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Open letter to General Parvez Musharraf



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PAKISTAN

Open letter to General Parvez Musharraf

Dear General Musharraf,

I am writing to you on behalf of Amnesty International, the world's largest human rights organization with over a million members worldwide. It is an organization totally independent of any government, political ideology or religious creed. It works on all the countries of the world for the promotion and protection of the full range of human rights laid down in international human rights standards. We consider these rights to be universal, indivisible and interdependent. Amnesty International takes no position on the forms of different political systems and, therefore, the constitutionality or otherwise of recent developments in Pakistan.

With the policy statement issued on 17 October, you have set out the responsibilities you have assumed and the program you aim to implement. While some human rights concerns have been reflected in your statement, we believe a more comprehensive reform program is urgently needed to effectively secure human rights protection in Pakistan.

We welcome the fact that fundamental rights have not been suspended in the present transition period and that courts continue to fully function. We appreciate assurances in your policy statement that institutions will be rebuilt, de-politicized and strengthened and that a neutral accountability process to end corruption will be initiated. Your assurance of protection to the country's minorities and against religiously motivated violence is timely.

A crucial first test for the restoration of the rule of law in Pakistan will be how members of the deposed government are treated. Amnesty International considers them to be political prisoners and is concerned that they have been held for a week without charge or trial. The organization urges that they be charged with recognizable criminal offences or immediately and unconditionally released. Those charged must receive prompt trials that must meet international standards of fairness and be spared the death penalty for any offences committed.

This letter contains a series of recommendations for reforms of the legal and constitutional framework for human rights protection, steps to ensure their full implementation and measures to reinvigorate and protect institutions whose tasks include human rights protection. These recommendations are based on many years of work by Amnesty International, documenting the grave human rights situation under successive governments. The reforms suggested are encompassing and sweeping but the new administration has a unique opportunity to rebuild respect for the rule of law and human rights in Pakistan. We hope you will take up this task with sincerity and determination.

Corruption and impunity

In your statement of 17 October, you rightly note that "lack of accountability has resulted in corruption of horrendous proportion, weakening the very basis of our society". Abuse of office and disregard for the rule of law under successive governments have not only contributed to corruption in the economic sphere but to the widespread impunity with which human rights violations have been committed. When members of government and leaders of society abuse office, use the law enforcement apparatus in the pursuit of political or personal ends, let connections override merit or take bribes, they send a message to society at large that it is acceptable to bypass or ignore the rule of law, that the law does not apply to everyone equally.

Perpetrators of human rights violations have frequently been protected by political actors some of whom may have instigated the abuse. The perception that human rights violations will not be prosecuted and punished has contributed to a self-enforcing cycle of abuse which has resulted in a climate of fear and helplessness for ordinary people. Willingness of police to cover up crimes of colleagues and the fear of retribution by police if members of the public dare complain or testify against police have led to very few cases of custodial deaths coming to court and fewer still to lead to convictions.¹ The law of Qisas and Diyat has also facilitated impunity; it has made it possible that criminal prosecution stops when police officers responsible for custodial deaths put pressure on the family of the victim to accept compensation and drop criminal charges.

The judiciary has not used its powers to institute public interest litigation in response to the grave and pressing human rights situation in Pakistan. Massive human rights violations have been reported and acknowledged at the highest level, yet little has been done to bring the perpetrators to justice. In November 1996, Prime Minister Benazir Bhutto was dismissed from office by the President; among the grounds he cited were a spate of extrajudicial killings in Karachi. The Supreme Court subsequently confirmed the constitutionality of the dismissal. However, these killings were not investigated and no one was held to account.

Ensure that the rule of law is respected and equality before the law and equal protection of law are restored and maintained in order to secure the full enjoyment of all human rights. Ensure that every reported human rights violation is investigated and its perpetrator brought to justice.

The constitution

The constitution of 1973 has undergone many amendments some of which have undermined human rights protection. These include the 8th amendment of 1985 which indemnified all acts

¹ See: Pakistan: Time to take human rights seriously, AI Index: ASA 33/12/97.

and orders of the then martial law regime and the 12th amendment, which subsequently lapsed, under which speedy trial courts were established. The 15th constitutional amendment, passed in the National Assembly in October 1998 is pending in the Senate. It seeks to make Sharia the supreme law in Pakistan and to give the federal government unqualified powers 'to prescribe what is right and forbid what is wrong' irrespective of 'anything contained in the Constitution, any law or judgement of any court'. This amendment, if passed, would effectively render the constitutional protection of fundamental rights void.

Amnesty International believes that a review of the constitution in consultation with constitutional experts, national NGOs and taking into account Pakistan's international commitments assumed after ratification of the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child should be undertaken as soon as possible to ensure full constitutional protection of all fundamental rights.

Review and reform the constitution to fully safeguard fundamental rights

The judicial system

The judiciary has been weakened by successive governments culminating in the confrontation between the government of Nawaz Sharif and the Chief Justice of Pakistan which ended with the latter's ouster in 1997. At stake were essential principles of the independence of the judiciary, such as the appointment of judges. Special courts were set up against the explicit recommendations of the highest judiciary. In 1998, Special Courts for the Suppression of Terrorist Activities, Anti-terrorism Courts and from November 1998, Special Military Tribunals tried specified offences; the latter were subsequently declared unconstitutional and abolished. All these courts imposed a large number of death sentences after trials that did not meet international standards for fairness.²

Judicial functions were also sometimes officially allocated to non-judicial bodies functioning outside higher judicial purview and following procedures and principles very different from those secured in the constitution and statutory law. Local administrators in upper Sindh were reported to facilitate the resolution of criminal cases, often involving murders in blood feuds, in tribal councils some of which were reported to take place in jails.

The independence of the judiciary has not only been weakened by interference from outside; it has also been undermined by the bias of individual judges. Cases involving women's rights have sometimes been arbitrarily decided reflecting the gender bias of judges; members

²See for instance: Pakistan: Legalizing the impermissible: The new anti-terrorism law, AI Index: ASA 33/34/97.

of religious minorities have not always received justice in the courts in Pakistan.³ Socially and economically deprived or disadvantaged people have found access to the judicial system difficult, expensive and not always responsive to their specific needs thereby effectively restricting their possibility to achieve redress and full protection of their fundamental rights. In more recent years, the respect for the judiciary has suffered by rulings which are widely seen in Pakistan to be politically biased.

Ensure that the judiciary as the highest body to protect human rights is reformed and strengthened in terms of resources, personnel, equipment and training and that its independence will not be interfered with.

The legal system

The criminal law of Pakistan has over time been substantively amended in ways that significantly weaken human rights protection. For instance, torture is recognized as a criminal offence only if carried out for the purpose of extracting information. Again, in the area of juvenile justice, protection of children's rights, while inadequate in the entire country, also varies greatly between provinces. Specific laws, particularly those introduced during Zia-ul Haq's rule, contravene constitutional guarantees of equality and equal protection of law, facilitate impunity, prescribe cruel, inhuman and degrading punishments and inadequately provide for redress. For instance, the Zina Ordinance discriminates between men and women, prevents - when the harshest punishments are at stake - women victims or witnesses of rape from testifying and prescribes stoning to death and flogging for fornication and rape.⁴

The case law in Pakistan, too, is uneven and often contradictory, reflecting all too often individual biases of judges rather than national and international standards of human rights protection.

Reform the legal system to bring it into conformity with international human rights standards to afford adequate human rights protection to all.

The police

The police in Pakistan are underpaid, understaffed and undertrained. Many police officers routinely resort to torture to extract confessions or money or to humiliate suspects. If the suspects die, police often falsify reports, put pressure on families not to pursue the case and influence witnesses. Police have frequently claimed that since courts release criminal suspects on insufficient evidence, they act in the larger interest of society if they take on quasi-judicial

³See: Pakistan: Use and abuse of the blasphemy laws, AI Index: ASA 33/08/94.

⁴See: Pakistan: Appeal to ban public flogging, AI Index: ASA 33/25/95.

roles and execute the suspects rather than submitting them to prosecution. Police then seek to conceal such extrajudicial killings by claiming that the suspects died in shoot outs: the notorious 'encounters killings' which have steadily risen in number. If criminal charges are brought against police officers for abuses, superior police officers often shield them and at most employ disciplinary measures against 'errant' officers.

Police have arbitrarily arrested and detained people, either on their own account or in connivance with political actors. In this process they have either completely ignored procedural safeguards relating to arrest and detention or they have used series of blind FIRs [First Information Reports, complaints registered in police stations which do not name a suspect] to arbitrarily detain people for long periods of time.

Domestic violence, including honour killings of girls and women, is often ignored by police officers and treated as a 'domestic' issue to be resolved in the family or community.⁵ Similarly bonded labour, child labour and trafficking are frequently not treated according to the law by police, either because of ignorance of the law, fear of or collusion with, the offenders.

Strengthen and reform the police force and provide appropriate government monies and international development assistance for this purpose, including for legal and human rights training and gender sensitization.

The death penalty

At a time when positive steps are being taken worldwide towards the abolition of the death penalty, the use of the death penalty in Pakistan doubled in 1998 in relation to the previous year. This year, while the UN Commission on Human Rights has urged governments to hold a moratorium on executions, again a high number of death sentences and several executions have been observed in Pakistan. The majority of these punishments have been imposed by special courts, the anti-terrorism courts, whose procedures do not fully accord with international standards for fair trial.⁶

The crime for which the death penalty is most frequently imposed is murder. This offence and its punishment are governed by the Qisas and Diyat law which allows convicts to avoid execution if they can negotiate an agreement with the family of the victim to pay compensation.⁷ While welcoming every measure that prevents the imposition of the death penalty and its execution, the organization believes that the law advantages the rich and makes

⁵See: Pakistan: Violence against women in the name of honour, AI Index: ASA 33/17/99.

⁶See: Pakistan: The death penalty, AI Index: ASA 33/10/96.

⁷See: Pakistan: Executions under the Qisas and Divat Ordinance, AI Index: ASA 33/13/95.

life and death negotiable entities. There are reports of convicts waiting under the gallows while their families bargain for their lives.

Of particular concern to Amnesty International is the continued use of the death penalty for children despite its absolute prohibition by the Convention on the Rights of the Child.⁸ The Juvenile Offenders Bill which raises the age below which no one can be sentenced to death to 16, has been pending in the Senate of Pakistan since 1995. The UN Convention on the Rights of the child prohibits the death penalty for anyone below the age of 18.

Abolish the death penalty for all offences and all offenders.

Religious minorities

Amnesty International notes your assurance on 17 October that minorities "enjoy full rights and protection as equal citizens in the letter and spirit of true Islam". In the two weeks prior to the dismissal of the government of Nawaz Sharif, sectarian violence claimed some 50 lives in Pakistan; its victims were primarily members of the Shia community but there were also a number of targeted killings of Sunni Muslims.

State protection against religiously motivated violence has long been inadequate as has been the protection of religious minorities in general. The blasphemy laws have not only led to dozens of member of the Ahmadiyya and Christian community being imprisoned as poisoners of conscience over the years, it has further fed a climate of fear and uncertainty for these communities. The fact that death threats, *fatwas* calling for the murder of dissidents or non-believers and most killings of members of minority members have not been criminally prosecuted has led some sections of the community to believe that the state sanctions such actions.

Protect and secure equality in law and practice to all members of religious minorities.

Protection of women and children

Amnesty International notes your assurance on 17 October that Pakistan "will continue to honour international obligations and commitments as in the past".

Following ratification of the UN Convention on the Rights of the Child in 1990 and the UN Convention on the Elimination of All Forms of Discrimination Against Women in 1996, neither domestic law nor practice relating to children's and women's rights have been amended. Cruel, inhuman and degrading treatment and punishment of children and the death penalty for

⁸See: Pakistan: Juveniles sentenced to death, AI Index: ASA 22/08/99.

children have not been legally banned.⁹ The Zina Ordinance which clearly discriminates against women has not been amended or abolished.¹⁰ No steps have been taken to prevent, investigate and punish the several hundred honour killings of girls and women reported every year in violation of such obligations under the two Conventions. A comprehensive report issued in 1997 by the Commission of Inquiry for Women set up on the initiative of the Pakistan Senate, has not been officially discussed with a view to implementing its far reaching recommendations.

Fully incorporate all the provisions of the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child in national legislation and ensure full implementation. Ratify other major human rights treaties, in particular the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights.

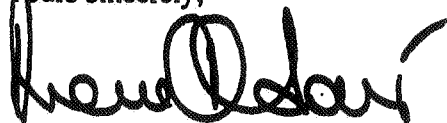
Human rights defenders

Particularly under the government of Nawaz Sharif, human rights defenders, including journalists reporting abuses, rights activists, women's rights groups and lawyers have been harassed, in some cases been arbitrarily arrested and detained, subjected to false criminal charges and been denied protection when threatened by private persons.

Ensure that human rights defenders can freely and without fear pursue their legitimate activities

As you yourself acknowledged in your statement of 17 October, ordinary people in Pakistan have had to endure widespread abuse of their basic human rights for much too long. Amnesty International urges the new administration to take the urgent measures summarized above to ensure the full protection of human rights and restore respect for the rule of law.

I look forward to receiving your response to our concerns and recommendations.
Yours sincerely,



Pierre Sané
Secretary General

⁹See: Children in South Asia: Securing their rights, AI Index: ASA 04/01/98.

¹⁰See: Women in Pakistan: Disadvantaged and denied their rights, AI Index: ASA 33/23/95 and Pakistan: No progress on women's rights, AI Index: ASA 33/13/98.

