



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 caretaker 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.