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SHORT REPORT
OF AN
AMNESTY INTERNATIONAL
MISSION
TO THE
ISLAMIC REPUBLIC OF PAKISTAN
(20-25 January 1978)

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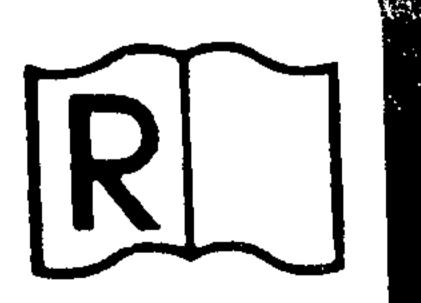
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The Short Report on a Mission to the Islamic Republic of Pakistan, 1978, describes the situation in Pakistan at the time that an Amnesty International delegation visited the country, from 20 to 25 January 1978. The report contains the observations made by the AI delegates as regards the implementation of recommendations AI had made to the previous government; it also outlines present areas of concern within Amnesty International's mandate. These relate mainly to the introduction of a set of martial law provisions curtailing fundamental freedoms, and the infliction of harsh punishments by military courts on civilians for engaging in activities which often appear to be no more than the exercise of the right of freedom of speech and expression, guaranteed in the Constitution of the Islamic Republic of Pakistan.

Since the report was written, major developments have taken place in Pakistan, particularly regarding the application of the death penalty, a punishment which Amnesty International opposes without reservation on humanitarian grounds because it believes it constitutes "cruel, inhuman and degrading punishment", as defined in international law. These developments are of great concern to AI and have contributed to the decision of the International Executive Committee to release the text of this report.

On 22 March 1978, the first public executions took place in Pakistan since the present government assumed office. Three men were hanged outside Camp Jail, Lahore, after being found guilty by a military court on 12 March of charges of kidnapping and murder. One of the accused had pleaded not guilty but, according to press reports, the verdict was upheld by the Lahore High Court. Amnesty International is deeply concerned about these executions, because they involve the first public execution in Pakistan of death sentences passed on civilians by a military court. In this report, Amnesty International expresses great concern at the practice of trying civilians by military courts, now compounded by the military courts' exercise of the power to pass death sentences on civilians. On receiving reports that the execution of these three men was imminent, AI sent a cable to the Chief Martial Law Administrator, on 22 March, with the text:

"Deeply concerned reports that first executions of three men sentenced by military courts will be carried out in public today. Executions of civilians following trial by military courts would set dangerous precedent in Pakistan. Urgently appeal to Your Excellency to immediately stop executions."

Shortly before these executions were carried out, on 18 March 1978, Mr Z.A. Bhutto, the former prime minister, and four members of

the former Federal Security Force accused with him were sentenced to death. A five-member bench of the Lahore High Court, hearing the charges against the former prime minister at first instance, sentenced Mr Bhutto and his four co-accused to suffer the death penalty for participation in the murder of Nawab Ahmed Khan in November 1974. All the accused appealed to the Supreme Court during the seven days they were allowed to do so.

Immediately the sentence was pronounced, on 18 March, Amnesty International cabled the Chief Martial Law Administrator, General Mohammad Zia-ul Haq, appealing to the government on humanitarian grounds to immediately announce its intention to commute the death sentence passed on Mr Bhutto and the four members of the Federal Security Force accused with him, regardless of the outcome of appeals. Amnesty International's appeal was released to the press on 20 March 1978 and pointed to the risk involved in carrying out executions, considering the danger of miscarriage of justice inherent in every trial. Amnesty International is particularly aware of such risks when the trial is held in circumstances, as now prevailing in Pakistan, where all normal political activity has been banned under martial law and when the trial concerns that of a prominent political personality for acts allegedly committed while in office.

This report was written before the outcome of Mr Bhutto's trial was known but contains observations on his trial made on the basis of a copy of part of the official trial transcript, given to the AI delegates during their recent visit to Pakistan (see Appendix to this report). One of the recommendations made to the Pakistan Government in this report (recommendation v, page v) deals specifically with the imprisonment and trial of Mr Bhutto, and urges the government to allow international observers at all stages of all trial proceedings against him, including the stage of appeal. Considering the government's negative response to the request made by the AI delegates visiting Pakistan in January, AI also urges the government to allow international organizations to meet Mr Bhutto in prison. Following his conviction, Amnesty International appealed to the government to allow Mr Bhutto unhindered access to members of his family and his counsel, in order to allow him full opportunity to prepare his appeal.

This report puts the number of political prisoners in Pakistan at several hundred, an estimate made at the time of the delegates' visit in January 1978. However, it should be noted that, since that time, several thousand political prisoners have been arrested in the weeks prior to and after the announcement of the Lahore High Court's verdict. Most of them were arrested under martial law provisions for organizing demonstrations to protest against the imposition of the death sentence on Mr Bhutto, and are supporters of the Pakistan People's Party. During the months of March and April, the Pakistan press carried frequent reports of the arrest of many party officials and party workers, sometimes in groups of hundreds, in the provinces of Sind and Punjab.

More recently, on 1 May, 26 journalists were arrested under martial law for attempting to start a hunger strike in protest against the closure by the government of the Lahore edition of the Urdu daily Musawat, which supports the Pakistan People's Party. Its editor and several other journalists were already known to be imprisoned under martial law on charges of "publishing objectionable material". Two of these journalists, Mr Abbas Athar, the President of the Lahore Press Club, and Sheikh Manzoorul Hasan, editor, daily Payam-i-Quaid, were arrested on 27 March under the provisions of Martial Law Order No 33, on the charge of "unauthorizedly publishing the appeal of Mr Z.A. Bhutto in the Supreme Court against the verdict of the full bench of the Lahore High Court".

Amnesty International sent its report to General Mohammad Zia-ul Haq, the Chief Martial Law Administrator, and other government officials in letters dated 22 March 1978, requesting the government's comments on the report and also informing the government of its decision in principle to publish the report around 17 April. Amnesty International was informed that this would leave the Pakistan Government insufficient time to comment on the report, and, on the request of the government, twice postponed publication date of the report.

On 12 April, Amnesty International cabled Mr A.K. Brohi, the Adviser on Law and Parliamentary Affairs, informing the government that AI was still awaiting the government's comments on the report and that the International Executive Committee was willing to consider an alternative date of publication, on 4 May. Al also confirmed that it was prepared to include the government's comments with the release of the report, if these reached AI in time. The Government of Pakistan, via its London embassy, informed AI on 17 April that: "The release of the report should be postponed to a later date. The comments of the Government of Pakistan on the report will follow." However, the embassy was unable to give AI a date by which it could expect the government's reaction. On 19 April, the Secretary General of AI sent the following cable to Mr Brohi: "Because government's intention only now known to us, preparation for publication in accordance with International Executive Committee decision cannot be delayed beyond 15 May. Warmly welcome government's comments which will be published by us if received before 1 May and length not more than 2,500 words."

AI informed the London embassy that it would also be willing to publish the government's comments even if these exceeded somewhat the length stated in its cable, provided they were received on 1 May. However, on inquiring, the Secretary General of AI was informed on 3 May that the London embassy still had not received the government's comments on the AI report. The International Executive Committee then decided to release the text of the report on 15 May, in accordance with its earlier communications to the government.

The present mission report, and the recommendations made therein, are part of the organization's long-standing concern for human rights developments in Pakistan. During March 1977, Amnesty International presented a 92-page report containing critical observations and detailed recommendations to Mr Z.A. Bhutto, then Prime Minister of Pakistan. The report, based on the findings by an AI delegation visiting Pakistan in April 1976, covered the period up to 31 January 1977. At the time, the then government only contested AI's estimate of the number of political prisoners and charged the organization with having "distorted" the judgment of the Supreme Court of Pakistan upholding the order of Mr Bhutto's government dissolving the National Awami Party. Amnesty International released the report in May 1977 (Islamic Republic of Pakistan - an Amnesty International Report including the findings of a mission to Pakistan, 23 April - 12 May 1976).

The text of this short mission report is identical to that sent to the government on 22 March 1978.

Thomas Hammarberg
Chairman
International Executive Committee

3 May 1978

INTRODUCTION

Since the publication of a previous Amnesty International report on the Islamic Republic of Pakistan in May 1977, a military government has assumed power and declared martial law. These developments have affected the nature of Amnesty International's concern with human rights in Pakistan.

On 7 March 1977, general elections were held in Pakistan, returning the ruling Pakistan People's Party to power, but not without widespread allegations, particularly on the part of the opposition Pakistan National Alliance, that extensive rigging of the elections had taken place. As a result of the ensuing political agitation, Mr Z.A. Bhutto's government announced that new elections would be held in October 1977. Large scale demonstrations, calling for the resignation of the Prime Minister pending the holding of fresh elections resulted in the arrest of many thousands of persons on political grounds. The opposition claimed that 50,000 had been arrested but the then government acknowledged the arrest of only 12,900. When the opposition announced the launching of a large scale civil disobedience campaign to press its demands, martial law was declared by the civilian government headed by Mr Bhutto in three major cities on 21 April 1977, and revoked on 8 June 1977.

On 5 July 1977, the army, headed by General Mohammad Zia-ul Haq, the Army Chief of Staff, seized power from the civilian government led by Mr Z.A. Bhutto in a bloodless military takeover. Martial law was again imposed and General Zia-ul Haq became the Chief Martial Law Administrator. The constitution, although suspended, was held "in abeyance" and the new government announced that their only objective was the holding of free elections; national and provincial assemblies were subsequently dissolved. A set of stern martial law orders and regulations was issued and the government announced the introduction of the punishments of amputation and flogging, with reference to the Islamic Shariat. The Supreme Court and the High Court were later given the power to declare void any law not in conformity with the Holy Quran and Sunnah. All political activities were banned following the military takeover and leading members of the Pakistan People's Party and the Pakistan National Alliance were taken into "protective custody". Although the political leaders were subsequently released, there are serious criminal charges against the leaders of the Pakistan People's Party and Mr Z.A. Bhutto was arrested and tried on a charge of conspiracy to murder. Political workers, mainly belonging to the former ruling party, are also being tried for contravening martial law provisions.

In view of the concern about human rights in Pakistan, expressed in the Amnesty International Report on the Islamic Republic of Pakistan, Amnesty International has received many requests for information about the situation of fundamental rights in Pakistan following the military takeover of 5 July 1977. However, Amnesty International felt it was

unable to make substantial comment without first discussing with the new government the implementation of the recommendations made by AI to the previous government, and also other matters of concern to AI. The International Executive Committee of Amnesty International therefore requested its Vice-Chairman, Professor Muntaz Soysal, to travel to Pakistan and, on 6 December 1977, the Secretary General of AI wrote to the Chief Martial Law Administrator and the Attorney General about the proposed visit of the Amnesty International delegation. On 6 January 1978, AI asked for confirmation of arrangements for the visit, which, until then, it had not received. On 16 January 1978, Amnesty International received confirmation that arrangements for the visit had been made. On 20 January, Professor Mimtaz Soysal, Vice-Chairman of the International Executive Committee of Amnesty International and Professor of Constitutional Law at Ankara University, Turkey, and Yvonne Terlingen, a Dutch lawyer from the International Secretariat, travelled to Pakistan for a five-day visit.

Throughout their visit to Pakistan, the delegates received extensive cooperation from the government, and from the Chief Martial Law Administrator in particular, although one important request of the delegates was not granted (see Appendix); they were readily supplied with the information they requested and arrangements were made on the spot for the delegates to attend proceedings of a summary military court sitting in Lahore. In Islamabad, the delegates were received by the Chief Martial Law Administrator and had extensive discussions with the Adviser to the Chief Martial Law Administrator on Law and Parliamentary Affairs, the Adviser to the Chief Martial Law Administrator on Foreign Affairs and the Secretary of the Interior. In Karachi, the delegates also met briefly with the Attorney General. During their stay, the Amnesty International delegates also met with lawyers concerned with civil liberties and some political prisoners who had recently been released; they also met the daughter of the former Prime Minister in Lahore.

This short report on a mission to Pakistan, 20-25 January 1978, contains the observations made by the Amnesty International delegates concerning positive steps taken by the present government in line with recommendations made by AI to the previous government; it also outlines areas of concern which specifically relate to the position of fundamental rights under martial law. The present report is part of Amnesty International's longstanding concern for human rights in Pakistan: Sean MacBride, SC, the then Chairman of Amnesty International, visited Pakistan in August 1971 and Professor Soysal and Yvonne Terlingen prior to their present visit previously had the opportunity of travelling to Pakistan from 23 April to 12 May 1976, at which time they met officials of the former government. In May 1977, Amnesty International published a report including the findings of the AI delegation.

CONCLUSIONS AND RECOMMENDATIONS

The Amnesty International delegation, which visited Pakistan from 20 to 25 January 1978, is grateful for the extensive cooperation it received from the martial law authorities, and from the Chief Martial Law Administrator in particular, as well as from other government officials. Following receipt of the delegates' report by the International Executive Committee, Amnesty International, while mindful of the commendable steps taken by the military government after coming to power on 5 July 1977 regarding the early release of many political prisoners and the restoration of powers guaranteed to the higher judiciary in the constitution, wishes to express its concern about the introduction of martial law provisions curtailing fundamental freedoms and, in particular, the practice of trying civilians before military courts. Against the background of its longstanding interest in and concern for human rights in Pakistan, Amnesty International wishes respectfully to submit the following recommendations for the government's consideration:

i. Amnesty International has already expressed to previous administrations its great concern at the practice of trying civilians, and political prisoners in particular, before military courts (see pages 1-2 of this report). Military courts are by their nature summary and do not follow the rules and procedures applicable before ordinary courts, designed with care to ensure that the greatest degree of fairness is assured to the accused. Military judges do not have the benefit of the extensive training and experience which is generally required from civil judges trying criminal offences. Amnesty International's reservations about the military court procedure (which in Pakistan does not allow for appeal to a higher court) were strengthened by the experience of a recent attendance of summary military court proceedings.

Amnesty International believes that if civil courts are capable of functioning (which is at present the case in Pakistan), civilians should be tried before the ordinary courts of law in accordance with the requirements of due process of law (see pages 13-15 of the report). Moreover, no civilians should be imprisoned for contravention of martial law provisions curtailing fundamental freedoms as listed in this report (page 2 and pages 10-12 of the report).

We therefore respectfully submit that the government consider abolishing as soon as possible the practice of trying civilians before military courts, and consider prosecutions only in those cases where there is prima facie evidence of a criminal nature.

ii. Amnesty International notes with great concern the introduction of the punishments of flogging and amputation of the hand under the martial law provisions, and the fact that the punishment of flogging

is now being administered to prisoners convicted of carrying out normal political activity. Amnesty International opposes the introduction of these punishments and the use of flogging on political prisoners, since it considers these punishments to be forms of "cruel, inhuman and degrading treatment or punishment", as defined in international legislation (pages 12-13 of the report).

Amnesty International therefore recommends to the government to consider their immediate abolition.

iii. While welcoming the government's early decision to repeal the Defence of Pakistan Ordinance (under which the Defence of Pakistan Rules - providing for preventive detention - were in force), Amnesty International is concerned that the Maintenance of Public Order Ordinance - already in force under the previous government - continues to be used and that the government has introduced martial law provisions for preventive detention (Martial Law Order No 12; see pages 10-11 of the report).

On the basis of humanitarian and legal considerations already stated in its May 1977 Report on Pakistan, Amnesty International opposes preventive detention for political purposes.

Amnesty International therefore respectfully submits that the government consider issuing an order repealing present legal instruments providing for preventive detention. If this is not immediately possible, AI recommends that the period of detention be restricted to a maximum of three months.

- iv. In its May 1977 Report on Pakistan, Amnesty International had expressed its concern about special legal provisions (in the form of trials by special courts and tribunals) to which political prisoners in particular were being subjected.
- a. Whereas special tribunals, set up under the Defence of Pakistan Rules, have now been abolished, special courts, set up under the Criminal Law Amendment (Special Court) Act 1976, continue to exist. Amnesty International is glad to note that, so far, no new cases have been brought before these special courts and that the government is reviewing the cases of 338 prisoners sentenced by such courts during the previous administration. If the review of these cases does not result in the release of the 338 prisoners, Amnesty International recommends that the government order that they be re-tried before ordinary courts of law.
- b. There is also concern about the twelve special courts more recently set up by the government to try alleged criminal offences

of misconduct and corruption of members of the previous government. Amnesty International believes that the wide powers given to the courts to try such offences opens the possibility of their use for political ends (see page 17 of the report). As stated in earlier reports, Amnesty International believes that all charges, including those against political personalities, should be brought before ordinary courts with full access of the public and the press, where all customary legal safeguards apply.

We therefore respectfully submit that the government consider abolishing special courts, as mentioned in this report.

v. The charges of conspiracy to murder and aiding and abetment of murder against the former Prime Minister, Mr Z.A. Bhutto, are essentially of a criminal nature and therefore do not on their face come within the mandate of Amnesty International. However, they concern a prominent political personality on trial for acts allegedly committed while holding office, and Amnesty International notes that the actual arrest and detention of Mr Bhutto took place under Martial Law Order No 12, which is aimed at political activity. Accordingly, AI believes that the former Prime Minister, like all political prisoners, has the right to a fair and open trial and should be held in conditions which comply with internationally accepted standards. Whereas Amnesty International is unable properly to assess the merits of the case of Mr Bhutto before the full bench of the Lahore High Court, for reasons outlined in this short report (see pages 21-22), Amnesty International wishes to express concern that Mr Bhutto, while on trial on serious criminal charges, is also kept in preventive detention. Following the visit of the AI delegates recently to Pakistan, Amnesty International was not able to satisfy itself that Mr Bhutto is being held in conditions which comply with those required by the United Nations Standard Minimum Rules for the Treatment of Prisoners (see pages 23-24).

Amnesty International recommends that international observers be assured and allowed access at all stages of all trial proceedings against the former Prime Minister, including the stage of appeal; that the orders of preventive detention, under which the former Prime Minister and other leaders of his party are at present being held, be withdrawn forthwith, and that international organizations be allowed to meet the former Prime Minister in prison.

SHORT REPORT ON A MISSION TO PAKISTAN 20-25 January 1978

Since coming to power on 5 July 1977, the military authorities have released a large number of political prisoners and taken important steps toward the protection of fundamental rights in Pakistan, in line with recommendations made by Amnesty International to the previous government and described by AI in its Report on the Islamic Republic of Pakistan - including the findings of a mission to Pakistan April - 12 May 1976. Amnesty International has welcomed these steps on a number of occasions in letters to the martial law government; they will be described in this short report (see under I).

However, not all the recommendations made by AI have been implemented and, following the declaration of martial law, the new government has introduced a set of martial law orders and regulations which are of concern to AI, since they not only provide for wide powers of preventive detention, but also allow for trial of civilians under martial law legislation which curtails fundamental freedoms and does not allow for appeal (see under III).

On a previous occasion, AI had set out its serious reservations about the trial of civilians before military tribunals. On 17 August 1971, Sean MacBride, then Chairman of the International Executive Committee of AI, wrote to General Yahya Khan, then President of Pakistan, about the trial of Shaikh Mujibur Rahman, in progress at that time. We quote here from his letter:

"Military tribunal: Every State recognises that it is bound by the Rule of Law and that, save in very exceptional circumstances, no civilian should be tried by a Military Tribunal. This is not to imply that military officers are less fair than civilian judges; but military courts are by their nature intended to be summary. The rules and procedures of civil courts in criminal cases were devised with care to ensure that the highest degree of fairness and objectivity would be assured in the trial of persons accused of crime. The need for this high degree of fairness in a criminal trial is universally accepted by all responsible lawyers and by most governments.

It can be said in retort that there are very exceptional circumstances in existence in the Islamic Republic of Pakistan which would justify the use of military tribunals. Even if this were so, it does appear to us that the true test in this case is not 'Can military courts be used' but is 'Are the Civil Courts capable of functioning?'. If the answer to this question is, as I think it must be, 'Yes', the justification for the trial being held before a military tribunal vanishes."

Amnesty International believes that its strong reservations about the trial of civilians before military tribunals, expressed above, similarly apply today. AI was therefore glad to note that the present government on 1 October 1977 abandoned plans to try former Prime Minister Z.A. Bhutto before a military court. Some civilians have also recently successfully appealed to the high courts against their conviction by summary military courts. However, there are a number of political prisoners in Pakistan, mainly members of the Pakistan People's Party (PPP), at present serving sentences handed down by military tribunals for contravening martial law regulations curtailing fundamental freedoms. AI has adopted 30 of these prisoners as "prisoners of conscience". (See under III or IV.)

The martial law orders and regulations issued since 5 July 1977 have also introduced forms of punishment, such as flogging and amputation, which Amnesty International considers to be "cruel, inhuman and degrading punishment", as defined under international law. Although these provisions, which we will describe below (see under IIIc), exist in some other Islamic countries, AI is concerned about their introduction in Pakistan and the application of the punishment of flogging in particular as a means to punish political dissent.

I STEPS TAKEN BY THE GOVERNMENT CONCERNING RECOMMENDATIONS MADE BY AMNESTY INTERNATIONAL TO THE PREVIOUS GOVERNMENT

(a) Powers to detain and try political prisoners

On 15 September 1977, the President issued a proclamation revoking the state of emergency which had been declared on 23 November 1971 at the outbreak of the Bangladesh War. Consequently, the Defence of Pakistan Ordinance, under which the Defence of Pakistan Rules had been issued, was repealed. The DPR had been severely criticized by AI since many political prisoners were detained without trial under their provisions and since they allowed for the trial of political prisoners before special tribunals. Their abolition had been one of the main recommendations made to the previous government. Shortly after coming to power, on 14 July 1977 the new government abolished special tribunals operating under the DPR, a decision which led to the freeing of most of the prominent political prisoners adopted by Amnesty International. However, the military government made an exception in not abolishing the special tribunal trying Wali Khan and other opposition leaders of the former National Awami Party (NAP) since 1974 in Hyderabad. This tribunal was finally dissolved on 1 January 1978 and all the accused were released and the charges against them withdrawn. (A charge of murder against Gul Khan Naseer is still pending in a criminal court.) These steps were warmly welcomed by the Amnesty International delegation visiting Pakistan.

However, it should be noted that provisions for preventive detention of political prisoners remain, both under the Maintenance of Public Order Ordinance, which has not been repealed and continues to be used, and under Martial Law Order No 12, introduced by the present government.

The government has also retained Special Courts set up by the previous government under the Suppression of Terrorism (Special Court) Act 1975 and the Criminal Law Amendment (Special Court) Act 1976. During their mission to Pakistan, the AI delegates were told by the Home Secretary that these provisions had been retained by the government, although no new cases had been brought before these courts since the new government assumed office. However, AI has noted that one new special court has been set up by the new government under the Criminal Law Amendment (Special Court) Act 1976: on 14 September 1977, the government announced that it had set up a special court, consisting of three High Court judges, to try offences punishable under the High Treason (Punishment) Act 1973. Amnesty International is concerned about this development, since a charge of treason was brought (in a private suit) against former Prime Minister Mr Z.A. Bhutto in August 1977 and is pending before the Lahore High Court. As stated in its 1977 Report on Pakistan, AI believes that political prisoners should always be tried under the ordinary procedures of law and have the full protection of all customary legal safeguards.

During its mission, Amnesty International was also told that the government is reviewing the cases of 338 prisoners convicted by such special courts under the previous administration for alleged acts of sabotage, subversion and terrorism. In its May 1977 Report, AI had been particularly critical of the procedures applying before these special courts, especially those which changed the burden of proof; AI had called these "serious and unjustifiable deviations from the legal safeguards ... in ordinary criminal law". If the review of the cases of these 338 prisoners does not result in their release, AI urges the government to order the re-trial of these prisoners before ordinary courts, and to release the accused pending trial.

(b) Restoration of powers guaranteed to the higher judiciary in the constitution

On 7 July 1977, the new government restored powers to the higher courts to issue writs under Article 199 of the constitution, including the writ of habeas corpus (Laws /Continuance in Force / /Amendment / Order of 7 July 1977). And, on 22 September 1977, the Laws (Continuance in Force) (Fifth Amendment) Order was passed, annulling the amendments made to Articles 179, 195 and 199 of the constitution. In its report, AI had pointed out that these amendments had withdrawn powers from the higher courts to grant bail and give other orders for interim relief to certain categories of prisoners. They had also introduced serious restraints on the independent functioning of Pakistan's higher judiciary. AI has said that these amendments "deprived the higher judiciary of their principal means of effectively and speedily remedying violations of individual liberties".

However, the martial law government made one exception while restoring the original powers and position of the higher judiciary; it excluded the writ jurisdiction of the higher courts under Article 199 of the constitution to make orders against the Chief Martial Law Administrator or other martial law authorities. But, in spite of this Order, the Supreme Court has retained powers of judicial review in its judgment of 10 November 1977 (see under II).

(c) Number of political prisoners

Amnesty International believes there are at present several hundred political prisoners held under martial law provisions in Pakistan.

New arrests:

After the government assumed power, leading members of the Pakistan People's Party (PPP), including the former Prime Minister, were arrested under detention laws and subsequently charged with criminal offences. Political party workers have also been arrested either

under preventive detention laws or for violating martial law orders and regulations (see under III). They are usually quickly tried and sentenced by the martial law courts. Amnesty International believes that several hundred political party workers are presently so being held and has adopted 30 as "prisoners of conscience". Solely on the basis of reports appearing in the Pakistan press, drawn upon by AI, it is clear that at least 404 persons have so far been sentenced in 34 cases of trial by summary martial law courts; of these, at least 321 are political prisoners sentenced under martial law provisions restricting fundamental freedoms as described in this report (pages 10-12). Sentences imposed by martial law courts are often of one year's imprisonment or less and are not always necessarily reported in the press; it is therefore difficult to give a precise estimate of the number of political prisoners held at any one time.

Releases:

In its May 1977 Report on Pakistan, Amnesty International estimated that there were at least several thousand political prisoners held under the previous government. In addition, many thousands were arrested during the political agitation which followed the holding of the March 1977 general elections, of which the then government acknowledged the arrest of 12,900. Prominent political prisoners, including the majority of those adopted by AI as "prisoners of conscience", were released shortly after the government's decision to abolish special tribunals which existed under the Defence of Pakistan Rules (see under (a)). On 1 January 1978, the government announced it had released 11,109 political prisoners under a general amnesty since coming to power; all were political prisoners arrested under the previous regime. During their mission, the AI delegates were told that these included long-term political prisoners, as well as political prisoners arrested during the opposition agitation which followed the March 1977 general elections. The government is in the process of examining the cases of 68 political prisoners excluded from the amnesty and against whom, AI was told, there are specific criminal charges. During its mission, AI asked for details of the charges against these 68 political prisoners, which it has not yet received.

The Chief Martial Law Administrator has announced that the general amnesty of 1 January 1978 will also apply to Baluchistan. Whereas the 52 accused in the Hyderabad Special Tribunal case - all leaders of the former National Awami Party from Baluchistan and the North West Frontier Province - were released in early January, following the government's decision to abolish the special court in Hyderabad, reports from Baluchistan suggest that cases against political workers imprisoned in Baluchistan during previous civil disturbances have not yet been withdrawn. According to unconfirmed reports, many political prisoners held in the Marri areas and Khalat district of Baluchistan have not yet been released. Unfortunately, the AI delegates were not in a position to travel to Baluchistan during their recent mission. In its previous report, of May 1977, Amnesty International quoted reports that there were several thousand political prisoners in Baluchistan alone.

THE POSITION OF FUNDAMENTAL RIGHTS AND THE POWERS OF THE JUDICIARY UNDER THE MARTIAL LAW REGIME

The Laws (Continuance in Force) Order 1977, of 5 July 1977, provides that:

"The Fundamental Rights conferred by Chapter One of part two of the Constitution, and all proceedings pending in any court in so far as they are for the enforcement of any of those rights, shall stand suspended."

The constitution, according to the wording of the 5 July Order, is held "in abeyance" and Pakistan shall, subject to the martial law orders and regulations issued by the authorities, "be governed as nearly as may be, in accordance with the Constitution".

Amnesty International notes, however, that the government's Order includes the suspension of the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the freedom of thought, conscience and religion, the freedom from slavery and the right not to be punished under retroactive laws - rights guaranteed in the Pakistan Constitution.* These are all rights from which no derogation is possible, even in times of a "public emergency threatening the life of the nation", as defined in Article 4 of the International Covenant on Civil and Political Rights.

The powers of the judiciary under the declaration of martial law of 5 July 1977

The Amnesty International delegates, in the course of their discussions in Pakistan, have noted the importance and value of the judgment of the Supreme Court, passed on 10 November 1977, on the validation of the Martial Law and its legal consequences. Whereas Amnesty International does not take any position as regards the legitimacy of governments established by extra-legal means, the judgment deserves special attention as the consequence of the particular difficulties in which the judiciary may find itself in a country of tension under military rule and as a remarkable effort to set legal limitations to the arbitrary actions which a government might easily take under such conditions.

The petition before the Supreme Court was presented by Begum Nusrat Bhutto and it challenged the detention of Mr Zulfikar Ali Bhutto and 10 leaders of the Pakistan People's Party (PPP) under Martial Law Order No 12 of 1977, on grounds that the detention under martial law was without lawful authority and mala fide. While dismissing Begum Bhutto's petition and upholding the imposition of martial law on 5 July 1977 as valid, the Supreme Court made interesting observations about the latest imposition of martial law in Pakistan, which imply some measure of control by the judiciary over acts taken by the martial law authorities.

The Supreme Court held that the imposition of martial law on 5 July 1977 and the subsequent actions of the martial law authorities were "extra-constitutional" rather than "supra-constitutional". The military takeover was justified under the doctrine of necessity and not under Kelsen's theory of "revolutionary legality", as maintained by the counsel appearing for the Federation of Pakistan.

The point may seem to be too theoretical, but, as the judgment shows, it has important consequences: had the Court accepted the applicability of Kelsen's theory, then the validity or legality of any action which took place after 5 July 1977 could only be tested against the guidelines provided by the new legal order and the jurisdiction of the superior courts would have been strictly defined according to the guidelines of the new legal order.

But the Court, instead of referring to a new legal order, held that the 1973 Constitution was still the supreme law of the land, subject to the condition that certain parts of it had been held in abeyance on account of "state necessity". Subsequently, the President of Pakistan and the superior courts continued to function under the constitution. The new oath taken by the judges of the superior courts after the proclamation of the Martial Law did not mean that the courts now occupied a different position than had originally been established under the 1973 Constitution. They should therefore continue to perform their functions (including that of judicial control) in spite of the Proclamation of Martial Law.

The Supreme Court, in this historic judgment of 10 November 1977, also ruled,

"That the Chief Martial Law Administrator, having validly assumed power by means of an extra-constitutional step in the interest of the State and for the welfare of the people, is entitled to perform all such acts and promulgate all legislative measures which have been consistently recognized by judicial authorities as falling within the scope of the law of necessity, namely:-

(a) All acts or legislative measures which are in accordance with or could have been made under the 1973 Constitution, including the power to amend it;

(b) All acts which tend to advance or promote the

^{*} These rights are guaranteed in Articles 9, 14, 20, 11 and 12 of the Pakistan Constitution, respectively.

good of the people;

- (c) All acts required to be done for the ordinary orderly running of the state; and
- (d) All such measures as would establish or lead to the establishment of the declared objectives of the proclamation of Martial Law, namely, restoration of law and order and normalcy in the country, and the earliest possible holding of free and fair elections for the purpose of restoration of democratic institutions under the 1973 Constitution;

That these acts, or any of them, may be performed or carried out by means of Presidential Orders, Ordinances, Martial Law Regulations, or Orders, as the occasion may require; and

That the superior courts continue to have the power of judicial review to judge the validity of any act or action of the Martial Law authorities, if challenged, in the light of the principles underlying the law of necessity as stated above. Their powers under Article 199 of the Constitution thus remain available to their full extent, and may be exercised as heretofore, notwithstanding anything to the contrary contained in any Martial Law Regulation or Order, Presidential Order and Ordinance."

The judgment said that,

"... the Court is bound to take note of the fact that already several instances have been brought to its notice where the ordinary civil rights of the people are being interfered with by the subordinate Martial Law authorities even though the laws of the land, which have been kept alive under the Laws (Continuance in Force) Order, 1977, make full provision for their adjudication. In some cases, interference has occurred even when the contending parties had already been litigating in the Civil Courts regarding the same disputes. The necessity which justified the proclamation of Martial Law did not arise owing to the failure of the Courts to adjudicate on these matters. Such matters must, therefore, continue to fall outside the purview of the Martial Law authorities and the only remedy to the citizens against any such encroachment can be by way of judicial review in the superior courts."

(Supreme Court Judgment on Begum Nusrat Bhutto's Petition challenging detention of Mr Z.A. Bhutto and others under Martial Law Order 12 of 1977 - Lahore, 10 November 1977, Government of Pakistan.)

The legal implications of such a judgment are obvious.

While the judgment appears to legitimize, through legal means, an extra-legal action taken by the military, it also imposes, by this very act of legitimization, clear legal limits upon subsequent activities of the military government and subjects them to judicial review in order to preserve the rule of law. It protects the 1973 Constitution and maintains the supremacy of the judiciary. It also induces the military government to be consistent with its stated objectives and to remain within the "scope of the law of necessity".

Already, this Supreme Court judgment has had an impact on the decisions of the lower courts. During the delegates' visit, on 23 January 1978, the Lahore High Court, founding its judgment on grounds established by the judgment of the Supreme Court, ordered the release of twelve public servants sentenced by the Summary Military Courts to different terms of imprisonment and flogging for bribery and corruption. The High Court allowed with costs the constitutional petitions filed on behalf of the convicts and declared the orders of the summary military court to be without lawful authority and of no legal effect. The Court's order said this would "not prevent their lawful trial in appropriate cases".

This sort of judgment, which Amnesty International welcomes in view of its expressions of concern in this short report about the trial of civilians under martial law provisions, could not have been possible without the important interpretation given by the Supreme Court to the validation of the martial law and its legal consequences.

III APPLICATION OF MARTIAL LAW PROVISIONS TO POLITICAL IMPRISONMENT

(a) Preventive detention

On 23 July 1977, Martial Law Order No 12 was issued. As later amended, it empowers the Chief Martial Law Administrator, the Martial Law Administrators and the Deputy Martial Law Administrators to order the detention of any person on very widely defined grounds; a person can be detained:

"for the purpose of preventing him from acting in a manner prejudicial to the purpose for which Martial Law has been proclaimed or to the security of Pakistan, the public safety or interest, the defence of Pakistan or any part thereof, the maintenance of peaceful conditions in any part of Pakistan or the efficient conduct of martial law".

The initial period of detention is three months, which can be extended by the Martial Law Administration, but detention should not exceed 12 months (Martial Law Order No 27). It is not necessary to supply the person detained with the grounds for his detention. A detainee may make a petition to the Chief Martial Law Administrator within 20 days "praying for relief", but there is no provision for review of detention as existed (although in an unsatisfactory form) under the Advisory Board procedure constituted under the Defence of Pakistan Rules. (However, there have been press reports that a number of political prisoners are being released after the first term of detention - three months - has expired.) The orders for detention cannot be called into question in any court of law in Pakistan.

Political party workers, in particular those belonging to the Pakistan People's Party, continue to be arrested under these martial law provisions, often to prevent them from organizing or taking part in processions which are prohibited under martial law (see under (b)). Also detained are well-known political figures: for example, the rearrest of Mr Z.A. Bhutto, the former Prime Minister (who had been released on bail by the Lahore High Court on 13 September 1977) took place under MLO 12 (see under IV). Ten other PPP leaders were arrested with him under the same provisions, of whom eight so far have been released after a habeas corpus petition had been filed against their detention in the High Court. (There are several criminal charges, some of a most serious nature, pending against all these PPP leaders.) Apart from this, political prisoners are held in detention under the provisions of the Maintenance of Public Order Ordinance, already in force under the previous government.

(b) Martial Law provisions restricting fundamental rights

A number of political prisoners have been sentenced by summary military

courts for contravening martial law regulations which seriously restrict fundamental rights. According to a press note, issued by the government on 14 July 1977:

"Anybody who makes a political speech, issues a political statement, makes a political comment, or flies a flag of any political party is thus liable to be prosecuted under Martial Law regulations."

Political prisoners have been arrested for alleged violations of the following martial law provisions in particular:

- Martial Law Regulation No 11 (of 5 July 1977) prohibits participation in political meetings or processions taken without prior permission of the martial law administration. (Maximum punishment: 7 years' imprisonment and whipping not exceeding 10 lashes.)
- Martial Law Regulation No 13 (of 11 July 1977) which restricts criticism of the armed forces in very broadly defined terms:

"No person shall, by word, either spoken or written, or by signs or by visible representation or otherwise, bring or attempt to bring into hatred or contempt or excite or attempt to excite disaffection towards the Armed Forces or any members thereof."

(Maximum punishment: 5 years' imprisonment and whipping up to 20 lashes.)

- Martial Law Regulation No 23 (of 21 September 1977) (repealing the earlier martial law regulation no 12) prohibits any "strikes or lock-outs"; these are punishable with 3 years' imprisonment and/or flogging not exceeding 10 lashes.
- Martial Law Regulation No 24 (issued 1 October 1977) which bans any direct or indirect participation in political activity. (Maximum punishment: 5 years' imprisonment and/or flogging not exceeding 15 lashes.) (Indoor political meetings of the central or provincial executive committees of political parties are allowed in restricted places.)
- All political activity was prohibited for one month on 28 February 1978 under Martial Law Regulation No 33, its contravention punishable with 7 years' imprisonment and/or flogging not exceeding 20 lashes. At least 100 political workers were reportedly arrested at the time of the issuing of the order.

Several hundred political workers, trade unionists and students have been arrested under these provisions for "trying to form a procession and raise slogans!" (Dawn, 13 October 1977); "delivering an objectionable speech" (Dawn, 13 October 1977); "hoisting flags of a political party" (Pakistan Times, 11 October 1977) and making "calls for strikes" (Dawn, 19 February 1978). At present, Amnesty International has adopted 30 of them as "prisoners of conscience" and is investigating another four cases. They include, for example, the President of the Ganesh Flour Mills Labour Union, who was sentenced on 31 July 1977 to one year's imprisonment for "absence from duty without cogent reason" and was dismissed from service (AI believes this action was taken because he participated in a strike). During their visit, the AI delegates discussed with the Home Secretary the cases of prisoners it has adopted as "prisoners of conscience".

The majority of those arrested and sentenced by military tribunals for political activities (and the majority of those at present adopted by AI as "prisoners of conscience") are members of the Pakistan People's Party. But, during its recent visit, AI learned that members of other political parties, such as the Tehrik Istiqlal, are also liable to arrest and imprisonment. In most cases, they are sentenced to terms of imprisonment up to one year. What is of particular concern to AI is that political prisoners, sentenced by military tribunals, are often given the additional punishment of flogging.

(c) Martial Law Regulations introducing forms of cruel punishment

- Flogging

Several martial law regulations provide for the punishment of flogging. In Pakistan, the punishment was introduced after the military takeover of July 1977 and has been administered to, among others, political prisoners who have been sentenced to undergo flogging for attempting to lead processions and "raising slogans against the government" (in most cases reported to AI, these are slogans in favour of the Pakistan People's Party and Mr Z.A. Bhutto). The punishment has also been administered to persons "making objectionable speeches" and "hoisting flags of political parties". Most recently, on 20 February 1978, seventeen members of the Pakistan Television staff were sentenced by summary military court to flogging (varying from 10 to 15 lashes) and one year's imprisonment for leading a takeover of television studios in four Pakistani cities, in connection with wage demands and improved working conditions (although in this exceptional case the Chief Martial Law Administrator stayed the execution of the floggings.) According to information available to Amnesty International from the Pakistan press, at least 161 persons have so far been sentenced to undergo flogging for committing political offences of this nature.

In a speech of 1 September 1977, the Chief Martial Law Administrator

"instructions are being issued that in future it would not be inflicted on bare parts of the body of the convicted person. It is the humiliative rather than punitive aspect of this punishment which is important." Flogging is provided for in the Shariat (Islamic religious law) for certain offences. Haji Abdur Rashid, a worker of the Pakistan People's Party, recently presented a writ petition in the Lahore High Court, on 22 January 1978, against the punishment of flogging for alleged political offences, on the ground that it was "unislamic and hence unlawful in Pakistan". (The petition was dismissed on technical grounds.) (Pakistan Times, 23 January 1978.)

The punishment of flogging is sometimes carried out in public; political prisoners are usually flogged in jail.

Amputation of hands

Martial Law Regulations Nos 6 and 7, issued on 11 July 1977, have introduced the amputation of one hand as punishment for persons convicted of theft, robbery and dacoity (armed robbery with five or more persons). The punishment is provided for in the Shariat. Amputation has to be carried out by a qualified surgeon under local anaesthetic, in public or in jail, as directed by the military court awarding the punishment. Amputation is from the wrist and will be of the left hand of a right-handed person and of the right hand of a left-handed person. The sentence must be confirmed by the Chief Martial Law Administrator.

During their visit to Pakistan, the Amnesty International delegates expressed great concern to the Chief Martial Law Administrator about the introduction of these punishments and the flogging of political prisoners, adding that AI was glad not to have received any reports so far that the punishment of amputation of the hand has been carried out.

Amnesty International regards the punishments of flogging and amputation as "cruel, inhuman and degrading treatment or punishment" and is deeply concerned about the use of flogging as a means to punish political dissent. It urges the government to consider the immediate abolition of these types of punishment.

(d) Trial of political prisoners by military courts

Two types of military court exist in Pakistan: summary military courts and special military courts. Both have jurisdiction to try civilians

on a wide range of martial law offences but also offences punishable "under any other law for the time being in force". Amnesty International has set out its serious reservations about the trial of civilians before such courts at the beginning of this short report.

Summary Military Courts consist of one member. The accused can address the courts and cross-examine witnesses, but only a memorandum of the evidence needs to be taken down. The accused has no right of representation by a lawyer, although the accused may have a person to assist him, who could be a legal adviser - he may be present during proceedings as a "friend of the accused", and may advise him in that capacity. (The "friend of the accused" cannot address the court directly.) The maximum punishment these courts can impose is one year's imprisonment and/or flogging not exceeding 15 lashes. The maximum period of imprisonment is imposed in most cases. There is no provision for appeal, but the proceedings of the summary military court shall be sent to the Zonal Martial Law Administrator for review.

Special Military Courts consist of three persons, one of them a magistrate, the other two of the rank of Major or Lieutenant-Colonel. Only a summary of the evidence needs to be recorded and, if necessary, 'may be dispensed with in a case and in lieu thereof an abstract of evidence may be recorded" (Martial law Order No 5, 11 July 1977). The courts may impose all punishments, including the death penalty and amputation of a hand; however, the execution of these last two punishments has to be confirmed by the Chief Martial Law Administrator. Any question relating to the jurisdiction or the legality of the exercise of powers of the military courts shall be referred to the Chief Martial Law Administrator, whose decision is final. In other words, there is no provision under martial law for review of the legality of decisions taken by the martial law authorities by any court of law in Pakistan, including the Supreme Court. (In spite of this, the higher courts have retained some supervisory jurisdiction over the acts taken by the martial law authorities; see under II.)

During their visit, the Amnesty International delegates requested permission to attend the trial of a civilian before one of the military courts. They were readily given assistance to attend summary military court proceedings in Lahore, and were given all the information they requested. AI was told by the military judges that the advantage of the summary military court procedure was that it provided quick justice as well as deterrent punishment.

However scrupulously military courts may carry out their functions, there are clearly features in the military court procedure, particularly in relation to defence arrangements and absence of appeal procedures, which should be of great concern to all those interested in providing a fair trial to an accused. For example, a petition before the Sind High Court challenged the varying sentences (from 8 to 12

months' imprisonment and 8 to 10 lashes) awarded to seven boys found guilty of "taking out a procession and raising pro-Bhutto slogans" by the Summary Military Court, Nawabshah. The petition asked for quashing of the sentence on the ground that the accused were "denied opportunity of self defence" (Dawn, 30 December 1977).

In the case which the Amnesty International delegates partly attended (the charge was illegal possession of arms), there were four prosecution witnesses and two witnesses for the defence. The accused in this case did not have the help of a "friend" who could assist him. AI was informed that the accused had the assistance of a police officer to advise on defence matters. The delegates gained the impression that the same police officer also acted as adviser to the prosecution witness under examination by the court when the delegates attended the proceedings. If this is true, the value of such legal advice — if any — seems to be minimal. AI was also told of reports (which it was unable to confirm because of lack of time) that lawyers present during the trial of political workers to advise the accused as a "friend", were not allowed entry into the court room of a summary military court in Lahore.

Even without confirmation of these reports, AI feels that the existing defence arrangements before summary military courts trying political prisoners are inadequate and can in no way equal legal advice by qualified legal counsel as exists under the ordinary criminal law procedure. The absence of adequate defence arrangements is particularly disquieting in view of the summary way in which the evidence is recorded before military courts.

The summary military court procedure requires that no more than a memorandum of the evidence needs to be recorded (Martial Law Order No 7 of 11 July 1977). In the court case which the AI delegates attended during their mission, the evidence was dictated by the military judge and taken down in English, although the accused did not speak or understand that language. The accused was thus clearly in no position to question or even understand the nature of the evidence recorded, in a normal court a crucial function of defence counsel, which is an essential feature of a fair trial.

The above considerations are only an example of Amnesty Internnational's serious reservations about the practice of trying civilians under military court procedures, as outlined at the outset of this report (see pages 1 and 2).

Amnesty International therefore recommends to the government to consider abolishing the practice of trying civilians - and political prisoners in particular - before military courts, at the earliest opportunity. Political prisoners on trial before such courts should be

released, at least on bail, and their cases transferred to ordinary courts of law. The recent issue of Martial Law Order No 36, of 18 February 1978, which allows for the transfer of cases pending before military courts to ordinary courts of law could be an important step forward in this respect. Amnesty International regards it as most unfortunate that a martial law order issued the following day (Martial Law Order No 37) empowered military courts to order the transfer of cases pending before ordinary criminal courts to military courts (military courts having jurisdiction to try offences punishable under martial law regulations or "under any other law for the time being in force").

During its mission, Amnesty International was glad to receive reports that some leaders of political parties who were held in detention under the provisions of Martial Law Order No 12 were being released. In a few instances, military courts are known to have released political prisoners on bail and the martial law authorities have, in a few instances, released and suspended sentences of political prisoners convicted of martial law offences (for example, on the eve of Eid-ul Azha, the Martial Law Administrator Zone C ordered the release of 48 persons on the "assurance given by them not to indulge in agitation", etc (Dawn, 21 November 1977).

Amnesty International urges the government in future only to prosecute those against whom there is substantial evidence of a criminal nature and to order that trials take place in ordinary courts of law, in accordance with the requirements of due process of law.

IV ARREST AND TRIAL OF LEADERS OF THE PAKISTAN PEOPLE'S PARTY

Apart from political party workers, whose imprisonment has been referred to in the previous section, leading politicians are also being held; in most cases there are serious charges against them. At present under arrest is former Prime Minister Z.A. Bhutto, and serious charges of corruption, misappropriation of funds and other charges of a criminal nature have been brought against at least some of the ten other leaders of the Pakistan People's Party (two of whom remain in detention under Martial Law Order No 12).

While acknowledging that criminal courts can be set up to deal with a specific category of offences, such as corruption and misappropriation of funds, Amnesty International is concerned at the establishment of twelve special courts under the provisions of the Holders of Representative Offices (Punishment for Misconduct) Order of 25 November 1977. Special courts, established under the Order, may try acts of misconduct and scheduled offences committed by "holders of representative offices" as described in the amended Order and committed after December 1970. Amnesty International wishes in particular to draw attention to the provision that a special court has the power to "conduct its proceedings and regulate its procedure in all respects as it deems fit" (section 6(2) of the Order). And, although there is the possibility of appeal to the Supreme Court (section 6), no court has "any jurisdiction of any kind in respect of any order, sentence or proceedings of a Special Court" (section 9). Special courts are therefore not bound by the ordinary rules covering criminal procedure and AI believes that the wide powers given to the courts to try this specific category of criminal offences opens the possibility of their use for political ends. This is particularly so in view of the restriction that the special courts should only try allegations of misconduct of officials of the previous government (its jurisdiction being limited to offences allegedly committed by "holders of representative offices" after 1972 - ie, the time that the previous government assumed office), and that conviction for misconduct by special court leads to disqualification from public office for seven years.

In this context, it is of considerable concern to Amnesty International that the first special court set up under the Order (the special court to deal with cases against a person who has held the office of President or Prime Minister), announced on 7 March 1978 that its hearings of six charges of abuse of official power, misuse of government funds, violation of foreign exchange regulations and tax evasion against the former Prime Minister, will be heard in camera. (The Court announced that it would hold hearings in Kot Lakhpat Jail, Lahore, where Mr Z.A. Bhutto, the former Prime Minister, is currently being held.)

As already stated, Amnesty International believes that all charges, including those against political personalities, should be brought

before the ordinary courts of law and the ordinary rules of evidence and procedure should apply; access of the press and foreign observers should be guaranteed at all stages.

The above observations apply to all politicians tried for acts committed while holding office; international attention has been focused in particular on the trial of the former Prime Minister, Mr Z.A. Bhutto, in progress in Lahore at the time that the Amnesty International delegation visited Pakistan.

APPENDIX

ARREST AND TRIAL OF MR Z.A. BHUTTO IN THE NAWAB AHMED KHAN MURDER CASE

Mr Z.A. Bhutto, Prime Minister of Pakistan until the military takeover of 5 July 1977, was first arrested on 3 September 1977 on charges of complicity in the murder of Nawab Ahmed Khan in November 1974. The charges were made on the private complaint of Ahmed Raza Kasuri, then a member of the National Assembly and a dissident member of the Pakistan People's Party. Mr Kasuri, who is the son of Nawab Ahmed Khan, has alleged that the murder of his father was committed at the instance of the then Prime Minister, the reason being that serious political and personal differences had arisen between him and Mr Bhutto and that the attack (in which his father died) was in fact directed at Mr Kasuri himself.

On 13 September 1977, Mr Bhutto was released on bail by the Lahore High Court, but re-arrested on 17 September 1977 with ten other leaders of the Pakistan People's Party under the preventive detention provisions of Martial Law Order No 12 (MLO 12). The Chief Martial Law Administrator has stated before the Lahore High Court that Mr Bhutto and some other PPP leaders had been detained under MLO 12 "because they were acting in a manner prejudicial to the purpose for which Martial Law has been proclaimed, the security of Pakistan and the maintenance of peaceful conditions".

For reasons already put forward in its May 1977 Report on Pakistan, Amnesty International opposes the use of preventive detention for political purposes. In the case of Mr Bhutto, for example, this has deprived him of some rights otherwise applicable to prisoners held in judicial custody: such prisoners have the right to visits twice a week, whereas prisoners held in preventive detention can only be visited twice a month.

Considering the criminal charges against them, the arrest of Mr Bhutto and other leaders of the PPP should have taken place under the ordinary provisions of law and bail should be available to all the accused; they should be granted all customary rights applicable to prisoners awaiting trial.

Although the government had originally ordered that Mr Bhutto's trial be held before a special military court, the government later ordered his trial to take place in an ordinary court of law, under the normal procedures of law and on 13 September 1977 the Acting Chief Justice of the Lahore High Court announced that Mr Bhutto's trial in the Nawab Ahmed Khan murder case should take place before the Lahore High Court, exercising original jurisdiction. A bench of five Lahore High Court judges was constituted for this purpose.

On 9 October 1977, the full bench of the Lahore High Court cancelled the bail granted earlier by one judge of the court to Mr Bhutto, and ruled that Mr Bhutto be held forthwith in judicial custody. Mr Bhutto is therefore held both under the authority of martial law and held in the judicial custody of the Lahore High Court.

On 20 September 1977, a habeas corpus petition was admitted for hearing by the Supreme Court, challenging the detention of Mr Bhutto under martial law under the provisions of Article 184(3) of the constitution, on the grounds that Mr Bhutto's detention under martial law provisions was mala fide and that Martial Law Order No 12, under which Mr Bhutto and leaders of the Pakistan People's Party were arrested and detained, was without lawful authority. This petition was dismissed on 10 November 1977, and the important observations made by the Supreme Court concerning the legality of the imposition of martial law are referred to above, under section II.

Subsequently, on 28 November 1977, Begum Bhutto filed a habeas corpus petition in the Lahore High Court on behalf of Mr Bhutto and four other leaders of the Pakistan People's Party, under Article 199 of the constitution. (The petition was filed in view of the Supreme Court's earlier judgment that the superior courts continue to have powers of judicial review over actions taken by the martial law authorities.) This petition is still being heard and Mr Bhutto continues to be imprisoned in Kot Lakhpat Jail, Lahore.

Trial

In a letter to the Chief Martial Law Administrator of 6 September 1977, Amnesty International welcomed the decision to try Mr Bhutto before an ordinary court of law, instead of under special procedures. The AI delegates, while in Pakistan, have also expressed appreciation for this decision to the Chief Martial Law Administrator, particularly in view of press reports at the time of the delegates' visit urging that Mr Bhutto be tried instead "before a special court for his political as well as criminal offences, so as to avoid the formalities of the civil courts" (an observation made by Abdul Wali Khan, former leader of the National Awami Party (NAP), Dawn, 8 January 1978).

The trial of Mr Bhutto before a full bench of the Lahore High Court consisting of five High Court judges began on 11 October 1977. The charges against Mr Bhutto are: conspiracy to murder of Ahmed Raza Kasuri, a political opponent who had allegedly earned Mr Bhutto's wrath, (section 120B of the Pakistan Penal Code), aiding and abetment of the murder of Nawabzada Muhammad Ahmed Khan (the father of Ahmed Kasuri) (section 302 PPC, read with sections 109 and 301 PPC), aiding and abetment of the attempted murder of Ahmed Raza Kasuri (section 307 read with section 109 PPC). Mr Bhutto, who pleaded not guilty, is being tried with four others - Mian Muhammad Abbas, Director, Operations and Administration, Federal Security Force, Arshad Iqbal, Ghulam Mustafa and Rana Iftikar Ahmad - all accused of similar offences. Masood Mahmood,

Director General of the Federal Security Force, and Ghulam Hussain, member of the Federal Security Force, originally also accused, were granted pardon by the court and subsequently gave evidence against Mr Bhutto. There have been regular reports in the press about the trial proceedings which, up till the final stage, were held in open court. Although other charges have been brought against the former Prime Minister, the trial in the Lahore High Court before a full bench was the only one in progress at the time of the visit of the AI delegates.

During the course of the trial, Mr Bhutto alleged that the court was biased against him and, on 18 December 1977, Mr Bhutto instructed his counsel not to further cross-examine a prosecution witness then being examined. He filed an application in the court for the transfer of the case, on the grounds that he was not receiving a fair trial. On 9 January 1978, Mr Bhutto withdrew his counsel from the trial and subsequently ceased to participate himself in the trial proceedings.

In his application to the Lahore High Court for the transfer of the case to a different bench, under section 561-A of the Criminal Procedural Code, Mr Bhutto alleged bias on the part of the Acting Chief Justice trying him; he alleged insulting and humiliating behaviour on the part of the Chief Justice and deprivation of the possibility of giving instructions to counsel by the way the dock in the courtroom was designed; he alleged that the Acting Chief Justice gave interviews about the manner and conduct of the trial while the trial was in progress, that the trial continued in the absence of the petitioner (who claimed to be ill) and that documents relevant to the defence were at times not allowed to be put to the witnesses nor to appear on the record of the trial proceedings.

Amnesty International has received a number of requests to comment on whether Mr Bhutto has received a fair trial. AI will confine itself, however, to the following comments, which arise from the visit to Pakistan of the AI delegates and a perusal of the transcript of the trial which was given to the delegates by the Acting Chief Justice of Lahore. It was this judge who sat as president of the court which tried Mr Bhutto. The trial transcript covers the period up to 18 January 1978; a record of the last stages of the trial proceedings, particularly those held following the court's 31 January decision to try Mr Bhutto in camera, has so far not been made available to AI, although AI requested the court for the remaining part of the transcript in a letter dated 7 February 1978. However, the trial transcript which was given to Amnesty International is not a verbatim record of the proceedings and therefore does not present a complete and precise reflection of the events which took place during the trial. Given the imprecision of its source material, Amnesty International is unable properly to assess the merits of the case. The following evidential point constitutes one of the most serious allegations made by the defence.

In their application to the Lahore High Court under section 561-A

of the Criminal Procedural Code, defence counsel have alleged that "the record of evidence and proceedings (were) dovetailed to suit the prosecution". In particular, it has been alleged that the court "have not allowed a single contradiction or omission in the evidence of the witnesses with their previous statements to be brought on record although there were hundreds of material contradictions and discrepancies". Although this particular allegation does not appear to be borne out on the basis of the transcript that AI has studied (since there appear to be numerous instances where the court allowed cross-examination of witnesses on the basis of court rulings that they gave contradictory statements), some previous statements of prosecution witnesses do not appear to have been made exhibits in the case. The defence also alleged that "it has been noticed that the evidence dictated in court and typed is recast and re-typed later and copies of the re-typed record are supplied to the parties and the press". It is alleged that the defence requested permission to tape-record the proceedings by placing its own tape-recorder, but that the court refused to order on this request.

Amnesty International wishes to emphasize that a number of allegations have been made by the defence concerning the fairness of the conduct of the trial and the correctness of the record of proceedings in particular, which, if true, would affect an assessment on whether the trial has been conducted in accordance with accepted international standards for a fair trial. But an assessment of the validity of these allegations is difficult to make on the basis of the official trial transcript alone, since most of the objections raised and the court rulings upon them do not appear in detail on the trial record itself. However, Amnesty International notes that the most direct evidence against Mr Bhutto is that given by Masood Mahmud, Director General of the Federal Security Force. Mr Mahmud was himself indicted upon these charges; however, he had been granted a pardon at an earlier stage and therefore his evidence, which is that of an informer, should be regarded with considerable suspicion. His evidence was to the effect that a specific order for the elimination of Ahmed Raza Kasuri was given personally by Mr Bhutto. It should be pointed out that, under the common law system, which obtains in Pakistan, courts would normally be expected to regard evidence of this nature with suspicion and to acknowledge the danger of convicting a defendant without corroborative evidence. At the time of writing, the final judgment in the case is not available to Amnesty International and therefore AI is unaware of whether the court of trial fully considered the dangers of relying on such uncorroborated evidence or whether this question will be taken on appeal before the Supreme Court of Pakistan.

Throughout the period that prosecution evidence was being produced and subjected to cross-examination by the defence, proceedings were held in open court with full access of the press, and AI acknowledges with appreciation the decision of the court to invite international observers to attend the trial proceedings. But, on 25 January 1978, the court held proceedings in camera when recording Mr Bhutto's statement in defence under section 342 of the Criminal Procedural Code. According to press reports, on 24 January, Mr Bhutto stated before the court that he "would not answer questions having

direct bearing on his defence" (Mr Bhutto had decided to boycott trial proceedings on 9 January). And, on 31 January 1978, the Lahore High Court ordered that the remaining part of the trial be held in camera "in the interest of just and proper determination of the issues involved in this case and to obviate the possibility of any disturbance being created inside the courtroom by the supporters of the principal accused, Mr Z.A. Bhutto" (Dawn, 1 February 1978).

Amnesty International's position as regards Mr Bhutto's case.

The trial of Mr Bhutto on charges of conspiracy to murder and aiding and abetment of murder is essentially of a criminal nature and therefore does not fall within the mandate of Amnesty International. However, Amnesty International has taken an interest in this particular case since it concerns the trial of a prominent political personality for acts he allegedly committed while holding office. Given that situation, there is the risk that political factors could affect the circumstances of the trial, however fairly the judges trying the accused may have exercised their functions. Amnesty International believes that it is therefore important that all safeguards against such possible influences be taken and recommends that international observers from qualified international organizations be assured access to all further stages of the trial, including the stage of appeal. It regrets the Lahore High Court decision to conduct the last stage of the trial proceedings in camera, even while recognizing that full access of observers was available during the important stages that the prosecution evidence was examined and recorded, and that Mr Bhutto refused to participate in the trial proceedings after 9 January 1978.

Mr Z.A. Bhutto is currently being tried for serious offences under the provisions of the Pakistan Penal Code. However, AI notes that he is also being held in detention under the provisions of Martial Law Order No 12, aimed at political activity. And, while Amnesty International has not taken up Mr Bhutto's case as that of a "prisoner of conscience", as defined in Article 1 of the AI Statute, Amnesty International believes that Mr Z.A. Bhutto, like other political prisoners, has the right to a fair and open trial and should be held in conditions which comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners. During their visit, the Amnesty International delegates discussed with government officials reports it had received prior to their visit that Mr Bhutto was not being given proper treatment in jail. In order to verify or deny these reports, Amnesty International requested the Chief Martial Law Administrator for permission to meet Mr Bhutto in jail. AI was offered the possibility of meeting Mr Bhutto in court, an offer which the AI delegates declined since it would not enable them to make an on the spot evaluation of the conditions of Mr Bhutto's detention. The government refused the AI delegates permission to meet Mr Bhutto in jail.

Amnesty International was therefore unable to satisfy itself that

Mr Bhutto is being held in conditions which comply with international standards and is therefore not in a position to verify or deny allegations made by Mr Bhutto's daughter, whom the delegates met during their visit, that Mr Bhutto is being held in "solitary confinement". Consequently, Amnesty International is very much concerned at the government's decision to refuse the AI delegates permission to meet Mr Z.A. Bhutto in jail.