

## STATEMENT OF THE NDI PRE-ELECTION DELEGATION TO PAKISTAN

*Islamabad, October 21, 2007*

This statement is offered by an international delegation organized by the National Democratic Institute (NDI), which visited Pakistan from October 16 to October 21, 2007. The delegation reviewed the political environment and the framework for the upcoming elections for the national and provincial assemblies, expected in January 2008.

The delegation included: Tom Daschle (United States), former Senate Majority Leader; Peter Manikas (United States), NDI Senior Associate and Director of Asia Programs; and Sue Wood (New Zealand), former President of the National Party. Sheila Fruman, director of NDI's Pakistan programs was the delegation's chief consultant. The delegation was also assisted by NDI staff members: Niaz Ahmed, Andrew Hall, and Mailis Orban. The delegation followed and built upon the work of a previous NDI mission that visited Pakistan from May 13 to 17.

The delegation sought to reflect the interest and concern of the international community in achieving democratic, civilian governance in Pakistan. It visited the Northwest Frontier Province (NWFP) as well as Islamabad and met with government and electoral officials, including the Prime Minister and Chief Election Commissioner, a broad spectrum of political party leaders and leaders from civic and human rights associations, representatives of the news media, and international organizations. The delegation offers its findings and observations in the spirit of international cooperation and recognizes that it is the people of Pakistan who will ultimately determine the meaningfulness of the upcoming elections. The delegation stresses that it did not seek to reach any final conclusions on the 2007/2008 electoral process.

The delegation would like to express its appreciation to everyone with whom it met. Without their taking time and sharing their knowledge and insights, the delegation would not have been able to accomplish its work.

### SUMMARY OF FINDINGS AND OBSERVATIONS

As parliamentary and provincial elections approach, international attention is focused on Pakistan as never before. The stakes are high for the people of Pakistan, the region, and the world. If the elections enjoy the confidence of Pakistanis, they could help return the nation to a democratic path and end eight years of increasingly unpopular military rule. Elections that meet international standards could also help stabilize a nuclear power and an important strategic ally in the war on terror, which is threatened by escalating civil strife and political violence. If the integrity of the elections is seriously compromised and not seen as representative of the will of

the people, the nation could face increased civil conflict and the military could become further entrenched in the nation's political life.

Shortly after this delegation arrived, former Prime Minister Benazir Bhutto, in exile since 1999, returned to Pakistan. After being greeted by hundreds of thousands of supporters, her caravan was the target of a suicide bombing which killed approximately 140 people and left hundreds injured. The incident, which was described as the bloodiest political event in the nation's history, sadly reminded the delegation of the violent episode NDI's previous mission witnessed in May of this year. On the eve of that delegation's visit, demonstrators in Karachi, protesting the suspension of the Chief Justice of the Supreme Court, were attacked, resulting in the deaths of 47 persons.

These incidents, as well as the continuing political and religiously-inspired violence that plagues the nation, are deeply troubling and could increase as the election approaches. This delegation believes it is urgent for the government, election commission and political parties to take immediate steps toward providing a safer electoral environment.

On October 6, General Pervez Musharraf was reelected by an electoral college as president. His decisions to seek reelection by the assemblies that previously elected him, and to do so while remaining army chief, were widely unpopular and the Supreme Court is currently hearing challenges to the constitutionality of his reelection. President Musharraf has pledged to resign his army post before his new term begins on November 15. The return to a civilian-led government would be a first step toward building public confidence in the electoral process.

The delegation views Benazir Bhutto's return to Pakistan as a positive step toward holding more credible elections. Nawaz Sharif, also a former prime minister and leader of the Pakistan Muslim League – Nawaz (PML-N), remains in exile. Many Pakistanis will not view the upcoming polls as credible without the presence of both party leaders in Pakistan contesting the elections.

NDI's previous delegation made several recommendations regarding election administration, including the need for the Election Commission of Pakistan (ECP) to: fill two provincial election commissioner vacancies through a consultative process; improve the process for hearing election complaints; and correct the electoral rolls. These problems remain. Regrettably, little has happened over the past five months. Further delays could have very negative consequences for the elections' success. The delegation was told by the ECP, however, that action would be taken on the delegation's recommendations.

Other problems identified in the previous delegation's report continue unaddressed. These include the need to: open up the Federally Administered Tribal Areas (FATA) to normal political activity; adopt measures to protect the right of women to vote, especially in FATA, the Northwest Frontier Province (NWFP) and Balochistan; and to issue and publicize government orders preventing the security forces, including Inter-Services Intelligence (ISI), from interfering in the political process.

Elections alone will not solve the problem of intolerance, exemplified by the growing political violence; neither will they remedy the continuing problems of poverty, religious extremism, and ethnic and sectarian strife. The marginalization of the nation's large, secular political parties has prevented the establishment of a government able to build a national consensus around addressing these issues, which are destabilizing the nation.

## **POLITICAL ENVIRONMENT**

The escalating violence and intimidation in Pakistan is creating an atmosphere of fear and threatens to curtail the ability of parties and candidates to freely engage in political activity. Since the President's attempt to remove the Chief Justice of the Supreme Court last March, the security situation in Pakistan has sharply deteriorated. As a result, the government's ability to maintain public order for the upcoming election is being questioned by many. As previously mentioned, demonstrations in Karachi last May and the attack on Benazir Bhutto this week resulted in dozens of deaths and hundreds of injuries. In July, the government stormed the Red Mosque in Islamabad, whose members had been terrorizing local shops they found offensive to Islam, and who had also illegally occupied land in the federal capital and taken Chinese nationals hostage. At least 70 persons were reported killed in the government's assault on the mosque. In late August, close to 300 Pakistani soldiers were taken hostage by pro-Taliban militants in FATA; some have been killed and the rest remain captives.

In addition, the violence that has persisted in FATA is now seeping into areas of the NWFP. Extremists in the southern districts of the NWFP have been attacking video shops and barber shops that shave beards in an effort to enforce their religious beliefs on residents of the province. Political violence has also increased in the Province's southern districts, which is discussed further in this statement. The abduction and disappearance of political activists in Balochistan, where an insurgency is calling for greater autonomy and control over a larger share of the area's resources, has been well-documented by Human Rights Watch and the Human Rights Commission of Pakistan, a well-respected non-governmental group.

As NDI's delegation in May noted, the government has frequently invoked Section 144 of the Code of Criminal Procedure, which permits local governments to ban political activity. The law has been used selectively against opposition parties. In addition, the government arrested many party activists in recent months. Thousands of Nawaz Sharif's supporters, for example, were arrested and some were beaten on the eve of his attempted return to Pakistan in September. The breakdown of public order, due to the actions of the government and extremists, threatens to disrupt and impact the legitimacy of the upcoming elections.

The election preparations of two large secular parties, the Pakistan Peoples Party (PPP) and PML-N, have been hindered because their leaders have been in exile for many years. Several of the nation's political parties have failed to develop as modern political organizations, in part because their activities have been subject to intervention by the military and security forces. Pakistan's parties, however, have also been the target of widespread criticism for corrupt practices, highly centralized and often undemocratic procedures, and for failing to fulfill their campaign promises while in office. This perception of the parties is one reason why the 1999 coup was initially welcomed by large segments of the population. While parties have taken some

initial reform steps, deeper changes are needed. The parties remain, however, the only organizations capable of mobilizing the population to support the policies needed to deal with the nation's pressing problems.

## **RULE OF LAW**

The importance of preserving the independence of the judiciary has never been more critical in Pakistan and cannot be overstated. While the nation's lower courts are often viewed as subject to political interference, the higher courts – especially the Supreme Court – have been held in much higher esteem. The public reaction to the President's attempt to remove the Chief Justice of the Supreme Court reflects the importance of the principle of judicial independence to the people of Pakistan.

Pakistan's courts perform an important role in elections. Election Commissioners are drawn from the High Courts and Returning Officers are also recruited from the judicial system. Election Tribunals, which handle election complaints, are also staffed by judges. Furthermore, election disputes are reviewed by the High Courts and Supreme Court.

At least two critical election-related issues are now before the Supreme Court: the eligibility of President Musharraf to seek reelection and the constitutionality of the National Reconciliation Ordinance, which in effect removes the corruption charges against Benazir Bhutto. Decisions on these cases are expected in the coming weeks.

## **MEDIA**

While newspapers frequently contain articles critical of the government and independent television channels have proliferated in recent years, disturbing trends are also developing. Numerous instances have been reported in which the government has failed to effectively enforce the rights of journalists or has actively sought to limit their activities. The International Federation of Journalists (IFJ) has reported that several journalists have been killed in recent years and Pakistani authorities have failed to solve a single case. IFJ has also reported that the families of journalists reporting on militants in the tribal areas have been targeted for retaliation. NDI's previous delegation noted that law enforcement officials failed to intervene when the offices of Aaj TV were attacked in Karachi during the May 12 riots.

According to Reporters Without Borders, in 2006 at least 10 journalists were kidnapped by security forces, some for a few days, but others for up to three months. The delegation is concerned about numerous reports of government attempts to intimidate the electronic and print media. In addition, a recent report of the International Committee to Protect Journalists states that Pakistani police filed complaints against approximately 200 journalists charging that they defied a government ban on political rallies.

## ELECTORAL PROCESS

### *Election Commission of Pakistan*

The ECP consists of five members appointed by the president and is responsible for administering elections in Pakistan. There are widespread concerns among opposition political parties and civic groups that the ECP lacks transparency and independence. Broad public confidence in the ECP is integral to public acceptance of the results of the upcoming election. In the long term, ensuring the independence of the ECP may require constitutional changes in the appointment of the Chief Election Commissioner and the Election Commission members.

NDI's previous delegation identified four major problems that needed to be addressed by the Election Commission: the failure to hold formal and regular meetings with the political parties to discuss ECP policies and procedures; the inaccuracy of the voters list; insufficient transparency during the vote count; and the long-standing vacancies on the Commission. The delegation was disappointed that these problems remain unresolved, although assurances were received from the ECP that some of them would be corrected.

Open dialogue between the ECP and political parties on election preparations could go a long way toward alleviating concerns about the election process. Although members of the ECP have occasionally met with representatives of the political parties, they have not engaged the parties in formal and regular meetings to share information and address concerns. The lack of a meaningful dialogue has resulted in a loss of confidence in the work of the ECP.

Throughout the mission, major concerns were raised about the quality of the voters list currently being prepared by the ECP, as they were during the Institute's mission in May. An accurate and complete voters list is a fundamental necessity for any credible election. Without a credible voters list, the election results could be suspect. The current electoral rolls, compiled through a process of door-to-door enumeration, resulted in a draft list with approximately 20 million fewer entries than the list used during the 2002 general elections, despite a lowering of the voting age. The omission of millions of eligible voters prompted the Supreme Court to order the ECP to add tens of millions of names from the previous list. While the current electoral rolls now contain many more names, elections experts have advised the delegation that they are no more accurate, with approximately 10 million entries that cannot be verified. Moreover, women are considerably underrepresented on the voters list.

NDI's pre-election mission in May recommended that the ECP make available electronic copies of the full voters list available to political parties and provide the public with sufficient information on the voter registration process. This delegation believes the opportunity for addressing the flaws in the voters list is rapidly closing. It was a major oversight not to utilize the existing database of Pakistani citizens compiled and maintained by the National Database and Registration Authority (NADRA). NADRA has issued tens of millions of computerized national identity cards, but its database was not utilized in the preparation of the current voters list. Instead, millions of dollars in aid from international donors was spent in the construction of a voters list of questionable accuracy.

In light of concerns expressed by political parties and civic groups, the delegation is apprehensive about the administration of the vote counting procedures on election day. In past elections in Pakistan, election observers have been unable to track the tabulation of votes all the way from the polling station up to the election commission. The delegation welcomes the provisions in the recently promulgated National Reconciliation Ordinance (NRO) to address these issues, but it falls short of requiring the necessary transparency for a credible tabulation process.

The delegation received credible reports concerning attempts by ISI and other security forces to manipulate the electoral process. These attempts include efforts to influence local officials who are responsible for election administration at polling stations and to convince certain individuals not to seek their party's nomination or to switch party allegiances. NDI's previous delegation recommended that the government should issue and publicize orders to security forces, including intelligence services, stating that they must be politically neutral and not interfere in the political process in any way. The delegation continues to believe this recommendation is essential to enhancing confidence in the elections. In addition, ISI operates in a legal vacuum; it is not subject to laws adopted in a transparent manner by a democratically elected legislature. A legal framework for the activities of all intelligence agencies is currently lacking that would provide for the political neutrality of these organizations. That framework could then provide the basis for parliamentary oversight to ensure that intelligence agencies do not interfere in the political process.

Pakistan's constitution provides that each of the nation's four provinces will be represented on the ECP. Nevertheless, the seats for commissioners from Sindh and NWFP remain vacant. In May, the Institute's delegation recommended that the President fill the two vacancies at the ECP in consultation with the political parties and civil society. The ECP has informed the delegation that the President intends to fill the vacancies; however, there is no indication that this will be done in a transparent and broadly consultative manner.

#### *Coordination of Electoral Activities*

Coordination meetings involving many organizations supporting electoral activities are taking place. As the election approaches, these meetings will be of increasing importance in ensuring that electoral preparations are proceeding in a timely manner and that the activities of the various organizations involved in the elections are appropriately harmonized. Often these efforts at coordination are ineffective because specific timetables and benchmarks are lacking. More effective coordination can help to ensure that resources are used more effectively and efficiently.

#### *Care-taker Cabinet*

Pakistan's constitution provides that the President may appoint a caretaker cabinet upon the dissolution of parliament to administer elections in a neutral manner. The delegation was informed that the President plans on doing so. If the caretaker cabinet is appointed without reaching a consensus among the political parties, there is little public confidence that it will perform its responsibilities in an unbiased manner.

## *Security*

Either by design or a lack of state capacity, the government's writ does not extend throughout much of the nation's territory. In addition to frequent incidents of political violence in various areas of the country, such as those in Karachi on May 12 and October 18, the delegation is deeply concerned about the persistent instability and lack of security in the FATA and southern districts of the NWFP. The delegation received reliable reports that threats have been made by religious extremists against the leaders of regional secular parties and moderate religious parties in NWFP. Voters and candidates in these regions must feel confident that they can safely exercise their rights to, without fear of retribution or intimidation. Currently, political parties are concerned about the possible postponement of the election in numerous areas. In addition, there are concerns that, as in past elections, there will be "no go" areas, which were considered unsafe for some parties to freely campaign.

The ECP has indicated a code of conduct will be instituted for political parties, with the aim of establishing clear guidelines for party activities and candidates during the campaign period and on election day. If effectively implemented, adherence to the code of conduct will be a welcome development as it could reduce the incidence of political violence around the elections. With concerted effort, election stakeholders could eliminate violence and instability from the electoral period and create an environment in which credible elections can be held.

## *Protecting the Rights of Women*

The constitution of Pakistan guarantees the right to vote for all citizens, including women. The delegation was troubled to learn about a recent by-election in the Baujar Agency of FATA where the contesting parties – both secular and religious – mutually agreed that women would be prohibited from casting votes. This coordinated mass disenfranchisement undermines the fundamental principle of democratic elections. The ECP has the authority to nullify such elections, but has not done so.

Concerns about the right of women to participate on election day have also been raised in other parts of the country, such as Balochistan and NWFP. The delegation received reliable reports that women in many areas have not had the opportunity to cast votes without fear or intimidation. In many instances, polling stations for women have not been adequately staffed and operated in full accordance with the law in past elections.

## **DOMESTIC ELECTION MONITORING AND INTERNATIONAL OBSERVING**

The delegation learned that the Free and Fair Election Network (FAFEN), a network of 26 civil society organizations, will be deploying 24,000 non-partisan election monitors in all 272 constituencies. With the use of mobile units, the FAFEN team will visit approximately 30,000 polling stations on election day. FAFEN also plans to monitor and report on violations of the code of conduct and it promotes political electoral reforms.

International observers will also be present during the upcoming elections. The delegation strongly supports these efforts and encourages the international observers to

coordinate their efforts with domestic election monitors. Moreover, given its size and the importance of these elections, Pakistan would benefit from the participation of a large number of international observation missions.

## **RECOMMENDATIONS**

The delegation offers the following recommendations in the spirit of international cooperation and with the hope that they will be helpful in promoting inclusive, transparent and credible elections:

### *Election Integrity*

The Election Commission should:

- develop a formal process of regular and timely consultations with the political parties and civil society sharing views on routine election procedures and policies; regular meetings should also be held with the political parties at the national and provincial levels to discuss security issues and identify areas expected to be especially troublesome as the elections approach;
- gain access to NADRA's database of identity card holders in order to strengthen the accuracy of the voters list;
- publish the final voters list in an electronic format, thereby avoiding the time-consuming printing of the voters list which narrows the window during which improvements can be prior to the calling of elections;
- establish procedures in a timely manner whereby domestic and international observers will be guaranteed access to all stages of the vote counting process;
- instruct that election results announced at the district level include a breakdown by polling station to improve the transparency of the vote tabulation;
- require polling officials at each polling station to post the results in a manner that is visible to the public immediately after the count at each station is concluded;
- revise the procedures for handling electoral disputes to ensure timely adjudication and if necessary, timely redress; and
- ensure adequate training for election day workers.

### *Governance*

- the government should take all necessary steps to prevent election-related violence and promptly investigate and prosecute all attempts to disrupt the electoral process;
- the involvement of the intelligence agencies in the electoral process must be terminated;
- the government should create a legal framework for the security forces, including intelligence services, requiring that they be politically neutral and not interfere in the political process in any way; such a framework should then provide the basis for parliamentary oversight to ensure compliance with the law;
- criminal laws should not be used to impede political activity and no law designed to protect public order should be selectively applied;
- the President should fill the two current vacancies on the ECP in full consultation with the political parties and civil society;



- the President should use the authority in the Constitution to establish a neutral care-taker Cabinet in consultation with political parties and civil society;
- the government should review the ban on political parties operating in FATA and work with tribal leaders and political parties to normalize the political situation in the tribal areas; and
- the government should cooperate with judicial inquiries investigating the killing and abduction of journalists and political party workers.

#### *Electoral Rights*

- the government should use its full authority to improve the law-and-order situation, particularly in FATA and southern districts of NWFP, to ensure that campaigning can take place prior to, and voting on, election day;
- political parties and other participants in the electoral process should adhere to a code of conduct and refrain from employing violence during the electoral period; and
- the government and police should use their fully authority to enforce the right of women to vote and the right of the media to cover the elections in all areas of the country.

#### *Election Coordination and Observation*

- coordination of all election-related efforts, including the work of the ECP should include specific timetables and benchmarks to ensure that resources are effectively and efficiently utilized; and
- the government, the ECP, and political parties should fully cooperate with domestic monitoring and international observation efforts.

For any questions, please contact Kathy Gest in Washington at +1 202 728 5535 or Sheila Fruman in Islamabad at +92 51 285 3548.





## **STATEMENT OF THE NDI PRE-ELECTION DELEGATION TO PAKISTAN**

*Islamabad, May 17, 2007*

This statement is offered by an international delegation organized by the National Democratic Institute (NDI), which visited Pakistan from May 13 to May 17, 2007. The delegation assessed the political environment and the framework for the upcoming elections for the national and provincial assemblies, expected in late 2007 or early next year.

The delegation included: David Collenette (Canada), former Minister of National Defence, Minister of Veterans Affairs and Minister of Transport; Peter Manikas (United States), NDI Senior Associate and Director of Asia Programs; Tioulong Saumura (Cambodia), Member of the National Assembly and member of the Steering Committee of the Sam Rainsy Party; Teresita Schaffer (United States), Director of South Asia Programs at the Center for Strategic and International Studies and former Ambassador to Sri Lanka; and Tony Worthington (United Kingdom), former Member of Parliament from the Labor Party. Sheila Fruman, director of NDI's Pakistan programs was the delegation's chief consultant. The delegation was also assisted by Program Officer Irtaza Abbas, Senior Program Officer Jumana Dalal and Executive Coordinator Mailis Orban.

The delegation sought to express the interest and concern of the international community in achieving democratic, civilian governance in Pakistan. It met with electoral and government officials, a broad spectrum of political party leaders and leaders from civic and human rights associations, as well as representatives of the news media and international organizations. The delegation offers its findings and observations in the spirit of international cooperation and recognizes that it is the people of Pakistan who will ultimately determine the meaningfulness of the upcoming elections. The delegation stresses that it did not seek to reach any final conclusions on the 2007 electoral process.

### **SUMMARY OF FINDINGS AND OBSERVATIONS**

The upcoming national elections are critical to the nation's future. They are important not only to the people of Pakistan, but to the international community as well. Pakistan is a nuclear power and an essential ally in the fight against terrorism. If the upcoming elections meet international standards and have the confidence of the people of Pakistan, they can provide the basis for returning power to civilian hands and the newly elected government can negotiate the proper role of the military in the nation's life. If the elections are tainted, they could lead to the strengthening of extremist elements, which can fill the void left by the marginalization of the

more moderate parties. Such elections could also further consolidate the role of the military in governing the nation.

For more than half of its life as an independent nation, Pakistan has been under military rule. Even when the government was led by civilian authorities, the military played a role in the nation's life that went well beyond its military responsibilities. In 1999, General Pervez Musharraf deposed the elected government of Nawaz Sharif, promising to lay the foundations of "true democracy." Much remains to be done, however, to attain that goal.

President Musharraf announced his intention to step down as Army Chief by late 2004, but has continued in both roles. Serving in both positions blurs the distinction between military and civilian authority that is fundamental to a democratic system. He has also expressed his intention to be re-elected as President by the legislative assemblies that will complete their term on November 15. This decision is controversial within Pakistan and could diminish public confidence in the upcoming elections.

The government has made progress in recent years in enhancing the participation of women in the political process. For example, the role of women in governance has been increased by reserving seats for them in local and national legislatures. The Hudood Ordinance, which regulates some cultural and family matters, was amended by the Protection of Women Act, providing women with greater freedom and more equal treatment under the law. The government has also recently announced that it will substantially increase funding for the nation's educational system, providing a stronger basis for an informed citizenry. These reforms are important advances; however, serious problems persist and much more needs to be done to fulfill the President's stated goal of building sustainable democratic institutions.

The press regularly publishes criticism of the government and provides coverage of opposition party activities. Recently, however, there have been well-documented reports of human rights abuses directed at critics of the regime, including journalists, especially in Balochistan and FATA, where a growing insurrection challenges government authority.

The Election Commission, whose members are appointed by the government, is widely viewed as lacking independence. The delegation identified three areas in election administration that give rise to particularly serious concerns: the preparation of voters lists; the procedures for aggregating voters from different polling stations; and the lack of timely adjudication and remedy of election disputes.

The government has also been accused of interfering with the judiciary, compromising its independence and the rule of law. There have been several demonstrations by the lawyers of the Bar Council, who at one point even refused to bring constitutional cases before the courts, questioning their ability to decide cases without government interference. On March 9, the President suspended the Chief Justice and referred him for disciplinary action, sparking demonstrations throughout the country. Protestors charged that the President's action was politically motivated. On the eve of this delegation's arrival, demonstrations--in which 38 persons were reported killed and many more injured--were taking place in Karachi to protest the government's suspension of the Chief Justice of the Supreme Court.

There is still time to take steps to rectify many of the problems this delegation has identified, but concerted efforts are needed if the process is to meet international standards. Our specific recommendations appear at the end of this statement.

## **POLITICAL ENVIRONMENT**

Two issues cast a shadow over the upcoming elections: the president's status as Army Chief and his intention to seek re-election under the current legislative assemblies.

In exchange for parliamentary approval of certain constitutional and legal changes President Musharraf initially made by decree, the President expressed his intention to step down as Army Chief by the end of 2004. However, he has continued to retain both posts. Serving in both roles undermines the fundamental premise of a democratic society that the military should operate under civilian control. This delegation believes that if Pakistan is to return to a democratic path, its political leadership must be civilian and the military returned to its role of defending the nation.

Controversy also surrounds the issue of whether the President will seek re-election by the outgoing legislative assemblies. These assemblies were produced through elections in 2002 that international and domestic election observers found to be seriously flawed. In the past, presidents have been selected by newly-elected assemblies. President Musharraf's dual status as President and Army Chief and a decision to hold the presidential election under the current assemblies are likely to further erode public confidence in the upcoming legislative elections.

President Musharraf's stated justifications for taking power in 1999 included corruption on the part of the political parties and a desire to establish true democracy. The record of accomplishment of party-led governments has not been impressive. There has been widespread dissatisfaction with the performance of political parties which have been criticized for corrupt practices and for failing to fulfill their promises to improve the conditions of ordinary Pakistanis, many of whom live in deep-seated poverty. The delegation notes, however, that the parties in Pakistan have been subject to manipulation by the government since the founding of the nation. Even the civilian-led governments from 1988-1999 were constrained by the military, which reserved the right to make decisions involving Pakistan's nuclear program and other issues concerning foreign policy. Since 1977, no civilian government has been allowed to complete its full term. Parties in Pakistan have had little opportunity to evolve into modern political organizations. A democratic transition would be impossible without the full participation of political parties. Despite legitimate criticisms of the parties, they are a critical component of democratic governance.

While the parties can often engage in open political activity, and frequently do so vigorously, laws banning rallies and meetings are sometimes unpredictably and inconsistently applied. Opposition parties complain that they have been effectively weakened by selectively applied laws and intimidation. They have expressed concern that the void left by Pakistan's moderate parties are being filled by extremist parties that have historically fared poorly in Pakistan's elections. The delegation also notes that Muttahida Majlis-e-Amal (MMA), a coalition of religious parties, was appointed as the Official Opposition in the National Assembly, even

though the Pakistan Peoples Party (PPP) had more seats and popular votes in parliament. This is contrary to normal parliamentary practice and further serves to marginalize the parties that have led past governments.

The delegation heard reliable reports that in the Northwest Frontier Province (NWFP) and Balochistan, government security forces, including intelligence agencies, have intimidated some opposition party members. This was done, apparently, in an attempt to get them to switch allegiances to parties allied with the government. The delegation learned that many journalists and activists critical of the current government have been abducted or disappeared.

There are now reserved seats for women in local government and in the national and provincial assemblies. Further, the Hudood Ordinance was amended to provide women greater personal freedom and access to the legal system. Nevertheless, many women activists state that political participation is still thwarted by local custom. In areas where tribal customs are dominant, the government tacitly accedes to pressures that prevent women from voting. In past elections, women's polling stations have been targeted for fraud on election day.

Political participation is hindered by a law passed in 2002 that requires that candidates for the national and provincial assemblies hold a Bachelor's Degree or its equivalent. This prevents 90% of the population from standing for office. The law is also applied in a fashion that seems to favor particular parties and candidates. Madrassa certificates, for example, can be substituted for university degrees, providing an advantage to the religious parties.

## **LEGAL FRAMEWORK AND RULE OF LAW**

The independence of the judiciary and confidence in the rule of law are essential ingredients of a democracy and are critical in ensuring fair elections. Both, however, are under challenge in Pakistan. Since the 1999 coup, many Pakistanis believe that the independence of the judiciary has been compromised and the rule of law eroded.

The legal framework for the election is governed by Pakistan's constitution, presidential decrees, the Code of Criminal Procedure, the Frontier Crimes Regulation Act (FCRA), the Political Party Law and other laws and regulations.

The constitution permits the president to establish a care-taker Cabinet to oversee the election period. The delegation understands that the government is considering doing so. We urge the President to establish a care-taker government in consultation with political parties and civil society. Pakistan's constitutional provisions on a care-taker appear to involve replacing only the prime minister and cabinet ministers. The president's powers would not be affected, limiting the impact of such an action.

In 2002, the Legal Framework Order (LFO) was issued granting the president sweeping powers. These included the right to amend the constitution unilaterally, to issue orders that could not be challenged in court and to dismiss legislative assemblies. The LFO also established a National Security Council, dominated by the military, to oversee parliament. Many provisions of the LFO have been incorporated into the constitution or enacted as legislation.

Section 144 of the Code of Criminal Procedure permits local governments to issue orders banning political activity for up to two months. This law, which dates back to 1898, has long been used by the government to curtail political activity; the law is now being selectively applied against opposition parties.

The leaders of both of the parties that previously led the government, Benazir Bhutto, of the Pakistan Peoples Party (PPP) and Nawaz Sharif, of the Pakistan Muslim League-Nawaz (PML-N), have been charged with criminal offenses and currently live in exile. While NDI cannot judge the merit of these charges, many in Pakistan believe that they are politically motivated. After the 1999 coup, the Political Party Law was amended to prevent anyone from being prime minister for more than two terms, barring the two party leaders from again serving in that office. This law is inconsistent with customary practice in parliamentary systems throughout the world. Many Pakistanis will not view the upcoming national elections as credible without the participation of the leaders of two major political parties.

The FCRA prohibits political parties from campaigning or operating an office in the Federally Administered Tribal Areas (FATA). In addition, candidates from FATA may not register by political party or hold rallies. The delegation was told by secular and religious parties that permitting political activity by all political parties in FATA may help to normalize the political situation in the tribal areas.

Political interference in the judiciary has long been a problem in Pakistan; the judiciary is now being undermined in several ways. Five judges, for instance, resigned after being asked to take an oath pledging to uphold the LFO, which suspended the constitution. On some occasions, lawyers have boycotted the courts because of their lack of faith that cases would be decided without interference from the government. A 2003 White Paper, issued by the Pakistan Bar Council, stated that the judiciary had “relegated itself to the position of subservience to the military rulers.”

The delegation notes that confidence in the judiciary is critical for the upcoming elections. Four of the five members of the Election Commission are drawn directly from the High Court. Returning Officers, who compile and report the election results, are also drawn from the judicial system. Election Tribunals, which handle election complaints, are staffed by judges. Grievances in election cases are also heard by the High Court and the Supreme Court. The Supreme Court’s independence, already questioned, is being tested by the recent suspension of the Chief Justice. Demonstrations over the past two months allege that the suspension was politically motivated. The suspension has been referred to the Supreme Judicial Council.

As the election approaches, more attention should be given to the role of the legislature in overseeing the electoral process. There has been little progress in setting up cross-party committee structures that would help to strengthen institutions such as the electoral commission. Legislators have a common interest in creating confidence in an open, democratic framework. We urge the National Assembly and Senate to establish a Committee of Inquiry to make recommendations for improvements in the conduct of elections.

## **MEDIA**

While the government directly owns Pakistan Television and Radio Pakistan, the only national non-fee broadcasters, private television stations abound. Numerous Urdu and English dailies and weeklies, several local and international radio and television stations, as well as internet-based media operate independently. Newspapers and electronic media are able to publish criticisms of the government and cover opposition activities, and regularly do so. Pakistani law provides for freedom of speech and of the press, and citizens are generally free to discuss public issues and criticize the government.

Nevertheless, the delegation learned that some journalists have been intimidated and practice self-censorship, especially on topics specifying government instances of wrongdoing. The killing, disappearances and intimidation of investigative journalists, especially those covering unrest in Balochistan and FATA, have led several international and domestic media organizations to find Pakistan one of the most dangerous countries for journalists.

Earlier this month, the Committee to Protect Journalists, based in New York, declared Pakistan one of the top ten countries where press freedom has most deteriorated. The delegation learned that private cable stations covering protests against the Chief Justice's suspension have suffered various forms of state intimidation, including being pulled off the air and the ransacking of offices. President Musharraf publicly apologized for one such attack on a television station in March of this year. However, on May 12, as the riots unfolded in Karachi, many Pakistanis watched as live coverage showcased the offices of Aaj TV being fired upon for several hours. Despite pleas for help from broadcasters, law enforcement agencies failed to intervene.

## **ELECTION COMMISSION**

Under Pakistan's constitution, the Election Commission of Pakistan (ECP) is comprised of five persons: the Chief Election Commissioner and four Commissioners, one from each of the nation's provinces. All are appointed by the President. The Chief Election Commissioner must be a person who is, or has been, a judge of the Supreme or High Court and is qualified to be appointed as a judge of the Supreme Court. The term of Chief Election Commissioner is three years from the day he assumes office. The National Assembly may extend the term of the Commissioner by a period not exceeding one year. The Chief Election Commissioner enjoys the same privileges as of the Chief Justice of Pakistan. Each one of the four members of the ECP must be a High Court Judge and appointed in consultation with the Chief Justice of the High Court of the province concerned and the Chief Election Commissioner.

Because ECP members are appointed by the President, many opposition parties and members of civil society question their independence and ability to fairly administer the upcoming elections. Broad public confidence in the ECP is integral to public acceptance of the results of the upcoming election. In the long term, ensuring the independence of the ECP may require constitutional changes. However, in the shorter term, public confidence in the ECP would be enhanced through regular consultations with the political parties and civil society. The delegation also believes the President should consult widely with political parties and civil



society before filling the two vacancies on the ECP that currently exist.

The delegation identified three broad categories of problems with elections procedures: the voters list; opportunities for manipulation at certain stages of the counting procedures; and, in the event election disputes are referred to the judiciary, the lack of timely opportunity for redress.

The delegation notes that the voter registration process is a particular area of concern. These issues include a lack of training for door-to-door enumerators and unclear requirements for registration coupled with insufficient public notification and voter education. Political parties expressed concern about the preparation of the preliminary voters list. The list will be available at 45,000 display centers throughout the nation for a period of 21 days. This period is likely to be insufficient because of the large number of people believed to have been left off the list. Copies of the list will not be available to the parties outside of the display centers. This makes the task of party-led registration drives, and civil society examination of the voters list, much more difficult.

There is inadequate information provided by the ECP on the registration process. The timetable and requirements for registration have changed on several occasions since they were first announced, and parties, voters, and the public at large have received little information about the need to register, how to register or eligibility requirements. Insufficient information is publicly available on how voters may be able to register or appeal to the ECP should they find the voters list in error. Initially expected to be completed and displayed in January, the voters list is considerably behind schedule. This is of considerable importance; one election expert told the delegation that up to 10 million persons should be added to the list.

The delegation is concerned about the ECP's preparedness based on findings by election monitors in past elections. In 2002, international and domestic observers were troubled by the lack of training for poll workers, a lack of supplies, a failure to guarantee secrecy during the vote and the relocation of polling stations without adequately informing the electorate.

Political parties expressed an urgent need to review the process for adjudicating electoral complaints. In past elections, there have been long delays in resolving such complaints. The delegation was told that some cases filed in connection with the 2002 elections still remain to be adjudicated.

## **DOMESTIC ELECTION MONITORING AND INTERNATIONAL OBSERVING**

Domestic and international election observing can play a crucial role in the upcoming elections. Non-partisan election observers have helped to deter electoral fraud and build public confidence in the electoral process throughout the world. These activities will be critical in Pakistan because of the problems that have been identified during past elections. Since several parties and civil society organizations have identified the ballot counting process as especially vulnerable to abuse, monitoring the process at the polling station, where ballots are first counted, and at the district level, where the ballots are compiled and tabulated, will be especially important. The delegation hopes that these activities will receive the full support of the government, the ECP and political parties.

## CONCLUSION AND RECOMMENDATIONS

The delegation would like to express its appreciation to everyone with whom it met. Without their taking time and sharing their knowledge and insights, the delegation would not have been able to accomplish its work.

Many of the themes developed in the report--the need to strengthen political parties, permit free political activity, establish accountable, democratic institutions and define the proper role of the military--are hardly new in Pakistan. NDI began identifying these issues almost 20 years ago when it first observed elections in Pakistan in 1988.

Pakistan stands at a critical juncture and the stakes are very high. If the upcoming elections are considered credible by the people of Pakistan, they could return the nation to the path toward democracy. A new, democratically-elected legislature could prepare the way for the return to civilian rule. Tainted elections that are not considered to reflect the will of the people could lead to disillusionment and instability. The delegation hopes that the government and those involved in the election will do everything needed to ensure that the elections are a success.

The delegation offers the following recommendations in the spirit of international co-operation and with the hope that they will be helpful in promoting fair and credible elections:

### *Contextual Issues*

- the President should resolve as soon as possible the issue of holding both the posts of Chief of Army and President; holding both posts blurs the distinction between military and civilian authority that is fundamental to a democratic system; and
- the issue of whether the president will be elected by the current assemblies should immediately be referred to the courts for resolution.

### *Legal Framework*

- the President should use the authority in the Constitution to establish a neutral care-taker Cabinet in consultation with political parties and civil society;
- the law preventing anyone from serving as prime minister for more than two terms should be repealed;
- the independence of the judiciary should be inviolate and the government should facilitate efforts of the Bar Council to ensure that its independence is not breached;
- the President should fill the two current vacancies on the ECP through a process of full consultation with the political parties and civil society;
- the parliament should establish a cross-party Committee of Inquiry to make recommendations concerning the conduct of elections. These recommendations should include provisions for long term parliamentary scrutiny of the electoral process;
- criminal laws should not be used to impede political activity and no law designed to protect public order should be selectively applied;

- the government should review the ban on political parties operating in FATA and work with tribal leaders and political parties to normalize the political situation in the tribal areas;
- the government should use its full authority to enforce the right of women to vote in all areas of the country;
- the government should cooperate with judicial inquiries investigating the killing and abduction of journalists and political party workers; and
- the government should issue and publicize orders to security forces, including intelligence services, that they must be politically neutral and not interfere in the political process in any way.

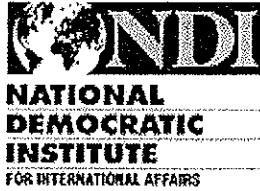
### *Electoral Framework*

The Election Commission should:

- develop a formal process of regular and timely consultations with the political parties and civil society sharing views on election procedures and policies;
- establish a timeline and clear requirements for the voter registration process, and make it public and widely available;
- make copies of the voters list available to political parties, on compact disk if possible, and extend the display period to permit as many eligible voters to register as possible;
- ensure adequate training for election day workers;
- require polling officials at each polling station to post the results in a manner that is visible to the public immediately after the count at each station is concluded; and
- revise the procedures for handling electoral disputes to ensure timely adjudication and if necessary, timely redress.

For any questions, please contact Tom Barry at (202) 728-5691 or Jumana Dalal (202) 728-5658.





**TESTIMONY OF SENATOR TOM DASCHLE TO  
THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**

*Thursday, December 20, 2007*

Rayburn House Office Building Room 2154

Mr. Chairman, thank you for inviting me here today to speak on behalf of the National Democratic Institute (NDI) regarding the prospects for free and fair elections in Pakistan. I am a member of the Board of Directors of NDI and was pleased to be able to lead a pre-election assessment to Pakistan for NDI from October 17 to 21.

NDI has been actively involved in supporting the electoral process in Pakistan for nearly two decades. The Institute organized international delegations to observe the national and provincial elections in 1988, 1990, 1993, and 1997. This year, NDI is implementing a program to train political party representatives to monitor polling stations across the country on election day. The Institute also conducted two pre-election assessment missions to Pakistan, both prior to the imposition of martial law. The first was held in May and I led the second, held in October. These missions identified a number of critical issues that needed to be addressed by the Pakistani government to improve the inclusiveness and credibility of the polls. The most recent delegation identified the following critical issues affecting these elections:

- the high incidence of election-related violence;
- the killing and abduction of journalists and political party workers;
- the infringement of the rights of women to vote;
- the ban on political parties operating in the Federally Administered Tribal Areas;
- the lack of regular consultation by the election commission with the political parties and civil society on election procedures and policies; and
- the inaccuracy of the voters' list.

President Pervez Musharraf's recent retirement from his military post and the lifting of the state of emergency on Saturday have been welcome developments, but much remains to be done before the upcoming polls could be viewed as free and fair by international standards. In fact, we urge the members of this committee not to be distracted by President Musharraf taking off his uniform. It has not undone the damage of eight years of military rule to the basic institutions of rule of law and democracy in Pakistan.

Similarly, the lifting of the state of emergency is not alone sufficient for ensuring free and fair elections. It is only the first of many steps the government must take to avoid a further deepening of Pakistan's current crisis.

Among the serious impacts of the recent state of emergency was the severe erosion of the independence of Pakistan's judiciary. Musharraf's replacement of several Supreme Court justices who threatened to rule his reelection unconstitutional undermines the democratic principle of checks and balances. Without the restoration of Chief Justice Iftikhar Chaudhry and the other deposed justices, public confidence in the ability of the judicial system to act independently and ensure the transparency of the electoral process will be significantly curtailed.

Lingering restrictions on the press and opposition political parties also pose a threat to free and fair elections in Pakistan. Vibrant independent media and political competition are important elements in free society. While many restrictions imposed during the state of emergency have since been lifted, one major television station continues to be prohibited from broadcasting while others face strict limitations on the content of their political coverage. Many opposition supporters remain under arrest while their parties do not have the freedom to campaign freely.

In addition, both of NDI's assessments identified a host of very serious and basic issues that, if not addressed, would adversely affect the election. Virtually nothing has been done since our first report to strengthen the prospects for free and fair elections. While the government has allowed the return of two former prime ministers – Benazir Bhutto and Nawaz Sharif – after years of exile, Sharif has been barred from standing for a seat in parliament, thus diminishing his party's ability to fully participate in these elections. The other issues identified by the NDI delegations, which remain unaddressed today, are still fundamental to an inclusive, credible, and transparent electoral process.

Only elections that are viewed as legitimate by the people of Pakistan can resolve the instability that has long plagued their country. Robust institutions, an independent judiciary, free and independent media, vibrant political parties, and transparent elections are all fundamental to a stable and democratic future for Pakistan.

Thank you.