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Pakistan: Further dismantling of rule of law

Amended laws undermine civilian judiciary and consolidate military control

The International Commission of Jurists (ICJ) today expressed deep concern at further assaults on the rule of law by the Government of Pakistan, including the arrest and detention of thousands of lawyers and the misuse of existing laws and adoption of new or amended laws that further undermine the civilian judiciary and consolidate military control.

"Judges, lawyers and the court system in Pakistan are under sustained assault", said Nicholas Howen, Secretary-General of the ICJ.

"Unless this continuing attack on the judicial branch of the state and on lawyers is swiftly reversed, it is difficult to see how free and fair elections will be possible. The electoral process must be overseen by an independent, civilian judiciary, operating under the constitution, with lawyers freely able to bring challenges to court. Free and fair elections also need a free media, yet journalists and media houses have also been targeted", said Nicholas Howen.

Thousands of lawyers, estimated to be at least 3000, have reportedly been arrested across the country since 3 November 2007, many said to have been beaten and taken to unknown locations, some arrested without arrest warrants, some held incommunicado. While many have been released the ICJ has received reports of re arrests. The ICJ is concerned about the fate of those who remain in detention and those who have been charged for peacefully protesting. At least eight lawyers have been charged with sedition. Security personnel have locked court rooms and bar associations. Bar associations, lawyers' chambers and residences have been reportedly raided by security personnel searching for lawyers whose names appear on lists of those to be detained.

In the last two days laws have been hastily adopted or amended that further undermine the civilian judiciary and consolidate control by the military.

The Army Act has been amended to allow military courts to prosecute civilians suspected of wide range of activity seen as terrorist or subversive, including under the

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Anti-National Activities Act, treason and sedition and the vaguely worded offence of making “statements conducive to public mischief”. The amendments have retroactive effect as of 2003.

“These amendments open the door to perceived political opponents being tried by uniformed officers who are part of the hierarchy that leads up to President Musharraf. Such military courts are neither independent nor impartial and fail to provide internationally-accepted fair trial guarantees. A military court should never try civilians for any offence”, said Nicholas Howen.

Trials of civilians before these military tribunals will not be open to the public. Investigations will be carried out by military personnel and ordinary rules of evidence will not apply.

President Musharraf has also reportedly issued an Ordinance amending the Bar Council Act to empower Supreme Court and High Court judges to cancel the licence of lawyers. Having replaced the judges of the superior courts with those willing to take the oath of office under the 3 November Provincial Constitutional Order, this Ordinance operates as a further threat hanging over lawyers who exercise their right to freedom of expression and assembly.

“The law and the courts of Pakistan are being controlled and misused by the Government. Anyone challenging this is at serious risk of being arbitrarily arrested and detained and now could be prosecuted in a military court and lawyers could lose their licence to practise”, added Nicholas Howen.

The ICJ is calling for immediate actions that would contribute to restoring the rule of law and political rights and freedoms in Pakistan. The Government should lift the state of emergency and restore the constitution, reinstate the Chief Justice and other judges who were in place prior to 3 November, release those arbitrarily detained and withdraw arbitrary offences, lift restrictions on the media, demonstrations and public statements, and repeal the laws adopted or amended since 3 November 2007.

Update on judges and lawyers

From **Lahore** the ICJ has received information that 803 lawyers have been detained under two separate first information reports on charges under Section 7 of the country’s 1997 Anti Terrorism Act. 350 are reportedly released on bail. However the whereabouts of many other lawyers from Lahore is unknown as many are believed to have been arrested without a warrant. There is reportedly a list of lawyers to be detained and lawyers’ offices are being systematically visited by both plain clothes and uniformed security personnel seeking out those individuals. During demonstrations lawyers have been reportedly beaten with batons and severely kicked by security personnel. The Lahore High Court and district courts were locked by security personnel between 3 and 10 November as was the Lahore Bar Association office. ICJ Commissioner and UN Special Rapporteur on religious intolerance, Asma Jahangir, remains under house arrest under a 90-day preventive detention order. An arrest warrant remains issued for lawyer Hina Jilani, who is also a United Nations Special Rapporteur on human rights

defenders and member of the ICJ's Eminent Jurists Panel on Terrorism, Counter terrorism and Human Rights.

In **Karachi**, it is estimated that between 300 to 500 lawyers are currently in detention, some of those are injured from excessive use of force during arrest. The majority are held under section 16 (*Dissemination of rumours*) of the Maintenance of Public Order Ordinance (MPO), others are believed to be held for sedition under the Pakistan Penal Code, and in other cases it is unknown if the lawyers are held under any law. Detention orders are reportedly being signed on mass by the Provincial Secretary with little scrutiny. Lawyers have been primarily arrested from the Bar Association though some have also been detained from their chambers and residence. Arrests are carried out by both uniformed and plain clothes security personnel and the ICJ has received reports that lawyers have been manhandled during arrest.

Of the 27 judges sitting on the bench of the High Court of Sindh Karachi only 5 or 6 have taken an oath under the PCO of 3 November 2007. An additional four appointments have been made since 3 November. It is reported that at the session (district) court level judges have begun dismissing cases as lawyers have failed to appear for the hearing. The Sindh High Court Chief Justice, Justice Sabihuddin Ahmed, who has refused to take oath under the PCO, has police vans and at least 12 policemen posted at either end of his street. While not under formal house arrest, when questioned the police informed that people are allowed to visit him but if he would like to leave his house the police must be informed and they will accompany him.

In **Islamabad**, it is reported that more than 200 lawyers from the Rawalpindi Bar Association are detained and at least ten members of the Islamabad Bar Association are detained. The majority are believed to be detained under the Maintenance of Public Order Ordinance, but around 20% are believed to have been detained without any arrest warrant. The majority of those arrested have been taken to undisclosed locations and have no access to their families or lawyers. Arrests on 3 November were largely carried out by plain clothes police, but since then arrests have been mostly carried out by uniformed policemen. Many have been arrested from their homes as the Rawalpindi Bar Association and district and high courts were locked for four days following the declaration of the state of emergency. Lawyers have also been detained and reportedly beaten with batons when attempting to come out from the Bar Association to demonstrate.

The 13 Supreme Court judges who refused to take oath under the PCO, including Chief Justice Iftikhar Mohammad Chaudhry, remain under what amounts to house arrest. There are reports that they are not allowed to have any visitors and their families have been unable to leave the house to attend school or work. There are also concerns that medicines required by some of the Justices have not been made available. Media have reported that the Government attempted to forcibly move the Chief Justice to Quetta.

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