



**General Assembly**

Distr.  
GENERAL

A/HRC/5/NGO/42  
7 June 2007

ENGLISH ONLY

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HUMAN RIGHTS COUNCIL  
Fifth session  
Item 2 of the provisional agenda

**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251  
OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Written statement\* submitted by the Jammu and Kashmir Council for Human Rights  
(JKCHR), a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is  
circulated in accordance with Economic and Social Council resolution 1996/31.

[7 June 2007]

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\* This written statement is issued, unedited, in the language(s) received from the  
submitting non-governmental organization(s).

## **Independence of Judges and Lawyers**

The mandate on the independence of judges and lawyers has been established with a focus to investigate allegations of interference in the judicial process; establish a record of attacks against judges, lawyers and court officers; catalogue the positive measures taken by governments to protect judges and lawyers and their independence; and make proposals on how to enhance the independence of judges and lawyers.

Consensus Resolution [1998/35](#) of the Commission states that an independent and impartial judiciary and legal profession are prerequisites for the protection of human rights and the prevention of discrimination in the administration of justice. General Assembly resolution 40/32 has endorsed the Basic Principles on the Independence of the Judiciary. The role of Lawyers, Prosecutors and the important role of non-governmental organizations, bar associations and professional associations of judges in the defence of the principles of the independence of judges and lawyers have equally been recognised and endorsed in various resolutions.

It is the duty of a State that it works to secure and promote the independence of the judiciary. Independence of the judiciary has to be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general.

The question of independence of judiciary and lawyers in Pakistan has been debated during the past sessions of Commission, in particular, in reference to executive interference in cases instituted against Benazir Bhutto and Asif Ali Zardari. We note with great concern and anguish that the interference of the Executive in the independence of judges, lawyers and court officers in Pakistan and Azad Kashmir has hit a new high in the recent months.

The manner in which a reference was filed by President General Pervez Musharraf against Chief Justice Iftikhar Muhammad Chaudhry and the treatment meted out to the Chief Justice have shocked everyone across the world.

Chief Justice Iftikhar Muhammad Chaudhry in his affidavit submitted to the Full Court of the Supreme Court has maintained that he was 'illegally and unlawfully' restrained to perform his constitutional functions as a judge and as the Chief Justice of Pakistan. Giving details of the March 9 incidents, he said that President of Pakistan General Pervez Musharraf met him wearing army uniform in the Rawalpindi Camp Office. He has stated that Prime Minister of Pakistan Shaukat Aziz, DG MI (Director General Military Intelligence), DG ISI (Director General ISI), DG IB (Director General Intelligence Bureau), COS and another official were also present in the Army House and all officials (except DG, IB and COS) were in uniform.

According to the affidavit, the President General Pervez Musharraf insisted that Chief Justice Iftikhar Muhammad Chaudhry should resign and if he (Chief Justice) resigned, he (the President) would 'accommodate' him (the Chief Justice). However the President also said that in case of refusal to resign, the Chief Justice will have to face the reference which could be a bigger embarrassment for him (Chief Justice).

The affidavit further states that the Chief Justice finally, and more resolutely, said, 'I wouldn't resign and would face any reference since I am innocent; I have not violated any code of conduct or any law, rule or regulation; I believe that I am myself the guardian of law. I strongly believe in God who will help me'.

One has reasons to suggest that the 'judiciary in Pakistan' has lost its case much before it could advance its defence in the present case. The readiness of Supreme Judicial Council (SJC) to submit to a military discipline invoked by the President under article 290 reveals a chronic deficiency in the judicial character of Pakistan. President can send a reference to the SJC for an inquiry against any judge of the superior courts but he has no powers to precipitate suspension or removal of a judge of a superior court until the SJC recommends so.

The Executive decision to make Chief Justice "non-functional" has put the Judicial Character and Popular Will in Pakistan under Microscope. Military discipline of a General is at variance with the Constitutional wisdom of a 60 year old nation state. SJC has a higher burden of judicial wisdom to discharge while it sits to judge the senior most member of judiciary on the basis of a reference detailed by the President, who holds two irreconcilable offices.

Constitutional qualifications of a President stipulate that "President of Pakistan shall represent the unity of the Republic". Constitution makes it clear that "there is no inherent power in the Executive, except what has been vested in it by law and that law is the source of power and duty". Therefore, executive action would necessarily have to be such that it could not possibly violate a Fundamental Right.

The only power of the executive to take action would have to be derived from law and the law itself would not be able to confer upon the executive any power to deal with a citizen or other person in Pakistan in contravention of a Fundamental Right.

The decision of the President to make the chief justice of Pakistan non-functional constitutes a punishment. It is extraneous to article 290. He has conferred upon himself a power which is inherent in the role of SJC, which has yet to unfold its understanding after hearing the two arguments in favour and against the reference. The decision of the President to make chief justice non functional violates the principle of natural justice, that is, the rule of audi alteram partem (no person should be condemned without being afforded an opportunity to be heard).

In making the chief justice non functional President has acted as a judge in his own cause. There is an age old judicial tradition that no man should be a judge in his own cause (the *nemo iudex in causa sua* rule). The 'judiciary in Pakistan' has lost its case much before it could advance its defence in the present case because it has failed to take cognizance of the fact that the principles of natural justice have been violated in part by the President. Such an aggressive overstretch of authority is a natural spill over of an inherent contradiction of two offices held by the President. The military man is always at war with the constitutional wisdom.

The reference has equally placed the President under scrutiny of all sections of the civil society at home and abroad. It needs to be seen as to how far he remains conscious of his

“Loyalty to the State and obedience to Constitution and law”. Loyalty to the State is the basic duty of every citizen. Therefore, every conscientious citizen of Pakistan has to keep a vigil and assure that – SJC does not fail in its judicial wisdom and that there is due process and a duty to fairness duly discharged at all levels.

The easy weapon of ‘Pakistan first’ slogan is used to advance personal interests and dispossess the opposition of a freedom of expression. The military ruler is treading a thin wire a second time after he brought down an elected Government of Mian Nawaz Sharif. If things go wrong this time, he may suffer the attention of article 6 of the Constitution. He may very rightly be charged with an “attempt to subvert or conspiracy to subvert the Constitution by use of force or show of force or by other unconstitutional means”. These actions stipulate ‘guilt of high treason’. It would be the Parliament which would provide for the ‘punishment of persons found guilty of high treason’.

It is not only the Supreme Court of Pakistan or Supreme Judicial Council but it is the duty of every conscientious citizen in Pakistan and world over to remain watchful in regards to the freedom of press and independence of lawyers, necessary to increment the judicial wisdom in Pakistan. A transparency of the arguments is important feature to rehabilitate the trust of the common man in the independence of Judiciary and Lawyers.

The interference of the Government of Pakistan in the appointment of the Chief Justice of Supreme Court of Azad Kashmir in October last year is a serious interference in the independence of Judiciary. Azad Kashmir is a subject at the UN Security Council and falls under the protection envisaged in UNCIP resolution.

Therefore the matter should merit an urgent attention of the **Human Rights Council**. This Council and the representatives of participating Governmental and non Governmental Organizations have a duty to support the Lawyers of Azad Kashmir in their Constitutional Writ Petition seeking a correction of the executive interference in the appointment of a junior judge as the Chief Justice of Azad Kashmir.

The judiciary and the lawyers of Azad Kashmir should not be allowed to vanish in helplessness. They should benefit from the mandate on the independence of judges and lawyers. At the same time Executive in Pakistan has to be reminded that as a member nation of UN it has to see to it that “The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.”

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