

Pakistan: Fatal erosion of human rights safeguards under emergency

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The current State of Emergency in Pakistan involves serious violations of international human rights law and standards, including those enshrined in the country's own constitution.

Hundreds of lawyers, human rights activists and political workers have been arbitrarily detained across Pakistan. The whereabouts of some of those arrested remain unknown.

Independent television and radio news channels have been prevented from broadcasting within the country. New laws restricting freedom of print and electronic media have also been issued, the breach of which attracts three to four years' imprisonment and heavy fines.

By by-passing the Constitution's provisions for declaring a state of emergency, General Musharraf suspended most of the fundamental rights enshrined in the constitution, including the right not to be unlawfully deprived of life, key elements of the right to a fair trial, freedom of movement, assembly, association and speech, as well as the right to equality before the law.

The effective removal of judges, including Supreme Court judges, from office and, in some cases their *de facto* house arrest, plainly breaches the core provisions of the UN Principles for the Independence of the Judiciary. Government may not "hire and fire" judges so as to have courts that will do their bidding. Judges also may not be removed by the government, except in cases of incapacity or if they are unfit to discharge their duty.

1. State of emergency imposed

On 3 November, acting in his capacity as Army Chief of Staff, General Musharraf imposed a state of emergency, suspended the Constitution, replacing it with a "Provisional Constitutional Order" (PCO). The PCO, while providing that Pakistan would "be governed, as nearly as may be, in accordance with the Constitution," makes this provision subject to General Musharraf's orders. Under this exception the PCO explicitly suspends fundamental constitutional rights and empowers General Musharraf to amend the Constitution at will, without any parliamentary or other procedures. The PCO also prohibits any court issuing an order against the President, Prime Minister or any person exercising powers under their authority.

On 15 November, General Musharraf amended the PCO, transferring the power to lift the state of emergency from his role as Army Chief of Staff, to his role as President. This will enable him to exercise these powers if and when he chooses to step down as Army Chief.

Under the PCO, existing members of the superior judiciary (Supreme Court and four High Courts) are effectively suspended until they take a new oath to abide by the provisions of the proclamation of emergency of 3 November and the PCO – rather than the Constitution. Only five of seventeen Supreme Court Justices took the new oath, the remaining Supreme Court judges were effectively put under *de facto* house arrest, whilst authorities sought to induct their hand-picked replacements.

The emergency rule imposed by General Musharraf is unlawful under Pakistan's legal system. General Musharraf, in his capacity as the Army Chief of Staff, has no legal authority to enforce a state of emergency. It is solely the remit of the President and the emergency is to be regulated as provided in the Constitution.

In a further disturbing development the government amended the Army Act, on 11 November, to allow the military authorities to try civilians. Under these amendments, which have been backdated to be effective from January 2003, civilians can be tried by the military authorities on charges including treason, sedition and "statements conducive to public mischief". Publishing any materials that include comments against the imposition of the emergency could be considered a violation of the amended Act. As such, it poses a serious threat to print and electronic media and civil society activists, as well as to the basic human rights of those individuals against who cases have been registered under the provisions of the Anti-terrorism Act. An assurance by the Attorney General that politicians and lawyers would not be tried under the Act has not allayed grave concerns that these, and other groups perceived as government opponents, face the prospect of being tried in military courts.

2. The legal context

Amnesty International condemns General Musharraf's suspension of fundamental human rights through emergency rule as a blatant violation of international law, as well as of Pakistan's Constitution. Under rules of customary international law, which are binding on Pakistan, the human rights to life and to freedom from discrimination and arbitrary detention, as well as key rights to a fair trial, can never be suspended, regardless of circumstances.

The International Court of Justice has ruled that "In principle, the right not arbitrarily to be deprived of one's life applies also in hostilities",⁽¹⁾ and more generally that human rights law applies during armed conflicts,⁽²⁾ obviously entailing that human rights law applies in other emergencies as well. The Human Rights Committee, noted for its expert and authoritative jurisprudence, has stated that,

"The proclamation of certain provisions of the Covenant as being of a non-derogable nature, in article 4, paragraph 2, is to be seen partly as recognition of the peremptory nature of some fundamental rights ensured in treaty form in the Covenant (e.g., articles 6 and 7)."⁽³⁾

Article 6 provides for the right to life, while Article 7 includes the prohibition on torture and other cruel, inhuman or degrading treatment or punishment.

The Human Rights Committee has also emphasised the peremptory or otherwise non-derogable nature of the prohibitions on arbitrary detention, unacknowledged detention and discrimination, ⁽⁴⁾ as well as the need to respect in all circumstances safeguards "based on the principles of legality and the rule of law", including the right to *habeas corpus*.⁽⁵⁾

Fundamental rights enshrined in the Universal Declaration on Human Rights, including freedom of movement, expression, assembly and association must not be curtailed in order to silence political opposition. Civilians must be tried fairly in regular, independent, civilian courts.

The replacement of constitutionally constructed Supreme Court and other courts by courts staffed by those hand-picked, presumably because they are considered favourable to the emergency ruler, and who have sworn allegiance to an order which suspends fundamental rights, removes a crucial safeguard against human rights violations and against impunity for perpetrators, at the time when they are needed most.

With the Supreme Court endorsing General Musharraf's declaration of a state of emergency, the PCO and amendments to the Constitution, a system is now firmly in place which ensures not only General Musharraf's tenure as President, but also the blanket impunity for all human rights violations by officials under the state of emergency. The judiciary is now a shadow of its former self, transformed from an independent body unafraid to challenge the government on human

rights issues, to one which approves legislation which suspends fundamental rights, and prohibits it from exercising judicial review of government action.

3. Groups under threat

Amnesty International is gravely concerned at a continuing pattern of mass arrests across the country. On 21 November, the authorities announced that 5,134 detainees, including lawyers, political activists and human rights activists, arrested since imposition of emergency, have been released. They have also stated that 202 lawyers remain in detention. Further arrests continue and Amnesty International believes a far greater number of arrests and detentions, which have not been officially recorded and acknowledged, have taken place since the imposition of emergency rule.

Human rights activists

On 4 November, the Office of the Human Rights Commission of Pakistan was raided by a large police contingent. More than 50 human rights activists, who had gathered to discuss the emergency, were arrested and charged with unlawful assembly and maintenance of public order law and initially detained in Kot Lakhpat jail, Lahore.

Among those detained was the Chair of the Commission, UN Special Rapporteur for freedom of religion Asma Jahangir. She was served a 90-day detention order on 3 November under preventive detention laws and remained confined in her house, which was declared a sub jail by the authorities, till 17 November, when the detention order was withdrawn. A similar detention order was issued against Hina Jilani, UN Special Representative of the Secretary General on human rights defenders, who currently is not in Pakistan.

At least 53 of the other detained activists were released on bail, however they remain under threat of re-arrest.

Lawyers

Members of Pakistan's legal profession have been at the forefront of protests against the abrogation of constitutional protections, human rights violations and the assault on the independence of the judiciary.

Several senior lawyers, including former Supreme Court Bar Association (SCBA) presidents Tariq Mahmood and Munir A Malik, have been held incommunicado since they were arrested on 3 November. Serious concerns continue to be raised about Munir Malik's health. According to his counsel Mr Malik's condition has deteriorated and, in addition to his known prostrate problems, initial tests have indicated that he may also be suffering from hepatitis. He is currently being denied adequate medical treatment and access to specialized doctors. According to his wife the authorities have continued to deny any access to him whilst also restricting the delivery of medicines to him.

Atizaz Ahsan is being held in Adiala jail in Rawalpindi where he is at risk of ill-treatment. His lawyer was finally granted access to him on 21 November for the first time since Mr Ahsan was detained in custody on 3 November.

The fate and whereabouts of Ali Ahmed Kurd, former Vice President of Pakistan Bar Council and catalyst in the lawyers' movement, who was also detained on 3 November, continues to be unknown. There are grave concerns that he and the other detained lawyers, some of whom suffer from ill-health, are at risk of torture and other ill-treatment.

According to media and other reports, hundreds of lawyers have been arrested nationwide since the imposition of emergency rule, particularly in the cities of Karachi, Lahore, Peshawar,

Rawalpindi, Quetta, Hyderabad, Sukkur and in many small towns and cities where many had been protesting peacefully against the state of emergency and the removal of senior judges. On several occasions, security forces reportedly beat protesting lawyers, and fired teargas at crowds protesting in Lahore and Karachi.

Many of the lawyers detained are being held in administrative detention for 30 to 90 days under the Maintenance of Public Order law. People detained under this or other preventive detention laws are held without charge or trial. Karachi police have also reportedly charged eight lawyers with sedition.

Journalists

Local independent television and radio channels have been prevented from broadcasting within the country. New laws restricting freedom of print and electronic media have been issued, a breach of which attracts three to four years' imprisonment and heavy fines. Many journalists have been arrested since the imposition of a state of emergency, including, on 21 November, when police in Karachi baton-charged and arrested over one hundred protesting journalists.

The Karachi journalists were subsequently released but further arrests have continued to take place across the country. The climate of intimidation has been sustained by a "revolving door" pattern of arrests and releases of those attempting to peacefully protest against emergency rule.

Further harassment and detention of journalists remain likely. On 17 November, the editor of the Islamabad Urdu-language daily newspaper *Tulu* was arrested by the plainclothes police from his office. During his detention he was blindfolded, taken to an unidentified location and questioned about his writings. He was informed that he had been arrested on the orders of senior government officials. He was released on 19 November.

Political activists

As opposition parties have stepped up protests against emergency rule the number of arrests and incidents of excessive use of force against peaceful protestors by law enforcement personnel has increased.

The Pakistan People's Party (PPP) reports that at least 7,500 of its members have been arrested since the imposition of emergency rule, most on public order offences. On 12 November, its leader, Benazir Bhutto, was placed under house arrest for a period of seven days, in an attempt to prevent her leading a mass protest march from Lahore to Islamabad.

Three politicians and a trade unionist have also been charged with sedition on 8 November, after being arrested in Karachi for making speeches and participating in an anti-emergency demonstration outside the city Press Club.

4. 'Disappearances' justified by the 'war on terror'

General Musharraf blamed militant violence in the country when he imposed emergency rule and accused members of the judiciary of "working at cross purposes with the executive and legislature in the fight against terrorism and extremism".

Amnesty International is increasingly concerned about thousands of individuals who have reportedly "disappeared" over the past six years, including at least those 485 whose names formed a reference list in the hearings before the Supreme Court. The next hearing was due before the Supreme Court on 13 November.

With the Court in disarray, owing to the dismissal of the Chief Justice and other senior judges, this case is currently suspended. The fate and whereabouts of those whose cases were due to be

heard, as well as many hundreds of others who have gone missing, remain unknown. They are at serious risk of torture and other ill treatment.

The vast majority of these individuals, some of whom have been labelled terrorists or threats to national security, have not been charged with any crime and are thought to be held arbitrarily, incommunicado and secretly in undisclosed locations, or to have been unlawfully transferred to the custody of other governments, including the USA. The figure of 485 represents a fraction of those actually believed to have been subjected to enforced disappearance since the start of the "war on terror" in 2001.

The clandestine nature of the "war on terror" makes it impossible to know exactly how many enforced disappearances there have been, but Amnesty International believes that since 2001 the figure is over 2,000.

The Supreme Court had been taking a tough stance on enforced disappearances, demanding that the government and intelligence services produce the missing people before the court. The Court had worked from a list provided by the Human Rights Commission of Pakistan and the Defence of Human Rights group, the latter of which was formed by families of the "disappeared".

In early November, the Supreme Court consolidated the cases involving enforced disappearances before it and adjourned the hearing until 13 November. On this date, the Court was due to hear the government's progress in cross-checking the lists of those reported as "disappeared" into government custody and produce the individuals before the Court. Chief Justice Iftikhar Choudhry, who has now been dismissed and is currently under undeclared de facto house arrest, had previously stated that there was "irrefutable proof that the missing persons are in the custody of secret agencies," and stated that the Supreme Court would initiate legal proceedings against those held responsible.

As noted above, the Government of Pakistan amended the Army Act, granting military courts the power to try civilians who are suspected of a range of offences including "terrorist" activities, treason or sedition, for acts dating back to 2003. Effectively, this puts into further jeopardy the fate of the "disappeared" and their families, and their right to see justice.

Amnesty International fears that in the present climate further enforced disappearances of "terror" suspects, including lawyers and political activists, will take place. International law strictly prohibits enforced disappearances in all circumstances. In certain circumstances enforced disappearance constitutes a crime against humanity. Enforced disappearances can also amount to ill-treatment of relatives and friends of the "disappeared" person in that the uncertainty about their fate and whereabouts, directly resulting from the authorities' deliberate denial of information, can cause extreme distress and fear.

5. Political context

'Political instability' in Pakistan heightened after 11 September 2001 when American and Coalition forces launched strikes against the Taliban government in Afghanistan, and Pakistan joined as a front line ally in Washington's War on Terror (WOT). In this role Pakistan, and in particular President General Musharraf, has drawn strong opposition both from inside and outside the country. In particular, the USA and Afghanistan have criticized Pakistan for failing to take tough enough action against Al-Qaida and Taliban support in the border areas of Pakistan.

In the past few years Pakistan's Tribal areas along the Afghanistan border, the FATA (Federally Administered Tribal Areas, consisting of seven Agencies), have remained the focus of Pakistan security agencies operations under the pretext of the War on Terror. In 2003, Pakistan security forces launched major security operations in Wanna, South Waziristan (one of the seven Agencies in FATA), resulting in heavy loss of life on both sides. Media and human rights organisations were denied access to the area. During the operations the security forces

committed numerous violations of human rights, including enforced disappearances and arbitrary arrests and detention.(6) Unarmed citizens, taking no part in the fighting, have routinely been the victims of reckless attacks from both sides.

This visible rise in militant activity in Pakistan was also seen to be convenient for President Musharraf in that he was able to present himself as a bulwark against Islamist radicalism and so evade pressure from the international community to ensure a rapid return to democracy. In this context the Pakistan Government appeared to turn a blind eye towards a number of developments, such as the unlawful activities carried out at the Red Mosque in Islamabad (Lal Masjid) and allied madrassa schools for religious teaching in Islamabad.

Political tensions have also risen in the country following the suspension of the Supreme Court Chief Justice, Iftikhar Chaudhry, on 9 March 2007. The Chief Justice has been a thorn in President Musharraf's side, having issued a number of orders and judgements against the government, notably regarding cases of enforced disappearances. The Chief Justice was sent on forced leave and the government filed a complaint of judicial misconduct against him before the Supreme Judicial Council. The Chief Justice was held incommunicado for four days and later manhandled by police when he tried to appear before the Judicial Council to give his defence.

The move to suspend the Chief Justice provoked a strong reaction across Pakistan and gave impetus to a movement for justice led by senior lawyers and judges, calling for his reinstatement and an independent judiciary. It also spurred mass protests across the country, leading to the death of over 40 people during violent clashes in Karachi on 12 May. In June, hundreds of political activists in Punjab province and other parts of the country were arbitrarily arrested and detained as they sought to hold peaceful rallies in support of the Chief Justice.

On 20 July, a 13-member bench of the Supreme Court convened and ruled in favour of the reinstatement of the Chief Justice. While marking a new chapter in Pakistan's judicial history, the reinstatement of the Chief Justice also began another chapter of government hostility towards judicial independence.

With public confidence restored in the judiciary, many new petitions were filed in the Supreme Court. Key petitions included that of the former Prime Minister Nawaz Sharif (in exile in Saudi Arabia since December 2000) for his return to the country, cases of enforced disappearances, as well as a challenge to President Musharraf's eligibility to take part in the October presidential elections while remaining Army Chief of Staff.

In August, the Supreme Court ruled in Sharif's favour and directed the Government not to obstruct his return to the country. This decision was not complied with and government authorities deported Nawaz Sharif from Islamabad airport, on 10 September, within hours of his landing at the airport. A contempt of court petition was filed before the Supreme Court in which top government authorities, including the Prime minister, were alleged to be responsible.

Meanwhile, the Supreme Court also moved to cover various issues of its own volition where the authorities had exceeded their powers. The Supreme Court's decisions on these petitions were set to shape the future political discourse in the country and the relationship between the three key organs of the state.

The Supreme Court, whilst allowing the scheduled presidential elections to take place on 6 October, ordered the Election Commission to refrain from notifying the results until the Court ruled on the legality of General Musharraf's candidacy. Members of the opposition political parties, except for those belonging to former Prime Minister Benazir Bhutto's PPP, resigned from the elected national and provincial assemblies which, along with the Senate, form the Electoral College for the presidential elections. President Musharraf's tenure expired on September 15, but he can continue to hold office until his successor comes in. Under Pakistan Constitution a President can not hold any other office of profit and any person in service of Pakistan is not

permitted to contest for the election of the President. On the eve of the Supreme Court's ruling on his candidature, General Musharraf, acting in his capacity as Army Chief of Staff, imposed a state of emergency.

6. Demands

Amnesty International calls on the Pakistan authorities to immediately:

1. Restore fundamental human rights

General Musharraf's suspension of fundamental human rights through emergency rule is a blatant violation of international law and of Pakistan's Constitution. The state of emergency must be immediately revoked and fundamental rights, including freedom of expression, association and assembly fully restored.

2. Release the prisoners

All those arbitrarily detained under emergency provisions, including human rights activists, judges, lawyers, journalists and political activists, many of whom are at risk of torture and other ill-treatment, must be immediately and unconditionally released.

3. Reinstate the independent judiciary

An independent judiciary is critical for the protection of human rights and the rule of law. The Chief Justice and all other judges who have been dismissed must be immediately re-instated.

4. Say 'no' to military tribunals for civilians

The recent amendment of the Pakistan Army Act (1952), which gives the military authorities sweeping powers to prosecute civilians, must be rescinded. Civilians must be tried fairly in regular, independent civilian courts-

Amnesty international also calls on the international community to take the following steps.

1. The UN must urgently address the situation in Pakistan:

The High Commissioner for Human Rights must undertake an urgent fact-finding mission to Pakistan to assess the situation and report and make recommendations to the Government of Pakistan and all relevant UN bodies

The Human Rights Council must call without delay on Pakistan to immediately revoke the state of emergency, restore all human rights and fundamental freedoms, release all those detained under emergency provisions, reinstate the independent judiciary, and lift all restrictions on the media.

The Security Council must consider the situation in Pakistan, caused by the undermining of human rights and the rule of law, to prevent the development of a threat to peace and security in the region and to call on all Member States to immediately suspend all forms of security and military cooperation with Pakistan until the state of emergency is lifted.

2. Governments must exert their influence on Pakistan to restore fundamental human rights

3. All governments should suspend immediately all forms of security cooperation, including military assistance, with the government of Pakistan until the current emergency measures which violate international human rights law are lifted.

(1) Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, I.C.J. Reports 1996 (I), opinion of 8 July 1996, para. 25.

(2) Ibid., and see also Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ICJ Reports 2004 at 136, opinion of 9 July 2004, para. 106.

(3) Human Rights Committee, General comment no. 29: States of emergency (article 4), UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 11.

(4) Ibid., paras. 11, 13(b), 13(c).

(5) Ibid., para. 16.

(6) See AI Report:Pakistan Human Rights ignored in the "war on terror" AI Index: ASA 33/036/2006

Amnesty International, International Secretariat, 1 Easton Street, WC1X 0DW, London, United Kingdom