

[ALRC Joint Statement] PAKISTAN: Canadian, Dutch and Hong Kong lawyers conclude that Emergency Measures are illegitimate and call on Pakistan to restore the law and redress violations

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A Joint Statement by the Lawyers Rights Watch Canada (LRWC) , the Dutch Lawyers for Lawyers Foundation (L4L) and the Asian Legal Resource Centre (ALRC)

PAKISTAN: Canadian, Dutch and Hong Kong lawyers conclude that Emergency Measures are illegitimate and call on Pakistan to restore the law and redress violations

Lawyers Rights Watch Canada (LRWC), the Asian Legal Resource Centre (ALRC) and the Dutch Lawyers for Lawyers Foundation (L4L) call for:

1. The immediate unconditional release of all jurists arrested under preventative detention measures, including: Aitzaz Ahsan, President of the Supreme Court Bar; Chief Justice Iftikhar Choudhry, removed from office by the Musharraf regime; Ali Ahmed Kurd; Justice (retired) Tariq Mahmood and others.
2. Strict adherence by the State and state officials to all Pakistan laws in force prior to November 3, 2007 and to applicable international standards protecting the independence of lawyers and judges including those embodied in the UN *Basic Principles on the Role of Lawyers*[i] and the *Basic Principles on the Independence of the Judiciary*. [ii]
3. Strict adherence by the State and state officials to all Pakistan laws and to applicable international standards governing the humane treatment of prisoners, including the universal non-derogable prohibition against torture and denial of due process;
4. The immediate re-instatement of and adherence to the *Constitution of the Republic of Pakistan* and
5. The rescission of all laws that came into force under the authority of the *Proclamation of Emergency Declaration* of November 3, 2007, the *Provisional Constitutional Order No. 1 of 2007* and the *Oath of Offices (Judges) Order, 2007*
6. Reinstatement, prior to elections, of all judges removed from office subsequent to the Emergency Declaration and removal from office of judges appointed in their stead on conditions that are reasonable fair.

Judicial Independence

Judicial independence in Pakistan was effectively destroyed by recent measures taken by the Musharraf regime. The resulting absence of an independent judiciary violates the fundamental duty, accepted as jus cogens and binding on Pakistan, to afford at all times, including during legitimate states of emergency, "all the judicial guarantees which are recognized as indispensable by civilized peoples." The non-derogability of judicial independence is a requirement of common sense and is also the foundation of all international and domestic human rights and humanitarian law and is secured by many instruments including all four *Geneva Conventions*, (common article 3), *Protocols I and II to the Geneva Conventions*, the *International Covenant on Civil and Political Rights*, the *Universal Declaration of Human Rights* and the *Basic Principles on the Role of Judges*)

Without an independent judiciary, there can be neither free and fair elections nor trials in Pakistan. The thousands of charges laid in the aftermath of the murder of Benazir Bhutto cannot be lawfully determined unless and until judges removed in November are reinstated and proper safeguards of their independence are recognized by the government of Pakistan.

Proclamation of Emergency fails to meet UN legitimacy test and violates the law

LRWC, the ALRC and L4L reiterate earlier statements (November 5th, 6th, 13th, 26th and 29th) condemning as a violations of both Pakistan law and of international laws and standards binding on Pakistan:

- a) the suspension of the Constitution of the Islamic Republic of Pakistan; and,
- b) the Proclamation of Emergency of November 3, 2007; and,
- c) the Provisional Constitutional Order No. 1 of 2007; and,
- d) the Oath of Offices (Judges) Order, 2007; and,
- e) the arrest, detention and removal from office of jurists suspected of opposing violations of the law by the Musharraf regime.

To be lawful and legitimate the imposition, duration and removal of emergency measures by Pakistan or any other state, must meet the 10-principle test of the United Nations standards. [iii] The *Proclamation of Emergency* of November 3, 2007 fails to meet all 10 of the UN criteria for legitimate emergency measures: the emergency measures declared in Pakistan on November 3, 2007 fails to meet the tests regarding legality, proclamation, notification, time limitation, existence of exceptional threat, proportionality, non-discrimination, compatibility, concordance and complementarity with international law and preservation of non-derogable rights. Access to judicial safeguards of non-derogable rights remains an absolute requirement during emergency measures. Actions that compromise or destroy judicial independence, such as those taken by the Musharraf regime, render even emergency measures that meet UN standards, illegal.

LRWC, the ALRC and L4L therefore take the position that all laws brought into force and all state actions taken in reliance on the legitimacy of the Proclamation of Emergency of November 3, 2007 must be considered as enacted and done without legal authority and therefore as null and the appropriate remedies must be taken to restore the law and redress violations.

Lawyers Rights Watch Canada (LRWC) is a committee of Canadian lawyers who promote human rights and the rule of law internationally by providing support to lawyers and other human rights defenders in danger because of their advocacy. LRWC is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations. Earlier LRWC statements on Pakistan: www.lrwc.org/pub1.php

The **Asian Legal Resource Centre (ALRC)** is a Hong Kong-based NGO with General Consultative status with the Economic and Social Council of the United Nations. The ALRC was founded in 1986 by a prominent group of jurists and human rights activists in Asia and is committed to the development of legal self-reliance and the empowerment of people. The Centre promotes the respect of human rights in the region through the strengthening of institutions of the rule of law, notably the police, prosecution and judiciary. It also seeks to strengthen and encourage positive action on legal and human rights issues by the bar and other legal bodies and personnel, at the local and national levels and to promote rights in the region through advocacy, research and publications, such as Article 2.

The **Dutch Lawyers For Lawyers Foundation (L4L)** ('Stichting Advocaten voor Advocaten') is committed to enable lawyers, throughout the world, to practice law without improper interference and to this end, supports lawyers who are under threat or attack in the exercise of their profession while working for the protection of human rights. L4L, established in co-operation with the Dutch Bar Association, the Dutch affiliate of the International Commission of Jurists, and the Dutch Institute of Human Rights, regularly reports on the situation of human rights lawyers.

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[i] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

[ii] 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.

[iii] Report by the UN Special Rapporteur, Mr. Leandro Despouy, on the question of Human Rights and States of Emergency. <http://www.derechos.org/nizkor/excep/despouy97en.html>

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About ALRC: *The Asian Legal Resource Centre is an independent regional non-governmental organisation holding general consultative status with the Economic and Social Council of the United Nations. It is the sister organisation of the Asian Human Rights Commission. The Hong Kong-based group seeks to strengthen and encourage positive action on legal and human rights issues at local and national levels throughout Asia.*

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