants

In May 2006 Pakistan was elected to the newly formed Human Rights Council (HRC), not on the basis of its human rights record but because the fifty four Asian countries were allocated 13 seats on the Council and Pakistan was one of the countries that also ran and was certain to get elected. An important criterion for any country to get elected to the Council was its “voluntary pledges” to further advance human rights. In a written communication to the UN Pakistan pledged to ratify “core human rights treaties” and set up an independent National Human Rights Institution with “powers to investigate human rights violations in all aspects” among others.

Convention Against Torture (CAT) is a core HR instrument that we have not signed. Mysterious disappearances of citizens by agencies are one of the most serious forms of torture. It has dramatically increased after 9/11 and in the wake of insurgency in Balochistan and the war in tribal areas. If Pakistan has become a member of the Council on the basis of its pledge to ratify ‘core human rights treaties’ it cannot drag on it any more. It has also pledged to set up an independent human rights body with powers to investigate human rights violations. There is no reason it should not restore the Parliament its right to question and improve upon the existing laws on the statute.

Voices have been raised in the Parliament asking the government to sign the ‘core human rights treaties’ most importantly the Convention Against Torture (CAT). Motions and resolutions moved in the Senate calling for signing the CAT however have met with no success.

## 10. The Struggle Continues

Recently the Supreme Court took notice of the disappearances of citizens. Separately it also directed the Balochistan High Court to dispose of urgently the habeas corpus petition of a woman complaining that her husband had been kidnapped by the agencies. Other high courts have also taken up cases of those who have disappeared mysteriously. Hopefully judicial activism will finally come to the rescue of missing persons but so far indications are that the executive is determined not to let the judiciary come to the rescue of disappeared persons.

Almost daily the grieving relatives of the disappeared hold protest demonstrations in Islamabad. They only want to know where their near ones have been kept and demand that they be produced before courts if they had done anything wrong.

Almost on the eve of this public hearing there are three news items in newspapers of March 2. One, political activists have condemned the secret trial of JSMM leaders. The relatives of the imprisoned leaders of the Jeay Sindh Muttahida Mahaz (JSMM) and party activists staged a protest demonstration outside the Karachi press club to protest against the in camera trial of JSMM leaders that their torture in prisons. Two, a march planned against enforced disappearances on March 18 from Sukkur in Sindh to Karachi to protest against enforced disappearances of nationalist leaders. Three, the disappointment expressed by the Sindh High Court over disappearances that threatened the entire legal system. (Dawn March 2, 2007)

In a serious development the government has taken the position in Sindh High Court that the defence ministry exercised only administrative control over the intelligence agencies and not over their operations (Dawn 12-7-2006). It amounts to saying that the intelligence agencies are a state within state and can act beyond the purview of law.

When people disappear mysteriously and the families are only informed to collect their dead bodies it is time to stand up and speak up. Silence is no option. If the human rights bodies of the Parliament cannot take it up they should stop making tall claims.

## 11. No Room for Complacency

The Parliament, the Judiciary and the civil society must rise. The abduction market must be closed and the myth around the 'tank busting dogs' busted.

We must not forget the lament of German intellectuals over their indifference to the state's persecution, immortalized in the following poem:

*First, they came for the Communists  
I did not speak up because I was not a Communist  
Then they came for the Jews  
I did not speak up because I was not a Jew  
Then they came for the trade unionists  
I did not speak up because I was not a trade unionist  
Then they came for the Catholics  
I did not speak up because I was not a Catholic  
Then they came for me  
But then there was nobody to speak*



## 12. Recommendations

- \*The practice of extra-judicial involuntary and forced disappearances in Pakistan must be condemned.
- \*The police stations should be required to register every disappearance in their daily register called roznamcha.
- \*There should be a central register of detainees and recognized places of detention.
- \*No one should be held in secret or incommunicado. The authorities should allow the accused to engage defence lawyers of their choice.
- \*The defence lawyers and family members of the victims must be allowed to meet the abducted citizen wherever they might have been detained
- \*All detention centres must be made public and governed by law.
- \*The Government of Pakistan should immediately sign the 'International Convention for the Protection of All Persons from Enforced Disappearances', adopted by the United Nations General Assembly on December 20, 2006.
- \*Torture does not stop terror. It in itself is terror. The Government of Pakistan should sign the Convention Against Torture.
- \*Those accused of inflicting torture in any form should be prosecuted under national and international laws.



*Shaheed  
Bhutto  
Foundation*

