

REFORM OR REPRESSION? Post-Coup Abuses in Pakistan

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I. SUMMARY

Addressing the nation on October 17, 1999, five days after he deposed Prime Minister Nawaz Sharif and proclaimed himself chief executive, General Pervez Musharraf offered a damning indictment of the state of Pakistan's economy and civic institutions. Outlining a seven-point recovery plan, Musharraf said that the army planned to stay in charge only so long as was "absolutely necessary to pave the way for true democracy to flourish in the country." Increasing authoritarianism and militarization of state institutions during Sharif's second term had in fact undermined democratic governance, although observers in and outside Pakistan expressed skepticism that a military government would be likely to reverse those trends.

The Musharraf administration has since begun to address a few longstanding justice issues—notably, through the adoption of Pakistan's first federal juvenile justice law and the establishment of a commission on the status of women. But in other respects, human rights conditions have deteriorated since the coup. Political opponents and suspected wrongdoers have been subjected to prolonged detention without charge, custodial ill treatment, and even torture. The administration has also greatly augmented executive powers, curtailed the independence of the judiciary, and neutralized political parties. It has done so through the promulgation of executive orders that infringe on judicial independence and fundamental rights; the application of broadly defined laws governing terrorism, sedition, and public order; and the establishment of extra-constitutional accountability and monitoring mechanisms.

Immediately after the coup, the government stripped the judiciary of much of its power by promulgating the Provisional Constitution Order (PCO), which suspended the constitution and legislative bodies and prohibited the superior courts from making any decision against the chief executive "or any person exercising powers or jurisdiction under his authority." On January 26, Musharraf issued an order requiring all Supreme and High Court judges to take an oath that would bind them to uphold his proclamation of emergency and the PCO, effectively dispensing with any pretension to judicial independence and immunizing officials of the military government from prosecution. Fifteen judges, including the chief justice of the Supreme Court, were removed for failure to take the oath. Four months later, a reconstituted, quiescent Supreme Court validated the coup on the ground of state necessity and set a three-year time frame for the restoration of democratic rule. The court also gave the Musharraf administration authority to amend the constitution unilaterally—a power that the administration says it intends to utilize.

General Musharraf has also acted to remove real and potential sources of political opposition. Senior Sharif administration officials were detained on the day of the coup, including two, Information Minister Mushahid Hussain and Petroleum Minister Chaudhry Nisar Ali Khan, who continue to be held without charge. Sharif himself was tried and convicted under the Anti-Terrorism Act and sentenced to life imprisonment on April 6, 2000, following a trial that was marred by the retroactive revision of the act to facilitate his prosecution and by the murder of one of his defense counsel.

The government's principal vehicle for detaining former officials and party leaders, however, has been the National Accountability Ordinance, a law created in November 1999 ostensibly to bring corrupt officials to account. Although Human Rights Watch does not question the need for accountability mechanisms, the terms of the ordinance invite politically motivated application. It confers sweeping powers of arrest, investigation, and prosecution in a single institution, the National Accountability Bureau (NAB), permits detainees to be held for up to ninety days without charge, and at trial places the burden of proof on the defendant. There have been persistent reports of ill treatment of detainees in NAB custody, particularly those who were held at Attock Fort, an army-occupied sixteenth century fortress west of Islamabad where a number of high-profile accountability trials have been conducted. Persons convicted under the ordinance are automatically prohibited from holding public office for a period of twenty-one years. A recent amendment to the Political Parties Act also bars anyone with a court conviction from holding party office. The combined effect of these acts, as they have been applied, is to eliminate the existing leadership of the major political parties.

While political parties themselves have not been banned, they have been prohibited from fielding candidates for the local government elections that the Musharraf administration plans to hold in December 2000. The administration has also suppressed political activity by conducting raids on party offices, preventing political rallies from being held, and lodging criminal cases against rally organizers under laws governing sedition and public order. Rana Sanaulah Khan, a member of the suspended Punjab provincial assembly from Sharif's Pakistan Muslim League (PML), was arrested in Faisalabad on November 28, 1999. The arrest came after he criticized the army at a meeting of former legislators and urged his colleagues to launch a protest movement against the military government. He was tortured while in custody, and criminal charges were registered against him.

In March 2000, the government formally curtailed the fundamental rights of free association and assembly with an order banning public rallies, demonstrations, and strikes. At least 165 PML leaders and activists were arrested when the order was enforced against a procession that Nawaz Sharif's wife, Kulsoom Nawaz, had planned to lead from Lahore to Peshawar. Other police and army operations have targeted the two leading ethnically based parties in Sindh, the Jeay Sindh Qaumi Mahaz (JSQM) and Muttahida Qaumi Movement (MQM). One consequence of the government's curbs on political activity is that the relative space open to religious parties—whose authorities and institutions General Musharraf has thus far largely refrained from challenging—is likely to grow. The influence that the latter already wield is apparent from the government's abrupt withdrawal of plans to restrict administratively the application of the blasphemy law and to repeal electoral law provisions that many members of religious minorities have criticized as contributing to their communities' political marginalization.

This report examines human rights abuses by the Musharraf administration in its consolidation of military rule and suppression of political party activism and leadership. The press has not been as frequent a target of the present government as political parties, and this report does not specifically address press freedom issues. However, local human rights activists report that self-censorship on political issues is increasingly common in the vernacular press, while recent developments suggest that the English-language press is coming under official pressure as well. On September 27, an army monitoring team conducted an unannounced, four-hour inspection of the headquarters of Karachi's respected English-language daily *Dawn*. Although the ostensible purpose of the inspection was to check metering equipment for electricity billing fraud, the team demanded access to all floors of the publishing house, including the offices of the publishers, editors, and journalists. According to *Dawn*, the inspection was preceded by legal notices to the newspaper from the Ministry of Information to restrict its coverage of a draft Freedom of Information Act, and by complaints from government officials about an article in *Dawn* stating that the administration was preparing new curbs on press freedom.

Ironically, many of the steps taken by the new government—the militarization of state institutions and the use of accountability courts and anti-terrorism legislation—rest on a foundation that was established by Sharif and which helped give his government its autocratic cast. Together with the military administration's curbs on judicial independence and on freedoms of expression, association, and assembly, they speak against Musharraf's justification for the coup and are undermining respect for human rights and the future of democratic development in Pakistan.

II. RECOMMENDATIONS

To the Government of Pakistan

- The state of emergency imposed last October should be lifted immediately, constitutional human rights safeguards recognized and fully respected, and a clear and reasonable timetable set for holding national elections and returning the country to constitutional rule.
- The Provisional Constitution Order (PCO) should be revoked, as should the January 26, 2000, order requiring Supreme and High Court judges to take an oath to uphold the PCO and the proclamation of emergency. The orders undermine the independence of the judiciary and immunize officials of the

military government from prosecution. All fifteen Supreme and High Court judges who were dismissed for failure to take the oath should be reinstated immediately.

- The March 15 Interior Ministry order banning all “political meetings at public places, strikes and processions” should immediately be rescinded. The order is violative of the fundamental rights of expression, association, and assembly, as enshrined in the Universal Declaration of Human Rights.
- The National Accountability Ordinance should be amended so as to vest powers of arrest, investigation, and prosecution in separate bodies. Persons detained under the ordinance should not be held without charge longer than permitted by the Criminal Procedure Code; once charged, they should have adequate time and facilities for the preparation of their defense. Accountability courts should be empowered to grant bail, as provided for in the Code of Criminal Procedure. The authority to release detainees should rest with the courts, rather than the chairman of the National Accountability Bureau, and the burden of proof at trial should rest with the prosecution, not with the defendant. The automatic prohibition on individuals convicted under the law from holding elected office for twenty-one years should be repealed as a violation of the political rights of those concerned.
- Accountability trials should not be conducted inside the Attock Fort. The army-occupied fort is not readily accessible as a venue to defense counsel or witnesses, nor are there persuasive security reasons for conducting trials there.
- Persons detained in connection with accountability proceedings should under no circumstances be held in military custody.
- The Anti-Terrorism Act should, at a minimum, be amended so as to provide adequate time and facilities for the preparation of a defense; the provision prohibiting the publishing or pasting of handbills should be revoked. As presently drafted, the Act violates international standards of due process as well as the right to free expression.
- Pakistan should ratify the International Covenant on Civil and Political Rights and enact the necessary reforms to its domestic legislation so as to ensure consistency with the covenant.
- Army monitoring teams should be disbanded. Any monitoring of civilian institutions should be conducted by legally constituted civilian oversight bodies.
- The Local Bodies Elections 2000 plan should be amended to allow political parties to field candidates and campaign on their behalf. The elections should not be conducted on the basis of a separate electorate for religious minorities.
- Former Information Minister Mushahid Hussain, former Petroleum Minister Chaudhry Nisar Ali Khan, and other persons being illegally detained should be formally charged or released from custody.
- A judicial inquiry should be conducted into the custodial torture of Rana Sanaullah Khan, a member of the suspended Punjab provincial assembly who was arrested in Faisalabad on November 28, 1999. Strict disciplinary action, including criminal prosecution where warranted, should be taken against all officers found to have been responsible. In addition, the charges filed against Sanaullah under the Maintenance of Public Order (MPO) Ordinance and the Section 124-A of the Pakistan Penal Code, governing sedition, contravene his fundamental right to expression and should immediately be withdrawn.
- Judicial inquiries should also be directed into the other cases of custodial torture, ill-treatment, and illegal detention documented in this report, and into the arrest of Mukhi Namomal, head of the District Hindu Panchayat Committee in Daharki, Sindh, by an army monitoring team on February 17, 2000.

To the International Community

- Donors and trading partners of Pakistan should use every available opportunity to press for implementation of the legal and administrative reforms recommended above; respect for international standards of due process and fair trials; impartial inquiries into, and accountability for, cases of illegal detention and custodial ill-treatment; and the early restoration of democratic government in Pakistan under conditions that are conducive to free and fair elections.
- The U.N. High Commissioner for Human Rights should visit Pakistan as soon as possible to raise human rights issues with government and judicial authorities, nongovernmental organizations (NGOs), and others, and to press for the immediate lifting of the state of emergency, the release of all those illegally detained, an end to arbitrary and unjust trials and ill-treatment of those in detention, the lifting of the Interior Ministry's ban on political meetings, and protection of the right of free expression.
- Cooperation with the Musharraf administration's extradition requests in connection with cases registered under the National Accountability Ordinance should be contingent on the amendment of the ordinance as outlined above. Countries that have acceded to extradition requests should monitor the treatment of detainees and the conduct of trials through their embassies in Pakistan, with a view to ensuring that international standards relating to the treatment of prisoners, due process, and fair trials are upheld at all times. Extraditing countries should insist on being allowed to send observers to the trials and to visit defendants in their places of detention.
- Governments should refrain from providing technical assistance for anti-corruption trials until Pakistan takes steps to restore the independence of the judiciary and to amend the National Accountability Ordinance.
- Bilateral donors and international lending agencies, including the World Bank and Asian Development Bank, should insist that the government of Pakistan commit itself to an action plan to restore good governance and constitutional rule to Pakistan before they agree to provide any new loans.

III. BACKGROUND

The legal and administrative regimes that General Musharraf has put in place have clear antecedents in the previous administration. Backed by a comfortable two-thirds majority of the federal legislature, Nawaz Sharif's second term in office was marked by increasing centralization of authority. Sharif undermined judicial independence by pressuring the Supreme Court to remove its chief justice, introduced monitoring teams—staffed mainly by supporters of his Pakistan Muslim League—to oversee the civilian bureaucracy, established an accountability bureau that targeted opposition politicians, and weakened civil society through a protracted crackdown on the press and NGOs.

In his bid to increase his own power, however, Sharif pursued what proved to be an untenable strategy: relying on the army as an instrument of governance while attempting to assert control over the army itself. The army was given administration of the country's largest public sector utility, army-run organizations were awarded a contract for all major development projects in Punjab, and troops were called out to conduct the census.¹ A 1998 ordinance also authorized military courts to try civilians charged with committing acts of terrorism, causing a "civil commotion," or other specified criminal offenses. The Supreme Court ended this use of military courts in February 1999 when it declared portions of the ordinance unconstitutional. Sharif nevertheless alienated important constituencies within the military through the coerced resignation of General Jahangir Karamat as army chief in October 1998, the passage of legislation stripping the President of his power to dissolve parliament (a device that the military had previously relied on to overthrow elected governments), and most critically, his

¹ Zahid Hussain and Amir Mir, "Army to the Rescue," *Newsline* (Karachi), May 1998, pp. 18-23.

withdrawal of support in July 1999 for Islamist guerrillas who had seized strategic locations in the Indian-held portion of Kashmir with the backing of the Pakistani military.

By the fall of 1999, Sharif was under mounting pressure from a newly unified political opposition to call elections, just as the International Monetary Fund (IMF) was demanding that he adopt unpopular economic reforms in order to secure a desperately needed loan installment. Meanwhile, discontent within the military was palpable enough to prompt a statement by the United States that it would take a dim view of any armed intervention. Sharif's dismissal on October 12, 1999, of General Pervez Musharraf, Karamat's successor as army chief, and the coup that reinstated Musharraf brought an abrupt end to the confrontation. In the immediate aftermath of the coup, Musharraf declared a state of emergency, designated himself chief executive, and detained Sharif, his brother Punjab Chief Minister Shahbaz Sharif, and other senior office holders.

Musharraf's Stated Objectives

In a televised speech to the nation on October 17, 1999, General Musharraf attempted to justify his coup. He said that Pakistan had reached a stage where its economy had crumbled, the government had lost its credibility, and state institutions lay demolished. In addition, he accused the Sharif administration of having tried to destroy the army, which he termed "the last institution of stability in Pakistan." Musharraf went on to declare that the armed forces had "no intention to stay in charge any longer than is absolutely necessary to pave the way for true democracy to flourish in the country."² As remedial measures, Musharraf laid out the following policy objectives for his government:

- Rebuild national confidence and morale;
- Strengthen the federation, remove inter-provincial disharmony, and restore national cohesion;
- Revive the economy and restore confidence of the investors;
- Ensure law and order and dispense speedy justice;
- Reconstruct and de-politicize state institutions;
- Devolve power to the grass-roots level; and
- Ensure swift and across-the-board accountability.³

Since assuming power, General Musharraf has taken pains to portray his government as having a socially progressive agenda. At a government-organized national convention on human rights on April 21, 2000, Musharraf announced the initiation of reform in two areas of longstanding concern to Pakistani and international NGOs: juvenile justice⁴ and violence against women.⁵ Musharraf also pledged to adopt an administrative procedure to limit the application of Pakistan's blasphemy law.⁶

² "Excerpts from General Musharraf's address," BBC News Online, October 17, 1999.

³ "Aims and objectives of the government," *Report on the Work of the Government: 12 October, 1999 to January 2000*, Directorate General Films and Publications, Ministry of Information and Media Development, (Islamabad: Government of Pakistan, 2000).

⁴ A Human Rights Watch investigation of the treatment of children in Pakistan's criminal justice system revealed a pattern of abuse. Children are held together with adults in police lockups, usually remain in police custody without production in court well beyond the legally permissible twenty-four hours, and like adults detainees, are usually subjected to custodial torture. While their trials are pending, children languish in overcrowded, often harsh detention facilities that offer few educational or recreational opportunities, and where there is a serious risk of sexual abuse by prison warders or adult inmates. *See generally* Human Rights Watch, *Prison Bound: The Denial of Juvenile Justice in Pakistan* (New York: Human Rights Watch, 1999).

⁵ Women in Pakistan face staggering levels of violence, including domestic violence and sexual assault, and have virtually no access to justice or redress for these crimes. Officials at all levels of the criminal justice system do not consider domestic violence a matter for the criminal courts. Women who attempt to register a police complaint of spousal or familial physical abuse are invariably turned away and sometimes pressured by the police to reconcile with their abusive spouses or relatives. Women who report rape or sexual assault by strangers fare marginally better, but they too face harassment by officials at all levels. They must contend with abusive police, and a discriminatory and deficient legal framework. *See generally* Human Rights Watch, *Crime or Custom? Violence Against Women in Pakistan* (New York: Human Rights Watch, 1999).

⁶ Consulate General of Pakistan, New York, "Human Rights Convention in Pakistan," April 24, 2000; "Honour killings condemned: Chief Executive unveils Human Rights package," *Dawn* (Karachi), April 22, 2000.

On July 1, President Rafiq Tarar announced the promulgation of a juvenile justice ordinance that incorporated a number of recommendations made by local and international nongovernmental organizations and the official Pakistan Law Commission.⁷ The ordinance's salient features include prohibiting imposition of the death penalty on persons for crimes committed while they were under the age of eighteen, providing a right to legal assistance at the state's expense, authorizing the creation of juvenile courts with exclusive jurisdiction over juvenile cases, prohibiting joint trials of adults and children, and requiring probation officers to prepare a report on the child's circumstances prior to adjudication. On September 2, the government announced the establishment of the National Commission on the Status of Women, whose mandate is to safeguard and promote women's interests. The first issue that the government has directed the commission to examine is violence against women.⁸

Despite these positive and welcome steps, however, the government has failed to implement other intended reforms. In April, General Musharraf introduced a modest procedural safeguard against the application of Pakistan's controversial blasphemy law: a First Information Report would be registered in a blasphemy case only after preliminary investigation and scrutiny by the local deputy commissioner, a measure that was seen as being less prone to abuse than the previous procedure of filing a complaint with a police station house officer.⁹ On May 16, however, Musharraf announced that the previous procedure for registering a report would be reinstated, "[a]s it was the unanimous demand of the Ulema [clergy], Mashaikh [notables], and the people."¹⁰ The announcement came three days before a number of Islamist groups had planned to hold demonstrations against the reform.¹¹

The government similarly acquiesced to two demands that were voiced by an alliance of Islamist parties in a June 5 communiqué: incorporating Islamic provisions of the constitution into the Provisional Constitution Order (PCO)¹² and preserving the existing electoral system for members of religious minorities.¹³ Musharraf advisor Javed Jabbar had said in April that the government planned to repeal the system of separate electorates for religious minorities,¹⁴ a measure that the country's Election Commission had recommended the month before.¹⁵ Introduced by Pakistan's last military ruler, General Mohammad Zia-ul-Haq, the separate electoral system reserves a limited number of seats in the national and provincial assemblies for each minority community and limits the franchise of non-Muslim citizens to the seats that have been allotted to their respective communities. It has been widely denounced by minority community leaders and human rights organizations as having contributed to the marginalization of religious minorities in Pakistan. The local government elections plan unveiled by Musharraf in August retained the system of separate electorates, with seats reserved for minorities in districts where they form more than 10 percent of the population.¹⁶

⁷ "Pakistan abolishes death penalty for children," Pakistan Link, July 2, 2000, www.pakistanlink.com/headlines/July/02/42.html (visited July 2000).

⁸ "Commission launched to promote women's interests," *Dawn*, September 13, 2000; "Boost for Pakistan's Women," BBC News Online, September 2, 2000. While welcoming the establishment of the commission, local human rights activists have cautioned that previous women's commissions in Pakistan have proven ineffectual due to a failure to implement their recommendations. Asma Jahangir, "Democracy and Human Rights in Post-Coup Pakistan," speech delivered at the Asia Society, New York, April 20, 2000.

⁹ Consulate General of Pakistan, New York, "Human Rights Convention in Pakistan," April 24, 2000. The First Information Report (FIR) is a record of the information available to the police regarding the commission of a cognizable offense—that is, an offense where the police may effect an arrest without a warrant. A FIR is ordinarily the starting point of a criminal investigation, but it is not required in order for an investigation to commence.

¹⁰ "Blasphemy law: Old FIR procedure restored," *Dawn*, May 17, 2000.

¹¹ "Pakistan's blasphemy law U-turn," BBC News Online, May 17, 2000.

¹² Shakil Shaikh, "Provisional Constitution Order Amended: Islamic Clauses not in Abeyance," *News International* (Karachi), July 16, 2000.

¹³ "Pak religious parties oppose joint electorate system," *Deccan Herald* (Bangalore), June 5, 2000.

¹⁴ Javed Jabbar, Advisor to the Chief Executive of Pakistan on National Affairs, Information and Media Development, "Pakistan: New Government, New Agenda," speech delivered at the Asia Society, New York, April 20, 2000.

¹⁵ "EC suggests joint electorate to ensure proper representation," Associated Press of Pakistan, March 3, 2000.

¹⁶ Local Bodies Elections 2000, Sec. 19, 49, 67, 133.

Far more significant than the failure of parts of Musharraf's reform agenda has been the further institutionalization of the political and social role of the military and the consolidation of political authority in the military's hands. Rather than creating conditions that are conducive to a functioning democracy, General Musharraf has moved Pakistan further away from public accountability and the rule of law. In the process, his administration has made further incursions upon judicial independence, denied political party leaders and activists their fundamental rights of assembly, association, and expression, and in several documented cases, subjected political opponents to torture, ill treatment, and illegal detention. And like Sharif before him, Musharraf has established parallel judicial structures that deny detainees due process of law.

IV. CONSOLIDATION OF MILITARY RULE

The Musharraf administration moved quickly after the coup to preclude any judicial challenge to its authority and took steps toward institutionalizing the army's role in governance.

Curbs on Judicial Independence

The Provisional Constitution Order (PCO), issued by General Musharraf on October 15, 1999, prohibits the Supreme Court and the provincial High Courts from making any order against the chief executive "or any person exercising powers or jurisdiction under his authority." On January 26, Musharraf issued an order requiring all Supreme and High Court judges to take an oath that would bind them to uphold his proclamation of emergency and the PCO. The move came shortly before the judges in question were due to hear petitions against the legality of the military coup; the order recalled a similar measure taken in 1981 by General Zia-ul-Haq.¹⁷

On the evening of January 25, the chief justice of Pakistan's Supreme Court, Saeeuzzaman Siddiqui, was summoned to Musharraf's offices. Musharraf asked Siddiqui to take an oath of loyalty under the newly promulgated PCO, but Siddiqui refused, saying that it was impossible for him to take a fresh oath because he had already been sworn in.¹⁸ Later that night, Interior Minister, retired General Moin-ud-Din Haider, accompanied by two active-duty generals, went to Siddiqui's residence and asked him to reconsider his decision, but Siddiqui again declined.¹⁹ At 6:00 a.m. on January 26, an army colonel arrived at Siddiqui's residence and told him that he should not go to the Supreme Court that day.²⁰ The area around his house was subsequently cordoned off and no one was allowed to enter or leave his residence. Along with Chief Justice Siddiqui, five other judges of the Supreme Court were forced to resign when they refused to take the oath, as were nine provincial High Court judges.²¹ Interior Minister Haider told Human Rights Watch that four of the provincial judges were not invited to take the oath "as a means of getting corrupt judges to leave."²²

On May 12, the reconstituted Supreme Court issued a verdict disposing of the petitions challenging the coup's legality. The court held that the coup was justified on the grounds of state necessity, a conclusion that it reached after cataloguing Pakistan's economic, social, and political ills in a manner that echoed Musharraf's address to the nation seven months earlier. The judges stated that control by Sharif's party, the PML, of the national and provincial assemblies had prevented democratic institutions from functioning and that "an attempt was made to politicize the Army, destabilize it and create dissension within its ranks." Legitimacy was also conferred on the new military government, the court concluded, by the principle that "government should be by the consent of the governed, whether voters or not." Ignoring the ban on public rallies instituted in March, the court found that there was "an implied consent of the governed, i.e., the people of Pakistan in general including

¹⁷ Aziz Siddiqui, "Why courts had to fall in line," *Dawn*, January 30, 2000.

¹⁸ Mubashir Zaidi, "The Missing Constitution," *Herald* (Karachi), February 2000.

¹⁹ *Ibid.*

²⁰ Mubashir Zaidi, "Interview with Justice Siddiqui," *Herald*, February 2000.

²¹ "Judges who did not take oath under the military's Provisional Constitutional Order," Pakistan Press International, January 27, 2000.

²² Human Rights Watch meeting with Lt. Gen. (Ret.) Moin-ud-Din Haider, Minister of Interior, Narcotics Control and Capital Administration and Development Division, New York, March 21, 2000.

politicians/parliamentarians, etc. to the army takeover, in that no protests worth the name or agitations have been launched against the army take-over and/or its continuance.”²³

The court set a deadline of three years for the holding of elections to the national and provincial assemblies and to the Senate. In doing so, it took into consideration a report by the chief of the election commission stating that the preparation of fresh electoral rolls would require two years, after which there would be a need for “some time” to delimit constituencies and dispose of objections. The court reserved authority, to review the continuation of the proclamation of emergency “at any stage if the circumstances so warrant as held by the Court”—a provision that would allow the Musharraf government to seek an extension of military rule.²⁴

While the Constitution remains in abeyance, the military government has been granted extensive powers to introduce laws and amend the Constitution itself. The Supreme Court verdict permits the government to adopt any act or legislative measure that could have been made under the Constitution and that tends to advance or promote “the good of the people,” that is necessary for the “orderly running of the State,” or that would “establish or lead to the establishment of the declared objectives of the Chief Executive.” The court also authorized the administration to “make any law or take any executive action in deviation of” Articles 15 through 19, and 24 of the constitution, encompassing the fundamental rights of assembly, association, expression, movement, property, and trade, business, or profession, for as long as the proclamation of emergency remains in effect.²⁵

That the government fully intends to avail itself of these powers was unambiguously stated by the interior minister. According to Haider, Musharraf believed that his reform agenda would not succeed without amendments to the constitution.²⁶

One of the military government’s first casualties was due process in the case of the deposed prime minister. On January 19, 2000, Sharif was formally charged under the Anti-Terrorism Act with kidnapping, attempted murder, hijacking, and terrorism for having denied Musharraf’s plane permission to land in Pakistan on October 12.²⁷ On April 6, Sharif was convicted of hijacking and terrorism by an Anti-Terrorism Court in Karachi and sentenced to life imprisonment after a trial marred by intimidation of the court, procedural abuses, and the still unexplained assassination of one of Sharif’s defense lawyers.²⁸ In December 1999, as the trial was underway, the government amended the act to add hijacking and conspiracy to the list of offenses falling within the Anti-Terrorism Court’s jurisdiction, which offenses were then applied retroactively to Sharif. The act was also amended to allow for the appointment of a High Court judge to hear the trial in place of Rehmat Hussain Jaffery, a Sessions Court judge who had been appointed to head an Anti-Terrorism Court under Sharif. In January, the High Court judge to whom the case had been transferred refused to continue hearing it, publicly complaining of the presence of intelligence agents in his courtroom, and returned the case to Jaffery. In March, only days before the final arguments were to be presented in the trial, Sharif’s lawyer, Iqbal Raad, and two of his colleagues were

²³ Verdict of the Supreme Court of Pakistan regarding Constitution Petitions Nos. 62/99, 63/99, 53/99, 57/99, 3/2000, 66/99, and 64/99, May 12, 2000.

²⁴ Ibid.

²⁵ Ibid. Articles 8 through 28 of the constitution are listed therein as fundamental rights. Constitution of the Islamic Republic of Pakistan, 1973, Part II, Chapter 1.

²⁶ Human Rights Watch meeting with Interior Minister Haider, New York, March 21, 2000. As of this writing, the government had yet to make any amendments to the constitution.

²⁷ Enacted under the Sharif administration, the Anti-Terrorism Act violates international standards of due process as well as the right to free expression. Although trials have rarely been conducted within the prescribed period, courts established under the act are supposed to conduct trials within seven days. Convicted persons have only seven days in which to file appeals, and these too must be heard and decided within a seven-day period. The act criminalizes, among other activities, “distributing, publishing or pasting of a handbill or making graffiti or wall-chalking intended to create unrest or fear”—an ill-defined provision that could be applied against political speech. Anti-Terrorism Act, 1997, as amended by Anti-Terrorism (Amendment) Ordinance, 1999, Sec. 7A, 19, 25.

²⁸ A month after Sharif’s conviction by the Anti-Terrorism Court in April, he was brought before an accountability court to face trial on charges of concealing assets and evading taxes in connection with his acquisition of a helicopter. He was convicted on July 22, and sentenced to fourteen years in prison, with a fine of Rs. 20 million (US\$380,000).

assassinated in their office. Other members of the defense team charged that the government had failed to provide them protection despite repeated warnings that they were being harassed and threatened.

The Army's Role in Governance

Upon seizing power, General Musharraf instituted a seven-member National Security Council, under whose guidance the cabinet was to operate. The council included the heads of the navy and air force, and was chaired by Musharraf himself. He subsequently set up a countrywide network of army monitoring teams to supervise and assist in the functioning of the civilian bureaucracy and appointed a serving general to head a newly empowered National Accountability Bureau. Military personnel have frequently taken part in arrests ordered by the bureau, and a military fortress at Attock has been used as the site of an accountability court and a place of pre-trial detention.

The Musharraf administration has stated that the purposes of the army monitoring teams are to monitor the functioning of the civilian bureaucracy; reduce corruption; provide “assistance” to government institutions; “monitor the impact of governance on public perceptions”; and provide input to the chief executive and National Security Council for “evolving policies,” restructuring government machinery, and developing “a representative and effective system at the grassroots level.”²⁹ The teams are constituted at the provincial, regional, and district levels, and consist of army personnel, Directorate of Military Intelligence personnel, and members of the Inter-Service Intelligence agency’s field units. Heads of the district monitoring teams have appointed officers to supervise individual departments within each district.³⁰ According to official figures, there are presently 207 teams with a total staff of over 3,500.³¹ There have been a number of reported cases of army monitoring teams exceeding the functions for which they were purportedly established, often through the abusive exercise of police powers.³²

That these measures were part of an effort to ensure that any elected government would operate under army tutelage was evident from statements made by administration officials. In a speech delivered in New York in April, Javed Jabbar, a senior advisor to Musharraf, termed Pakistan a “different kind of nation-state,” one that he said had been forced into existence by the refusal of the Indian National Congress—the precursor to India’s Congress party—to accept a confederal structure for the subcontinent. Pakistan was “still coming to terms with itself” during the years that followed independence, he added, and in that process the armed forces were “one of the essential binding forces that made sense out of the country.” Because of the military’s role in nation-building, Jabbar argued, “the conventional distinction that this belongs to civilians and this to the military should not apply to Pakistan.”³³

As the army has expanded its role in the administration of the country, there has been a corresponding diminution of the role of political parties. The Musharraf government has pursued this objective through a range of legal measures and police actions that have been taken against party leaders and activists belonging to different parties and in different regions of the country. A principal vehicle has been the National Accountability Ordinance, introduced in November 1999, which prohibits convicts from holding political office for twenty-one

²⁹ “Annex-III: Monitoring Teams,” *Report on the Work of the Government: 12 October, 1999 to January 2000*, Directorate General Films and Publications, Ministry of Information and Media Development (Islamabad: Government of Pakistan, 2000). The teams supplanted an earlier extra-constitutional monitoring system that had been instituted by Nawaz Sharif in 1998: *khidmat* (“service”) committees, which were staffed in the main by PML loyalists.

³⁰ “The Situation in, and Outlook for, Pakistan under the Musharraf Administration,” Global Information System, Defense and Foreign Affairs Group, Alexandria, Virginia, February 1, 2000.

³¹ “Annex-III: Monitoring Teams,” *Report on the Work of the Government....*

³² A columnist for *Dawn* reported in March that members of the First Self-Propelled Artillery Regiment had evicted cart vendors from Chappar Bazar, a market area in Chakwal, Punjab; a significant number of these vendors, he wrote, held certificates of temporary tenancy issued by the Chakwal municipal committee. Ayaz Amir, “A Tale of a Dazed City,” *Dawn*, March 3, 2000. A journalist in Sukkur, Sindh, told Human Rights Watch that a monitoring team headed by Colonel Zahid Majid arranged to have ten houses bulldozed in an impoverished Sukkur neighborhood known as Bhitai Nagar on March 20, 2000. The journalist said that the houses had been regularized in 1985 by the government of Prime Minister Mohammad Khan Junejo.

³³ Javed Jabbar, speech delivered at the Asia Society, New York, April 20, 2000.

years. Musharraf has since moved to ensure that many current leaders of political parties are barred from participating in any future elections. On August 11, 2000, the government amended the Political Parties Act to automatically disqualify anyone with a court conviction from holding party office, a move that would apply to all party leaders convicted in accountability proceedings. In addition, party activists and leaders have been arrested throughout Punjab and Sindh for criticizing the army in party meetings and attempting to hold public rallies. And while administration officials have said that parties will be allowed to participate in elections to the Senate and national and provincial assemblies, local government elections scheduled to be held in December 2000 will be conducted on a non-party basis.³⁴

Denial of Freedoms of Assembly and Association

The Provisional Constitution Order promulgated after the coup stated that fundamental rights would remain in force, provided that they were “not in conflict with the Proclamation of Emergency or any Order made thereunder from time to time...”³⁵ The significance of this caveat for the rights of assembly and association was made readily apparent on March 15, when the Interior Ministry issued a ban on all “political meetings at public places, strikes and processions with immediate effect.”³⁶ The Ministry’s announcement came in the midst of a multi-city tour by Kulsoom Nawaz, the wife of Nawaz Sharif, aimed at shoring up support for her husband and opposition to the government among PML supporters. It also followed a police and paramilitary crackdown on demonstrations by two ethnically based parties in Sindh province against military rule, government policies affecting the province, and the arrest of party leaders. The ban put an end to public assemblies by opposition parties and, while it did not restrict membership in political parties or unions as such, it undermined the right to freedom of association by prohibiting legitimate, nonviolent means for parties and unions to express their views, air their grievances, and act in concert in pursuit of their common political goals.³⁷

In a meeting with Human Rights Watch on March 21, the interior minister said that he regarded the imposition of the ban as a mistake “because the public was staying within the parameters of holding nonviolent demonstrations.” The problem, Haider said, was with specific strikes in Sindh involving the JSQM and the MQM that he claimed had resulted in violence and caused considerable damage to property. Haider told Pakistani journalists six days later that the government would review the ban in April; on April 21, Musharraf declared that the ban would be lifted shortly.³⁸ In late June, however, Interior Ministry sources told the Karachi daily *Dawn* that its lifting was no longer under active consideration,³⁹ and the ban remained in force at this writing.

Although indoor political meetings are permitted under the terms of the ban, authorities have on several occasions raided such gatherings and arrested participants. The rights to free expression, assembly, and association have also been limited by the application of broadly worded laws governing sedition and the maintenance of public order. The sedition law, Section 124-A of the Pakistan Penal Code, criminalizes speech that “brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the

³⁴ Local Bodies Elections 2000, Sec. 131.

³⁵ Provisional Constitution Order No. 1 of 1999, Sec. 2(iii).

³⁶ “Political rallies, strikes banned: Provinces told to enforce order,” *Dawn*, March 16, 2000.

³⁷ Pakistan is not a party to the International Covenant on Civil and Political Rights. However, the fundamental rights enshrined in Chapter 1 of the constitution of Pakistan include qualified rights of expression and assembly. Citizens have the right to freedom of speech and expression, “subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [or] commission of or incitement to an offence.”³⁷ Citizens also have rights to “assemble peacefully and without arms,” to form associations and unions, and to form or join a political party, “subject to any reasonable restrictions imposed by law...” Constitution of the Islamic Republic of Pakistan, 1973, Part II, Chapter I, Sec. 16, 17. Restrictions may be imposed, with respect to assembly, “in the interest of public order”; with respect to association, “in the interest of the sovereignty or integrity of Pakistan, public order or morality”; and with respect to political parties, “in the interest of the sovereignty or integrity of Pakistan.” *Ibid.* Even these limited rights, which fall short of internationally recognized standards, have been repeatedly violated by the Musharraf government.

³⁸ “Ban on rallies to be reviewed, says Moin,” *Dawn*, March 28, 2000; “Ban on Political Activities to go soon: Musharraf,” *Dawn*, April 22, 2000.

³⁹ “Political activities to remain banned,” *Dawn*, June 21, 2000.

Central or Provincial Government established by law.”⁴⁰ Section 16 of the Maintenance of Public Order Ordinance prohibits speech that “causes or is likely to cause fear or alarm to the public” or any section thereof, or which “furthers or is likely to further any activity prejudicial to public safety or the maintenance of public order.”⁴¹ Examples of the use of these laws to silence peaceful expression of dissent are included in the cases below.

V. ARRESTS OF PARTY ACTIVISTS

Since October 1999, police, paramilitary, and military personnel have detained scores of leaders and activists of different political parties. The arrests, made in response to statements critical of the military takeover or to forestall public demonstrations in opposition to the government, have been effected under laws governing sedition and the maintenance of public order, as well as the Anti-Terrorism Act. The crackdown has also been facilitated by a nationwide ban on public gatherings that was imposed on March 15, 2000, and remains in force. These developments have severely limited the scope for party activism and have directly gone against Musharraf’s pledge to uphold the fundamental rights of free expression and assembly as provided for in Pakistan’s constitution. The experience of Rana Sanaullah Khan is illustrative of the impunity and at times brutality with which the Musharraf government has treated outspoken opponents.

Rana Sanaullah Khan

Sanaullah, a practicing lawyer and PML member of the suspended Punjab provincial assembly, was arrested and tortured in custody after he sharply criticized the military government during a meeting of former legislators in November 1999. The meeting had been convened at the residence of Chaudhary Parvez Illahi, the former speaker of the Punjab assembly, in Lahore on November 25. The following day a criminal case under the sedition law, Section 124-A of the Pakistan Penal Code, and Section 16 of the Maintenance of Public Order Ordinance, was registered against Sanaullah at Ghalib Market police station.

Human Rights Watch has obtained a copy of the First Information Report filed in the case, which states:

During the meeting, Rana Sanaullah, former MPA [Member of the Provincial Assembly] from Faisalabad and the nearby vicinity, severely criticized the events of October 12 and said that the army on October 12 killed democracy, [and that] there was no justification or authority under the constitution or the law for such acts. Those present at the meeting delivered provocative speeches and spread hatred against the government.

Rana Sanaullah said that the army thinks the country is like a bicycle; whenever they want, they ride it, and whenever they want, they will get off it. He further said that the army is creating hardships for democracy and the Muslim League. Former MPA Muhammad Khoro read things against the government from printed literature and announced that this literature will be distributed throughout the country. At the end of the meeting, Rana Sanaullah came to the gate and incited his colleagues against the government, and announced plans to end the government, and exhorted his colleagues to launch a protest movement against the government.⁴²

Even this official account of events suggests that Sanaullah did nothing more at the meeting than peacefully express his opposition to army rule. According to Sanaullah, a heavy contingent of police headed by Deputy Superintendent of Police (DSP) Tariq Kamboah, surrounded his house in Faisalabad three days later on November 28, stormed into his bedroom, and took him away. The arrest was supervised by the superintendent of

⁴⁰ Persons convicted under Section 124-A “shall be punished with [imprisonment for life] to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.” Pakistan Penal Code, Sec. 124-A.

⁴¹ Persons convicted under Section 16 may be punished by imprisonment for up to three years, a fine, or both. West Pakistan Maintenance of Public Order Ordinance, 1960, Sec. 16.

⁴² Initial Report 302/99, Police Station, Ghalib Market, Lahore, November 25, 1999, signed by Jaan Muhammad, SHO/SI, before DSP Legal at Police Station on November 26, 1999.

police for Faisalabad, Captain Saif, and the Additional Deputy Commissioner, Wasim Ajmal. “They locked me in a torture cell at Quilla Gojar Singh police station in Lahore,” Sanaullah said.⁴³ He told Human Rights Watch what happened next:

On the night of November 29, DSP Jamaat Ali Bukhari and Inspector Ilyas, leading ten to twenty armed men, entered my cell, put me in a jeep, and drove me toward the [Lahore] airport. The jeep stopped, they blindfolded and handcuffed me, and put me in another jeep. After driving ten to twelve kilometers they stopped at the Lahore Army Cantonment area, and took me off the jeep.

They put a rope through my handcuffs and hung me up by it, so that my feet could barely touch the ground. A person whose presence I could sense in front of me ordered, “Five-five.” Within no time, cutting into the air, a whip hit my back. After he completed the first round of whipping, there was complete silence for five or ten minutes. A doctor checked my pulse and heart beat. The whipping man resumed and he did another four rounds. My back bled profusely, as I had been hit with a *kaura* [a leather strap] twenty times. He whipped me in such a way that my clothes stuck to my bleeding skin, and my skin and shreds of cloth came ripping off together. They made me lie on the floor with my back turned for hours.

It was 3:00 am when they brought me back to Quilla Gojar Singh police station. I was there until December 8. There was no sense of day or night, as the cell was lit [at all times] by a bare bulb. They would give me food only once a day. In twenty-four hours, maybe they would give me some tea.

They would take me blindfolded into another room for interrogation. From their way of talking, the interrogators sounded to me like army officials. DSP Bukhari told me that the head of the interrogation team was an army major named Saif, a member of a monitoring team who sits with the SSP [Senior Superintendent of Police] cantonment in Lahore.⁴⁴

Sanaullah was shifted to Lahore Central Prison on December 8, after his colleagues filed a habeas corpus petition with the Lahore High Court.⁴⁵ The court ordered a medical examination, which was conducted on December 15, 1999, at Lahore’s government-run Services Hospital by a board that consisted of the hospital’s medical superintendent, a surgeon, and a senior physician. According to the board’s report, Sanaullah was brought to the hospital in police custody. While the board did not note injuries on Sanaullah’s back that would have been indicative of whipping, it found twenty-eight bruises and abrasions on other parts of his body that it concluded were inflicted with a “blunt-edge weapon” two to three weeks prior to the examination, when he was in police custody.⁴⁶

The Lahore High Court ordered Sanaullah’s release on bail on January 5. When Human Rights Watch interviewed Sanaullah two months later, the case against him was still pending. “My telephone is being tapped, I am under constant surveillance by undercover men outside my residence, and officers are deputed by the military government to keep an eye on me,” he said.⁴⁷

Crackdown on Other PML Activists

Sharif’s arrest and trial rent deep fissures within the PML leadership, with a dissident faction conspicuously refraining from supporting the former prime minister. At the same time, Kulsoom Nawaz, who had previously played no major role in party affairs, emerged as a galvanizing force for much of the PML rank

⁴³ Human Rights Watch telephone interview with Rana Sanaullah Khan, Faisalabad, March 5, 2000. *See also* Ayaz Amir, “Military justice: the good and not so good,” *Dawn*, December 24, 1999. The arrest was recorded as having occurred on December 2, 1999, in the Gulberg area of Lahore.

⁴⁴ Human Rights Watch telephone interview with Rana Sanaullah Khan, Faisalabad, March 5, 2000.

⁴⁵ *Ibid.*

⁴⁶ Medical officer’s report, examination of Rana Sanaullah Khan, Services Hospital, Lahore, December 15, 1999.

⁴⁷ Human Rights Watch telephone interview with Rana Sanaullah Khan, Faisalabad, March 5, 2000.

and file. Along with Sharif loyalists in the party leadership, she organized a series of rallies in different cities of Pakistan during March that led to preemptive arrests by the police and the lodging of criminal cases against her and other PML leaders.

On March 10, cantonment police in Hyderabad registered criminal cases against Kulsoom Nawaz; Allah Bux Magsi, the district president of the PML; Shah Mohammad Shah, a Sindh province PML leader; Haleem Siddiqui, a former member of the National Assembly and minister in Sharif's government; former Sindh governor Mamnoon Hussain; and twelve other PML leaders for making "provocative" speeches at a party convention held the previous day at Magsi's residence. The cases were lodged under the Maintenance of Public Order Ordinance, read together with sections of the Anti-Terrorism Act, the sedition law, and laws banning incitement to riot and promoting enmity between groups.⁴⁸ Three days later, police in Karachi registered a case under the Maintenance of Public Order Ordinance against Shah Muhammad Shah, Haleem Siddiqui, Mamnoon Hussain, and thirty other PML members in connection with slogans that they had allegedly chanted during the funeral procession of Iqbal Raad, a defense attorney for Nawaz Sharif who had been assassinated on March 10 by unknown assailants in his law office in Karachi.⁴⁹

Kulsoom Nawaz issued a call on March 13 for protests against Raad's assassination, to be held two days later. As a preemptive measure, police conducted midnight raids throughout Sukkur district on the night of March 14. Five PML activists were detained under Section 188 of the Penal Code and then released the following day.⁵⁰ The police succeeded in preventing any protest rally in the city or district from taking place.

The crackdown on PML activists widened after the government's March 15 ban on rallies. An attempt by Kulsoom Nawaz to lead a 500-kilometer procession from Lahore to Peshawar starting on July 8 resulted in a wave of arrests. In an attempt to forestall the procession, police conducted pre-dawn raids throughout the city on July 7, arresting 165 PML members by the official count and up to 300 according to PML leaders. Police said they were acting on the orders of the Punjab governor, Mohammad Safdar, who had declared that the planned procession would violate the ban on rallies.⁵¹ The following day, Kulsoom Nawaz was stopped in her car and arrested by police while trying to join the procession. After she refused to turn back or leave her car, police brought a crane to the site and hauled the vehicle into a police compound.⁵² On July 9, police armed with tear gas and shields surrounded the PML party headquarters in Rawalpindi, sealed off the exits, and forcibly entered the premises. Twenty-nine PML members present, who had gathered to discuss a response to the previous day's arrest of Kulsoom Nawaz, were detained under the Maintenance of Public Order Ordinance.⁵³

Mian Ejaz Shafi, a PML member of the suspended National Assembly, was detained by law enforcement authorities on July 29 in Islamabad, where he had traveled to attend a meeting of the PML central working committee. Shafi said he was released the following day, after the PML meeting had ended. He claimed that he had been held in a lockup for twenty-four hours, with his face covered and without access to food, water, or treatment for his diabetes.⁵⁴

On August 11, police in different parts of Karachi arrested at least forty PML supporters ahead of a planned public meeting on Pakistan's independence day, PML sources told reporters. Police officials

⁴⁸ "Kulsoom, PML leaders booked for provocative speeches," Dawn Wire Service, Issue 06/12, March 17, 2000.

⁴⁹ *Kawish* (Hyderabad), March 15, 2000.

⁵⁰ Section 188 of the penal code criminalizes disobedience of an order promulgated by a public servant. It is punishable by imprisonment for one to six months, and a fine of Rs. 200 to Rs. 1000. Pakistan Penal Code. Sec. 188. The order in this case was issued under Sec. 144 of the Criminal Procedure Code, which authorizes magistrates to issue temporary orders to persons to desist from certain acts in urgent cases of public nuisance or apprehended danger. Criminal Procedure Code, Sec. 144.

⁵¹ "Mass arrest of Sharif supporters," BBC News Online, July 7, 2000; "Police detain up to 300 Sharif party members," Agence France-Presse, July 7, 2000; "Pakistani police arrest Sharif Supporters to Stop Protest," Associated Press, July 7, 2000.

⁵² "Sharif supporters detained," BBC News Online, July 9, 2000.

⁵³ Ibid; "29 PML workers arrested," *Dawn*, July 8, 2000.

⁵⁴ "Ejaz Shafi demands suo moto action," *Dawn*, August 1, 2000. See also, "Ejaz Shafi missing," *Dawn*, July 31, 2000.

acknowledged having detained two provincial vice-presidents of the PML, Nihal Hashmi and Tariq Khan, under the Maintenance of Public Order Ordinance.⁵⁵

Arrests of JSQM and MQM Activists

Authorities also cracked down on the two major ethnic parties in Sindh province, the Muttahida Qaumi Movement (MQM) and the Jeay Sindh Qaumi Mahaz (JSQM), detaining leaders and activists during raids on their homes and party offices, and preventing demonstrations from being held. The two parties, which respectively claim to represent Urdu-speakers whose families migrated from India after partition and the province's indigenous Sindhi-speaking population, entered into an alliance in 1998. By agreeing to temporarily set aside their differences, the parties quelled longstanding tensions between their activists and presented a broader opposition to the PML governments in Karachi and Islamabad. Both parties have also been strident in their criticism of the Musharraf administration and have held strikes and demonstrations against its economic policies and administrative measures. Although the JSQM and MQM share a history of involvement in ethnic and political violence, the acts for which their leaders and activists have been arrested by the military government include the legitimate, peaceful exercise of their rights to freedoms of expression, assembly, and association.

Azad Jamali, who runs the JSQM media center in Hyderabad, was arrested with party colleagues, Gul Bhatti, Latif Samon, Jamil Gadani, and Sulaiman Marri on November 13, 1999, in a paramilitary and police raid on the media center following a bomb blast in the city. He told Human Rights Watch that he was "shifted from one police station to the other," and finally held at the Khebrani forest police station.⁵⁶ "They blindfolded me, kicked at my ribs, hung me upside down, and finally they inflicted *cheera* on me," Jamali said. *Cheera* is the forced stretching apart of the victim's legs, sometimes in combination with kicks to the genitalia.⁵⁷ Despite the cold weather, Jamali added, he was forced to sleep on the bare floor of his cell. Jamali was set free on December 14 without being charged with the commission of any crime.⁵⁸

JSQM Information Secretary Akash Mallah was arrested on February 8, 2000, in a subsequent raid on the JSQM media center. Mallah's family was not informed of his arrest or whereabouts for a week thereafter. On February 16, Mallah was produced before a magistrate at Hyderabad, after his attorney filed a habeas corpus petition before the Hyderabad circuit bench of the High Court of Sindh. The arrest date was falsely recorded in the First Information Report as February 15, apparently to conform with the Criminal Procedure Code's requirement that detainees be brought before a magistrate within twenty-four hours of their arrest.⁵⁹ At his appearance, Mallah claimed that he had been tortured by police and paramilitary rangers while in their custody. The trial judge ordered that he receive a medical examination at Liaquat Medical College Hospital (LMCH) in Hyderabad. According to a press report published in the Sindhi daily *Kawish*, the examining physicians found that Mallah had "acute swelling of his back and legs."⁶⁰

The authorities in Sindh province launched a crackdown against activists and leaders of the JSQM and the MQM on February 19, 2000, after the two parties had jointly called for a strike—observed in many parts of the province—against the government's dismissal of 400 Pakistan Steel Mills employees. Paramilitary troops and rangers conducted search and siege operations in urban areas and searched for JSQM activists in rural areas of Sindh, resulting in the arrest of about forty activists.⁶¹

⁵⁵ "Police arrest dozens of PML activists," Agence France-Presse, August 11, 2000; "PML activists detained," *Dawn*, August 12, 2000.

⁵⁶ Human Rights Watch telephone interview with Azad Jamali, Hyderabad, March 9, 2000.

⁵⁷ U.N. Commission on Human Rights, Report of the Special Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment, Visit by the Special Rapporteur to Pakistan, U.N. Doc. E/CN.4/1997/7/Add.2, 15 October 1996 (Nigel Rodley, Special Rapporteur), para. 14.

⁵⁸ Human Rights Watch telephone interview with Azad Jamali, Hyderabad, March 9, 2000.

⁵⁹ Human Rights Watch telephone interview with Allah Bachayo Soomro, Akash Mallah's attorney, Hyderabad, February 29, 2000; Human Rights Watch telephone interview with a family member of Akash Mallah, Hyderabad, March 8, 2000.

⁶⁰ *Kawish*, February 14, 2000.

⁶¹ Human Rights Watch telephone interviews with MQM and JSQM members between February 29 and March 15, 2000; "Muttahida, JSQM leaders baton-charged; 34 arrested," *Dawn*, February 20, 2000.

Police in Ghotki district detained the elderly father of Illahi Bux Chachar, the local JSQM leader, after they were unable to locate his son.⁶² In Karachi, heavy police contingents led by police superintendent Pir Farid Jan Sarhandi surrounded the Karachi Press Club, where JSQM leaders had planned to hold a demonstration against the steel workers' dismissal, the transfer of a motorway to federal administration, and the government's failure to provide Sindh with what the JSQM considered its due share of federal revenues. According to the Karachi daily *News International*, police beat JSQM leaders Bashir Qureishi, Zain Shah, and Ghulam Shah after they and other JSQM members broke through the police barricade and Qureishi began addressing the crowd. Thirty JSQM members, including the three party leaders, were taken into custody under Section 188 of the penal code. The same day, police stormed into Liaquat Hall at Jinnah Park in Karachi, and arrested MQM leaders Nasreen Jalil, Aftab Shaikh, Hasan Musanna Alvi, and Zahid Qureishi, who were holding a press conference there. Jalil was held at the women's police station in Karachi for forty-eight hours.⁶³

The JSQM and MQM called for further protests to be held on February 22 against the police violence of February 19 but withdrew their call after setting a deadline for the government to accept two demands: the release of jailed MQM leader Farooq Sattar (whose case is described below) and the reinstatement of laid-off Pakistan Steel Mills employees. Police and paramilitary rangers nevertheless took preventive action on the night of February 21, rounding up and detaining fifty-four JSQM and MQM activists. The activists were released the following day.⁶⁴

Mansoor Marri, a member of the legal aid committee of the JSQM, told Human Rights Watch that several JSQM activists were stopped on April 25 at the Jamshoro Toll Plaza on the Hyderabad-Karachi motorway while returning from a ceremony marking the death anniversary of the Sindhi nationalist leader G. M. Syed in his native village of Saan. Three of the activists, Muhammad Ali Jamali, Punhal Larik, and Abdul Ghani Unar, were blindfolded, beaten, and detained, Marri said. He added that Jamali and Unar were later released, but Larik's whereabouts remained unknown as of April 28.⁶⁵

Mukhi Namomal

While directed mainly at members of political parties, the Musharraf administration's crackdown on political activism has also embraced civil society actors who have challenged actions taken by the army or the military administration. A case in point is that of Mukhi Namomal, a Hindu community leader who was arrested in apparent retaliation for his advocacy on behalf of a community member whom army intelligence agents had detained.

On February 17, three vehicles carrying members of an army monitoring team and police personnel surrounded the Hindu *mohalla* (residential quarter) in the small town of Daharki, in Ghotki district in northern Sindh. They were led by Colonel Ahsan, Captain Nadeem, and two men in plainclothes. According to an eyewitness, army and police personnel stormed into the house of Namomal, a cotton factory owner and president of the Ghotki district Hindu Panchayat Committee. Brandishing weapons, they gathered all the women and children of the family into one room and started hitting the adult male family members with rifle butts, kicking them with their jackboots, and asking about Namomal. They then went upstairs to Namomal's bedroom, tied his hands behind his back, and blindfolded him. After searching the house for half an hour, they departed, taking Namomal with them. "His family and members of the community had no idea of his whereabouts or the charges against him," said an eyewitness. "Fifteen of us went to the office of the colonel in charge of the monitoring cell at Mirpur Mathelo district headquarters, but all of our pleas were ignored by the colonel," he added. "Instead, he threatened to throw us out of his office."⁶⁶

⁶² *Kawish*, February 20, 2000.

⁶³ "JSQM, Muttahida leaders arrested," *News International*, February 20, 2000; Human Rights Watch telephone interview with Nasreen Jalil, Karachi, March 15, 2000. According to Jalil, a total of about forty-five JSQM and MQM members were arrested on February 19 in Karachi.

⁶⁴ Human Rights Watch telephone interview with Nasreen Jalil, Karachi, March 15, 2000.

⁶⁵ Human Rights Watch telephone interview with Mansoor Marri, April 28, 2000.

⁶⁶ Human Rights Watch telephone interview with an eyewitness to the incident whose identity has been withheld for personal safety, Daharki, March 27, 2000.

A case of theft was registered against Namomal by the Daharki police on February 19 for allegedly breaking into the shop of a neighbor, Anwar Malik. If this had been a routine theft case, it is unclear why the army monitoring team was involved; moreover, the timing suggests that the theft charge may have been a pretext. Namomal had earlier been active in attempting to secure the release of another Hindu citizen, Yudhishtir Lal, who had been arrested in Daharki by army intelligence agents on January 25, 2000, a local resident said. Lal was kept in the A Section of Sukkur police station for twenty days until February 17, and Namomal was arrested the same day that Lal was released.⁶⁷ Namomal was handed over to the police by the army on February 21, and was finally released on bail on March 14 after twenty-six days in custody.

VI. ABUSES IN ACCOUNTABILITY CASES

Promulgated in November 1999, the National Accountability Ordinance supplanted the Ehtesab (Accountability) Ordinance that Nawaz Sharif had introduced two years earlier. The new ordinance combines unchecked powers of arrest, investigation, and prosecution in a single institution, the National Accountability Bureau (NAB), which has been chaired since its inception by a serving military officer.⁶⁸ Human Rights Watch does not question the need to prosecute corrupt or illegal behavior or the legitimacy of accountability mechanisms per se. But in pursuance of these objectives, the Musharraf government has introduced an accountability ordinance that creates extra-constitutional tribunals, denies arrested persons due process of law, and strips convicted persons of their political rights.

People arrested under the accountability ordinance may be detained for up to ninety days without charge,⁶⁹ a period that far exceeds the fifteen days permitted under Pakistan's Criminal Procedure Code. In a further break with the code, the ordinance prohibits courts from granting bail and gives the NAB chairman sole power to decide if and when to release detainees—a provision that clearly contravenes the principle of separation of powers.⁷⁰ The ordinance also establishes special accountability courts, provides that trials should be conducted within thirty days of charges being filed, and automatically bars those convicted under the ordinance from holding public office for twenty-one years.⁷¹ Under a February 2000 amendment, the ordinance shifts the burden of proof at trial to the defendant, who must demonstrate that he or she acted “in the public interest, fairly, justly, and for the advancement of the purpose of the enactment under which the authority was used....”⁷² By policy, serving judges and senior officials of the armed forces are outside NAB's provenance.⁷³

Several defendants, including former officials and civil servants, were confined earlier this year inside Attock Fort. Conditions in the fort's detention cells were deplorable, according to family members and others who visited detainees there, and belied Musharraf advisor Javed Jabbar's assertion that no detainee under the accountability ordinance had been maltreated.⁷⁴ In a letter published on March 14 in the Karachi daily *News International*, Ayesha Aziz, the daughter of former North-West Frontier Province Chief Secretary Khalid Aziz, reported that her father was being held in a portion of the fort that had been declared a police station by the military government, but was entirely under army control. She then described the conditions in his cell:

⁶⁷ Ibid.

⁶⁸ Lt. Gen. Khalid Maqbool was appointed chairman of NAB on September 1, replacing Lt. Gen. Mohammed Amjad. Ahmed Rashid, “Military Facelift: Army leaders shuffle jobs in an apparent effort to woo the West at a UN summit,” *Far Eastern Economic Review*, September 14, 2000, pp. 27-28.

⁶⁹ National Accountability Ordinance, No. XVIII of 1999, Sec. 24(d).

⁷⁰ Ibid., No. XVIII of 1999, Sec. 9(b), 24(d).

⁷¹ Ibid., No. XVIII of 1999, Sec. 5(g), 15(a), 16(a).

⁷² Ibid., No. XVIII of 1999, Sec. 14(d), as amended by National Accountability Bureau (Amendment) Ordinance, No. IV of 2000, Sec. 9.

⁷³ In early June, Lt. Gen. Syed Muhammad Amjad, then chairman of NAB, said his bureau would not conduct any investigation into wrongdoing by a serving judge or a senior official of the armed forces. “Army Monitoring Teams to investigate lower level corruption: NAB Chief,” Associated Press of Pakistan, June 5, 2000.

⁷⁴ Javed Jabbar, speech delivered at the Asia Society, New York, April 20, 2000.

Previously, my father was locked up in solitary confinement in a 4x6 torture cell, with no ventilation and a high voltage bulb which was never switched off. Now there is complete darkness in the cell with a zero watt red light bulb kept on to put strain on his nerves. My father cannot make out whether it is day or night because his wrist watch has been taken away from him. He cannot get newspapers, medicines or food from home. There is no bedding in his cell and he sleeps on the uneven hard floor with only a blanket. Earlier my father was permitted to come out of his cell, every 24 hours, for thirty minutes, to breathe fresh air but now that too has stopped. My father is allowed to meet us (his family members) once a week under the army's strict supervision, without any privacy....⁷⁵

Conditions improved significantly for Attock Fort detainees shortly after the letter's publication, a development that was attributed by some observers to the impending visit to Pakistan of U.S. President Bill Clinton. The red light bulbs, according to a visitor, were replaced by standard lighting, unsupervised conversations with family members were allowed, and the quality of food, drinking water, and toilet facilities was upgraded. All of the detainees from Punjab lodged in the fort were transferred to prisons on March 15.⁷⁶ Those from the North-West Frontier Province, including Aziz, were produced in court after the maximum ninety-day period of detention in their cases had expired and were shifted on judicial remand to Peshawar Central Prison.⁷⁷

Despite the improvement in conditions at Attock Fort and the subsequent relocation of detainees who were held there, other cases have raised continued concerns about conditions in NAB custody. According to the Sindhi daily *Kawish*, Malik Allah Yar Khan, a former member of the national assembly, died at the Al Shifa trust hospital in Islamabad on June 27, fifteen days after having been brought there by "non-civilian" NAB officials. He had reportedly been in NAB custody for several months, on charges that he had illegally secured a contract to purchase helicopters and had defaulted in the repayment of an agricultural loan.⁷⁸

On June 15, 2000, the government announced that NAB had thus far issued 132 arrest warrants. At the time of the announcement, eighty-two persons were in detention: fifty-three who were being held in judicial lockups and twenty-nine in the bureau's custody. Accountability courts had released twenty-seven persons, the government said, and the bureau itself four others. On August 27, NAB Prosecutor-General Farouk Adam Khan said that accountability courts had issued decisions in thirty-three cases since their establishment, and an unspecified number had been settled out of court. He said that a further 109 cases were at different stages of trial. In part because of a perceived low conviction rate, the prosecution increasingly has relied on the testimony of "approvers"—former officials who themselves were under investigation by NAB, and against whom charges have been dropped or withheld in exchange for their cooperation in cases involving other defendants.⁷⁹

Siddiq-ul-Farooq

Siddiq-ul-Farooq, a former press secretary to Nawaz Sharif and chairman of the House Building Finance Corporation (HBFC), was arrested by military police in Karachi on October 18, 1999, and detained without charge until May 11, 2000, when NAB first filed charges against him. As of this writing, he was being held in Karachi, pending the commencement of proceedings in his case.

In a letter to his wife, dated December 30, 1999, and circulated to the press on March 10, 2000, Farooq said that he had been arrested by Lt. Col. Ayaz Ahmed Khan and Maj. Muhammad Arshad of Military Police Company 31. He further stated that he had initially been held in solitary confinement at the Iqbal Lines military police station in Karachi, kept blindfolded for about forty-five days, and subjected to thirty lashes of a whip on his

⁷⁵ Ayesha Aziz, "A daughter's plea," *News International*, March 14, 2000.

⁷⁶ Rahimullah Yusufzai, "Attock Fort detainees start receiving better treatment," *News International*, March 24, 2000.

⁷⁷ Khalid Aziz was convicted by an accountability court in Peshawar on June 21, 2000, of misusing his official position and accumulating wealth through illegal means. He was sentenced to four years in prison and a fine of Rs. 46 million (U.S. \$ 800,860), which according to the court was the amount found in the bank accounts of his wife and father-in-law. Intikhab Amir, "4-year RI, Rs46m fine: Ex-NWFP chief secretary convicted," *Dawn*, June 22, 2000.

⁷⁸ *Kawish*, June 28, 2000.

⁷⁹ A.S. Yousufi, "The wise guys of NAB," *Dawn*, May 11, 2000.

eleventh night in custody. He said that he was interrogated about the timing of Nawaz Sharif's decision to remove General Musharraf as army chief and about communications between then Prime Minister Sharif and Lt. Gen. Tariq Pervez, the Quetta corps commander who was believed to have supported Musharraf's dismissal and was prematurely retired by Musharraf after the coup. Farooq said that he was transferred to NAB custody seventy-two days after his arrest.⁸⁰

Farooq's wife, Fehmida Farooq, filed a habeas corpus petition in the Supreme Court on March 10, simultaneously with the letter's circulation. Farooq's lawyer, Chaudhry Ikram, told the court that the Lahore High Court had halted proceedings in the case after being notified by the Interior Ministry that Farooq was not in government custody. According to Ikram, information gathered by Farooq's family indicated that he was still being held by Mujahid Battalion 886, in Karachi's Malir Cantonment.⁸¹ On May 15, the Supreme Court ordered Farooq's production in court and asked the attorney-general to explain the reason for his detention.

Farooq was produced before the court on May 18. "I apologize that Mr. Siddiq-ul-Farooq was forgotten after being dumped somewhere as we were occupied by other important matters," NAB Prosecutor-General Farooq Adam told the court. Adam submitted to the court a warrant for Farooq's arrest, issued by NAB on May 11, over seven months after Farooq was taken into custody. In response to a query from the court about Farooq's prolonged detention without the registration of a First Information Report, Deputy Attorney-General Mansoor Ahmed replied that Farooq's activities before and after the coup were a "threat to the security of the state and he had connections with foreign agencies." Adam added that Farooq had met with Lt. Gen. Tariq Pervez, a statement that lent credence to Farooq's account of his interrogation. After denying the defense counsel's request for bail and permitting only a sealed, written statement by Farooq, the court adjourned the case.⁸²

In a verdict issued on June 14, the court observed that Adam had failed to justify Farooq's seven-month detention prior to the registration of a First Information Report. However, it disposed of Fehmida Farooq's petition for her husband's release, directing her instead to approach the accountability court in Karachi—though that court is not empowered, under the accountability ordinance, to grant bail. Farooq himself had been moved by NAB to Karachi on June 10 without the Supreme Court's authorization, according to his lawyer.⁸³ NAB reportedly has charged Farooq with causing a loss of Rs. 105,000 (US\$1,828) to the national exchequer by misusing the HBFC's entertainment fund and recruiting eighty-eight persons without inviting applications through advertisements.

Dr. Farooq Sattar

On July 16, an accountability court in Attock convicted Dr. Farooq Sattar, a MQM leader and former minister for local government in Sindh, of having misused his authority in awarding a Karachi Municipal Corporation tax-collection contract. The award, which had been given to the firm of Bolan Enterprise, was held to have resulted in a loss of Rs. 3.48 million (U.S.\$60,587) to the national exchequer. Sattar was sentenced to fourteen years of "rigorous imprisonment," the maximum jail term that can be imposed under the Accountability Ordinance, and a fine of Rs. 50 million (U.S.\$870,500).⁸⁴ Also convicted in the same case was Syed Anzar Hussain Zaidi, a former Karachi Metropolitan Corporation administrator, who was sentenced to ten years of rigorous imprisonment and a Rs. 5 million (U.S.\$87,050) fine.⁸⁵

⁸⁰ Aslam Butt, "Ex-PM's secy says he was arrested by MP," *Frontier Post* (Peshawar), March 10, 2000; "Fehmida submits petition in SC against Siddiqul-Farooq's detention," *Pakistan Post*, March 10, 2000.

⁸¹ "Supreme Court orders Farooq's production," *Dawn*, May 16, 2000.

⁸² "SC assured of investigation in 10 days: 'NAB forgot ex-HBFC chief after dumping him somewhere,'" *Dawn*, May 19, 2000.

⁸³ "Siddiq-ul-Farooq's release may be sought from accountability court: rules Supreme Court," *Business Recorder* (Karachi), June 14, 2000.

⁸⁴ Under the Pakistan Prison Rules, prisoners who are sentenced to "rigorous imprisonment" must perform labor in jail industries or be engaged in other tasks. Pakistan Prison Rules, Rule 810.

⁸⁵ "Farooq Sattar, Zaid convicted in octroi case," *Business Recorder* (Karachi), July 16, 2000.

Sattar's detention and trial were marked by procedural abuses. On November 17, 1999, paramilitary rangers and police officers raided his Karachi residence in an unsuccessful attempt to arrest him. Nine days later, Sattar surrendered himself to military intelligence agents and was taken to a military base in Karachi,⁸⁶ where he was held for seventy-seven days. His father, Abdul Sattar Pirwani, filed a habeas corpus petition in the Sindh High Court on December 3. The court issued orders for him to be produced before the bench on December 21 and again on December 27, but Sattar was not brought to the court until January 4. It was only after this court appearance that Sattar was permitted to meet with lawyers and family members.⁸⁷

On February 7, Sattar appeared before an accountability court in Karachi, which remanded him to detention for another fourteen days. Instead of being produced before the court on the assigned date, however, Sattar was flown to Islamabad on February 22. After being kept at the Civil Lines Police Station in Rawalpindi for two days, Sattar was moved on the night of February 23 to Attock Fort. On February 24, he was formally charged in the accountability court that had been established inside the fort, following the amendment of the National Accountability Ordinance on February 6 to permit the transfer of cases between courts constituted in different provinces "in the interest of justice and for the protection and safety of witnesses."⁸⁸ Interior Minister Haider said the transfer of Sattar's case had been authorized so that the MQM could not destroy evidence in the case or "dispose of witnesses."⁸⁹

Sattar was transferred to Attock District Jail on February 28 after being held in an interrogation cell in Attock Fort for five days. He was allowed a meeting with his father, Abdul Sattar Pirwani, on the day of his transfer. "The meeting lasted about an hour, but it took place in the presence of police and intelligence agents," Pirwani told Human Rights Watch, adding, "They shadowed us during the whole meeting."⁹⁰ Sattar was kept in solitary confinement while in the District Jail, Pirwani said. On May 23, the Attock Fort accountability court dismissed applications filed by both Sattar and Zaidi seeking permission to talk to their family members on the telephone, and also dismissed an application filed by Sattar for hospitalization for treatment of his heart condition and ulcers.⁹¹

Mushahid Hussain and Chaudhry Nisar Ali Khan

A full year after the coup, two former cabinet ministers remain under house arrest without charge. Former Information Minister Mushahid Hussain was placed under house arrest at his official residence in Ministers' Colony, Islamabad, along with the majority of the ministers then residing in the locale, immediately after the October 12 coup.⁹² Hussain's detention in Ministers' Colony continued until December 14, when he was shifted by the army to Punjab House, also in Islamabad; he remained there until February 8. Hussain's wife, Dushka Syed, told Human Rights Watch that he was held in solitary confinement throughout that period.⁹³ Syed filed a habeas corpus petition against her husband's detention at the Rawalpindi bench of the Punjab High Court. Hussain was then moved to the Federal Lodges, a residence facility for parliamentarians in Islamabad, and was allowed by the military authorities to live with his wife and son. The court also granted his parents permission to visit him. On March 2, Hussain was transferred to his sister's house in Islamabad. "His situation remains the same," Syed commented two weeks later. "He is not allowed to see anyone else except family and parents. Nor does he have access to a phone."⁹⁴

Former Petroleum Minister Chaudhry Nisar Ali Khan was arrested on October 12, 1999, and is presently under house arrest at his home in Rawalpindi. In a meeting with Human Rights Watch on March 21, 2000, the

⁸⁶ "Farooq, PQA official taken into custody," *Dawn*, November 27, 1999.

⁸⁷ Human Rights Watch interview with Abdul Sattar Pirwani, Karachi, March 16, 2000.

⁸⁸ National Accountability Ordinance, No. XVIII of 1999, Sec. 16A, as amended by the National Accountability Bureau (Amendment) Ordinance, No. IV of 2000, Sec. 12.

⁸⁹ Human Rights Watch meeting with Interior Minister Haider, New York, March 21, 2000.

⁹⁰ Human Rights Watch interview with Abdul Sattar Pirwani, Karachi, March 16, 2000.

⁹¹ The judge cited the opinion of physicians who had concluded after examining Sattar that he did not require hospitalization. *Ibid.*

⁹² Syed Ali Dayan Hussain, "Under Arrest," *Herald*, November 1999.

⁹³ Human Rights Watch telephone interview with Dushka Syed, Islamabad, March 15, 2000.

⁹⁴ *Ibid.*

interior minister said Khan was under investigation for embezzlement.⁹⁵ A Pakistani press report in late June stated that Hussain and Khan, along with four other former cabinet members, were being investigated by the National Accountability Bureau for corruption, embezzlement, and misuse of power, on the basis of records compiled by Saif-ur-Rehman, the head of the Sharif administration's Ehtesab (Accountability) Bureau.⁹⁶

⁹⁵ Human Rights Watch meeting with Interior Minister Haider, New York, March 21, 2000.

⁹⁶ "Saif's report to give new dimension to corruption cases against Sharif," Pakistan Link, June 26, 2000, www.pakistanlink.com/headlines/June/26/23.html (visited July 2000).

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