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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING
THE RIGHT TO DEVELOPMENT**

**Joint written statement* submitted by Asian Legal Resource Centre,
a non-governmental organization in general consultative status and Lawyers Rights
Watch Canada, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[20 February 2008]

* This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

Pakistan: Blatant subversion of the judiciary by the military regime

The events in Pakistan during 2007 can only be regarded as amongst the most blatant attempts to subvert a burgeoning independent judiciary to be witnessed in the region. An independent judiciary is at the fundament of any system of human rights and any government that launches such virulent attacks against the judiciary can not ever be believed when it talks about respecting human rights. As a member of the Human rights Council, Pakistan is supposed to uphold human rights to the highest possible standard, but has evidently failed in this, and therefore has violated its pledges to the international community as well as the trust that other Asian nations had placed in it, as their representative.

If the Human Rights Council is unable to take action to resolve this crisis, it will show itself to be weak and of little relevance to persons that are suffering from rights abuses in Pakistan and elsewhere.

The ALRC recalls that then-General Musharraf sacked the Chief Justice of the Pakistan Supreme Court on March 9, 2007, following which widespread demonstrations were met with mass arrests and violence, leaving many injured and dead. Protests continued until July 20, 2007, when the Supreme Court of Pakistan ordered Chaudhry reinstated as Chief Justice and dismissed the proceedings against him as being illegal. The judiciary in Pakistan remains under severe harassment by the military-backed government of President Musharraf, following the well-documented political and human-rights related crisis in the country at the end of 2007, in which the repression of lawyers began anew. General Musharraf declared a state of emergency and suspended the Constitution of Pakistan on November 3, 2007, on the false pretext of countering terrorism. The suspension resulted in fundamental human rights being repealed, including the right to life and liberty, freedoms of assembly, association and speech, equality before and equal protection of the law. Core legal rights related to arrest and detention were also repealed, including the right to counsel. More than 3500 lawyers, including the Chief Justice, were arrested and many lawyers including retired judges and office bearers of Bar associations were tortured in custody. Some judges were attacked by the police and prevented from entering the courts. About 8000 people were arrested after the imposition of the state of emergency, among them members of human rights organizations, political parties and trade unions. Hundreds still remain behind bars on fraudulent, non-bailable charges of 'terrorism.'

At present, judges from the higher judiciary, even those who have taken sides with Musharraf under the tailored Provisional Constitution Order (PCO), are not allowed to move freely. Judgments on pending cases or decisions taken by the deposed judiciary are respectively being issued or re-written by the military General Head Quarters (GHQ). Some judgments, such as those relating to the legality of the emergency rule have been issued by the GHQ, with judges only coming to know about the decisions following their announcement. The Pakistan military has in reality taken over control of judiciary, with even the newly formed judiciary that replaced that ousted during the State of Emergency in November 2007, having no voice or control over their own affairs. These new judges are expected to bury all notions concerning constitutionalism, the rule of law and human rights.

The Musharraf government is dealing with the judiciary as if it were an army regiment. In the newly formed judiciary, the judges are directly appointed by the government, not

through the constitutionally-mandated method of consultations with Supreme Judicial Council (SJC). Judges must now satisfy the Generals and politicians close to Musharraf government. This judiciary has now sanctioned all actions taken by the authorities during the State of Emergency, including the imposition of emergency rule, the termination of Chief Justice's tenure and those of the judges of the higher judiciary, the arrests of judges and lawyers, the abrogation of constitution, and the elections that saw Musharraf take the Presidency. The newly-formed, unconstitutional judiciary has also ruled that steps taken by General Musharraf in relation to emergency rule cannot be withdrawn unless the elected parliament passes an amendment by a two-third majority.

Lawyers throughout the country have been boycotting this sham-judiciary and the courts since November 3, 2007. They are calling for the restoration of the deposed judiciary and judges, particularly Chief Justice Mr. Iftakhar Choudhry, and are holding daily demonstrations, despite ongoing repression and arrests.

Mr. Iftakhar Choudhry, the deposed Chief Justice, remains under house arrest. The interior ministry claims that he is not under house arrest, but that nobody is allowed to meet him, even diplomats and former-Prime Ministers. His children are also not allowed to leave the house and will not be able to sit their school examinations. Given that there were risks that the Supreme Court might rule that General Musharraf's election to the Presidency was unconstitutional, that the Chief Justice might not be released for the remainder of Musharraf's five-year term.

The Musharraf government continues to arrest and detain judges and lawyers. Many persons that have been arrested since the current crisis began have been subjected to torture. The government has clearly been making desperate moves in an attempt to satisfy the desires of one man to stay in power. This crisis is blatantly and flagrantly renouncing any modicum on credibility in terms of human rights, and although allies of Pakistan are continuing to hope for some miraculous resolution, nothing positive can be gained from the continuation of this unconstitutional state. It is imperative that the international community rally round to support the Constitution of Pakistan and those that still respect it in the country.

The independence of the judiciary is being treated by the military as a threat to national security in Pakistan. 55 judges remain un-constitutionally ousted, of which 13 are from the Supreme Court. Eleven out of the 55 are still under house arrest and several senior advocates are also under detention. Their actions to uphold the rule of law and their insistence on the independence of the judiciary has led the regime to consider them as enemies of the State.

The international community has not yet shown anything like the required political will to ensure the reinstatement of the ousted Supreme Court of Pakistan and have only preoccupied themselves with promises of parliamentary elections, while allowing the appointment of a completely subservient judiciary to occur, undermining any semblance of independence of the judiciary, and therefore the realization of human rights themselves. It is incomprehensible that members of the international community can still believe that General Musharraf can be the protector of stability in Pakistan or a viable ally in the fight against terrorism. Such an ideological stance is divorced from reality. The stability of Pakistan depends on creating the possibility of the rule of law through the protection of the

country's judicial institutions. To allow these judicial institutions to perish and hope that there will still be stability is delusional.

The 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.
