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January 9, 2015

Secretary of State John F. Kerry
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Re: Human Rights Concerns in Pakistan

Dear Secretary Kerry,

Your forthcoming trip for the January 14 US-Pakistan Strategic Dialogue in Islamabad offers important opportunities to address both new and longstanding problems in Pakistan's human rights situation, including worrying new counterterrorism legislation, accelerating and injudicious impositions of the death penalty, and attacks on religious minorities and freedom of speech. We urge you to include these important issues in your trip agenda and have outlined below key details and recommendations to raise during your visit.

Abusive counterterrorism laws

Human Rights Watch is considerably concerned by the government's reaction to the horrific December 16, 2014 school attack by the Pakistani Taliban splinter group Tehreek-e-Taliban (TTP)—an atrocity that is now being invoked to justify overbroad and draconian counterterrorism measures. As you know, even before the school attack, Pakistan had begun to adopt a series of counterterror measures posing threats to civil liberties. In July 2014, the Pakistani parliament passed vague and overly broad counterterrorism legislation, the Protection of Pakistan Act, which allows the government to suppress peaceful political opposition and freedoms of speech, privacy, peaceful assembly, and violate due process protections embodied in international law. The act also provides that persons arrested under the law “shall be presumed to be engaged in waging war or insurrection against Pakistan unless he establishes his non-involvement in the offence” – a violation of the right to presumption of innocence.

On January 7, 2015, in the aftermath of the Peshawar school attack, Pakistan's President Mamnoon Hussain signed into law a constitutional amendment permitting military courts to prosecute terrorism suspects. The government has justified the move as a means to ensure “the speedy trial of terrorists.” Yet as many

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Pakistani lawyers and judges have pointed out, Pakistan's civilian courts are capable of handling terrorism cases so long as law enforcement authorities do their job, including conducting professional investigations and providing protection to witnesses.

As the State Department has repeatedly noted in its reports on human rights around the world, international standards prohibit the use of military courts to try civilians while the regular courts are functioning. As a party to the International Covenant on Civil and Political Rights (ICCPR), Pakistan is obligated to uphold and take measures to ensure basic fair trial rights. The United Nations Human Rights Committee, the international expert body that monitors state compliance with the ICCPR, has stated in its General Comment on the right to a fair trial that "the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial, and independent administration of justice is concerned."

For these reasons, we recommend that you:

- Communicate to the Pakistani government that its embrace of the use of military courts for civilians, combined with the extensive due process problems that exist under the Protection of Pakistan Act, is inconsistent with international human rights law and could imperil international support and assistance for Pakistan, as well as lead the US Congress to cut military and other security sector assistance to Pakistan or may even trigger automatic cuts to such assistance under the Leahy Law;
- Press the Pakistani government to commit to the "sunset" provisions allowing the use of military courts for civilians in terrorism cases contained in the amendment creating the courts; and
- Urge the Pakistani government, in the interim, to draft and adopt reforms and due process protections lacking in the current criminal procedure legislation that guides both military courts and anti-terrorism courts; in particular reforms to address:
 - Overbroad and vague definitional language on terrorist acts;
 - Dangerous expansions of powers of arrest without warrant;
 - Immunity for security personnel from liability for abuses they commit; and
 - The highly problematic shifting of the burden of proof to criminal suspects in terrorism cases.

Death Penalty

On December 17, 2014, Prime Minister Nawaz Sharif rescinded a four-year unofficial moratorium on capital punishment for non-military personnel "in terrorism related cases," instituted by then-President Asif Ali Zardari in 2008. As of July 2014 there were 800 people on death row in Pakistan for terrorism-related convictions and another 17,000 people undergoing prosecution for alleged terrorism offenses. A joint

report issued in December 2014 by the nongovernmental human rights organizations Justice Project Pakistan and Reprieve concluded that the high number of people on death row for terrorism-related convictions reflects an “overuse” of anti-terrorism laws by Pakistan’s security forces and judiciary. The report states that “instead of being reserved for the most serious cases of recognizable acts of terror, the anti-terror legislation is in fact being used to try ordinary criminal cases, either in a deliberate attempt to evade the procedural safeguards guaranteed by ordinary courts or due to the vague and overly broad definitions of ‘terrorism’ in the legislation.”

Pakistan’s use of the death penalty is inconsistent with international human rights law, according to statements of United Nations human rights experts and various UN bodies. Human rights law upholds every human being’s “inherent right to life” and limits the death penalty to “the most serious crimes,” namely exceptional crimes resulting in death or grievous bodily harm. Human Rights Watch opposes the death penalty in all circumstances as an inherently cruel and irrevocable penalty.

The Pakistani government has executed at least nine people following the school attack and there are reports that the government intends to execute dozens, and possibly hundreds more in the coming weeks. In one such case, Shafqat Hussain, who was 14 or 15 when sentenced in 2004 for kidnapping and killing a 7-year-old boy, faces execution on January 14 despite reports that the government had delayed his death warrant pending an official inquiry into his case. Pakistan is a party to the ICCPR and the Convention on the Rights of the Child, both of which specifically prohibit capital punishment of anyone who was under 18 at the time of their offense.

To address the situation outlined above, we urge you to communicate to the Pakistani government that its accelerating and injudicious use of capital punishment is inconsistent with international human rights law and could severely damage Pakistan’s international reputation. Specifically, we recommend that you urge the government to:

- Commit to restoring the moratorium on the use of the death penalty;
- In the interim, review each case being considered for the implementation of the death penalty to ensure that the right to a fair trial was met; and
- Commit to Pakistan’s international legal obligation not to seek or impose capital punishment for anyone who was under 18 at the time of their offense.

Attacks on Religious Minorities

Religious minorities in Pakistan are under increasing threat from both militant groups and discriminatory laws. The Pakistani government has failed to apprehend or prosecute members of the Lakshar-e-Jhangvi (LeJ), a Pakistani-Taliban-affiliated Sunni group that has claimed responsibility for attacks on Shia Hazara and other religious minorities. Those attacks have killed more than 500 Hazara since

2008 in Balochistan province alone. While authorities claim to have arrested dozens of suspects linked to such attacks, only a handful have actually been charged with any crimes. Civilian and military security forces deployed in Balochistan have done little to investigate attacks on Hazara or take steps to prevent the next attack.

The Pakistani government has also failed to end the use of the country's discriminatory blasphemy laws. The blasphemy law is largely used against members of religious minorities, while the government rarely brings charges against those responsible for attacks on people accused of blasphemy. The law is also often manipulated to settle personal disputes. At least 18 people are currently on death row for blasphemy in Pakistan, while another 20 are serving life sentences. Aasia Bibi, a Christian from Punjab province who became the first woman in the country's history to be sentenced to death for blasphemy in 2010, continues to languish in prison. At the same time, many Pakistanis who have been accused of blasphemy but never tried, or who were awaiting trial, have been murdered. Prime Minister Sharif has not spoken out against the blasphemy law and the threat it poses to Pakistan's religious minorities.

We recommend that you urge the Pakistani government to make the protection of religious minorities a priority, and specifically to:

- Investigate alleged security force indifference and complicity in militant attacks against the Shia Hazara and other religious minorities, and ensure that the LeJ and other groups operating in government-controlled areas are disarmed and their leadership and others responsible for abuses are fairly prosecuted; and
- Reform or repeal the blasphemy law, or in the interim—given extensive reports of due process problems in blasphemy prosecutions—impose a moratorium on the imposition of capital sentences in blasphemy cases and commit to allow new judicial reviews for persons already convicted, and provide better security for defendants, including persons who have been acquitted.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kenneth Roth', with a stylized flourish at the end.

Kenneth Roth
Executive Director
Human Rights Watch