



## **Assessment of Pakistan's compliance with GSP+ obligations (2014-2015)**

### **Responses by FIDH and HRCP to the European Commission's Joint Staff Working Document**

In response to the European Commission's January 2016 report on Pakistan's compliance with its obligations under the GSP+ scheme, our organizations have prepared the following document with complementary information to respond to some of the assertions or questions posed by the European Commission's report. We encourage the EU to take this information into consideration, urging Pakistan to make concrete steps for a better compliance to international human rights standards in order to continue enjoying the benefits afforded under the GSP+.

#### **Status of implementation of the conventions**

##### *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*

- With regards to the recommendations issued by CERD to incorporate educational objectives of tolerance and respect with a view of achieving true social cohesion, in Sindh province a curriculum review is currently in progress to remove prejudicial references from teaching materials.
- However, in Khyber-Pakhtunkhwa province, due to pressure from religious groups, the provincial government is reintroducing Islamic references in all school subjects, to the exclusion of other faiths and minority groups affiliated to faiths other than Islam, such as the Kalasha.

##### *International Covenant on Civil and Political Rights (ICCPR)*

- **military courts and violations of Article 14**
  - Since the establishment of the current military court system in 2015, eight civilians have so far been hanged after being sentenced to death by military courts. The procedures, location of courts, timing of trials and details about alleged offences are kept secret. Although trials should be public except for in certain prescribed circumstances, in which good cause exists for conducting parts or all of a hearing in camera, the reasons for any closure of the hearing must nonetheless be consistent with international standards and should be fully stated on the record and any such closure should be kept to the bare minimum to ensure fairness. Nevertheless, hearings continue to be held in camera without explanation,

and information and verdicts are not only withheld from the public, but also from concerned parties such as the families of defendants.

- In at least 5 cases, families of missing persons discovered through newspaper reports that their family member was arrested by the authorities and tried and sentenced to death in a military court.
- The Supreme Court verdict in early August 2015 stressing that all aspects of the military court system are be subject to appeal to the High Courts and the Supreme Court was put to the test in early 2016. On 9 February the Supreme Court stayed the execution of 4 individuals sentenced to death by a military court. This is the only known case of the SC stepping in to ensure that sentences handed down by military courts in violation of fair trial standards are not carried out, but it remains to be seen if this stay of execution will result in an overturned verdict or not.
  - A number of review petitions have been filed before various high courts in the country where families of individuals convicted and sentenced to death by military courts have alleged that the convicts were below the age of the 18 at the time of arrest or detention.
- During a visit to Pakistan in 2012, the UN Special rapporteur on the independence of judges and lawyers made a series of recommendations on the **need for training of judges, lawyers and prosecutors**, and in response Pakistan has claimed in its ICCPR report that it has developed training modules on human rights conventions. The “Judicial Academy” has in fact been reactivated and some trainings of judges conducted, but the focus on human rights conventions has been extremely limited and superficial.
- **Freedom of Expression**
  - The Prevention of Electronic Crimes Bill, introduced on 16 January 2015, will pose serious threats to freedom of expression in cyberspace if passed in its present form. David Kaye, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, stated on 14 December 2015 that “If adopted, the draft legislation could result in censorship of, and self-censorship by, the media.” He opined that the bill, as a whole, raised several concerns due to the vagueness of its provisions that provide limited guidance as to what would be prohibited under the law and impose excessive restrictions that would criminalize legitimate forms of expression. Despite domestic and international criticism, the bill is still before the Standing Committee.
- **Protection of journalists**
  - Despite the prime minister's promise to appoint special prosecutors to investigate attacks on journalists and Pakistan's announcement that a commission on the protection of journalists was in the process of being established, attacks against journalists continue unabated. Neither the special prosecutors nor the commission have been appointed, and there seems to be no action from the government to move these processes forward. In the meantime, Anchorperson Hamid Mir was shot at & wounded in April 2014, likely related to programs he aired on enforced disappearances.

- **Human rights defenders under threat**
  - Threats and violence against HRDs remain rampant, from both state and non-state actors, with impunity being the norm.
  - In addition to the two prominent examples of murdered HRDs cited in the EC's report, we would also like to bring the EC's attention to the fact that two HRCP activists, Rashid Rehman and Malik Jrar, were murdered in 2014 and 2013 respectively. The Pakistani police have not thoroughly investigated these murders, and no charges have been filed in either case.
  - Journalists and political party activists who speak out on human rights issues have also been targeted.
- **Enforced disappearances**
  - Despite the government of Pakistan insisting that there are fewer cases of enforced disappearances than are sometimes claimed, in 2013 HRCP was able to verify at least 90 cases of enforced disappearance and the discovery of 129 mutilated bodies of suspected victims of enforced disappearance. More than a 120 cases of enforced disappearance were reported to HRCP in 2014.
  - The Commission of Inquiry on Enforced Disappearances that was established in March 2010 completed its work in December 2010, but its work was never made public. On the recommendation of that commission another commission was established in March 2011, headed by a former Supreme Court Judge and with two bureaucrats as members. This second commission has been meeting in different cities and holding hearings related to cases of enforced disappearance. According to statistics published on 30 September 2015 by the Commission, the commission had received 2,680 new cases since 1 March 2011, bringing the total number of cases brought before it to 2,818. Of these, nearly 300 cases were dismissed due to insufficient information, 1,304 cases remained pending, and 1235 people had been located, either in prison or elsewhere. However, after nearly six years and despite the over 1000 people that the Commission has managed to locate after they were abducted, no perpetrator has been officially publicly identified nor has anyone been prosecuted for these crimes.
- **Freedom of religion and minority rights**
  - The claim that “freedom of religion and minority rights are being protected by the constitution”<sup>1</sup> is not accurate, since discrimination against religious minorities was actually enshrined in Pakistan's first Constitution adopted in 1956, and was subsequently reinforced in the 1962 and 1973 revisions. In article 25 (1), the Constitution of Pakistan guarantees that “all citizens are equal before law and are entitled to equal protection of law.” Article 5 provides that “adequate provision shall be made for the minorities to freely profess and practice their religions and develop their cultures,” and article 33 declares that it is the state’s responsibility to

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<sup>1</sup> *The European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014 – 2015, (January 2016), page 193*

discourage parochial, racial, tribal, sectarian, and provincial prejudices among citizens. However, these provisions have never been fully implemented in practice, and are contradicted by other provisions of the Constitution:

- Article 2 declares that “Islam shall be the State religion of Pakistan,” and article 31 states that it is the government’s duty to foster the Islamic way of life, formalizing government support, in terms of policies, legislation, and resources, for Islam above all other religions.
  - Article 41(2) provides that “a person shall not be qualified for election as President unless he is a Muslim,” and article 227 (1) states that “all existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Qur’an and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.”
  - Even article 20 of the Constitution, which enshrines every citizen’s “right to profess, practice and propagate his religion” and that “every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions”, is “subject to law, public order and morality,” thus discriminating against the beliefs of groups or individuals who do not align with the government's interpretation of “morality” (which is based on Islamic doctrine), which is reflected in Pakistan's Blasphemy laws and other discriminatory policies.
- In addition to the serious concerns about such hate speech, inter-sectarian violence, and negative stereotypes of ethnic or religious minorities in school textbooks<sup>2</sup>, discrimination and violence against members of minority groups continues to manifest itself through discriminatory laws, forced conversions, and impunity for crimes committed against members of minority groups.
  - In an attempt to curb hate speech in Friday sermons, in early 2016 the Sindh provincial government ordered mosques to use only officially authorized sermons distributed to mosques beforehand. It remains to be seen if this order will be respected fully, and if it will effectively curb hate speech in local mosques.
  - The national commission of minorities established in 2014 under the Ministry of Law, Justice and Human Rights and tasked with developing a national policy on inter-faith harmony, look into grievances by members of any minority community, including individual complaints, and make recommendations to the government, is not effectively implementing its mandate. The commission is widely considered a fig leaf by local civil society. Even information on where to submit complaints to the commission is very difficult to find.

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<sup>2</sup> Ibid.

- In a Supreme Court ruling in October 2015 the court ruled that criticizing the misuse of the blasphemy laws and calling for introduction of legal safeguards does not constitute blasphemy. This ruling has yet to make a tangible impact in the protection of individuals from the misuse of blasphemy laws, but apparently the Senate Committee on Human Rights plans to take up the issue. This should be something the EU follows closely and for which it requests updates from the Pakistani authorities. This is particularly important since in addition to the misuse of the blasphemy laws themselves, there are increasing examples of lawyers defending those facing blasphemy charges being threatened. One prominent example is the case of HRCP member Rashid Rehman, whose murder is believed to be linked to his work as a defense lawyer in a blasphemy case.<sup>3</sup>
- Although now no officer below the rank of superintendent of police can investigate offenses under Section 295 (C) of the penal code, there is no evidence that this has reduced the number of cases of misuse of the law. In fact, since the adoption of this measure, there continue to be examples of police filing blasphemy charges without conducting any serious investigation into the cases.

*International Covenant on Economic, Social and Cultural Rights (ICESCR)*

- Although the government of Pakistan has increased spending in the health sector of provincial budgets, no concrete changes have been felt at the local level.

*Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*

- Although 10 % of the public jobs at federal level are reserved for women in addition to the jobs they can apply for on open merit, this quota is not respected. Despite the July 2006 order by the Supreme Court for effective implementation of the quota in public employment, only about 4% of positions in the federal government are currently held by women.
- Since the government announcement that it would strengthen the national commission on the status of women, the commission has enjoyed a bit more autonomy with regards to its mandate, but it is still seriously underfunded.
- Although the inter-provincial ministerial group (IPMG) for women development has been constituted and meets relatively regularly, this group has little backing from the government and has thus not resulted in positive developments in the daily lives of women.

*Convention on the Rights of the Child (CRC)*

- **Lack of access to education and healthcare**
  - There has been no official data published to demonstrate the progress of the national plan of action (2013- 2016) to accelerate education-related MDGs, but the impression of individuals involved in education is that the

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<sup>3</sup> For more information see: <https://www.fidh.org/en/region/asia/pakistan/15320-pakistan-assassination-of-mr-rashid-rehman>

- goals of the plan are far from being achieved, with only 10 months left before the deadline.
- The commitment by the prime minister in March 2014 to raise spending on education from 1.8 % to 4 % of GDP by 2018 has not been reflected in the government's budgets over the last 2 years. This commitment should therefore be monitored by the EU to ensure implementation.
  - 25 million children are still out of school in Pakistan, 55 % of whom are girls.
  - To clarify a claim made in the EC report, the Hindu Marriage Act was not fully adopted in 2015. The Act was only approved by a parliamentary committee in early February 2016 and sets 18 as the minimum age for marriage. This is expected to have a positive impact towards ending forced marriages of Hindu girls, but the actual implementation of the Act must be closely monitored.

### **Conclusions and recommendations**

The EC's report on Pakistan has recognized that human rights violations remain widespread in the country.<sup>4</sup> Not only have certain violations persisted over the past several years, there have also been important legislative and political regressions that have led to a worsening of Pakistan's human rights situation in the past 2 years, such as the lifting of the moratorium on the death penalty and the execution of over 300 people, in many cases in violation of basic fair trial standards. Given this worrying lack of tangible progress - and in some cases regression – of Pakistan's human rights situation, our organizations urge the EU to take a firm stance in its negotiations with Pakistan, and to insist on the effective implementation of its obligations under international human rights conventions, including by focusing on several verifiable and concrete human rights measures.

Some of the most pressing human rights concerns that should be pushed for by the EU include:

- The government of Pakistan should ensure that the National Human Rights Commission is fully operational and has the resources required to implement its mandate.
- Despite promising rulings by the Supreme Court in line with human rights principles, these decisions have not yet been transformed into practical legislative and policy reforms, notably with regard to the 2014 judgment of the Supreme Court on religious freedoms for minorities. No policy reforms related to the protection of minorities has been implemented after more than a year and a half since the court made the recommendation. Not even meaningful consultations with stakeholders to determine effective policies have been held. The government must heed the Supreme Court's decisions, and rapidly set into motion measures to ensure the effective implementation of the SC's recommendations, particularly

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<sup>4</sup> *The European Commission*, The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014 – 2015, (January 2016), page 198

with regard to issues known to be linked to serious human rights violations, such as discrimination and violence against minorities.

- The grave and growing threats to HRDs and impunity for violence against them must be addressed. The government must firstly unequivocally and publicly condemn attacks against HRDs, and respond appropriately when non-state actors call for violence against HRDs. In addition, all branches of law enforcement and the justice system must be encouraged to swiftly and fully seek accountability for crimes committed against HRDs. To date, no one has been convicted for the murders of HRCP staff over the past few years. The apparent state policy of not investigating or prosecuting attacks against HRDs must end.
- The government must take a firm stance to promote the rights of girls, with regards to access to education and the protection of girls from the multiple types of violence they face in Pakistan. Regardless of lobbying from religious groups, the government must adopt legislation enshrining equal rights for boys and girls regardless of their religious or ethnic background, and implement policies to ensure that any violations of these rights are duly held to account.

FIDH and HRCP urge the EU to reiterate that the effective implementation of international human rights conventions is a condition to benefit from GSP+.

If the European Commission is retaining the GSP+ status of states who do not comply with their human rights obligations under the premise that GSP+ can be used as a tool to encourage these beneficiaries to improve their human rights records (despite the EU regulations on this matter explicitly stating that effective implementation of human rights conventions is a criteria for eligibility under the GSP+), FIDH and HRCP urge the EC to clarify the following:

- what are the concrete priorities, actions to be implemented, and timeline that the EC has identified with Pakistan, with regards to improving Pakistan's implementation of international human rights conventions;
- how specifically the Pakistani authorities plan to address ongoing violations related to enforced disappearances, harassment and violence against HRDs, discrimination against religious minorities, fair trial standards, and the death penalty; and
- why the EC considers the action plan to be adopted by Pakistan satisfactory with regards to its human rights obligations and GSP+ regulation.