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Pakistan

Repairing the damage: ensuring
robust human rights safeguards



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INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

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Repairing the damage: ensuring robust human rights safeguards

1. Introduction

On 18 February 2008 general elections were held in Pakistan in an atmosphere of heightened political tension following the period of emergency rule (3 November-15 December 2007) during which independent judges of the higher judiciary were dismissed and the Constitution suspended and then arbitrarily amended. The subsequent election campaign was marked by a series of suicide and other attacks on civilians, including the assassination of the Pakistan People's Party (PPP) chairperson and former Prime Minister Benazir Bhutto on 27 December.

The PPP headed by Asif Ali Zardari obtained the largest number of votes in the polls followed by the Pakistan Muslim League-N (PML-N) led by former Prime Minister Nawaz Sharif.¹ On 9 March 2008 the party leaders signed a declaration of their commitment to jointly taking measures to reinstate the judges who had been effectively dismissed under the emergency and to limit the president's powers to dismiss Parliament. The leaders stated that their parliamentarians would vote to reinstate the dismissed judges within 30 days of the convening of parliament. The two parties had earlier committed themselves to fully restoring the Constitution of 1973.

Amnesty International warmly welcomes these pledges and calls upon the new parliament to implement them in full. The organization urges the new parliament to seize this critical opportunity to bring about lasting legal and constitutional changes to ensure that a comprehensive attack on the Constitution, suspension of human rights guaranteed in it and the unlawful dismissal of judges – the key guardians of the Constitution – does not recur.

In this briefing, Amnesty International analyses the assault on the independence of the judiciary and on constitutional human rights protections that took place during the emergency. It sets out reasons why an independent judiciary is vital for the respect of human rights and explains the nature and impact of the "legislative" measures taken by Pervez Musharraf, both as General (as he was then) and President.

The briefing ends with a set of recommendations and calls on Pakistan's newly elected parliament to move decisively to repair the damage inflicted on human right safeguards during the emergency. Unless such remedial action is now taken, including ratification of key human rights treaties, their incorporation into domestic law and their implementation

¹ The PPP won 120 seats in the National Assembly, and the PML-N 90 seats.

in practice, Amnesty International fears that Pakistan in general and its legal-judicial system in particular will remain vulnerable to unilateral executive interventions at the expense of human rights protection and the rule of law.

2. Emergency rule and the assault on the judiciary

“And this country has indeed seen many a whimsical and arbitrary military head turning in wrath towards independent judges and seeking to subordinate and overawe the judiciary, sometimes to turn around the course of pending proceedings or impending judgments. The entire edifice of the independence of the judiciary would crumble like a house of cards, if contrary view is taken, as any judge about to deliver a judgment against the executive, will run the jeopardy of being effectively and summarily sent home. This has indeed happened in the past in this country in times when the constitution stood abrogated or had been suspended or held in abeyance. If contrary view is taken which judge will then stand up to the executive?”

Chief Justice Iftikhar M. Chaudhry, in a petition to the Supreme Court against his (first) dismissal, April 2007.²

On 3 November 2007 Pervez Musharraf, who then held the posts of both President of Pakistan and Chief of Army Staff, acting in the latter capacity imposed a state of emergency in Pakistan. He suspended the Constitution and proclaimed a Provisional Constitution Order (PCO), suspending most of the fundamental rights provided by the Constitution, including safeguards relating to arrest and detention and the rights to security of the person, freedom of expression, assembly and association.

The PCO barred any court reviewing the emergency or any actions carried out by the executive during it. Judges of the superior judiciary also ceased to hold office unless they took a new oath swearing to abide by the PCO. Only five of the 17 Supreme Court judges took the new oath. After these newly sworn in judges confirmed his eligibility as president on 22 November, Musharraf laid down his army office on 28 November, and was sworn in as a civilian president on 29 November for a five-year term. He lifted the state of emergency on 15 December and parliamentary elections were held on 18 February 2008. (See Appendix: Chronology of Events.)

This does not mean, however, that the political and constitutional crisis, which posed such a grave threat to the protection of human rights in Pakistan, is now over. Amnesty International believes that the illegality of President Musharraf's actions must be acknowledged and that these actions be reversed because their harmful effects remain despite the lifting of the emergency.

² Constitutional Original Petition NO. 21 of 2007, filed by Mr. Justice Iftikhar Chaudhry. The petition was allowed and Chaudhry reinstated by order of the Supreme Court on 20 July.

2.2 The relation between human rights and an independent judiciary

“...judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens”.

Preamble, UN Basic Principles on the Independence of the Judiciary, 1985.³

International human rights treaties and other instruments have emphasised the unique role that courts have in safeguarding human rights, and the necessity of ensuring their independence in order to fulfil this role.

Article 10 of the Universal Declaration on Human Rights states that,

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

A similar provision is made in Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR).

In 1993, the Vienna Declaration and Program of Action stated that,

“The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development.”⁴

Recently the Human Rights Committee, the UN body charged with overseeing the implementation of the ICCPR, stated, in a General Comment on Article 14, that “The requirement of competence, independence and impartiality of a tribunal in the sense of Article 14, paragraph 1, is an absolute right that is not subject to any exception.”⁵ While Pakistan is not a state party to that treaty, the Human Rights Committee was reflecting universally-accepted standards. In fact in 2003 Pakistan, with the other Commonwealth states, adopted a set of “Principles on the Accountability of and the Relationship between Three Branches of Government” which included the principle that,

“An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice.”⁶

³ Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

⁴ Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, para. 27.

⁵ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32, 23 August 2007, para. 19.

Several provisions in Pakistan's beleaguered Constitution point to the role of its high judiciary in safeguarding human rights while restraining the executive, where necessary. Article 184(3) provides that,

"...the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by

Chapter I of Part II is involved, have the power to make an order of the nature

mentioned in the said Article.”⁷

Article 187(1) provides that the Supreme Court,

“...shall have power to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it, including an order for the purpose of securing the attendance of any person or the discovery or production of any document.”

This role has been restored, in theory, after the emergency was lifted on 15 December 2007 but the executive – both past administrations and that of President Musharraf – has repeatedly demonstrated that it will not tolerate a Supreme Court that upholds its true independence in the legitimate defence of fundamental human rights.

3. Musharraf’s emergency “legislation”

The term ‘legislation’ cannot be understood here as it is normally used because during November-December 2007 General Musharraf assumed powers that were not his under Pakistan’s Constitution, or any other laws. Acting in his capacity as Chief of Army Staff – but beyond any powers legally granted to him in this capacity – General Musharraf in effect hijacked the legislative process, and made himself the supreme legislator whose “laws”, as well as actions, could not be challenged by anyone. Such commandeering of all power without legislative or judicial scrutiny and accountability had far-reaching implications for the protection of human rights.

General Musharraf's "legislative" measures included the following:

i. **Suspending the Constitution** (placing it "in abeyance"): this was done by a "Proclamation of Emergency" issued on 3 November 2007. This proclamation must be distinguished from a proclamation under the Emergency Provisions in the Constitution (Part X), which Musharraf's proclamation violated.⁸ Amnesty International notes that of the 13 paragraphs justifying the imposition of emergency, eight related to the judiciary while two related to "terrorism". The Proclamation cited wide-ranging accusations against the judiciary, including "weakening the Government and the nation's resolve"; "adversely affecting economic growth"; "interference in executive functions"; ordering "hard core militants, extremists, terrorists and suicide bombers, who were arrested and being investigated... to be released"; and meting out "humiliating treatment... to government officials". Perversely, within a series of orders intended to place him and his government beyond the reach of any form of challenge, law or court, General Musharraf also accused judges of having "made themselves immune from inquiry into their conduct and put themselves beyond accountability".

ii. **Replacing the Constitution with a "Provisional Constitution Order"** (PCO). This order was also issued on 3 November. The PCO retained some provisions of the Constitution – those "embodying Islamic injunctions", allowed the functioning of most institutions and declared that "Pakistan shall... be governed, as nearly as may be, in accordance with the Constitution". However, beyond the "Islamic injunctions" exception, anything and everything is "subject to this Order [the PCO] and any other Order made by the President." As Chief of the Army, General Pervez Musharraf now granted the President, Pervez Musharraf, extensive powers.

A constitution should set out fundamental principles, including the respect and protection of human rights, as well as basic procedural rules governing the establishment, function, powers (and limits of the powers) of a state's principal institutions. As such, a constitution must be amenable to amendments only through elaborate procedures, which the constitution itself sets out. These usually involve a special majority in Parliament, in the case of Pakistan a two-thirds majority in both houses (under Article 238 of the Constitution).

Instead, under General Musharraf's orders alone, Pakistan's Constitution was turned into a weak, ineffective document which he could use to mould or override as he saw fit.

⁶ Commonwealth (Latimer House) Principles on the Accountability of and the Relationship between Three Branches of Government, As agreed by Law Ministers and endorsed by the Commonwealth Heads of Government Meeting, Abuja, Nigeria, 2003, Principle IV.

⁷ Article 199(1) confers powers upon the High Courts for enforcement of fundamental rights provided in the Constitution.

⁸ For instance, under Article 232, only the President may proclaim a state of emergency in specific circumstances. Pervez Musharraf declared the emergency in his capacity as Army Chief.

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The PCO violates international law

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”,⁹ and more generally that human rights law applies during armed conflicts,¹⁰ 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).”*¹¹

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,¹² 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*.¹³

Other rights enshrined in the Universal Declaration on Human Rights, including freedom of movement, expression, assembly and association must not be arbitrarily curtailed as a tool of political expediency. Civilians must be tried fairly in regular, independent, civilian courts.

iii. Suspending “fundamental rights”. A particularly grave case in point is the Constitution’s “fundamental rights” provisions. The PCO explicitly ordered that “Articles 9, 10, 15, 16, 17, 19 and 25” of the Constitution “remain suspended”. This meant that under General Musharraf’s orders, the Government of Pakistan was “legally” at liberty to violate Pakistanis’ rights to life or liberty (Article 9 of the Constitution); to fair trial rights,

⁹ *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.

¹⁰ *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.

¹¹ 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.

¹² *Ibid.*, paras. 11, 13(b), 13(c).

¹³ *Ibid.*, para. 16.

including *habeas corpus* (Article 10);¹⁴ to freedom of movement (Article 15); to peaceful assembly (Article 16); to form associations and unions (Article 17); to freedom of speech and expression (Article 19); and to equality before the law and equal protection of the law and freedom from discrimination “on the basis of sex alone” (Article 25).

Other rights were not mentioned explicitly, but they too stood “in abeyance” with the rest of the Constitution. Pakistan thus became a state where nobody’s human rights were constitutionally protected and where state officials enjoyed unlimited discretion and were placed outside judicial review and accountability.

iv. Placing Musharraf himself, his government and all their actions above the law and beyond the reach of the courts. The PCO declared that “No court, including the Supreme Court,” could challenge the Proclamation of Emergency, the PCO or any further orders made pursuant to these. Immunity from judicial overview applied not only to General Musharraf’s “legislation” but also to any and all actions which he and his officials subsequently took. The PCO declared that “No judgment, decree, writ, order or process whatsoever shall be made or issued by any court or tribunal against the President or the Prime Minister or any authority designated by the President”. This means total, watertight immunity for the executive for any acts, including human rights violations, they committed or ordered to be committed during the emergency period. If, for instance, a person was subjected to enforced disappearance by security forces during the emergency, he or she could not complain to the police, petition the Higher Courts, or sue the government for reparation. Pakistan thus became a zone of official lawlessness, devoid of human rights safeguards.

v. Replacing the higher judiciary by General Musharraf’s hand-picked judges. As noted, the emergency “legislation” was officially justified as necessary in the face of an unruly judiciary. A major trigger for dismissing those judges who had asserted their independence appears to have been the widely shared anticipation that the Supreme Court would not confirm Musharraf’s eligibility to contest the Presidential elections while he still held office as Army Chief. General Musharraf acted to ensure that individual judges he regarded as troublesome over executive action were removed and replaced by those he felt he could better rely on. This was done by:

Issuing a new oath on 3 November which all judges had to take, the Oath of Office (Judges) Order, 2007. Under the new oath, judges had to swear to uphold the PCO rather than the Constitution in order to hold office. In doing so, they had to uphold the provisions suspending human rights and denying the authority of the very courts in which they served to take judicial steps against General Musharraf, his government or anything done under its authority. In other words, the new judges relinquished any meaningful role they could have in upholding respect for human rights.

¹⁴ It should be noted that this and some of the other “fundamental rights” provisions of the Constitution fall short of international human rights standards.

Inviting only hand-picked individuals to take the oath and serve as judges. Such invitations were not extended to Chief Justice Iftikhar M. Chaudhry and other senior judges, who had recently departed from the Pakistani judiciary's tradition of judicial compliance with the executive and challenged the government on several issues relating to social, economic, civil and political rights. These included ordering the government to stop its tactics of denial, delay and obfuscation in the case of hundreds of victims of enforced disappearance, and to provide real answers about their fate and whereabouts. Only five of 17 Supreme Court Justices took the new oath, of the remaining 12, the Chief Justice and at least 10 other Justices were put under de facto house arrest or suffered restrictions to their freedom of movement, whilst the authorities inducted their hand-picked replacements.

Issuing notifications declaring that the twelve existing judges of the Supreme Court, including Chief Justice Iftikhar M. Chaudhry ceased to hold office. Similar steps were taken in respect of more than 30 High Court judges (from three of the four provincial High Courts). Constitutional provisions for the appointment and dismissal of judges were ignored in this process. On 15 December President Musharraf promulgated the Judges (Pension Benefits) Orders 2007 in order to allow pension and other selected benefits to be provided to 'deposed' judges.

vi. Authorising military courts to try civilians on a wide array of offences. On 10 November, Pervez Musharraf, now acting in his capacity as President, citing both the Constitution and his own emergency "legislation", issued "Order No. LXVI of 2007, An Ordinance further to amend the Pakistan Army Act, 1952". The order expands the Pakistan Army Act enabling the military authorities to try civilians for several offences. Under the Order, which is backdated to be effective from January 2003, civilians may be tried in military courts for offences, including treason, "terrorism" and conspiracy, as well as sedition (sec. 124A of the Pakistan Penal Code, PPC); "statement conducive to public mischief" (sec. 505 PPC) and "attempt to commit any of the said offences".

Amnesty International is concerned that publishing or broadcasting materials that criticised the imposition of the emergency or government acts under it, could be deemed a violation of the amended Act. As such, it poses a serious threat to freedom of expression.

Charges of sedition, an offence hitherto tried only by Sessions Courts, may now be taken up by military courts. In fact, charges of both sedition and "terrorism" have been levelled – albeit in civilian courts – at lawyers, political activists and teachers who have protested against the imposition of the emergency. The Attorney General stated on 15 November that this law would not be used against politicians and lawyers; nevertheless the threat of being tried by a military court, now possible in law, hangs above the head of Musharraf's opponents. Unlike the Constitution and the Code of Criminal Procedure, the Pakistan Army Act does not provide for a number of fair trial rights. Thus defendants do not have full legal representation; instead a counsel can only represent a defendant in the capacity of a "friend"; hearings are not public; investigation, trial and review are conducted by

military officers and appeal to regular courts of the higher judiciary is barred. By making the amendment applicable to offences alleged to have been committed from January 2003, it may be used to try persons held in unacknowledged detention in the context of the “war on terror”. Some of these individuals have in recent months been traced and charged with a range of criminal offences.

4. Musharraf seeks to ensure future impunity for actions taken during the emergency

Three further pieces of “legislation” followed. On 15 November, General Musharraf amended the PCO, transferring the power to lift the state of emergency from his role as Chief of Army Staff, to his role as President. Then, on 21 November, President Musharraf issued the Constitution (Amendment) Order, 2007, followed by another Constitution Amendment Order on 14 December (see Appendix: Chronology of Events). Among other things, the November amendment added a new article (270AAA) to the Constitution. It provided that all the orders and amendments which Musharraf had made, whether as Chief of Army Staff or as President, were “(1)...declared to have been validly made by the competent authority and notwithstanding anything contained in the Constitution shall not be called in question in any court or forum on any ground whatsoever”¹⁵. The same applies to “(2)...any acts done by any authority, or by any person, which were made, taken or done, or purported to have been made, taken or done, on or after the 3rd day of November, 2007 in exercise of the powers derived from any Proclamation”. To clarify further, the Order goes on to declare that “No prosecution or any other legal proceedings” may be taken against any person for issuing or acting in accordance with the Proclamation of Emergency, orders made under it.

The cycle was completed when on 23 November Musharraf’s hand-picked Supreme Court judges validated the PCO and the declaration of emergency stating that these measures had been necessary. A day earlier these judges had dismissed petitions which challenged Musharraf’s right to stand for election as president. The stage was now set for a civilian president restoring the Constitution and “normality”.

¹⁵ See:

http://www.app.com.pk/en/index.php?option=com_content&task=view&id=21447&Itemid=1

5. The legacy of the emergency rule – the door to violations remains ajar

The lifting of the emergency means that the Constitution is restored. However, the amendments made by President Musharraf have ensured that:

Victims of arbitrary arrest, enforced disappearance or extrajudicial executions committed during the emergency are still barred from any redress whatsoever, and perpetrators still enjoy full impunity. Those who were charged, tried and sentenced during the emergency cannot challenge the validity of such measures. Unless the new parliament elected in February 2008 acts to reverse actions taken during the emergency, including several constitutional amendments, the impact on the independence of the judiciary of the dismissals of the Chief Justice and other senior judges and their replacement by hand-picked judges will not be remedied. Parliamentary indifference or inaction in this regard would halt one of the most promising developments of recent years – an independent judiciary willing to stand up for the victims of human rights violations.

In particular, the cases of hundreds of victims of enforced disappearance which the Supreme Court under Chief Justice Iftikhar M. Chaudhry was rigorously pursuing will remain unresolved as the hand-picked Supreme Court judges are unlikely to address them with the same human rights focus. Many hundreds of persons remain incarcerated, incommunicado in secret detention, with a high likelihood of ill-treatment and torture being inflicted upon them, while some others may have become victims of extrajudicial execution. Thousands of family members continue to suffer, not knowing what has happened to their loved ones. Civilians may be tried in military courts for committing or attempting to commit since 2003 offences including treason, “terrorism” conspiracy, sedition, “statements conducive to public mischief”, further compromising their rights to fair trial.

Underlying the fragile human rights situation in Pakistan after 15 December is the vulnerability of the Constitution, of the human rights guarantees that it provides, and of the judiciary that should be one of the primary guardians of both. This situation was encapsulated in the circumstances of Musharraf’s own oath, when he was sworn in as President on 29 November.

- President Musharraf swore “to preserve, protect and defend” a Constitution which was then still “in abeyance” – that is, suspended under his own, extra-constitutional orders;
- The Constitution now provides that the recent suspension of its key human rights provisions cannot be challenged;
- The Constitution now provides that the recent complete immunity of the executive for human rights violations under the emergency “legislation” cannot be challenged;

- The oath was taken in front of a Chief Justice whom Musharraf himself had appointed, ignoring the Constitution's provisions for such appointments, having sacked – in defiance, again, of Constitutional provisions – the previous Chief Justice. That Chief Justice had dared to use the powers granted him by the Constitution when exercising one of the judiciary's primary functions – to defend human rights and the rule of law. While Musharraf was taking his new oath of office, the deposed Chief Justice and other senior judges were under house arrest.

If this situation is allowed to continue Pakistanis cannot feel confident that their human rights will be upheld. It should be remembered that Pervez Musharraf first assumed power and consolidated it in 1999-2002 on the back of a similar Proclamation of Emergency, another PCO, a new oath for judges and amendments in the Constitution through a Legal Frame Work Order, 2002. Moreover, his was not the first takeover in Pakistan's history. If suspending the Constitution and key human rights and reshaping the composition of the high judiciary can be done repeatedly only to be rubberstamped by each obliging Supreme Court, little can assure Pakistani citizens that similar attempts will not be repeated in future.

6. Amnesty International's recommendations

Amnesty International often recommends constitutional improvements and reforms of legal systems so as to ensure that human rights are fully protected and respected, but the organization is aware that such recommendations may be of little use where generals or presidents or persons holding both these positions at once are ready to set the laws aside and dismiss those charged with ensuring respect for the law.

Amnesty International's recommendation to political parties in Pakistan:

As a first step, Amnesty International appeals to the political parties represented in Pakistan's newly elected Parliament to act decisively on their stated commitments to reverse the changes introduced in the Constitution during the emergency period, and to find ways to reinstate the judges punitively dismissed in November 2007 – immediately lifting any remaining restrictions on their freedom of movement.

After this crucial first step, several other long-term measures should be taken to permanently secure the independence of the judiciary and prevent the executive from again overriding provisions of the Constitution.

Amnesty International recommendations to the Pakistani parliament and government:

1. Put in place, through amendments to the Constitution or other relevant legislation, further procedural guarantees for the independence of the judiciary in line with International standards,¹⁶ including:

limiting the President's authority in appointing judges, for instance by introducing a Parliamentary mechanism or a special Judicial Commission for the appointment of Supreme Court and High Court judges;

ensuring security of tenure;

ensuring judges are free from conflicts of interest, intimidation or any other undue interference;

ensuring strict adherence to existing constitutional provisions for the removal of judges; at present the Supreme Judicial Council is empowered to investigate allegations of serious misconduct or incompetence brought against judges; it submits its recommendations to the President. The Constitution of Pakistan provides in Article 209(7) that no judge of the Supreme Court or High Court may be removed from office except as provided by the procedure laid down in this article;

making the recommendations of the Supreme Judicial Council binding on the President to ensure that he does not arbitrarily dismiss or suspend judges;

amending the Oath of Office of judges to include a commitment not to swear allegiance to any orders or laws promulgated in violation of the Constitution, and that violate human rights or enshrine impunity.

In addition:

repealing the amendment to the 1952 Army Act, retrospectively effective from January 2003, which allows civilians to be tried by military courts for several offences previously heard by civilian courts.

2. Put in place rules and procedures which would ensure, to the extent possible, that the executive does not assume total powers in violation of the Constitution, including:

amending the Constitution so as to explicitly state that no person or institution has the right to hold it in abeyance or proclaim an emergency outside its own provisions under any circumstances;

amending the Oaths of Office of the President, the Chief of the Army Staff and other senior commanders to include a commitment not to issue any orders placing the Constitution in abeyance, or any other orders or laws which suspend non-derogable human rights and facilitate violations of human rights;

¹⁶ See for instance UN Basic Principles on the Independence of the Judiciary; Human Rights Committee, General Comment No. 32; Commonwealth (Latimer House) Principles, all cited above.

amending the Oaths of Office of the President and the Chief of the Army staff to include a commitment not to issue any orders dismissing members of the higher judiciary in violation of Constitutional and other legal provisions.

3. Strengthen the protection of human rights and the rule of law by ratifying, incorporating into domestic legislation and implementing international treaties, in particular:

The International Covenant on Civil and Political Rights and its Optional Protocols;

The International Covenant on Economic, Social and Cultural Rights;

The UN Convention Against Torture And Other Cruel, Inhuman or Degrading Treatment Or Punishment and its Optional Protocol;

The Rome Statute of the International Criminal Court;

Beyond this, Amnesty International believes there is a need for a sea-change in Pakistan's political culture and for embedding respect for human rights in political life – and in particular to reverse and prevent further erosion of the Constitution and the independence of the judiciary. The organization strongly urges political and military leaders to accept and uphold the principle that the state must be governed through observance of Constitutional provisions and other laws properly legislated; respecting the proceedings and abiding by the decisions of an independent judiciary; and complying with international human rights law and standards.

Amnesty International's recommendations to the international community:

Amnesty International also appeals to the international community, including national governments and international associations; both national and international professional legal and judicial associations; parliamentarians' bodies and relevant UN mechanisms to use their good offices to encourage a return to constitutionality and the protection of human rights by an independent judiciary in Pakistan. This may involve encouraging political parties to use their legislative powers after the elections to take the steps outlined above, providing training in international law and holding Pakistan to account in international fora.

Appendix:

Pakistan: Chronology of Events (October 2007 - March 2008)

5 October 2007: the Supreme Court permitted President and Chief of Army Staff Pervez Musharraf to stand for presidential elections for a further term of office, with the proviso that the Election Commission suspend notification of the election result until the Supreme Court had decided several petitions challenging his eligibility to stand in presidential elections while still retaining his office as army chief.

6 October: Pervez Musharraf won 55 per cent of the vote in indirect Presidential elections by the existing Senate, the national and four provincial assemblies amidst a boycott by opposition parliamentarians. Around 85 opposition members of the National Assembly resigned in protest, with at least 70 other opposition members abstaining from voting.

3 November: Pervez Musharraf in his capacity as Chief of Army Staff imposed a state of emergency, suspended the Constitution and replaced it with the Provisional Constitution Order, No 1 of 2007 (PCO). The PCO, while providing that Pakistan would “be governed, as nearly as may be, in accordance with the Constitution”, permits the President to amend the Constitution at his discretion and suspends fundamental constitutional rights, including the safeguards relating to arrest and detention and the rights to security of the person, freedom of expression, assembly and association. The PCO also places the declaration of emergency, the PCO and all acts taken under the PCO outside judicial review. The new Oath of Office (Judges) Order, 2007, issued on the same day, obliged judges of the Supreme Court and the four provincial high courts to swear to uphold the PCO. More than 60 judges who were not asked to take the oath, or who refused to do so, were dismissed.

10 November: President Musharraf issued Order No LXVI of 2007 which extended the jurisdiction of military courts to include the trial of civilians.

15 November: General Musharraf amended the PCO, transferring the power to lift the state of emergency from his role as Chief of Army Staff to his role as President.

15 November: the federal and provincial assemblies were dissolved after completion of their five-year term and caretaker governments installed in preparations for elections.

21 November: President Musharraf issued Constitution (Amendment) Order, 2007, which added a new Article (270AAA) to the Constitution under which no legal proceedings may be taken against any orders or amendments made by Musharraf whether in his capacity as Chief of Army Staff or as President or any actions taken by any authority under the Proclamation of Emergency or orders made under it.

22 November: judges who had taken the new oath of office on the PCO, confirmed President Musharraf’s eligibility for elections to another term as president.

23 November: the newly sworn in Supreme Court validated the PCO and the Declaration of Emergency stating that these measures had been necessary.

24 November: Ordinance LXIX of 2007 was promulgated by President Musharraf; it amends the Legal Practitioners and Bar Councils Act, 1973, and permits higher courts to suspend or cancel licences of lawyers at their discretion or on a complaint.

28 November: President Musharraf laid down his army office.

29 November: President Musharraf was sworn in as a civilian president for a further five-year term.

14 December: President Musharraf issued Constitution (Second Amendment) Order, 2007, acquiring more powers for the appointment of judges of the newly formed High Court at Islamabad.

15 December: President Musharraf lifted the State of Emergency and restored the amended constitution.

18 February 2008: elections to the National Assembly and the Provincial Assemblies, originally scheduled for 8 January, held.

21 February: In a joint press conference, the Pakistan People's Party (PPP) headed by Asif Ali Zardari and the Pakistan Muslim League-N (PML-N) led by former Prime Minister Nawaz Sharif, announced that they would work together to restore the Constitution of 1973.

7 March: Pakistan's Election Commission announced final election results. The two main opposition parties, the PPP and the PML-N, obtained the highest number of votes. The PPP won 120 seats in the National Assembly, while the PML-N won 90 seats.

9 March: the party leaders of the PPP and PML-N signed a declaration of their commitment to jointly taking measures to reinstate the judges who had been effectively dismissed under the emergency and to limit the president's powers to dismiss Parliament. The leaders stated that their parliamentarians would vote to reinstate the dismissed judges within 30 days of the convening of parliament.

17 March; National Assembly due to convene following 18 February elections.