

Amendments to Laws and the Constitution Under Emergency Rule Imposed by General Pervez Musharraf on November 3, 2007

General Musharraf used the state of emergency he imposed in November 2007 to arbitrarily change laws and amend the constitution. These amendments seek to institutionalize serious restrictions on individual rights and provide immunity for Musharraf and other officials for human rights violations and the subversion of the rule of law.

Ordinance LXVI of 2007 to amend the Pakistan Army Act, 1952

As part of his effort to institutionalize the military's power even after a return to civilian rule, on November 10, 2007, Musharraf amended the 1952 Army Act to allow the military to try civilians for a wide range of offenses previously under the purview of the country's civilian judiciary. These include offenses punishable under:

- the Explosive Substances Act, 1908;
- prejudicial conduct under the Security of Pakistan Act, 1952;
- the Pakistan Arms Ordinance, 1965; the Prevention of Anti-National Activities Act, 1974;
- the Anti-terrorism Act, 1997;
- several sections of the Pakistan Penal Code.

Under the amended Army Act civilians can now be tried in military courts for acts of treason, sedition and less specific offenses such as “giving statements conducive to public mischief.”³⁷

Shockingly, trials of civilians conducted by special military courts under the amended law will not be public, investigations will be conducted by military officers,

and rules of evidence and procedures prescribed by law and the constitution for civilian trials will not apply.

While the Pakistan security forces have long enjoyed impunity for serious abuses, the amendments to the Army Act will exacerbate the problem. First, by subjecting civilians to trial by military courts, family members of victims of military abuses will be even less willing to come forward than ever before. Secondly, the amendment to the Army Act making it retroactive to 2003 will permit the armed forces to claim as lawful the many illegal detentions for which it has been responsible in recent years. Before Musharraf dismissed Supreme Court justices and effectively took control of the Supreme Court, it was investigating some 400 cases of “Disappearances.”

Ordinance LXIX of 2007 to amend the Legal Practitioners and Bar Councils Act, 1973

Announced by Musharraf on November 24, this amendment is intended to end the independence of the Bar Association and to give the government powers to disbar lawyers involved in anti-government activities. It provides the government appointed attorney-general, in his capacity as the chairman of the Bar Association, wide powers over the Bar Association. In an attempt to muzzle the lawyers' movement, the chairman is authorized to expel from or cancel the membership of any member of a bar association, who is not given adequate opportunity to defend him or her self. The ordinance also allows anyone aggrieved by any decision, order or resolution of any Bar Association or the Federal or any Provincial Bar Council to appeal to the chairman of the Pakistan Bar Council, who can then overrule the decisions. To discourage legal claims against the government, the ordinance also empowers the Supreme Court or the High Courts, now under Musharraf's control, to dismiss complaints, reprimand lawyers, suspend lawyers, and remove a lawyer's name from the roll of lawyers if the court has reason to believe he or she is guilty of professional or other misconduct. Crucially, the attorney-general's decisions (in the role of chairman) are “final” and hence not open to appeal in a court.

Effectively, this amendment allows the government, at its discretion, to revoke any lawyer's professional license to practice. It also provides the courts, which have been heavily politicized by Musharraf's dismissals of justices of the Supreme Court, the power to do the same. In the absence of an independent judiciary, effectively the

government has arrogated to itself the power to expel any lawyer it deems undesirable.³⁸

Constitution (Amendment) Order, 2007 (President's Order No. 5 of 2007)

On November 21, 2007, Musharraf, in his capacity as army chief, amended the constitution through an executive order to provide blanket indemnity for all actions taken during the period the constitution remains suspended. The order included a number of amendments that would normally require a two-thirds majority in parliament to become law. Crucially, it withdrew the power of judicial review by Pakistan's courts of all actions taken under the Provisional Constitution Order.

The Order introduced a new constitutional clause called Article 270AAA which validates and affirms all laws, orders and constitutional amendments from November 3 until the constitution comes back into effect. Article 270AAA(1) states that, “The proclamation of emergency of November 3, all President's orders, ordinances, Chief of Army Staff orders, including the Provisional Constitution Order No 1 of 2007, the Oath of Office (Judges) Order 2007, the amendments made in the Constitution through the Constitution (Amendment) Order, 2007 and all other laws made from November 3, 2007 to the date on which emergency is revoked, are accordingly affirmed, adopted and declared to have been validly made by the competent authority and, notwithstanding anything contained in the Constitution, shall not be called in question in any court or forum on any ground whatsoever.”³⁹

According to article 270AAA (2), “All orders made, proceedings taken, appointments made...and acts done by any authority, or by any person in exercise of powers derived from any proclamation, PCO order No 1 of 2007, president's orders, ordinances, enactments, including amendments to the Constitution...or sentence passed by any authority in exercise of these powers, notwithstanding anything contained in the Constitution or any judgment of any court, be deemed to always to have been validly made, taken or done, and shall not be called in question in any court or forum on any ground whatsoever.”⁴⁰

Article 270AAA (3) states that “All proclamations, president's orders, ordinances, Chief of Army Staff orders, laws, regulations, enactments, including amendments to

the Constitution, notifications, rules, orders or bye-laws in force immediately before the date on which the emergency was revoked, will continue in force until altered, repealed, or amended by the ‘competent authority’.”⁴¹

³⁷ Pakistan Army (Amendment) Ordinance, November 10, 2007,
http://www.app.com.pk/en/index2.php?option=com_content&task=view&id=20627&pop=1&page=o&Itemid=2.

³⁸ Ordinance No. LXIX of 2007, Legal Practitioners and Bar Councils (Amendment) Ordinance,
http://www.app.com.pk/en/index.php?option=com_content&task=view&id=21729&Itemid=38 (accessed December 16, 2007).

³⁹ Constitution (Amendment) Order, 2007,
http://www.app.com.pk/en/index.php?option=com_content&task=view&id=21447&Itemid=1 (accessed December 16, 2007).

⁴⁰ Ibid.

⁴¹ Ibid.