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Pakistan: Promise to lift state of emergency hollow unless attacks on rule of law and independent judiciary reversed

The International Commission of Jurists (ICJ) said today that the formal lifting of the state of emergency in Pakistan will have little meaning, and free and fair elections will not be possible, unless all constitutional rights and freedoms are restored and the legal and physical attacks on the judiciary, lawyers and the legal system are reversed.

"President Musharraf's promise to lift the state of emergency looks hollow. He has just made changes to the constitution that will enable him to formally end the emergency, while retaining the powers he has accumulated under the emergency", said Nicholas Howen, Secretary-General of the ICJ.

The President has also prohibited the courts from challenging any of the measures he has or will put in place or overseeing anything he or his Government does.

"Having already removed the independent judiciary, these constitutional changes now make the executive even more unaccountable. Free and fair elections are not possible with a government that is beyond the law", said Nicholas Howen.

While some constitutional rights will probably be restored upon the lifting of the state of emergency, on 21 November 2007, the President made seven significant amendments to the constitution under President's Order No.5. Under a new clause, Article 270AAA, all orders, ordinances, proclamations made by the President or the Chief of the Army Staff after 3 November, will remain in force even after the lifting of the emergency, until revoked by the "competent authority". None of these acts, orders, appointments, ordinances and constitutional amendments can be "called into question in any court or forum on any ground whatsoever" and legal proceedings against the President or Chief of Army Staff for anything they have done or will do after 3 November are prohibited.

The effect of these amendments is that many of the restrictions on rights and attacks on the rule of law will remain after the lifting of the state of emergency. These include: restrictions on the media; the wholesale replacement of the once independent Supreme Court; giving power to military courts to try civilians, behind closed doors, for vague offences of subversion that can be used to suppress peaceful opposition, and authorising the Supreme Court to cancel the licence of lawyers. It will also not be possible to challenge in court any actions of the executive under laws passed since 3 November.

The ICJ also expressed concern about the continuing intimidation of lawyers (see update below), as well as of journalists and political activists. Supreme Court and High Court judges who have refused to take the new oath of office remain effectively under

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

33, rue des Bains, P.O. Box 91, 1211 Geneva 8, Switzerland
Tel: +41(0) 22 979 3800 – Fax: +41(0) 22 979 3801 – Website: <http://www.icj.org> - E-mail: info@icj.org

house arrest. Lawyers who have merely exercised their right to demonstrate continue to be arbitrarily detained. Some have been tortured or ill-treated while in detention. Lawyers are being forced to sign “good behaviour” declarations that they will not engage in political activity, as a precondition to being released. Security forces continue to have a heavy presence in and around the courts.

Responding to two legal challenges to the imposition of the state of emergency and the Provisional Constitutional Order (PCO), on 23 November 2007 the Supreme Court invoked the “doctrine of necessity” to justify their validation of the state of emergency and PCO.

“The Supreme Court’s judgment on Friday supporting the imposition of the state of emergency and the PCO lacks legitimacy. The Supreme Court has been stripped of the independence and impartiality necessary to decide on the legality of the Government’s actions. Judgments by this Court should be viewed in this context”, said Nicholas Howen.

The Court supported President Musharraf’s justifications for the emergency – judicial activism and the terrorist threat - and criticised “former” judges of the Supreme Court for exceeding constitutional limits.

The ICJ is calling, not only for the lifting of the state of emergency, but for the full restoration of the Constitution and all rights under it, the release and reinstatement the Chief Justice and other judges who have refused to take oath under the PCO, the release of those arbitrarily detained and the withdrawal of charges arising from peaceful protest, the lifting of restrictions on the media, demonstrations and public statements, and the repeal of the laws and constitutional amendments made since 3 November 2007.

Update on judges and lawyers

Supreme Court judges who refused to take the oath under the PCO remain under effective house arrest. Despite a statement by the Ministry of Interior claiming that these judges were free to move around, when Chief Justice Iftikhar Mohammad Chaudhry attempted to leave his home he was prevented from doing so by the police.

On 21 November 2007 the Ministry of Interior stated that around 3,400 lawyers, journalists, human rights and political activists had been released in the past week and 2000 remained detained. While figures are hard to verify, it is believed that this figure is about half the actual figure currently detained. Those who have been released have been forced to sign a declaration that they will not participate in political activities of any nature. Where another individual has provided “surety” to secure the release of a lawyer, that individual has been forced to submit bonds stating that the individual to be released will not participate in political activities of any nature. Individuals who were detained under a First Information Report are released on bail with charges remaining, while those detained under the Maintenance of Public Order Ordinance (MPO) must have their detention orders withdrawn.

Among the lawyers that have been detained the ICJ is gravely concerned for the wellbeing of Munir A. Malik, Aitzaz Ahsan, Ali Hamed Kurd and retired Justice Tariq Mehmood.

Ali Ahmed Kurd and retired Justice Tariq Mehmood were held incommunicado from 3 November. On 24 November Tariq Mehmood was said to be unwell and was reportedly moved to Lahore Services Hospital for medical examination. On 25 November Ali Ahmed Kurd was moved to a jail in Quetta, Balochistan, his hometown.

Munir A. Malik, former President of the Supreme Court Bar Association, was reportedly moved from Attock prison to the Pakistan Institute for Medical Sciences at 18.00 on 23

November after suffering acute renal failure. He is currently on dialysis and lawyers who have visited him stated that he is seriously ill. His detention order has now been withdrawn

Aitzaz Ahsan, President of the Supreme Court Bar Association, who represented justice (retired) Wajihuddin Ahmed before the Supreme Court in a petition challenging the candidature of President Musharraf, had been detained at Adiala prison in Rawalpindi since 3 November. He was reported to be suffering from blood pressure problems and was moved on the evening of 24 November to his home in Lahore after his house was declared a sub-jail. He has refused to sign a "good behaviour" bond. He had no contact with his family during his detention at Adiala prison. His petition was dismissed on 16 November due to his absence in the court room.

Athar Minallah was arbitrarily detained on 21 November after accompanying Justice Wajihuddin Ahmed on an attempted visit to Chief Justice Iftikhar Mohammad Chaudhry. Athar Minallah was released on the evening of 24 November despite being informed during his arrest that he was arrested for 30 days under administrative detention orders under Section 3 of MPO which gives "power to arrest and detain suspected person acting in any manner prejudicial to public safety or the maintenance of public order". He was forcibly removed from a moving vehicle by six or seven plainclothes intelligence officials and held incommunicado for several hours before being taken to Adiala prison.

The ICJ has learned that First Information Reports for sedition have been filed against 14 teachers of Punjab University under sections 124-A (sedition), 188 (disobedience by public servant), 143 (unlawful assembly) and 149 (detention order) of the Pakistan Penal Code and Section 16 of the MPO. This includes two law professors.

An ordinance LXIX of 2007 amending the Legal Practitioners and Bar Councils Act 1973 has been issued which allows anyone aggrieved by any decision, order (or) resolution of any Bar Association or the Pakistan or any Provincial Bar Council to appeal to the Chairman of the Pakistan Bar Council (the Attorney-General). The decisions of the Chairman are final. The Chairman is also empowered to expel or remove the membership of any member of a bar association without giving the member an opportunity to present his case. The Ordinance also empowers the Supreme or High Courts, on receipt of a complaint, to dismiss the complaint, reprimand the advocate, suspend the advocate, remove the advocate's name from the roll of advocates if the Court has reason to believe the advocate is guilty of professional or other misconduct.

Courts across Pakistan remain largely deserted. A boycott of High Courts has been put in place by the Pakistan Bar Council and the respective provincial bar councils of Punjab, Sindh, Balochistan and the North West Frontier Province. In many districts the district bar associations have also imposed a boycott on the lower courts. Courts fail to function normally. The Lahore High Court's registries/benches at Multan and Bahawalpur have been closed and their responsibilities transferred to Lahore High Court due to a lack of judges and the boycott imposed by the legal community. In many instances High Courts are dismissing cases for non-prosecution when advocates do not appear. There is a heavy police presence in and around the courts. In Lahore High Court for instance there are around two dozen plainclothes police present and approximately 200 police in uniform present outside the court. Unusually high numbers of police are also present in the lower courts.

For further information please contact:

- Susan Appleyard, +9779851100635 (Kathmandu)
- Leah Hctor, +41229793800 (Geneva)