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PAKISTAN

MUSHARRAF'S RESIGNATION

Executive Summary

On October 12, 1999, General Pervez Musharraf staged a coup d'etat and became the Chief Executive of Pakistan. He then appointed himself President in 2001. In 2007, following his re-election as President and while the Pakistan Supreme Court was considering a petition on the constitutional validity of the election, he suspended the Constitution, dismissed the Supreme Court, and declared a State of Emergency. The Election Commission then confirmed his re-election. After being sworn in for a five-year term as President, Musharraf terminated the State of Emergency in November 2007 and announced that a general election would be held in February 2008. Musharraf's party, the PML-Q, was badly defeated in the election, with the slain leader Benazir Bhutto's party, the PPP, winning the largest number of seats and the PML-N winning a close second in the National Assembly. After being threatened with impeachment by these two parties, Musharraf announced his resignation from the presidency on August 18, 2008. Mohammedmian Soomro, Chairman of the Senate, took over as acting President, a responsibility given to him by the Constitution, until Asif Ali Zardari, co-chairman of the PPP and widower of Benazir Bhutto, was elected President on September 6, 2008.

I. Introduction

On October 12, 1999, Pakistan's elected Prime Minister Nawaz Sharif dismissed General Pervez Musharraf, then Chief of Army Staff, while Musharraf was out of the country on a visit to Sri Lanka. Senior army generals refused to obey the dismissal orders, prompting Musharraf to fly back to Pakistan the same day on a commercial aircraft. Immediately upon landing, Musharraf staged a coup d'etat and ousted the elected government.

On October 14, 1999, he issued a Proclamation of Emergency, retroactive to October 12, 1999, which resulted in the dismissal of the Prime Minister and the provincial chief ministers. On the same day, he assumed the title of Chief Executive pursuant to Provisional Constitutional Order No. 1.¹ When the army takeover was challenged, the Supreme Court of Pakistan validated it, as with previous takeovers, on the basis of the doctrine of state necessity because of then prevailing circumstances.² The court also observed that general elections would be conducted within three years of the order, to restore democracy in the country.

¹ Provisional Constitutional Order No. 1 of 1999, available at http://www.pakistani.org/pakistan/constitution/post_12oct99/pco1_1999.html (last visited Oct. 6, 2008).

² Syed Zafar Ali Shah v. General Prevez Musharraf, Chief Executive of Pakistan, PLD, 2000 S.C. 869.

When the incumbent President resigned in 2001, Musharraf appointed himself President of Pakistan and arranged to be elected as President for an additional five years by conducting a referendum not warranted by the Constitution.³ In the referendum, citizens were asked to vote for Islamic rule and told that a “yes” vote would be construed as a vote for Musharraf for a five-year term. The citizens challenged his election by referendum under article 184 of the Constitution, but the Supreme Court dismissed all of these petitions on April 27, 2002, as premature.⁴

II. 2007: The Year of Problems

Musharraf's problems began in 2007 when he concluded that the independence of the Chief Justice of Pakistan (CJP), who had ruled against the government that year in a number of cases, was a challenge to his authority.⁵ Therefore, at his meeting with the CJP on March 9, 2007, Musharraf asked the CJP to resign, ostensibly because he had received a number of complaints of misconduct against the CJP.⁶ Upon the CJP's refusal to resign, Musharraf suspended him from the court⁷ and referred the matter to the Chief Judicial Council for consideration of action based on an alleged abuse of authority by the CJP. At the conclusion of the hearing on the matter, the full bench of the Supreme Court honorably reinstated the CJP. The result not only represented a setback for Musharraf, it also caused a furor among lawyers, who led a movement against presidential interference with the judiciary.

Upon reinstatement, the CJP continued to exercise his independence and rendered additional decisions against the government.⁸ Musharraf was so infuriated with the CJP's judicial activism that, on November 3, 2007, he issued a Proclamation of Emergency (POE)⁹ and a Provisional Constitution Order¹⁰ (PCO), with the stated objective of “end[ing] judicial activism.” Pursuant to the PCO, the Constitution was suspended and those judges who failed to

³ Chief Executive's Order No. 12 of 2002.

⁴ Constitution Petition No. 15 of 2002 (Qazi Hussain Ahmed, Amir Jamaat-i-Islami, petitioner), and Constitution Petition No. 22 of 2002 (Syed Zafar Ali Shah, petitioner), available at http://www.supremecourt.gov.pk/web/user_files/File/JR_Constitution_Petition_No._15_17-24_and_512_of_2002.pdf (last visited Oct. 6, 2008).

⁵ Adil Najam, *President Removes the Chief Justice, Why?* ALL THINGS PAKISTAN, Mar. 9, 2007, <http://pakistaniat.com/2007/03/09/pakistan-president-chief-justice-removes-dismiss-judiciary-freedom-ju> (last visited Sept. 29, 2008).

⁶ The Law Library of Congress, *Suspension and Reinstatement of the Chief Justice of Pakistan: From Judicial Crisis to Restoring Judicial Independence*, <http://www.loc.gov/law/help/pakistan-justice.html> (last visited Oct. 6, 2008).

⁷ Najam, *supra* note 5.

⁸ THE LAW LIBRARY OF CONGRESS, *PAKISTAN: CONSTITUTIONALITY OF THE PROCLAMATION OF EMERGENCY*, <http://www.loc.gov/law/help/pakistan-emergency.html> (last visited Oct. 6, 2008).

⁹ *Proclamation of Emergency*, THE DAWN, Nov. 4, 2007 (text of Proclamation), available at <http://www.dawn.com/2007/11/04/top16.htm> (last visited Oct. 6, 2008).

¹⁰ Ihtasham ul Haque, *Emergency To End Judicial Activism*, THE DAWN, Nov. 4, 2007, available at <http://www.dawn.com/2007/11/04/top12.htm> (last visited Oct. 6, 2008).

take a new oath of office prescribed by the PCO were subject to dismissal.¹¹ This led to the actual dismissal of the entire Supreme Court, which set the nation afire and invited international condemnation.

III. General Elections

In a bid to democratize governance, Musharraf terminated the POE on November 15, 2007, and announced that a general election would be held in February 2008. He also confirmed his pledge to resign as army chief.¹² In keeping with these promises, on November 28, 2007, Musharraf handed the command of the army to General Kayani and was sworn in as a civilian leader the following day. Due to the assassination of the principal opposition leader, Benazir Bhutto, on December 27, 2007, a general election was held on February 18, 2008.

Musharraf's party, PML-Q,¹³ was routed in the election, which gave the opposition a resounding victory.¹⁴ The two opposition parties' leaders, Asif Ali Zardari of the Pakistan People's Party (PPP) and Nawaz Sharif of the PML-N,¹⁵ immediately announced that they would impeach Musharraf if he failed to resign.

IV. Impeachment

In an effort to pacify the opposition and ward off any impeachment move, Musharraf offered to work with the opposition leaders to bring calm to the nation's political arena. However, the opposition was not satisfied with anything short of Musharraf's resignation and thus introduced resolutions of impeachment against him in the provincial assemblies, all of which were controlled by the opposition. Unable to face the humiliation of defeat by impeachment, Musharraf, who had vowed never to surrender to his political foes, resigned on August 18, 2008.¹⁶

Mohammedmian Soomro, Chairman of the Senate in the National Parliament, took over the same day as Acting President of Pakistan to fulfill his constitutional responsibility.¹⁷ The Election Commission of Pakistan (ECP) began preparing for the presidential election.¹⁸

¹¹ *Gen Musharraf Promulgates Provisional Constitution Order*, PAKISTANTIMES.NET, Nov. 4, 2007, <http://pakistantimes.net/2007/11/04/top1.htm> (last visited Sept. 29, 2008).

¹² Musharraf Announces Election Before Feb. 15, 2008, ABC News, Nov. 8, 2008, <http://www.abc.net.au/news/stories/2007/11/08/2086028.htm>

¹³ The PML-Q, also known as the "King's Party," formed in 2001 when the original Pakistan Muslim League (PML) split into several parties. The party's main objective was to maintain General Musharraf in power. The letter "Q" stands for Quaid-e-Azam, who was the leader of the PML at the formation of Pakistan in 1947.

¹⁴ Raja Asghar, *PPP, PML-N In Singh of Magical Number*, THE DAWN, Feb. 20, 2008, <http://www.dawn.com/2008/02/20/top1.htm> (last visited Oct. 6, 2008).

¹⁵ The PML-N is another offshoot of the former Pakistan Muslim League.

¹⁶ Raja Asghar, *Beyond Musharraf: 'Impeachment Charges Can't Stand'*, THE DAWN, Aug. 19, 2008, available at <http://www.dawn.com/2008/08/19/top1.htm> (last visited Oct. 6, 2008).

¹⁷ 1973 PAKISTAN CONST. art. 49.

V. Election of New President

The Constitution requires that an election to fill a vacancy in the office of President must be held within 30 days of the vacancy.¹⁹ For presidential elections, the Second Schedule of the Constitution and the Presidential Election Rules, 1988,²⁰ provide that the Parliament, comprising the National Assembly, the Senate, and the four provincial assemblies, form the electoral college.

Each member of the National Assembly and the Senate – a total of 442 members – has one vote. Under the formula applicable to members of the provincial assemblies, the vote cast by each member is divided by the total membership of each assembly and then multiplied by 65. Thus, each member of the assembly in the Province of Punjab has $65/370=0.176$ votes; in the Sindh Province, each member has $65/166=0.392$ votes; in the North-West Frontier Province Assembly, each member has $65/124=0.524$ votes; and in the Balochistan Province Assembly, which, as the least populous province, served as the base for the formula, each member has $65/65=1$ vote.

VI. Presidential Candidates

The Election Commission of Pakistan announced that the presidential election would be held on September 6, 2008. After nominations, scrutiny, and withdrawals, the Election Commission issued the final list of remaining candidates for the presidential election: (1) Asif Ali Zardari, PPP Co-Chairman and husband of the slain PPP leader, Benazir Bhutto; (2) Mushahid Hussain Sayed, Secretary General of PML-Q (Musharraf's party); and (3) renowned judge Saeed-uz-Aaman Siddqui of the PML-N party.²¹

When vote counting was finalized on September 6, 2008, the ECP declared Asif Ali Zardari President of Pakistan, after he garnered more than a two-thirds majority of the 1,170-member electoral college of Parliament, with 702 votes.

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¹⁸ Irfan Ghauri, *ECP Waiting for Government Signal to Announce Presidential Election*, THE DAILY TIMES, Aug. 20, 2008, http://www.dailytimes.com.pk/default.asp?page=2008%5C08%5C20%5Cstory_20-8-2008_pg7_18 (last visited Oct. 6, 2008).

¹⁹ 1973 PAKISTAN CONST. art. 41(5).

²⁰ The Presidential Election Rules, 1988, available at <http://www.ecp.gov.pk/PElectionsrules.pdf> (last visited Oct. 6, 2008).

²¹ *Three in Run For Presidential Election in Pakistan*, PAKISTANTIMES.NET, Aug. 31, 2008, <http://pakistantimes.net/2008/08/31/top1.htm> (last visited Oct. 6, 2008).