

## Democracy and Rule of Law in Pakistan – Challenges and Opportunities

### 1. Introduction

Pakistan is a country which usually draws rather negative international headlines, be it the suicide attack on the Marriott Hotel in Islamabad or the recent terrorist attacks in Mumbai. Foreigners were targeted and scores of innocent people died in both tragic incidencies.<sup>1</sup> As a consequence, Pakistan only just escaped from being declared a terrorist country, as it accepted the UN Security Council Resolution 1267, passed on Dec 10th, 2008.<sup>2</sup> The UNSC resolution banned a number of militant organizations and added some leading individuals to the UN terrorist list. Since then, Pakistan has come down hard on *Jamaat-ud-Daawa*<sup>3</sup>, closing the camps of the organization throughout the country and has arrested a number of its members. By complying with the UNSC resolution, Pakistan is appeasing the international community, notably the United States and India at the likely cost of resistance and growing unrest from within. The Pakistani people is split between those who have understanding for the response of the government and those who feel betrayed.

This situation of continued fear and insecurity is being aggravated by a faltering economy and by the energy and food crisis. Pakistan is struggling to uphold political stability. Since the elections of February 18th the Pakistan People's Party-led government is advancing the democratisation process while attempting to live up to a multitude of national and international expectations. Some observers in the West fear that without a direct military control, Pakistan is either going to fall apart or going to be seized by religious extremist groups. Hence, the question arises whether the new Pakistani government will be able to continue both with the democratisation process and the improvement of the human rights situation, as it claims.

Pakistan is among those countries in the world ranked rather low on the democracy scale. The Bertelsmann Transformation Index (BTI) 2008<sup>4</sup>, for instance, ranks Pakistan at position No. 94 out of 125 examined countries on the 'status index', which measures the current status of political and economic transformation. On the 'management index', which measures governance capacity towards such transformation Pakistan is ranked at position No. 90 out of 125.<sup>5</sup> The ensuing BTI country analysis of Pakistan points out obstacles to overcome on the path to democracy. Among these is an insufficient separation of powers, lacking independence of the judiciary, insufficient separation of the civil public service from the military and the still-to-be-resolved question of state ideology. The roots and dynamics of the problems raised call for a closer examination.

Next to geo-political and geo-strategic reasons, it is the imbalance of government institutions within the Pakistani state which is at the centre of the governance crisis and its related structural violence. The military of Pakistan is disproportionally sized and has stakes not only in the political but also in the economic sector. This decreases the probability of the government being able to delimit its power. Pakistan faces difficulties embarking on the 'road to democracy', because this road considerably challenges the existing power structures within the Pakistani society and state.<sup>6</sup> Slogans such as 'controlled democracy' or 'guided democracy' have been coined time and again by military rulers so as to justify their dominance and the lacking autonomy of parliament.

Taking a closer look at civil-military relations in Pakistan must be the first step towards understanding the lack of institutional democracy, the existence of structural conflict and

<sup>1</sup> In the recent Mumbai attacks, more than 170 people died, among them 22 foreigners, see *Officials quit over India attack*, BBC News South Asia, 30<sup>th</sup> Nov 2008. In Islamabad, more than 50 people died, among them a number of foreigners, see Khan, Zarar, *Death toll at 53 as workers search ruins of Islamabad hotel a day after truck bomb attack*, Newser, September 21<sup>st</sup>, 2008.

<sup>2</sup> *Jamaat-ud-Dawa ban averted Pak being declared terrorist country: DM*, The News Pakistan, December 12<sup>th</sup>, 2008.

<sup>3</sup> According to media reports, *Jamaat-ud-Daawa*, a registered non-governmental charity organisation is the successor of the former militant *Lashkar-e-Taiba*, which was banned in 2002 under President Musharrad and may have links to Al-Qaeda and the Taliban.

<sup>4</sup> The BTI Index 2008 results are based on a survey conducted between 2005 and spring 2007. For further information see: <http://www.bertelsmann-transformation-index.de/>

<sup>5</sup> The higher the position number, the lower the ranking.

<sup>6</sup> For an in-depth analysis see Siddiq, Ayesha, *Military Inc. Inside Pakistan's Military's Economy*, Oxford University Press, New York, 2007.

violence, the religious extremism and militancy in Pakistani society. First, by its very nature, military-dominated states have a tendency of responding by military means to political conflicts, to violence, to real or perceived internal and external aggression and to threat. The 'use of force' is a readily available tools of 'managing' a crisis instead of conflict resolution through political dialogue. Second, centralized and authoritarian state forms such as Pakistan under its nine years of Pervez Musharraf will undertake every effort to control civil institutions potentially able to challenge the status quo, notably the judiciary. Third, the involvement of the military in religious institutions and political parties throughout the history of Pakistan – sometimes closer, sometimes more distant – has had far-reaching and consequences for the Pakistani society and state. The controversy on the identity of the Islamic Republic of Pakistan and the question whether it is a secular, a theocratic, or a moderate state persists to date. Various politically motivated groups (including the Taliban) claim in this debate to be the 'true' representatives of Pakistan.

## *II. How did the Pakistani military manage to uphold its power over parliament for all these years?*

The military has always justified its interventions in politics with the 'incompetence and corruption' of the civilian bureaucracy and politicians, portraying itself as the sole arbiter and best guarantor for 'peace'. The current Pakistani government has inherited power from a military-dominated regime which had upheld its proclamation that Pakistan "enjoyed (macro-) economic growth". Ironically now, Pakistan is faced with an increasing disruption of law and order, an aggravating security situation, a growing energy problem and a declining economic situation, featuring high inflation and a food crisis.

In the short course of Pakistani history, the military has come to power four times through coups.<sup>7</sup> Each of its government periods have made the military stronger. Under Musharraf the military even managed to consolidate its

power by institutionalising itself in state government by founding the so-called 'National Security Council'. Zia-ul-Haq was not yet able to achieve this in his tenure.<sup>8</sup> While the military expenditure amounts to almost a quarter of the annual budget, the civil institutions such as the administration, the judiciary, the police force or the political parties are substantially underfinanced.

From the birth of Pakistan in 1947 onwards the military has been successful in creating and maintaining a perception of threat to the integrity of the country by one or the other external or internal aggressor. In this regard the Kashmir conflict has played a vital role in providing a justification for the establishment and financial equipment of a strong defense force.<sup>9</sup> With Pakistan becoming a refuge for Indian Muslims according to the 'Two Nation Theory', religion was to become the unifying fabric for a country so ethnically diverse. Kashmir symbolised the 'new Pakistani identity'. Thus, the notion of national security alongside with the Islamic identity of Pakistan was readily exploited by the military in order to reinforce and justify its elevated position in the newly created country.

With the first overt military intervention in 1958, the Ayub era witnessed an overall strengthening of the military as a political actor. Promulgating a centralized constitution in 1956 with the 'one unit' as its centre slogan, it really denied the existence of various ethnic communities and identities.<sup>10</sup> The people of Pakistan heavily resisted their 'controlled democracy'. This, together with the dire cost of defeat in the 1965 war with India over Kashmir led to the downfall of Ayub in 1968 through a popular resistance movement, spearheaded by students and nationalists.

In 1971 the inability and unwillingness of the regime to respond to genuine demands of autonomy and the power play of Zulfikar Ali Bhutto led to the dismemberment of Pakistan and the formation of Bangladesh. Exploiting the public humiliation of the military in 1971, Z.A. Bhutto, at least for a brief period, managed to restrain the power-hungry military for

<sup>7</sup> The first military takeover was staged in 1958, led by Iskandar Mirza and Ayoob Khan. The military came to power again in 1969, when Ayoob Khan handed over power to General Yahya. The third military takeover was led by General Zia-ul-Haq in 1977. The military staged its fourth *coup d'état* in 1999 under the leadership of General Musharraf.

<sup>8</sup> Samad, Younis, *The Military and Democracy in Pakistan*, Contemporary South Asia 3 (3), 1994, pages 189-201.

<sup>9</sup> Samad, Younis, *Kashmir and the Imagining of Pakistan*, Contemporary South Asia 4 (1), 1995, pages 65-77.

<sup>10</sup> Interestingly the early political leadership took nine years to develop the first constitution of Pakistan.

some years. He was, however, overthrown in 1977 by Mohammad Zia-ul-Haq, a junior general whom Bhutto had trusted, though underestimated.<sup>11</sup>

Eleven years of direct military dictatorship under Zia-ul-Haq had a long-lasting and highly detrimental impact on the Pakistani state and society, for which the current generation is still paying the price. In the course of the Afghan War (1979-89) the interests of the 'Islamists' and the military converged, when the United States and the Saudi regime massively funded the 'jihad' against communism through the Pakistani Inter Service Intelligence (ISI). The 'by-products' of the war were an overly intrusive intelligence service, wielding enormous powers far beyond those of the government and a parallel structure of religious militants, nurtured and bred in madrasah culture. Zia promoted the 'Islamization process' which installed unprecedented and pervasive structures in the public institutional sphere, promoting a rigid orthodox interpretation of Islam and enacting discriminatory laws against women, children and religious minorities (Hudood Ordinances, laws of evidence and inheritance and Blasphemy Law). These unfairly victimized those already most vulnerable in society. Having established 'Federal Shariat Court' Zia takes credit for the existence of a parallel judicial system, which is continually used by both the clergy and the military to exert political influence, even in times of civilian governments.<sup>12</sup>

Pakistan experienced an instable parliamentary civilian set-up with alternate rule of Benazir Bhutto and Nawaz Sharif in the 1990ies, with stern control of the military oligarchy from behind the scenes. Despite this parliamentary interlude, the so-called 'Mullah Military Alliance'<sup>13</sup> continued. Pakistan tacitly supported the Taliban, following its 'Strategic Depth Doctrine'. Also, it covertly supported the Kashmiri uprising on the Indian side, which helped create or reinforce religious militant groups such as the *Harkat-ul-Mujahideen*, *Lashkar-e-Taiba*<sup>14</sup> and *Jaish-e-Mohammad*, which were banned after the policy turnaround of Musharraf in 2001.<sup>15</sup> In 1999 General Pervez Musharraf, who had originally been handpicked by

Nawaz Sharif and was the Chief of Army at the time, staged yet another military coup under the 'state of necessity' against Prime Minister Nawaz Sharif himself. He did so in response to the withdrawal of the Pakistan Armed Forces from Kargil in 1999, as mediated by the Clinton administration (Kargil Crisis). In the course of the Musharraf regime the religious forces consolidated their power gained thus far by exploiting the anti-American sentiments among the Pakistani people, which had been reinforced by the Afghanistan intervention after 9/11. The interdependence between the military and the religious parties continued. The 17<sup>th</sup> constitutional amendment illustrates this well. It clearly undermined the system of checks and balances and allowed Pervez Musharraf to keep his two hats, that of President and that of Chief of Army Staff. The amendment would not have been possible without endorsement by the *Muttahida-Majlis-e-Amal* (MMA), the only religious party in Pakistan, which is a conglomerate of smaller fractions. In return, the MMA was given the position of leader of the opposition in the National Assembly, even though the Pakistan People's Party (PPP) had the largest number of seats on the opposition. For the first time in parliamentary history, the leader of the opposition was 'appointed' through an executive order.<sup>16</sup>

After 9/11 Pakistan has begun reversing some of its ideologies and policies. The Musharraf regime has tried to undo a number of policies and practises pursued by the Pakistani state for three decades. With Pakistan becoming an essential partner in the 'War on Terror', Musharraf, backed by the US, turned the hailed mujahideen into 'terrorists' and promoted his ideology of 'enlightened moderation'. He challenged various Islamic orthodox discriminatory laws and practices affecting women and religious minorities. He introduced some reforms in curricula and school text books and began registration of the more than 10.000 madrasahs, with the aim of building a 'softer image' of Pakistan. However, the madrasah reforms, financed by the United States Agency for International Development (USAID), are limping forward without major achievements in sight.<sup>17</sup>

<sup>11</sup> Samad, Younis, *The Military and Democracy in Pakistan*, Contemporary South Asia 3 (3), 1994, pages 189-201.

<sup>12</sup> Hussain, Zahid, *Frontline Pakistan - The Struggle within Militant Islam*, Vanguard Books, Lahore, 2007, pages 12-32.

<sup>13</sup> The phrase 'Mullah Military Alliance' is a connotation to describe the strategic partnership between the military and the orthodox clergy or religious and extremist groups.

<sup>14</sup> *Lashkar-e-Taiba* is the militant outfit, which has been named as the main culprit for the Mumbai attacks by India.

<sup>15</sup> Hussain, Zahid, *Ibid*.

<sup>16</sup> Brohi, Nazish, *The MMA Offensive. Three years in Power 2003-2005*, Actionaid International Pakistan, 2006, pages 37-45.

<sup>17</sup> There are 16,059 High Schools in Pakistan while the number of religious seminaries goes beyond 10,000. The number of students graduating from high schools stands at 1.6 million, while those from the religious seminaries i.e. *madrasahs* is 1.5 million. See: Salim, Ahmed and Dr. Nayyar, *The Subtle Subversion. The State of Curricula and Textbooks in Pakistan*, Sustainable Development Policy Institute, Islamabad, 2006.

In the eyes of the Western states and their powerful mainstream media, the Musharraf regime, the military establishment and the intelligence agencies thwarted the religious right wing of Pakistan. However, analysts, journalists, and human rights activists prevailed in their opinion that the military establishment and the intelligence agencies inter alia are not a monolithic entity, some ranks having close ties with religious extremist elements. This view has recently been endorsed by American and other Western officials and experts.<sup>18</sup>

No other period in the history of Pakistan has witnessed a greater penetration of the military into politics, economy and society of the country than the rule of Musharraf. This is reflected by the highest number of serving and retired military personnel employed in government, public institutions and other organizations ever since October 1999. Although the newly appointed Chief of Army Staff General Ashfaq Parvez Kayani has issued an instruction that all military personnel be recalled from civilian administration, not all of them are giving up the perks and privileges they have in civilian departments.<sup>19</sup> The 'predatory' character of the military is most pervasive in authoritarian regimes such as Pakistan. A vicious circle of 'Milbus' (military business) is in place and it is both cause and effect of the non-democratic, authoritarian regime. It is accompanied by a nexus, a 'patron-client relationship' between the military and other stakeholders such as industrialists and feudals. The prospects of a re-treating military and a flourishing democracy are weak.<sup>20</sup>

Traditionally, the judiciary in Pakistan has also helped perpetuating the status quo. This changed with the events of March 9<sup>th</sup>, 2007.

### *III. The Lawyers' Movement – An Awakening of the Judiciary?*

Traditionally, the judiciary in Pakistan has done its part in perpetuating the status quo. This changed in spring 2007. On March 9<sup>th</sup> 2007 President and Army Chief of Staff Musharraf removed from office the Chief Justice of Pakistan, Iftikhar Chaudhry. Pakistan attracted unexpected international media at-

tention with this incidence. Lawyers and judges challenged the military-dominated regime with remarkable intensity. Expressing international solidarity, the Harvard Law School awarded the 'Medal of Freedom' to the deposed Chief Justice. Moreover Iftikhar Chaudhry was nominated for the Nobel Peace Prize 2008. In a country where all social, political and economic developments are strongly influenced by the military, this new movement was able to put on the national and international agenda the need of an independent judiciary in Pakistan.

The international reputation of the Pakistani judiciary of being corrupt and ineffective<sup>21</sup>, of being an accomplice to the executive, of legitimising the subversive interventions of the military does raise the question as to why and how this sudden resistance against military intervention was even possible.

### *IV. A back flash*

Three out of four previous military coups were legitimised by the judiciary on the basis of the so-called 'doctrine of necessity' (Ayub Khan in 1958; Zia-ul-Haq in 1977; Pervez Musharraf in 1999). The precedence for the doctrine was set in a lead case in 1955 when the head of state dismissed the legislative extra-constitutionally, allegedly for ensuring 'political stability'.<sup>22</sup> Interestingly, the government was civilian at the time.

When General Pervez Musharraf staged his coup in 1999, he declared a state of emergency, suspended the constitution and imposed the so-called 'Provisional Constitutional Order' (PCO; 2000). During this PCO potential anti-Musharraf judges were removed from office and replaced by pro-Musharraf judges, including Chaudhry Iftikhar. Then, following the Legal Framework Order (LFO; 2002) decreed by Musharraf, he validated all of his ordinances and orders, including the LFO through the 17<sup>th</sup> constitutional amendment passed by his puppet parliament. The amendment was similar to the 8<sup>th</sup> amendment formerly passed under Zia-ul-Haq and later revoked by the 13<sup>th</sup> amendment under Nawaz Sharif in 1997. The amendment tipped power from the Prime Minister to the President and

<sup>18</sup> *ISI and Terrorism: Behind the Accusations*, washingtonpost.com, 9<sup>th</sup> July 2008.

<sup>19</sup> *Call for removing army men, bureaucrats from VCs posts*, Daily Dawn, Islamabad, 16<sup>th</sup> March 2008.

<sup>20</sup> Siddiqua, Ayesha, *Ibid*, pages 243-252.

<sup>21</sup> *Persistent Corruption in Low Income Countries requires Global Action*, Karachi, Transparency International Press Release, September 26<sup>th</sup>, 2007.

<sup>22</sup> International Crisis Group Report, *Reforming the Judiciary in Pakistan*, Asia Report No 160 – 16, October 2008, p. 3.

severely impinged on parliamentary sovereignty. It gave arbitrary powers to the president, such as the right to dismiss parliament (Article 58 (2) B) and to designate key positions such as the Chief of the Armed Forces, Chief Election Commissioner, the three Service Chiefs and the Provincial Governors. Moreover, the amendment provided for the right to hold two key offices at the same time, namely that of President and that of the Chief of Army Staff and indemnifies the holder of this office from legal prosecution of his past actions. Lastly, the amendment constitutionalised the National Security Council.<sup>23</sup>

These powers rendered Musharraf and his administration powerful enough to elude themselves from any accountability. In the wake of the so-called 'War on Terror' the phenomenon of 'Enforced Disappearances' became a tool to eliminate 'anti-state elements'.<sup>24</sup> This prompted national and international headlines due to protests by wives and families of missing persons in various parts of the country, including Islamabad.<sup>25</sup>

The campaign against 'Enforced Disappearances' is strongly taken up by national and international human rights groups. Persons suspected of 'terrorism' are kidnapped by Pakistani security or intelligence agencies, are tortured and kept incommunicado for days, weeks, months and sometimes even for years. Sometimes they are illegally extradited to third countries such as the United States. This phenomenon was on the rise notably since the military operation against the Taliban and other militant outfits in the Federally Administered Tribal Areas (FATAs). It gained momentum in 2004/ 2005 when the central government targeted a nationalist-tribal guerilla movement for independence in the South-Western region, Balochistan.

This region is the largest, most resource-abundant but also the least populated of Pakistan. The majority of the 241 documented and verified 'Enforced Disappearances' cases took place in Balochistan, victimizing political workers or activists, journalists and students.<sup>26</sup> This clearly indicates that political opponents were being targeted.

In response to the protests, the Chief Justice of the Supreme Court, Iftikhar Chaudhry, took suo moto action, holding high government officials of the Interior Ministry and Intelligence accountable and demanding they produce the missing persons. He was successful to a certain extent. While his actions rendered the Chief Justice a ray of hope for human rights in the eyes of some, for others he was merely a disturbing factor.

This, alongside with his famous ruling against the privatisation of the Pakistan Steel Mill<sup>27</sup> caused dissatisfaction among the ruling elite. Anticipating further hindrances to the moves of the government, Musharraf removed Chaudhry Iftikhar from office extra-constitutionally on March 9<sup>th</sup>, 2007. This day not only changed the course of his political career but was also decisive for future political events in Pakistan. Pervez Musharraf had underestimated the power of the media and the public.

The lawyers' movement marks the beginning of a new awareness among a small, educated middle class and the intellectual elite of the country. In a society known to be disillusioned and apolitical, the movement energized and united the weak and fragmented civil society, leading street protests with women and students participating. The decision of Musharraf was declared invalid by the Supreme Court on July 21<sup>st</sup> and Iftikhar Chaudhry was reinstated. However, the lawyers' movement did not end there. Demands were made that Musharraf take off his uniform or even step down as President of Pakistan.

Following the lawyers' movement and growing public pressure, he declared a 'state of emergency' on November 3<sup>rd</sup>, 2007, allegedly based on the deteriorating security situation in the country, but also based on the 'judicial activism', which was a 'destabilising factor' in his view. No doubt, it was destabilising his position. The movement had successfully pushed him into taking off his 'second skin', his uniform, only two months before. Similarly to 1999, he removed from office all judges who did not take oath under the new Provisional Constitutional Order 2007 and replaced them with new ones. However, this time, he

<sup>23</sup> Ahmed, Nazeer, *Constitution of Pakistan & People's Rights*, Centre for Democratic Governance – The Network for Consumer Protection, Islamabad, 2004

<sup>24</sup> Amnesty International Report, *Pakistan: Working to Stop Human Rights Violations in the 'War on Terror'*, London, December 8<sup>th</sup>, 2006.

<sup>25</sup> Just recently, Amna Janjua, co-founder of 'Defence of Human Rights' in Pakistan appealed to Barack Hussain Obama through a letter to help finding or getting released 600 missing people, including her husband, due to US involvement in Enforce Disappearance cases of Pakistan. For further details, see: <http://www.cageprisoners.com/articles.php?id=27159>

<sup>26</sup> Khan, Ilyas, *Pressure over Pakistan's missing*, BBC News, Karachi, January 22<sup>nd</sup>, 2007.

<sup>27</sup> Ahmad, Naveed, *The Reversal of Fortune – The Supreme Court moves to reverse the controversial PSM privatization*, Newline, July 2006.

could not simply get away with it. The growing lawyers' movement was joined by various sections of the educated middle and upper class, including journalists, women activists, students, concerned citizens, human rights and NGO activists and trade unionists. Various segments of civil society were united, helping counteract some of the stereotype images the different groups had had of each other.

Critics of the movement see it as the root of political destabilisation in the country, financed by foreign powers. Moreover, they call into question how a politically active judiciary can be independent. The supporters of the movement maintain it is an indigenous people's movement challenging the military establishment, an impulse and an opportunity to build democracy and the rule of law. They point out that the founder of Pakistan Muhammad Ali Jinnah, a lawyer himself, once led the Pakistan Movement.

Due to heavy national and international pressure, Musharraf was unable to sustain the emergency law and therefore lifted it on December 15<sup>th</sup>, 2007. On February 18<sup>th</sup>, 2008, one and a half months after the murder of the former PPP-leader Benazir Bhutto, elections took place – peacefully, against all expectations. The voter turn-out was lower than the usual 40 percent, but the people of Pakistan had clearly decided in favour of change. A civilian government with PPP as the leading party took power after nearly nine years of military-dominated rule.

All activists such as political party officers, lawyers and judges who had been imprisoned or kept under house arrest during the 'state of emergency' were freed with the takeover of the new government. The grand coalition between the Pakistan People's Party (PPP, led by Asif Zardari) and the Pakistan Muslim League-Nawaz Sharif (PML-N) issued the so-called 'Murree Declaration' on March 9<sup>th</sup>, 2008, exactly one year after the beginning of the movement. Within thirty days all judges were to be reinstated to the positions they had held before November 3<sup>rd</sup>, 2007. In other

words, all new 'PCO judges' were to be removed from office, the old ones reinstated and all actions by Musharraf from November 3<sup>rd</sup>, 2007 onwards to be declared as illegal.<sup>28</sup>

A six-month scuffle about the mechanism of reinstatement ensued between the PPP and the PML-N, which turned their attention from dire national problems such as the energy and food crisis and eventually ruptured the grand coalition. This happened just one week after Pervez Musharraf resigned on August 18<sup>th</sup>, 2008, anticipating an impeachment process against him by the ruling parties. The PML-Q and the PPP made a political deal. They provided him with safe passage and Zardari, the next President of Pakistan accepted the new 'PCO judges', thereby indemnifying all actions of Musharraf from November 3<sup>rd</sup>, 2007 onwards.

By now almost all judges of the Supreme Court and of the High Courts have taken oath again and are thus reinstated to their old positions - except Iftikhar Chaudry and five other judges. However, the diehards of the lawyers' movement are still active. They and their ideological supporters refuse to accept this mechanism of incremental and individual reinstatement of judges.<sup>29</sup> It seems that the PPP-led government has tried to resolve the judicial issue through a political solution rather than a legal one, so as to avert further political controversies and unrest in the country.<sup>30</sup> One of the considerations of Asif Zardari clearly was to avoid a legal challenge of the so-called 'National Reconciliation Ordinance'. This decree was issued by Musharraf in October 2008, providing protection for formerly indicted politicians which includes Benazir Bhutto, Asif Ali Zardari himself and Nawaz Sharif. Without the decree it would not have been possible for Benazir Bhutto and others to return to Pakistan and contest for elections.<sup>31</sup>

*V. Where does the Lawyers' Movement stand today?*

No doubt the lawyers' movement which was prominently led by Aitzaz Ahsan, has lost mo-

<sup>28</sup> Amir Wasim & Abid Abbasi, *Zardari, Sharif in historic accord: PML-N to join govt at centre. Judges' restoration in 30 days*, Daily Dawn, Islamabad, March 10<sup>th</sup>, 2008.

<sup>29</sup> International Crisis Group Report, *Reforming the Judiciary in Pakistan*, Asia Report No 160 – 16 October 2008.

<sup>30</sup> Telephonic interview with a civil society activist, Islamabad, December 14<sup>th</sup>, 2008.

<sup>31</sup> *NRO keeps Zardari away from judges' restoration*, The News Pakistan, Islamabad, May 1<sup>st</sup>, 2008.

mentum and is weak in its impact. The remaining members have difficulty mobilizing lawyers or civil society members as they did before, let alone unite them. On the one hand the lawyers have lost their persistence and on the other hand the PPP-led government has been successful in creating the perception among the people of having fulfilled the vast majority of demands. The recent Mumbai attacks changed the situation in Pakistan once again and with it the political priorities.

A leading and eminent human rights activist of Pakistan has described the situation of the movement as follows: "Perhaps they (the leaders of the lawyers' movement) could not or did not have the time to decide whether their agitation was in the nature of a trade union strike or a political movement for change. If the former was the case, the risk in stretching the struggle beyond the endurance of the judges and lawyers should not have been ignored. In such struggles, it is crucial to assess when the agitation should be wound up and inflexibility replaced with pragmatism. If the agitation fell in the second category, then the strategy recommended for long-term political movements should have been adopted – and in this, there is neither room for short-period ultimatums nor for promising success within days."<sup>32</sup>

#### VI. What future for democracy and rule of law in Pakistan?

Clearly the judiciary, which is part of the state and of the constitution cannot single-handedly build democracy and rule of law. Action is needed from various groups, notably from political parties, which have played a rather disappointing role thus far. They need to demonstrate that commitment to democratisation is not a lip service, but rather start implementing the concept in their own realm. The internal structures of the political parties need to be democratised, a shift from 'personality politics' to 'institutional politics' is mandatory. Nobody must stand above the law and everyone, including the political parties, the judiciary, the military and the security agencies must be held accountable for their actions.

With the new civilian government in place, a few improvements have been made towards a better human rights situation in the country.

The current government has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), it has signed the International Covenant on Civil and Political Rights (ICCPR) as well as the UN Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (UNCAT). It has also promised to revert all pending death penalties into life-long sentences.<sup>33</sup> The political parties are currently informally discussing a constitutional amendment, which is to aim for a balance of power between president and parliament (Article 58 (2) B) so as to re-establish parliamentary sovereignty. Another topic under discussion is judicial reform. The proposals on the table centre around capacity-building of subordinate courts dealing with 80% of all legal cases, legitimate appointment of high judicial positions, achieving accountability and neutrality of the judiciary and abolishment of the 'doctrine of necessity'.<sup>34</sup>

Additionally, if funds and scarce resources are to be utilized in an effective manner and if progressive democratic forces shall prevail over the orthodox religious lobby, the 'Federal Shariat Court', representing a parallel Islamic judiciary, needs to be abolished. For advice on 'Islamic matters', the Council of Islamic Ideology can be consulted, which is its original mandate.

Most importantly, if intervention by the military is to be averted in the future and the influence of the military in political and economic affairs to be restricted, the current government must restructure the so-called 'National Security Council'.

Pakistan is in a precarious situation and under heavy pressure from outside and from within. Time will tell whether the country will be able to hold the course of democratisation. As one civil society activist said: "Security is being increased everywhere. We see check posts, diversions, barriers, but we do not see any signs of the rule of law improving."<sup>35</sup> If the international community wants really to support Pakistan, it needs to work towards establishing long-term stability, while weakening religious extremist forces. As one leading American researcher states, "[...] the incoming Obama administration must recognise the regional nature of the country's challenges and support the country in stabilising its econ-

<sup>32</sup> ICG report, *Ibid.*, pp. 24-25.

<sup>33</sup> *Pakistan ratifies Key UN Human Rights Treaty*, Amnesty International Press Release, London, April 18<sup>th</sup>, 2008.

<sup>34</sup> ICG Report, *ibid.*

<sup>35</sup> Telephonic interview with civil society activist in Islamabad, December 14<sup>th</sup>, 2008.

omy and secure borders between Pakistan and its neighbours. [...] The US-Pakistan relationship needs to be moved away from a reactive, transactional, short-term approach that is narrowly focused on bilateral efforts to a more proactive, long-term strategy that seeks to advance stability and prosperity inside Pak-

istan. [...] For the first time in almost a decade, the United States and the world have legitimate partners in the democratically elected government of Pakistan.”<sup>36</sup>  
Pakistan has wasted various opportunities for democratisation in the past. It should not waste another one.

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