

THE DISCRIMINATION AND DENIAL OF FUNDAMENTAL RIGHTS FOR THE PEOPLE OF SINDH

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I. The Creation of Pakistan

Pakistan was created out of the Indian partition of 1947, following two centuries of British colonial rule. Its creation was the consequence of an inability to accommodate minority interests within independent India.² The Muslim minority within India feared they would become second-class citizens in a Hindu-majority state. The Muslim League, therefore, pushed to form an independent Muslim state. The partition, the arbitrary drawing of borders, resulted in eight million people, mainly Muslims migrating from India to Pakistan and millions of Sikhs and Hindus migrating from Pakistan to India making it the largest inter-state migration in history and, in the process, creating millions of refugees.³

Prior to Indian Independence, and on the basis of their shared faith, the Muslim population, who would later create Pakistan, felt that they were a unified community, despite their many ethnic and linguistic differences. They conceived themselves as intrinsically different from the other religious and cultural groups on the Indian sub-continent.⁴ However, following the creation of Pakistan, the Muslim population no longer feared being discriminated against by a Hindu majority state that in turn, failed to

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² JAVAID REHMAN, *THE WEAKNESSES IN THE INTERNATIONAL PROTECTION OF MINORITY RIGHTS* 5 (Kluwer Law Int. 2000).

³ *Id.*

⁴ *Id.* at 133.

unify the Muslim population. Though Pakistan was a state created on religious lines, a significant number of religious, ethnic and linguistic minorities were part of the composition of the country.⁵

In the creation of Pakistan, various regional minorities charged that they had been discriminated against and forced to assimilate into the central government's notion of what constituted the national Pakistani identity.⁶ Within Pakistan there exists five major regional provinces; Sindh, Punjab, Baluchistan, Azad Kashmir and the North West Frontier Province (NWFP).

II. Sindh: A Nation of its Own

Sindh is Pakistan's second largest province with approximately 24% of the nation's population.⁷ *Sindhi* is a term used to describe the indigenous people of Sindh, the southeast province of Pakistan. Sindhis have one of the oldest cultures and civilizations in the world. The Mohenjo-Daro civilization, dating back approximately 5,000 years, was one of the first civilizations of the world and was formed along the banks of the Indus River running through the heart of what is now known as the Sindh province. This region has historically enjoyed a great deal of autonomy, allowing for the development of its own culture. Sindhis have historically been known to promote a culture of non-violence, secularism and democracy.

During the time of the partition, there was an effort to drive out the Sindhi Hindus into India. The property left behind by the Hindus was arbitrarily distributed to political supporters of the then ruling government

⁵ *Id.*

⁶ *Id.* Pakistan actively campaigned to bring assimilation and conformity to the population, in an effort to build nationalism. *See Id.* at 141.

⁷ Amnesty International Special Report: Pakistan, *Arrests of Political Opponents in Sindh Province, August 1990- early 1992*, 3 (1992), available at <http://www.amnestyusa.org/countries/pakistan/document.do?id=3A9E2BD6FD58394D802569A600601F5B>.

and Muslim refugees coming from the newly independent India, by the National Government. The influx of the Muslim refugees coming from India, known as the *Muhajirs*, resulted in Sindhis becoming a minority in their own land.⁸ The sudden Muhajir influx and the national government's policy of cultural assimilation has been the root causes in bringing the Sindhi culture and language to the brink of extinction. The case of the Sindhis reflects the reality that international and national laws against discrimination and genocide offer ineffective protections for minorities, unless governments take steps to also protect these minorities from mass deportation and imposition of an alien population onto their land.⁹

III. Sindhis: Constituting an Ethnic and Linguistic Minority

“Pakistan is not a monolithic, homogeneous entity but a homeland of five historic nations.”¹⁰ In the first years following independence, Pakistan demonstrated a strong commitment to adopt principles of equality and non-discrimination for all individuals. Pakistan ratified various international covenants and instruments affirming its commitment to protect minorities. These commitments include: the United Nations Charter, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the United Nations International Convention on the Elimination of All Forms of Racial Discrimination (implemented through the Committee on the Elimination of Racial Discrimination (CERD)).¹¹ Pakistan's Constitutions of 1956,

⁸ REHMAN, *supra* note 1, at 87.

⁹ *Id.*

¹⁰ The Sindh Perchar, Official Newsletter of the World Sindhi Congress, *Delegates at the International Conference on Sindh* (Sep. 30, 2003), available at http://www.sindhlink.net/wsc/2003/Press_Release_AGM2003.doc.

¹¹ REHMAN, *supra* note 1, at 135. See also NATAN LERNER, *GROUP RIGHTS AND DISCRIMINATION IN INTERNATIONAL LAW* 46 (Kluwer Academic Publishers 1991).

1963 and 1973 have all affirmed fundamental rights based on equality and non-discrimination.¹²

However, despite such international and constitutional commitments, the Government of Pakistan has not actually put these obligations into practice. The official stance of the Government is that *no* ethnic, racial and linguistic minorities exist within Pakistan.¹³ The only minorities recognized by the Government are religious minorities.¹⁴

The Pakistani- Islamabad based government realizes that giving an official recognition to such minorities would give these minorities a basis on which to claim protection under the international legal instruments Pakistan signed in its formative years.¹⁵ The result is that linguistic and ethnic minorities like the Sindhis, Baluchis, Muhajirs and Pakhtuns are not given any official minority status and, therefore, no protections.¹⁶

This same policy of refusing to recognize ethnic and linguistic minorities was a driving force behind the secession movement of the East Pakistanis to form an independent Bangladesh in 1971.¹⁷ It has been argued that if Pakistan accorded more linguistic and cultural autonomy to East Pakistan, the people would not have demanded an independent state and would have rather been able to express their self-determination within the structures and confines of the Pakistani nation-state.¹⁸

State reports submitted to CERD, which is the implementing mechanism of the Convention of All Forms of Racial Discrimination, deny that Pakistan has any ethnic or linguistic minorities.¹⁹ During the 4th

¹² REHMAN, *supra* note 1, at 135.

¹³ *Id.* at 136. *See also* The Sindh Perchar, *supra* note 10, at 2.

¹⁴ REHMAN, *supra* note 1, at 136.

¹⁵ *Id.*

¹⁶ *Id.* at 136.

¹⁷ *Id.* at 219

¹⁸ *Id.* at 219 [Argument by Author, Javaid Rehman].

¹⁹ *Id.*

Periodic Report to the Committee, the Pakistan representative explained that they did not provide the Committee with information of its people based on race, descent or ethnic origin, because their government did not keep data on such characteristics of its people because “[i]n Pakistan there [are] no racial or ethnic minorities, but only religious minorities...”²⁰ In the 5th Report, despite criticisms from the Committee, there were further denials of the existence of such minorities. The Pakistani representative stated:

The people of Pakistan being of a relatively homogenic racial group and following the precepts of Islam, which is a universal religion advocating tolerance for people belonging to every race, have not faced the problem of discrimination. It has therefore not been necessary to enact any new laws... to deal specifically with racial discrimination other than already existing in the country.²¹

Committee members rightly expressed their concerns that if all state parties to the Convention were to adopt the same criteria to decide if it was necessary to adopt new measures to protect their racial minorities against discrimination, then all signatories would all be exempt from their obligations under the Convention.²² The Committee has also expressed concern that Pakistan’s policy in refusing to recognize its minorities has resulted in not giving them any specific protection under the Convention that would otherwise derive from their official recognition.²³

During the 15th International Conference of the *World Sindhi Congress*, held in London, political scholar Dr. Walt Landry emphasized

²⁰ REHMAN, *supra* note 1, at 137 (quoting 4th Periodic Report of Pakistan before the Committee, CERD/C/SR.322 para. 3).

²¹ *Id.* at 138. (quoting the 5th Periodic Report of Pakistan before the Committee, CERD/C/20/Add.15, para.1).

²² *Id.*

²³ *Id.* See Committee on the Elimination of Racial Discrimination, Observations and Comments CERD/C/304/Add.25 para.12, *available at* [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.304.Add.25.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.304.Add.25.En?Opendocument).

that Pakistan, like the European federations, could not last or prosper without giving recognition to the separate identities of the ethno lingual groups within their borders.²⁴ Pakistan's policy in refusing to recognize the existence of these differences was compared to the policy taken by the former Yugoslavia, which resulted in polarity, violence and frustration among the cultural groups.²⁵

IV. Sindh and the Muhajirs

Muhajirs is a term used to describe the Muslim population that migrated from India to Pakistan and who came to settle in the Sindh province. Following partition in 1947, millions of Sindhi Hindus and Sikhs were forced to leave Sindh for India. They were replaced by millions of Muhajirs, who came to dominate the local and national political arena for many years.²⁶ Seats in the Sindh Provincial Assembly were provided for the new arriving Muhajirs.²⁷

In fact, the Muhajirs also began to dominate the civil service, military positions and places of higher education. The Sindhis were predominantly an agricultural society. The Muhajirs however, were coming mainly from the cities and towns of India, representing a largely urbanized, entrepreneurial and educated class.²⁸ There were constant Muhajir-led federal interventions into the local government affairs of the regional provinces.²⁹ The language, culture and politics brought by the new refugees that began to dominate Pakistani society, was very different than what Sindhis were used to.³⁰

²⁴ The Sindh Perchar, *supra* note 9.

²⁵ *Id.*

²⁶ REHMAN, *supra* note 1, at 215. (For example, from 1947-1952 the majority of Pakistan's main political positions were held by Muhajirs).

²⁷ *Id.*

²⁸ *Id.* at 216.

²⁹ *Id.* at 215.

³⁰ REHMAN, *supra* note 1, at 215.

Sindhis soon became only a bare majority in the seven main cities of the province. The impact of being inundated by the Muhajirs was enormous. First, Karachi, the biggest city and main port of Sindh, was detached from the state and made into a “federal district.”³¹ Sindhi language was then abolished within the Karachi federal offices and banned from being used in Karachi university examinations, and the language department of the University of Karachi was shut down.³² Urdu was then made the national language, despite the fact that less than 8% of the population of the entire country spoke the language.³³ This brought on a deep division between the native Sindhis and the Muhajirs.

The first elected Prime Minister, Zulfikar Ali Bhutto (1973-1977), a native Sindhi, pushed for alleviating some Sindhi grievances of discrimination.³⁴ He introduced a lateral entry program for Sindhis to join the civil service. Sindhis were allotted a quota of 11.4% of the seats in the federal bureaucracy.³⁵ Furthermore, more Sindhis were appointed to national and provincial government offices. The Muhajirs, however, interpreted these actions as going against Muhajir interests. The Muhajirs then had basis to make claims of discrimination, persecution and political repression. In fact, many Muhajir groups participated in the military coup led by General Zia-ul-Haq to replace Bhutto.³⁶

Today, Sindhis and the Muhajirs share some of the same concerns, as they both face discrimination from the central government. They want to ban the influx of more outsiders, such as those from the Punjab province, and allowing properties within Sindh to be sold to the new arrivals. They also demand greater provincial freedoms, and less

³¹ *Id.* at 216.

³² *Id.*

³³ *Id.* at 141.

³⁴ *Id.* at 217.

³⁵ *Id.*

interference from the central government.³⁷ They are also united against the building of the Kalabagh Dam and Greater Thal Canal on the River Indus, which would result in great environmental and human costs in the province.

V. Specific Repression of Political Opponents in the Sindh Province

1. Overview

For years, Sindhi political and human rights organizations reported discrimination and political repression by the national government against Sindhis who were calling for increased political, cultural and linguistic autonomy. The 1992 Amnesty International Reports confirmed mass political imprisonment of political opposition members in the Sindh province from the 1990-1992 period.³⁸

The dismissal of Prime Minister Benazir Bhutto in August 1990, resulted in hundreds of opposition political party members being arrested, most of them associated with the *Pakistan People's Party* (PPP) and other Sindhi nationalist parties.³⁹ The PPP is a national party, but has its largest membership and organizational base in the Sindh.⁴⁰ Amnesty International has evidence that a large number of prisoners were political prisoners, many who are “prisoners of conscious,” detained for the peaceful exercise of rights such as freedom of association and freedom of expression.⁴¹

2. Political Developments in Sindh

In August 1990 the President of Pakistan, Ghulam Ishaq Khan, dismissed Prime Minister Benazir Bhutto, daughter of former Prime

³⁶ REHMAN, *supra* note 1, at 217.

³⁷ *Id.* at 218.

³⁸ Amnesty International Special Report, *supra* note 7, at 2.

³⁹ *Id.*

⁴⁰ *Id.* at 3.

⁴¹ *Id.*

Minister Zulfikar Ali Bhutto, under the PPP government.⁴² Khan went on to dismiss all the national and provincial assemblies, calling a State of Emergency. Benazir Bhutto maintained that her dismissal was an “unconstitutional coup” and illegal.⁴³ However, a Lahore High Court confirmed the dismissal as legal and constitutional, because, among other things, the PPP government failed to pass substantive legislation and to maintain law and order in Sindh.⁴⁴ Prime Minister Bhutto was charged with favoritism and corruption.⁴⁵

However, International observers, including the UK Parliamentary Human Rights Group concluded that that the hearings against Benazir Bhutto were “misconceived and partisan” and were brought by the PPP’s principle opponent for political reasons.⁴⁶ The Human Rights Commission of Pakistan observed that the “special tribunals against members of the outgoing government were noisily launched during the run-up to elections and the charges were repeatedly cited... to run down the party in the eyes of the voter.”⁴⁷

The State of Emergency was lifted when Prime Minister Nawaz Sharif, backed by the *Islamic Democratic Alliance* (IDA), took office. The IDA also won the general elections.⁴⁸ The provincial government of Sindh consisted of a coalition of the PPP and *Muhajir Quami Movement*

⁴² *Id.* at 5.

⁴³ *Id.* at 6.

⁴⁴ Amnesty International Special Report, *supra* note 7, at 6.

⁴⁵ *Id.* at 7. The Fordham Institute for Ethics and Economic Policy (FIEEP) at Fordham University, Corruption Information Exchange Report on Pakistan, *available at* <http://www.fordham.edu/economics/vinod/cie/pakistan.htm>. However, in July 2003, both Zardari and Benazir Bhutto were convicted of money laundering by a Geneva magistrate, which allegedly took place during her 1993 to 1996 term as prime minister. They refused to comply with the magistrate’s order to return US \$11million to the Pakistan government.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

party (MQM), who took power in 1988.⁴⁹ Following the dismissal of this provincial government, a caretaker government under Jam Sadiq Ali was installed in August 1990.⁵⁰ Elections were not held until October 27, 1990, where the IDA, and an alliance of nine right wing and Islamic parties, together with the MQM formed the government.⁵¹

During this time there was also political unrest due to an ethnic conflict between the Urdu speaking Muhajirs (MQM) and the indigenous Sindhis.⁵² The Sindhi nationalist parties including, Jeay Sindh Mahaz (led by GM Syed), Jeay Sindh Progressive Party, the Sindhi National Front and the Sindhi Awami Tehrik, expressed a fear that the Sindhis would be outnumbered and dominated by the Muhajirs.⁵³ Ethnic strife was high during PM Bhutto's term in office. The MQM transferred its alliance from the PPP to the IDA, when they felt they did not receive enough support from PM Benazir Bhutto and the PPP.⁵⁴ In 1990, the political strife between the MQM and PPP hit a peak when the MQM organized a general strike and hunger strike in January.⁵⁵ In May of that year, security forces raided a Muhajir community that resulted in massive rioting. Several thousands were arrested and about one hundred people were killed.⁵⁶

Although the ethnic conflict decreased following the IDA assumption of office in 1990, there was still a very high number of political and criminal violence in the area.⁵⁷ For example, in the first ten

⁴⁹ *Id.*

⁵⁰ Amnesty International Special Report, *supra* note 7, at 7.

⁵¹ *Id.*

⁵² *Id.* at 3.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Amnesty International Special Report, *supra* note 7, at 3.

⁵⁷ *Id.* at 7.

weeks of 1991, 738 kidnappings and 320 murders were reported.⁵⁸ The provincial government has held the PPP and allies to be responsible for these politically motivated crimes, but the PPP denied these charges.⁵⁹

Both the IDA led provincial government and the federal government led by Prime Minister Sharif led a policy of intimidation of the major opposition parties: the PPP and Sindhi Nationalist parties.⁶⁰ The Sindh Chief Minister, Jam Sadiq Ali, in an effort to crush the PPP, tried to portray the PPP as a terrorist organization.⁶¹ To do this, the provincial government made public statements to identify the PPP with a notorious terrorist organization, the Al-Zulfikar Organization (AZO).⁶² Chief Minister Sadiq declared to the press in November 1991 that, “the PPP and AZO are two names for one party.”⁶³ The AZO was responsible for a number of terrorist attacks within Pakistan in the early 1980’s, and is believed to be founded by PM Benazir Bhutto’s brothers, Murtaza and Shanawaz.⁶⁴ Among other things, the AZO has been accused of making various assassination attempts on General Zia ul-Haq’s life and hijacking a Pakistani airplane en route to Kabul.⁶⁵ The PPP, however, has consistently denied any involvement with AZO activities.⁶⁶ In fact, after years of hiding in Syria, when Murtaza returned to Pakistan in 1988, he entered as a political rival against his sister Benazir and formed a political faction of PPP- known as Shaheed Bhutto.⁶⁷

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 4.

⁶¹ *Id.*

⁶² Amnesty International Special Report, *supra* note 7, at 4.

⁶³ *Id.*

⁶⁴ *Id.* at 5.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Syed Saleem Shazad, *Saudi, Morocco Blasts may Fuel Kashmir Terror*, South Asia Monitor, available at <http://www.southasiamonitor.org/focus/2003/may/23foc01.html> (last visited May 20, 2004).

3. Patterns of Political Detention in Sindh

In an effort to crush the Sindh Nationalist Parties and the PPP, the IDA backed government has used two main methods of political intimidation. First, they have arrested opposition leaders using successive detention orders, and arrests based on pretentious criminal charges, and secondly, they have used mass arrests for the opposition supporters.⁶⁸

Former members of the National Assembly (MNAs) and Members of the Provincial Assembly (MPA's), as well as other PPP leaders have been arrested on what Amnesty International believes are un-sustained, politically motivated charges.⁶⁹ Furthermore, PPP members have been accused of being responsible for violent incidents in 1991, though there was no prima facie evidence *to even link them* with the events.⁷⁰ Mass arrests of PPP members, Sindhi nationalist party members, and dissident members of the MQM also occurred during demonstrations.⁷¹

Repeated arrests, without foundation, have been used to keep such legislatures and opposition leaders from carrying out their political obligations and non-violent political activities.⁷² Furthermore, another form of political arrest has been short-term detentions of opposition party candidates, to prevent them from participating in elections and parliamentary votes.⁷³ As an example of this phenomenon, is the case of Pir-Mazhar-ul-Haq, a lawyer who was elected to the Sindh provincial assembly by the PPP government in Sindh.⁷⁴

⁶⁸ Amnesty International Special Report, *supra* note 7, at 7-8.

⁶⁹ *Id.* at 8.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 9.

⁷³ *Id.*

⁷⁴ Amnesty International Special Report, *supra* note 7, at 9.

Pir Mazhar was arrested on August 1990 on various un-related criminal charges including kidnapping for ransom and robbery.⁷⁵ He was not given access to defense counsel or his family.⁷⁶ The charges were finally dropped in September, after no evidence against him was found.⁷⁷ Despite the discharge order, he was not released; instead he was re-arrested on three more unrelated criminal charges.⁷⁸ For a week he was not brought before the magistrate, and yet his custody was remanded.⁷⁹ His release was finally ordered in September, as the police were again not able to produce any evidence against him.⁸⁰

However, though the police report showed *Pir Mazhar* was released on September 14, again, he was not released.⁸¹ His wife filed a constitutional petition to the High Court of Sindh, alleging that her husband's detention at the hands of the care-taker government was illegal, and solely an effort to deny him the freedom to campaign in the provincial elections.⁸² The Sindh High Court on October 2, 1990, declared that he should be released immediately.⁸³ The State refused to release him. Though the public outside the jail cell were successful in demanding his release for a short time following a protest, he was re-arrested for the fourth time on October 23, 1990. He was again released on October 27 for lack of evidence.⁸⁴

⁷⁵ *Id.* at 10.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Amnesty International Special Report, *supra* note 7, at 11.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

In June 1991, ten more charges were registered against Pir Mazhar and other MNAs.⁸⁵ Five of the cases were dropped for lack of evidence.⁸⁶ Of the five remaining cases, the other accused citizens declared in sworn statements that they did not make any statements to implicate Pir Mazhar and the other MNA.⁸⁷ Instead, they were *forced* to sign blank papers under torture, coercion and duress, which were later shown by the State to be the statements implicating Pir Mazhar.⁸⁸ Pir Mazhar was compelled to move out of Sindh, since the warrants for the five pending cases continue to be out for his arrest.⁸⁹

In January 1992, there was a crackdown on the leaders of the *Jeay Sindh Mahaz* (Long Live Sindh Front). Its leader, GM Syed, was placed under house arrest on January 18, for making a speech demanding a separate Sindhi homeland, though he had made such demands several times in the past.⁹⁰ He was charged with a conspiracy to wage war against Pakistan, for condemnation of the creation of the state of Pakistan and for promoting enmity between different groups.⁹¹ In February of 1992, a Special Court for the Suppression of Terrorist Activities gave out arrest warrants for other Jeay Sindh Mahaz activists.⁹²

Throughout his life, G.M. Syed asserted that the Sindhi people hold an inalienable right to self-determination, and was known as a “visionary of the modern Sindhi nation.”⁹³ He was committed to the idea that the independence of Sindh would help bring a lasting solution for

⁸⁵ *Id* at 12.

⁸⁶ Amnesty International Special Report, *supra* note 7, at 12.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id* at 18-19.

⁹¹ *Id.*

⁹² Amnesty International Special Report, *supra* note 7, at 19.

peace in Pakistan and the surrounding region.⁹⁴ Though he was committed to peace, religious tolerance and non-violence, G.M Syed was repeatedly subjected to political detention without trials for over three decades.⁹⁵ Both Amnesty International and Human Rights International declared him a “Prisoner of Conscience.”⁹⁶ He died in custody in 1995.⁹⁷

More recently, under the military rule of General Musharraf, who took power in a bloodless coup in October of 1999, there continues to be suppression of peaceful political opposition. General Musharraf declared a Proclamation of Emergency as he seized power, allegedly to restore democracy to Pakistan.⁹⁸ However, the proclamation remains in effect as of 2004, leaving open the possibility of limitless extensions of military rule. According to Pakistan’s Lawyer’s Committee for Human Rights (a non-governmental organization), as of March 2004 there are approximately 170 political prisoners in Pakistani jails, most who have been held for months or years without proper trials.⁹⁹ This includes the seven-year detention and documented torture of Benazir Bhutto’s husband, Asif Ali Zardari.¹⁰⁰ Amnesty International reports that in the year 2000, the military government of Pakistan sentenced 258 people to

⁹³ Sindhi Link, *Remembering G.M Syed* (March, 1993) available at <http://www.sindhilink.net/wsc/2003/g-m-syed-proceedings-2003> (last visited May 20, 2004).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* See also, Human Rights International’s Press Release (1995), *Violations of Human Rights in Sindh, including Death in Custody of Sain GM Syed*, available at http://sindhilink.net/saen/articles/articles_eulogy_wsc.htm. (last visited Feb. 24, 2005).

⁹⁷ *Id.*

⁹⁸ Human Rights Watch World Report 2001, Pakistan (2001), *Pakistan, Human Rights Developments*, available at <http://www.hrw.org/wr2k1/asia/pakistan.html>

⁹⁹ South Asian Tribune, *170 Political Prisoners*, (March, 2004), available at www.satribune.com/archives/feb29_mar6_04/PI_asif.htm.

¹⁰⁰ *Id.* The Economist, *Benazir Bhutto’s Husband Freed* (November 25, 2004), available at http://www.economist.com/displayStory.cfm?story_id=3436303. In November 2004, Asif Zardari was released from jail on a bail order after 8 years of imprisonment, as he had never been convicted of any of the 16 charges of corruption and murder against him.

death.¹⁰¹ Most of these prisoners were sentenced to death by the Special Courts, where many were presumed guilty of the charges against them.¹⁰² Furthermore, human rights and women's rights organizations throughout the country have been harassed through threats and intimidation.¹⁰³

4. New Anti-Terrorism Laws Affecting Political Opposition Members

In August 2000, under a promise to build a guided democracy, President Musharraf unilaterally amended the Pakistani Constitution.¹⁰⁴ Amendments to the Constitution gave President Musharraf the right to dissolve parliament and to extend his term in office. On January 26, 2001, President Musharraf also issued an order requiring all Supreme and High Court judges to uphold the *Provisional Constitution Order* (PCO), which prohibits the Supreme Court and High Courts from making any decisions against the Chief Executive.¹⁰⁵ Holding the Legislature and Judiciary directly answerable to the military government has severely decreased political accountability in the country.

In what the president has called an effort to hold officials responsible for corruption, the creation of the National Accountability Bureau (NAB) has been used as a vehicle to suppress political opposition and detain former party leaders.¹⁰⁶ Those convicted under the *National Accountability Ordinance* (NAO) are barred from political office for 21 years.¹⁰⁷ Under the NAO, the burden of proof for corruption charges is

¹⁰¹ Amnesty International, *Report on Pakistan 2000*, available at <http://web.amnesty.org/web/ar2000web.nsf>

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Macon News, *Musharraf Grants Self Broad Powers* (Aug 21, 2002), available at <http://www.macon.com/mld/macon/3907516> (last visited May 20, 2004).

¹⁰⁵ Human Rights Watch World Report, *supra* note 98.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

placed on the defense.¹⁰⁸ Political opposition has also been curbed through placing criminal charges against protest and rally organizers against the *Maintenance of Public Order* (MPO) Ordinance.¹⁰⁹ This sedition law criminalizes speech that brings “hatred, or contempt, or excites or attempts to excite disaffection towards the Central or Provincial Government.”¹¹⁰ Broad language in the ordinance also bans various forms of speech that “is likely to cause fear or alarm to the public” or is likely to “further any activity prejudicial to public safety or the maintenance of public order.”¹¹¹ Human Rights Watch has noted that the ethnically based Sindhi parties, Jeay Sindh Quami Mahaz (JSQM) and MQM, have been particularly targeted.¹¹²

In November of 2002, President Musharraf also tightened Pakistan’s anti-terrorism laws, a move that was criticized by various human rights groups. The amendments in the Anti-Terrorism Act allow for the police to detain suspects for up to one year *without bringing any charges*.¹¹³ The previous term of detention was for a month. The amendments also allow Pakistani police to investigate the financial assets of relatives of any suspects, without showing reasonable suspicion for the search.¹¹⁴

The Human Rights Commission of Pakistan (HRCP) believes that these new amendments, which also enable police to arrest anyone suspected of having ties to groups that commit sectarian violence whether or not the group has been banned, are draconian.¹¹⁵ Opposition parties,

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* (quoting Section 124-A of the Pakistan Penal Code).

¹¹¹ Human Rights Watch World Report, *supra* note 98.

¹¹² *Id.*

¹¹³ BBC News Online, *Pakistan Beefs Up Anti-Terror Law*, (Nov. 17, 2002), available at http://news.bbc.co.uk/2/hi/south_asia/2487021.stm.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

such as Benazir Bhutto's Pakistan People's Party (PPP), and human rights groups are calling this the "black law."¹¹⁶ The PPP fears that such laws will enable the government to detain people who voice political opposition.¹¹⁷ The laws would allow Pakistani police and security to arrest people without any evidence against them, except for the faintest suspicion.¹¹⁸

Advocates of the anti-terrorism amendments allege that such laws were necessary, because under the previous laws, the police were unable to arrest forces that are hiding within Pakistan, but have committed no violence within Pakistan itself, such as Al-Qaeda.¹¹⁹

Amnesty International recalls hundreds of people that have been arrested in Pakistan, detained or given over to US custody, by circumventing the existing legal safeguards.¹²⁰ The current amendments are seen as unnecessary and arbitrary, given the fact that officials are circumventing the strict anti-terrorism laws that are already in place.¹²¹ According to Amnesty International, "detaining anyone for up to a year on the mere suspicion that they may be associated with an organization which may not even be classified as an illegal group violates a whole range of internationally agreed human rights."¹²² Legalizing searches and detentions to take place without reasonable suspicion, can open the doors to unhindered police activity, violating Article 9 of the Universal

¹¹⁶ Nadeem Iqbal, *Musharraf Shows His Iron Fist* (Nov. 20, 2002), Global Vision News Network, available at http://www.atimes.com/atimes/South_Asia/DK21Df01.html.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Amnesty International Press Release, *Pakistan: No Need for More Laws To Fight Political Violence* (Nov. 19, 2002), available at <http://web.amnesty.org/library/Index/ENGASA330372002?open&of=ENG-PAK>.

¹²¹ *Id.*

¹²² *Id.*

Declaration of Human Rights, which calls for no one to be subject to arbitrary arrest, detention or exile.¹²³

5. Political Arrests in Sindh are Violating Pakistan's International Legal Obligations

Arbitrary arrest and detention without reference to any law at all violates International human rights standards. Detention by repeated arrests and arbitrarily planting charges on persons is considered a form of "arbitrary detention," violating Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR). Article 9(1) states, "Everybody has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention."¹²⁴ Arbitrary detention also violates Article 9 of the Universal Declaration of Human Rights, which states, "No one shall be subjected to arbitrary arrest, detention or exile."¹²⁵

Political prisoners in Sindh are usually tried by courts set up under the Suppression of Terrorist Activities (Special Courts) Act of 1975.¹²⁶ This act allows the federal government and provincial government, at its direction, to set up special courts to try offenses found within the Act.¹²⁷ These offenses include non-violent political acts, such as sedition and attempting to wage war against Pakistan (which was the charge placed against G.M Syed after he demanded a separate Sindhi home-land).¹²⁸ This legislation includes provisions under Section 8, which deny the accused the right to be presumed innocent until proven guilty.¹²⁹ The

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* at 38.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

accused can also be convicted on circumstantial evidence.¹³⁰ The Special Courts Act clearly violates Article 14(2) of the ICCPR, which states that, “Everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to the law.”¹³¹ This presumption of innocence is considered essential to protecting human rights.

Having a set of special courts whose procedures significantly differ from the regular courts “violates the right to be tried by the established legal procedures of one’s country.”¹³² Article 2 of the UN Basic Principles of the Independence of the Judiciary states that, “tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.”¹³³

Furthermore, the fact that the trials of the Jeay Sindh Mahaz activists, under the Special Courts, were not open to the press or the public also violates a fundamental ICCPR principle stated in Article 14(1), that everyone shall be entitled to fair and public hearings, unless there are exceptional and well-defined circumstances for excluding the public.¹³⁴

The documented torture, rape and killing of many political prisoners in detention violates Article 5 of the Universal Declaration of Human Rights, which states, “No one shall be subjected to cruel, inhuman or degrading treatment or punishment.”¹³⁵ Human rights organizations urge Pakistan to ratify the UN Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, and the ICCPR.¹³⁶

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* (quoting the UN Basic Principles of the Independence of the Judiciary).

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at 41.

¹³⁶ *Id.* at 43.

VI. The Kalabagh Dam Project: The Most Recent Example of the Discrimination Against the Sindhi People

1. Background

Pakistan is currently facing a huge water shortage due to a long cycle of drought and the reduced storage capacity of its existing two reservoirs. President Musharraf is urging the building the Kalabagh Dam and reservoir and the Thal Canal to dam the Indus River and create more irrigation water. The Kalabagh Dam will cost \$42 billion and will generate 3,600 megawatts of electricity.¹³⁷ President Musharraf urges that the dam is necessary to save 17 million-acre feet of water (MAF) a year from being wasted as this water currently flows to the sea.¹³⁸ The Government argues that the Kalabagh reservoir would increase irrigation water supply reliability and compensate for the loss of water storage at the other dams, which is occurring due to silting.¹³⁹

The Kalabagh Dam project was initially shelved due to huge opposition. However, President Musharraf announced his intention to re-start the project in September of 2003. Sindhi political activists have been strongly protesting against the building of the Kalabagh Dam, and view its building as a matter of life and death.¹⁴⁰

The government is concerned that with the rapidly growing population the demand for food and water will also increase. Pakistan's increasing food import bill is being blamed on the rising population and

¹³⁷ Ahmad Naeem Khan *Pakistan's Mega Dam Plan Hits Opposition Barrage* (March 2003), South Asia Monitor, available at <http://southasia.oneworld.net/article/view/67237/1/>.

¹³⁸ *Id.*

¹³⁹ Kaleem Omar, *Some Critics Say Big Dams Do More Harm Than Good* (Sep. 2003), JANG NEWS, available at <http://www.jang.com.pk/thenews/sep2003-weekly/busrev-08-09-2003> (last visited Mar. 20, 2005).

¹⁴⁰ Susanne Wong, *Urgent Action Alert* (August, 2000), INTERNATIONAL RIVERS NETWORK (quoting Kalabagh Dam protest leader, Rasool Palijo), available at <http://www.irn.org/programs/india/index.asp?id=/programs/india/action000808.html>.

the reduced availability of water.¹⁴¹ The provinces of Sindh and Punjab have been struggling for water rights, which has turned into a serious confrontation between the provinces regarding the distribution of the water of the Indus River.¹⁴² Though the Kalabagh Dam would generally create more irrigation water for the country, its most beneficial affects will be felt in the Punjab province, while the human and environmental costs will be mainly felt in Sindh.

In 2003, President Musharraf, while strongly urging the building of the Kalabagh Dam, also re-constituted the Indus River System Authority (IRSA) to resolve the dispute over the sharing of irrigation water.¹⁴³ IRSA however, has not been able to work out an acceptable solution for the parties.¹⁴⁴

2. Why Sindh Opposes the Kalabagh Dam

There are various reasons why Sindh opposes the building of the Kalabagh Dam. The Kalabagh Dam will displace an estimated 124,000-250,000 people living mainly in Sindh, Baluchistan and the NWFP provinces.¹⁴⁵ It will submerge at least 35,000 acres of land, including endangered mangrove forests.¹⁴⁶ Several species of endangered fish, the famous Indus dolphin and sea cat would become extinct with the building of the dam and further shrink of the Indus Delta.¹⁴⁷ Furthermore, ancient cities along the Indus, including Mardan, Charsadda and Newshehra would sink.¹⁴⁸ The resulting reduction of fresh water, following years of

¹⁴¹ Senator Amin Dadabhoy, *Water Resources, Crisis, and Solution* (November 7, 2003), JANG NEWS available at <http://www.jang-group.com/thenews/nov2003-daily/07-11-2003/oped/o4.htm>.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Khan, *supra* note 137.

¹⁴⁶ Wong, *supra* note 140.

¹⁴⁷ *Id.* See also Khan, *supra* note 137.

¹⁴⁸ *Id.*

drought in Sindh would be a disaster for Sindhi agriculture and fisheries.¹⁴⁹

The PPP, MQM and various Sindhi nationalist parties feel the dam is designed to benefit Punjab, which is the most politically dominant and largest province, at the expense of Sindh, Baluchistan and the North West Frontier Province (NWFP).¹⁵⁰ Party leaders view the dam as an anti-Sindh plan. Nation wide anti-dam demonstrations and boycotts were staged in late 2003-2004, to appeal to the international donors against funding the dam.¹⁵¹ The Awami National Party general provincial secretary of NWFP expressed sentiments felt by the Sindhis when he said, “We are loyal to Pakistan. We want to live here, but [this project has] put us to the test.”¹⁵² Sindh is not the only province opposed to the dam; notably, the Kalabagh Dam was rejected unanimously by the elected provincial parliaments of three of the four affected provinces in Pakistan.¹⁵³

Sindhi political activists and environmental activists argue that in reality the Kalabagh Dam will be ineffective in meeting the Government’s expectations. The dam will trap the sediments of the Indus, which has the fifth highest sediment load in the world, thereby increasing the salinity of the irrigation water available to Sindh.¹⁵⁴ This would further degrade the agricultural productivity of the Indus basin and destroy the surrounding forests and fisheries.¹⁵⁵ Ironically, the increased salinity is theorized to be the cause of the downfall of the early Indus Valley Civilization of Sindh

¹⁴⁹ *Id.*

¹⁵⁰ Khan, *supra* note 137.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Why Sindh Opposes the Kalabagh Dam* (quoting World Rivers Review, 1989), available at <http://yangtze.cs.uiuc.edu/~jamali/kalabagh/summary/> (last visited Feb. 24, 2005).

¹⁵⁵ *Id.*

(of Mohenjo-Daro) 3,500 years ago.¹⁵⁶ In addition, Sindh irrigation expert, Senator Kazi has emphasized to the government that there is not enough water in the Indus River flow to fill the dam. Because of low water flow in the Indus, any upstream reservoirs such as the Kalabagh will be unfilled an average of 5 out of every 6 years.¹⁵⁷

The dam also represents a repetition of water violations, by what is seen as a “Punjab dominated” government. Punjab has been accused of illegally diverting water from the Tarbela Dam, which is also located on the Indus, by illegally keeping open link canals, in violation of past agreements.¹⁵⁸

Furthermore, it should be noted that the concession signed by Sindh, under the 1991 Water Accord, allowing water distribution to Punjab, was signed by the unelected care-taker government of Sindh, which was installed during the time when PM Nawaz Sharif simultaneously dissolved the PPP National Government and provincial assemblies.¹⁵⁹ The care-taker government consisted of un-elected state leaders, installed by the central government.¹⁶⁰

For the Sindhis, the underlying fear is that the Kalabagh Dam may be used as a political instrument by the national government to further suppress Sindhi political freedoms, since the obvious consequences of damming the Indus, would leave Sindh economically weak and dependant on Punjab for food.¹⁶¹

In December of 2003, eleven US Congressmen from the House of Representatives wrote a letter to President Musharraf, urging that the

¹⁵⁶ *Id.* (quoting Fred Pearce, “New Scientist” (1990)).

¹⁵⁷ *Id.* (quoting Aly Ercelawn, Citizens Alliance in Reforms for Efficient and Equitable Development (CREED)).

¹⁵⁸ *Why Sindh Opposes the Kalabagh Dam, supra* note 154.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

projects of the Kalabagh Dam and Thal Canal on the Indus River be halted.¹⁶² They stated, “The projects threaten the environmental security and the cultural and economic stability of the Sindh province. Already suffering from poverty and extreme drought, the Sindhi community would be greatly challenged if the river constructions continue.”¹⁶³ They expressed their concern that the Pakistani government was ignoring the Sindhi’s opposition to the river constructions, which was made clear through the unanimous provincial government’s decision against the project and through the daily street protests occurring in Sindh.¹⁶⁴

A majority of the populations living in the detrimentally affected provinces of Sindh and Baluchistan are already living under poverty levels. This is twice as high as the poverty rates in the other provinces.¹⁶⁵ The building of the dam, along with the government’s refusal to alleviate their conditions will lead to an economic imbalance within the country, threatening the unity and integrity of the nation.¹⁶⁶

3. Available Alternatives

In May of 2003, Pakistan made a request for funding future reservoirs including the Kalabagh Dam to international donor agencies and governments.¹⁶⁷ The World Bank, the International Monetary Fund, the Islamic Development Bank, the United Arab Emirates, Sweden and Japan all refused the request.¹⁶⁸ First, the agencies stated there are alternatives available to Pakistan, as the country could, through proper

¹⁶² Letter from US Congressmen to President Musharraf (Dec., 2003), *available at* <http://yangtze.cs.uiuc.edu/~jamali/sindh/res/wsi2003/uscongress.html>.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* (quoting statistics from the 2003 Asian Development Bank reports).

¹⁶⁶ *Id.*

¹⁶⁷ Staff Report, *Donors Refuse to Fund Large Water Projects*, (May 16, 2003), DAILY TIMES, *available at* http://www.dailytimes.com.pk/default.asp?page=story_15-5-2003_pg1_7.

¹⁶⁸ *Id.*

lining of its existing watercourses and canals, save 32 million acre feet (MAF) water, which is now being wasted in the saline zone because of the improper lining.¹⁶⁹ Second, the Pakistani government could introduce a Water Pricing Mechanism (WPM) to encourage people to ration water.¹⁷⁰ And finally, donors stressed the importance of Pakistan developing a national water policy and consensus on controversial projects like the Kalabagh Dam; otherwise, its government would lack the political support and power necessary to initiate the project.¹⁷¹

In November of 2000, the World Commission on Dams (WCD), an independent and international organization, published a report stating, that though large dams have provided many benefits, it was often at too high of a price because the people affected have little say in their planning and building. It is usually the most marginalized people who are affected by the dam. In this case, it is the indigenous Sindhis who would feel the most adverse affects of the dam. The WCD stated that there are many alternative means to meet the people's energy needs including renewable energy, recycling, better irrigation and reduction of water losses.

If building more dams is considered necessary, another alternative is for the government to build dams which would be as effective, but which would carry a smaller human cost. One proposal is the building of the Basha Dam that would produce 80% of Kalabagh's power production and would also significantly reduce the silt volume that is flowing into the water reservoirs.¹⁷² However the government has not prepared the feasibility of other dam sites and sadly the people do not know of their options when it comes to choosing a site for building a dam.¹⁷³

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Omar, *supra* note 139.

¹⁷³ *Id.*

4. Strong Opposition to the Dam Demonstrated Throughout Sindh and Other Affected Provinces

Since the dam project was first announced, there have been almost daily protests in Sindh and other provinces against the dam. For example, in 2000, strikes were held by the Sindh Peoples Students Federation (SPSF), resulting in the closing down of major cities in Sindh.¹⁷⁴ The Awami National Party (ANP) and the Sindhi Shaheed Bhutto Peoples Party, Sindh Students Federation, JSQM and MQM have joined the Anti-Kalabagh Dam Action Committee to protest the project.¹⁷⁵ The project has been described as one that is affecting the overall welfare of Sindh rather than an ethnic issue.¹⁷⁶ The protestors have made clear, “You construct the Kalabagh dam, and we will build a Sindhu Desh (Nation).”¹⁷⁷

More recently there have been hundreds of arrests of the peaceful protestors when the JSQM started peaceful sit-ins in March, 2004 against the Pakistani centralized decision to construct the dam.¹⁷⁸ However, this action failed to deter protestors and the JSQM has continued to organize large protests and sit-ins across Sindh. The World Sindhi Congress (a non-governmental human rights advocacy organization) has condemned the political harassment of the Sindhi people.¹⁷⁹ Following what seems to have become standard practice, many protestors have been detained and held in unknown places. Furthermore, they have been unable to meet with

¹⁷⁴ *Kalabagh Special Edition*, JANG NEWS, available at <http://www.jang.com.pk/thenews/spedition/kalabagh/7.htm>.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* (quoting Anti-Dam protestors).

¹⁷⁸ Farhan Kaghzi, Information Secretary, *WSC Condemns Pakistani Military Dictatorship's Mass Arrests* (April 9, 2004), World Sindhi Congress Press Release, available at <http://yangtze.cs.uiuc.edu/~jamali/sindh/sindh-l/archive/her/msg00973.html>.

¹⁷⁹ *Id.*

family or defense counsel.¹⁸⁰ Refusal to recognize the strong opposition to the dam is interpreted as a sign of the National Government's discrimination against the Sindhi people and its lack of political accountability to the people.

VII. Political Discrimination Against Sindhis, an Ethnic and Linguistic Minority Violates Pakistan's International Legal Obligations

In present international law, *discrimination* is defined as "unfair, unreasonable, unjustifiable or arbitrary distinction applicable to any act or conduct which denies to individuals equality of treatment with other individuals because they belong to particular groups in society."¹⁸¹ This principle protects individuals from group-based discrimination. There are three basic groups recognized in international law: (1) ethnic and racial groups, (2) religious groups and (3) linguistic and cultural groups.¹⁸² As discussed earlier, Sindhis constitute a separate ethnic and linguistic group that distinguishes them from the Pakistani majority. These groups have the recognized right to existence and non-discrimination, under various international instruments.¹⁸³

In 1965, the UN General Assembly adopted the Convention on the Elimination of All Forms of Racial Discrimination, which was signed by Pakistan. Under the Convention '*racial discrimination*' is described broadly as:

Any distinction, exclusion, restriction, or preference based on race, color, descent or national or ethnic origin which has the purpose or effect of ...impairing... exercise on an equal footing of human rights and fundamental freedoms in

¹⁸⁰ *Id.*

¹⁸¹ LERNER, *supra* note 11, at 25. (quoting W. MCKEAN, EQUALITY AND DISCRIMINATION UNDER INTERNATIONAL LAW (1983)).

¹⁸² LERNER, *supra* note 11, at 32.

¹⁸³ *Id.* at 34-35. (These instruments include the Convention on Racial Discrimination, the ILO and UNESCO anti-discrimination treaties).

the political, economic, social, cultural or any other field of public life.¹⁸⁴

Article 2 lists the obligations of the States. States cannot practice racial discrimination against persons, groups or institutions, nor sponsor racial discrimination by any persons or groups.¹⁸⁵ Government policies at the local and national level have to be reviewed to comply with the convention.¹⁸⁶ Article 5 deals with the judicial, political and civil rights that should be guaranteed to the people.¹⁸⁷

In the case of Sindh, it is clear that the Islamabad Government has failed to follow its obligations under the Convention. First, as discussed earlier, the national government's policy of political intimidation, mass arrests, and imprisonment of all political opponents and those specifically calling for more cultural autonomy violates Pakistan's obligations under Art. 5(d). Under Article 5(d), explicitly mentioned, are the rights to freedom of thought and conscience, freedom of opinion and expression, and the right to freedom of peaceful assembly and association.¹⁸⁸ Political rights are guaranteed under Article 5(c); individuals have the right to vote and stand for election.¹⁸⁹ They have the right to take part in the government as well as the conducting of public affairs at all levels of government, and equal access to public services.¹⁹⁰ Furthermore, placing the victims in continuous detention under inhumane conditions, through orders by the Pakistani Special Courts, violates Article 5(a), which states

¹⁸⁴ *Id.* at 48 (quoting the UN Convention on the Elimination of All Forms of Racial Discrimination art. 1, para. 1).

¹⁸⁵ *Id.* at 56 (quoting the UN Convention on the Elimination of All Forms of Racial Discrimination art. 2).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 56 (quoting the UN Convention on the Elimination of All Forms of Racial Discrimination, art. 5).

¹⁸⁸ LERNER, *supra* note 11, at 56.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

that all individuals have the right to equal treatment under Court Tribunals and the Right to be secure by the State against violence.¹⁹¹

The government's insistence to build the Thal Canal and Kalabagh Dam, despite the rejection of the proposal by three of the four provincial governments and its likely detrimental effects on the Sindhi people, is a sign of ethnic discrimination. The national government's insistence on the dam project violates Article 2 of the Convention as it has the purpose and effect of denying the Sindhi people equal footing of fundamental freedoms in their political, economic, social and cultural fields of life, since the dam will have devastating effects on both the economy and environment of the province.

Pakistan also signed the 1989 International Labor Organization (ILO) Convention, which calls for the protection of indigenous populations. Under the Convention, "*Indigenous peoples*" are defined as those "on account of their descent from the populations which inhabited the country... at the establishment of present state boundaries, and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions."¹⁹² Sindhis are clearly regarded as such a people, as they have a long history of autonomy in following their own social, economic and cultural traditions.

The ILO passed the 1957 Indigenous and Tribal Populations Convention (No. 107), which was revised in 1989. The Preamble of the Convention is aimed at protection of indigenous populations, improving their living and working conditions and achieving a progressive integration into their national communities.¹⁹³ However, it should be noted that under Article 2(c), measures tending towards the artificial

¹⁹¹ *Id.*

¹⁹² *Id.* (quoting, ILO Convention Article 1(b)).

assimilation of these populations” from national integration policies is excluded, as well as those measures using force or coercion as a means of promoting integration.¹⁹⁴

Article 11 recognizes the right of indigenous members to ownership, collective or individual, of the land.¹⁹⁵ Article 12, provides that indigenous populations cannot be removed from their habitual territories without their free consent, but exceptions are given for when removal is in accordance with the national law for reasons relating to national security or national economic development.¹⁹⁶

The Pakistani Government’s post-partition policy of allotting former Sindhi Hindu properties to political allies and to the new Muhajir refugees, without addressing the claims of Sindhi Muslims clearly violated this principle. More recently, the Government’s insistence on the building of the Kalabagh Dam is a clear violation of Article 11, as the government fails to recognize the rights of the Indigenous Sindhi population to ownership of portions of the Indus River, or at least to have their concerns considered regarding the damming of the river. Given the Indus River’s historical importance and current reliance by Sindhi agriculturalists and fishermen, and because damming of the river would also have a severe detrimental environmental impact on the Sindhi land, especially gives the Sindhi population basis to make the decision of whether or not the river should be dammed.

Although the Government may claim that building the dam, and displacing thousands of Sindhis is necessary for reasons of economic development under Article 12, there are strong arguments that the project

¹⁹³ *Id* at 105. (For its text, *ILO International Labor Conventions and Recommendations*, 1919-1981, at 901, 909 (1989)).

¹⁹⁴ *Id.*

¹⁹⁵ *Id* at 106.

is not necessary or even favorable for the nation's economic development. Building the dam would bring huge economic downfall for the Sindhi economy, as cities will be sunk, thousands will be displaced, and many more will lose their livelihood, detrimentally affecting the national economy. Because there are clear energy alternatives available, this project cannot be said to be "necessary for reasons of economic development." Rather, the government should be more accommodating of Sindh's concerns regarding decisions that detrimentally affect their land and environment. To fail to recognize their concerns will only alienate an already frustrated populace further away from the vision of a unified Pakistan.

Conclusion

Since the creation of the Pakistani State, there has been a denial of fundamental freedoms to the Sindhi People. Sindhis have undergone staunch political repression under a highly centralized and unyielding government, including being denied the right to free speech and peaceful assembly. Despite the fact that they enjoy a majority and indigenous status in Sindh, the minority Muhajir population has been politically and economically dominant. Under a government policy of forced assimilation, Sindhis have been denied the right to promote their language and traditions and are now left with the reality that their 5,000 year-old culture is quickly vanishing. The Kalabagh Dam controversy is just the most recent phenomenon of the National Government's policy to discriminate against the Sindhi people.

The Government justifies its actions on a need to build national unity, however, these actions have been self-defeating. Pakistan's policy of forced cultural assimilation, political repression and lack of political accountability by the State, has pushed those populations living on the

brink of poverty and repression, such as the Sindhis, to become disillusioned with the Pakistani Government. When a state denies even the most fundamental political rights and human rights, as recognized by international law, to groups within its population, it cannot but expect these groups to eventually grow frustrated and demand self-governance.

Pakistan's only hope at building national unity is to work quickly to restore its people's confidence in the central government by accepting the reality that it is a diverse nation with ethnic and linguistic minorities existing within its borders. This includes recognizing that these indigenous populations have a right to fundamental freedoms, respect and dignity.