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PAKISTANI ELECTIONS: WILL THEY BE FREE AND FAIR OR FUNDAMENTALLY FLAWED?

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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PAKISTANI ELECTIONS: WILL THEY BE FREE AND FAIR OR FUNDAMENTALLY FLAWED?

THURSDAY, DECEMBER 20, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:03 a.m., in room 2154, Rayburn House Office Building, Hon. John F. Tierney (chairman of the subcommittee) presiding.

Present: Representatives Tierney, Yarmuth, and Van Hollen.

Staff present: Dave Turk, staff director; Davis Hake, clerk; Andy Wright, professional staff member; A. Brooke Bennett, minority counsel; Christopher Bright, minority professional staff member; Todd Greenwood, minority legislative assistant; and Nick Palarino, minority senior investigator and policy advisor.

Mr. TIERNEY. Good morning. A quorum being present, the Subcommittee on National Security and Foreign Affairs hearing entitled, "Pakistani Elections: Will They Be Free and Fair or Fundamentally Flawed," will come to order.

I ask unanimous consent that the chairman and ranking member of the subcommittee be allowed to make opening statements. Mr. Yarmuth, we're happy to have an opening statement from you as well, when it comes to that, if you'd like. Without objection, so ordered.

I ask unanimous consent that the hearing record be kept open for 5 business days so that all members of the subcommittee will be allowed to submit a written statement for the record. Without objection, so ordered.

I want to thank our witnesses for coming here today and assisting us in this hearing. We're going to continue our sustained oversight of U.S. policy toward Pakistan.

Here in the States, we're well into our longest-ever Presidential campaign; and the future course of U.S. national security is at front and center as an issue. On January 8th, as New Hampshire voters brave the cold to vote in the first of the Nation's primary, another election that very same day, a parliamentary election halfway around the world in Pakistan, will also have a profound effect and consequences on U.S. national security.

We've noted at previous hearings that Pakistan is at a crossroads. After a year of extremist violence spreading throughout its western regions and ambivalent military response and increasing

pressure from pro-democracy groups, President Musharraf declared a state of emergency on November 3rd.

Pakistan's emerging civil society appeared to be the main target. President Musharraf sacked judges who refused to surrender their independence. He jailed lawyers, human rights advocates and political opposition leaders. He banned public political gatherings. He muzzled the nation's independent media; and, worst of all, he turned Pakistan's guns on its civil society instead of on the Taliban and al Qaeda.

The Bush administration initially made some gestures to pressure President Musharraf to reverse course. Ambassador Ann Patterson, for example, made very important and visible efforts to highlight the detention of lawyers and the crackdown on independent media. However, the administration, especially recently, has appeared to undermine the pro-democracy message.

Deputy Secretary of State John Negroponte and Richard Boucher continue to refer to Musharraf as an "indispensable" ally. President Bush said that President Musharraf "hadn't crossed any lines" by imposing the state of emergency. Just 2 weeks ago, Ambassador Boucher referred to the state of emergency as "a bump in the road."

I'm concerned that such statements greatly undermine U.S. credibility with the Pakistani people. We should never forget that the Pakistani people are indispensable and our long-term ally, not necessarily one leader, whether it be President Musharraf or anyone else.

Over the last several weeks, there have been some positive developments. President Musharraf resigned as Army Chief; the leaders of the two mainstream opposition parties, Benazir Bhutto and Nawaz Sharif, are now back in Pakistan; and President Musharraf revoked the state of emergency just this past weekend.

Still, much of the damage remains. Judges have not been reinstated, media outlets now operate under a code of conduct restricting criticism of the government, leading opposition lawyers remain under arrest, the election commission lacks independence, the voter rolls continue to inspire little confidence, and evidence mounts that raises serious concerns about President Musharraf using the power of the state to gain unfair advantage in the elections.

For example, this is a photograph—shown on the screen over there—that was taken last week depicting an armed Pakistani security official actually posting signs on behalf of President Musharraf's political party, the PML-Q.

There is also evidence that the crackdown against civil society continues, notwithstanding formal revocation of the state of emergency. This picture on the screen is of security forces beating a woman at a peaceful protest taken just a few days ago. We note that this confrontation happened after the state of emergency was purportedly lifted.

Taking all of this into account, there are grave concerns and many questions about the prospects for free and fair parliamentary elections less than 3 short weeks from now on January 8th.

How will the code of conduct imposed on the media allow the kind of unbiased political expression necessary for a free and fair election?

How much of a chilling effect will there be on a robust political opposition when activists continue to fear crackdowns and arrests?

How accurate are the voter rolls going into this election and what effect will Nawaz Sharif's ineligibility to stand for election have?

How will political parties campaign in the western regions of the country that have been inflamed by Taliban and al Qaeda violence?

How will the removal of judges unwilling to go along with President Musharraf and the lack of an independent election commission hamper the ability to ward off and root out corruption and unfair practices at the polls?

We also think it merits taking a few minutes now before the heat of the election day itself to discuss the following:

First, what standards must be met for an election to be deemed free and fair? What is the dividing line between minor problems and massive election fraud?

Second, how should the United States react if the international community and credible election observers deem it to be a fundamentally flawed election?

I look forward to engaging with our distinguished panel that is before us today about these particular questions. I want to thank all of you for sharing your expertise with the Congress and with the American people. In particular, I look forward to hearing your experiences, since you have closely monitored the buildup to these Pakistani parliamentary elections with business there in the not-too-distant past. So thank you.

And, Mr. Yarmuth, if you have some comments, we'd love to here those as well.

[The prepared statement of Hon. John F. Tierney follows:]

Opening Statement of Chairman John F. Tierney
"Pakistani Elections: Will They Be Free and Fair or Fundamentally Flawed?"

December 19, 2007

Good morning. Today the Subcommittee on National Security and Foreign Affairs continues our sustained oversight of United States policy toward Pakistan.

Here in the States we are well into our longest-ever Presidential campaign, and the future course of U.S. national security is front and center. On January 8th, as New Hampshire voters brave the cold to vote in the first-in-the-nation primary, another election that very same day – a parliamentary election half-way around the world in Pakistan – will also have profound consequences for U.S. national security.

As I noted at a previous hearing, Pakistan is at a crossroads. After a year of extremist violence spreading throughout its western regions, an ambivalent military response, and increasing pressure from pro-democracy forces, President Musharraf declared a "state of emergency" on November 3.

Pakistan's emerging civil society appeared to be the main target. President Musharraf sacked judges who refused to surrender their independence. He jailed lawyers, human rights advocates, and political opposition leaders. He banned public political gatherings. He muzzled the nascent independent media. Worst of all, he turned Pakistan's guns on its civil society instead of on the Taliban and al Qaeda.

The Bush Administration initially made some gestures to pressure President Musharraf to reverse course. Ambassador Anne Patterson, for example, made very important and visible efforts to highlight the detention of lawyers and the crackdown on independent media.

However, the Administration – especially recently – has appeared to undermine the pro-democracy message.

Deputy Secretary of State John Negroponte and Assistant Secretary of State Richard Boucher, for example, continue to refer to Musharraf as an "indispensable" ally. President Bush said that President Musharraf "hadn't crossed any lines" by imposing the state of emergency. And just two weeks ago, Ambassador Boucher referred to the state of emergency as, and I quote, "a bump in the road."

I fear that such statements greatly undermine U.S. credibility with the Pakistani people. We should never forget that the Pakistani people are our "indispensable" and long-term ally, not necessarily any one leader, whether it be President Musharraf or anyone else.

Over the last several weeks, there have been some positive developments: President Musharraf resigned as Army Chief; the leaders of the two mainstream opposition parties

– Benazir Bhutto and Nawaz Sharif – are now back in Pakistan; and President Musharraf revoked the state of emergency just this past weekend.

However, much of the damage remains. Judges have not been reinstated. Media outlets now operate under a "code of conduct" restricting criticism of the government. Leading opposition lawyers remain under arrest. The election commission lacks independence. The voter rolls continue to inspire little confidence. And, evidence mounts that raises serious concerns about President Musharraf using the power of the state to gain unfair advantage in the elections.

For example, here's a photograph taken last week depicting an armed Pakistani security official posting signs on behalf of President Musharraf's political party, the PML-Q.

There is also evidence that the crackdown against civil society continues, notwithstanding formal revocation of the state of emergency. This picture of security forces beating women at a peaceful protest was taken just a few days ago. Note that this confrontation is happening after the state of emergency was purportedly lifted.

Taking all this into account, I have grave concerns – and many questions – about the prospects for "free and fair" parliamentary elections less than three short weeks from now on January 8:

• How will the "code of conduct" imposed on the media allow the kind of unbiased political expression necessary for a free and fair election?

• How much of a "chilling effect" will there be on robust political opposition when activists continue to fear crackdowns and arrests?

• How accurate are the voter rolls going into this election?

• What effect will Nawaz Sharif's "ineligibility" to stand for election have?

• How will political parties campaign in the western regions of the country that have been inflamed by Taliban and al Qaeda violence?

• How will the removal of judges unwilling to go along with President Musharraf and the lack of an independent election commission hamper the ability to ward off and root out corruption and unfair practices at the polls?

I also think it merits taking a few minutes now – before the heat of election day itself – to discuss the following:

• First, what standards must be met for an election to be deemed "free and fair"? What is the dividing line between minor problems and massive election fraud?

• Second, how should the U.S. react if the international community and credible election observers deem it to be a fundamentally flawed election?

I look forward to engaging with our distinguished panel before us today on these vital questions.

I want to thank you all for sharing your expertise with the Congress and the American people. In particular, I look forward to learning from your experiences having closely monitored the build-up to these Pakistan parliamentary elections.

Mr. YARMUTH. Thank you, Mr. Chairman. I really don't have too much.

I want to thank you for and commend you for holding this hearing. It is a very important topic, and I'm particularly interested in an assessment of just what the risks and the possibilities are from U.S. relationships in Pakistan. Because I've seen in a number of cases throughout many years that there are usually a lot of unintended consequences from our involvement, our relationships within a country in terms of the results of elections and the perception of the United States as a result of that. So I'm very interested in the witnesses' testimony and the discussion that we'll have.

Thank you very much.

Mr. TIERNEY. Thank you, Mr. Yarmuth.

The subcommittee will now receive testimony from the witnesses that are here with us today. I want to begin by introducing each of the witnesses on the panel.

We have, starting from my left, Senator Thomas A. Daschle, who is a former two-time Senate majority and minority leader in the Senate. Senator Daschle recently co-authored a pre-election assessment report after he had led a team to Pakistan on behalf of the National Democratic Institute.

Mr. Thomas E. Garrett is the regional program director for the Middle East and North Africa for the International Republican Institute. The IRI was awarded the election observer grant on behalf of the U.S. Government and released a survey of the Pakistan public opinion just last week.

Mr. Mark L. Schneider is a senior vice president of the International Crisis Group and a former U.S. Peace Corps Director. The ICG closely monitors events on the ground in Pakistan and has employees stationed there to assist in that project as well.

Welcome to all of you and thank you again.

It is the policy of the subcommittee to swear in our witnesses before we take testimony, so I please ask you to stand and raise your right hands.

[Witnesses sworn.]

Mr. TIERNEY. The record will please reflect that all witnesses answered in the affirmative.

You have full written statements that you have been kind enough to supply to the committee, and those will be put on the record with unanimous consent. We ask that you keep your oral statements somewhere within the 5-minute range. So we have a small panel here today, so we're more than happy to let you go a little bit beyond that, And we do want to hear a full assessment of your thoughts and your observations.

Senator Daschle, we will be pleased to start with you.

STATEMENTS OF THOMAS A. DASCHLE, FORMER SENATE MAJORITY AND MINORITY LEADER; THOMAS E. GARRETT, REGIONAL PROGRAM DIRECTOR, MIDDLE EAST AND NORTH AFRICA FOR THE INTERNATIONAL REPUBLICAN INSTITUTE [IRI]; AND MARK L. SCHNEIDER, SENIOR VICE PRESIDENT OF THE INTERNATIONAL CRISIS GROUP [ICG] AND FORMER PEACE CORPS DIRECTOR

STATEMENT OF THOMAS A. DASCHLE

Mr. DASCHLE. I appreciate the opportunity to be here with you today. I commend you on your opening statement, Mr. Chairman; and I'm very pleased to be a part of the distinguished panel that is appearing before you today.

I come before you on behalf of the National Democratic Institute regarding the prospects for free and fair elections in Pakistan. I'm a member of the Board of Directors of NDI and, as you noted, was pleased to be able to lead a pre-election assessment of Pakistan for NDI from October 17th–21st.

NDI has been actively involved in supporting the electoral process in Pakistan now for nearly two decades. The Institute organized the 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 marshal 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: first, the high incidence of election-related violence, second, the killing and abduction of journalists and political party workers; third, the infringement of the rights of women to vote; fourth, the ban on political parties operating in the federally administered tribal areas. Next, 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 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 any international standard. 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 8 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 the Pakistan crisis today.

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 re-election unconstitutional undermines the democratic principle of checks and balances. Without the restoration of Chief Justice Iftikhar Chaudhry and the other deposed judges, public confidence in the ability of the judicial system to act independently and to ensure the transparence 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. Vibrant independent media and political competition are important elements in free society. While many restrictions imposed during the state of emergency have 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 openly.

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 none 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, Mr. Chairman.

Mr. TIERNEY. Thank you, Senator.

[The prepared statement of Mr. Daschle follows:]

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.

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 a 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 matter 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.

Mr. TIERNEY. Mr. Garrett.

STATEMENT OF THOMAS E. GARRETT

Mr. GARRETT. Thank you, Mr. Chairman and Mr. Yarmuth, for this opportunity to appear before you today to discuss the upcoming elections in Pakistan.

The International Republican Institute is actively engaged in programs to support the democratic process in Pakistan, ranging from public opinion polling to work with nongovernmental organizations to a political party strengthening program. These activities have been funded through the National Endowment for Democracy.

As you mentioned, with recent funding from the U.S. State Department's Bureau of Democracy, Human Rights and Labor, as well as the U.S. Agency for International Development, IRI has also undertaken a comprehensive elections effort that includes a pre-election assessment, deployment of long-term observers across the country and fielding of a 65-person international election day observer team. I mention the polling as a specific activity that IRI conducts in Pakistan.

Our public opinion research has revealed that Pakistanis are committed to democracy and concerned about the future direction of their country. In IRI's February 2007, poll, 81 percent were optimistic that democracy would improve their lives. Over the course of the past year, increasing numbers have expressed their desire for the army to remove itself from civilian government and for President Musharraf to resign his post as army chief of staff. Even when President Musharraf was at the peak of his popularity in IRI polling, strong majorities supported the return of exiled leaders Benazir Bhutto and Nawaz Sharif in order to contest elections.

Our most recent poll, conducted just this past month, found that voters overwhelmingly opposed the President's declaration of emergency. Voters were also opposed in large numbers to the various measures that accompanied this state of emergency declaration. For instance, 71 percent opposed the suspension of the constitution, 76 percent of Pakistanis opposed the closure of TV news channels, 76 percent opposed the crackdown on lawyers, and 62 percent supported the demonstrations you saw on the street against the declaration.

On the day before President Musharraf declared the state of emergency, IRI had a pre-election assessment team concluding its 8-day visit to the country. While there, we met with 12 political parties, representatives of the election commission, civil society and media as we traveled throughout the country visiting Islamabad, Quetta, Karachi, Lahore. What we found in this pre-election assessment was a strong commitment on the part of civil society and political parties to engage in the democratic process, even among those who identified as early as November/October a lack of a level playing field in the pre-election environment.

One of the overriding concerns expressed to our pre-election assessment team was the continued decline of law and order within Pakistan. People who intended to stand for candidate—excuse me—stand for office expressed fears about their personal safety while electioneering. The media told us they were worried about the vulnerability of their reporters and camera people as they tried

to carry out their work to bring information to the public. But even these concerns of election period instability did not result in the majority of Pakistanis we spoke to from saying that they agreed with the governmental band to limit rallies or to stop political gatherings.

Questions as to the capacity of the election commission of Pakistan to meet electoral needs in a timely fashion were often raised with IRI's delegation. One consistent issue of concern was the accuracy of the official voter list and the possible exclusion of eligible voters on election day.

Our election assessment also noted the important role played by Pakistan's nonstate media. If you look back to 1999, the year during which General Musharraf took power in Pakistan, you can see the limited number of private media that existed at the time. During these last several years, media outlet numbers have grown tremendously and today they play a very important role in the roadmap to democracy in Pakistan.

In IRI's most recent polling, the media actually outstrips institutions such as the judiciary and the army as the highest-rated institution in the country. That makes it all the more important, we believe, that private television stations that have been removed from the air—some restored but also still have media curbs in place against them—be allowed to report freely and fully on this election campaign period.

The declaration of emergency on November 3rd was a very significant obstacle to the restoration of democracy in Pakistan. Several individuals that IRI met with during that time were under detention or still face the threat of detention today.

The government of Pakistan's decision to lift the emergency and proceed with elections offers some hope the process toward democratization may be restored. However, I have to say it is very difficult to envision how elections conducted in a matter of only a few days and weeks under these kinds of rules while many participants are otherwise still detained or face the threat of detention—it is very difficult to envision how these elections can achieve legitimacy in the minds of the Pakistani citizenry. Of course, it is the Pakistani citizens who will judge this election's credibility. Based upon the polling figures that we have seen, we think this will be very difficult to achieve.

Within IRI, we've examined whether or not our presence as observers on this election January 8th is necessary or desirable, given the flawed conditions in which we see this election proceeding. As recently as last week while I was in Pakistan, we met in consultation with our Pakistani partners and others as to the viability of an observer mission. But with the decision of the majority of parties to contest the election, IRI determined that its role as an NGO that promotes democracy was to work with our Pakistani partners on this election in the hope that future elections can be improved to democratic standards.

So, over the next few weeks, our long-term and short-term observer delegation will be arriving in Pakistan to observe the electoral process. We will attempt to put people, observers in all four provinces of Pakistan, depending upon security at the time.

Our preliminary mission findings will be presented shortly after election day at a press briefing, and within 45 days we'll issue a comprehensive report. It is our hope that the recommendations that report contains will strengthen the future elections in Pakistan. We hope that these recommendations will set benchmarks that serve as a guide for Pakistani election officials, political parties and civil society on how future elections may improve the country's democratic standing.

Just before I close, let me say that much of my comments were geared toward the role of the government in this election. As a result of our pre-election assessment, I'd also like to point to the role played by political parties in Pakistan, including those in the opposition. We think that a commitment by the parties to run issue-based rather than personality centered election campaigns would break with the disastrous cycle of elections that have taken place in Pakistan since 1970. We think it is an important role for the parties to come forward with political programs or platforms that motivate the people of Pakistan to participate in elections.

If you look at our polling, the issues which predominate are not those concerned with foreign policy or the war on terror. But, for Pakistanis, it is bread and butter issues such as inflation. When presented with a number of issues and asked to select what was most important in determining which party they'd vote for, 77 percent of Pakistanis chose economics related issues. Inflation was the top issue by far, having been selected by 53 percent of the respondents.

Just finally, in closing, let me say that restoring public as well as international confidence in the electoral process in Pakistan is going to be very, very difficult. But we can see again through 2 years of polling that the urge among Pakistanis for democracy remains strong.

Thank you very much.

Mr. TIERNEY. Thank you, Mr. Garrett.

[The prepared statement of Mr. Garrett follows:]

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TESTIMONY BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON NATIONAL SECURITY
AND FOREIGN AFFAIRS

Thomas E. Garrett
Director, Middle East and North Africa Regional Division
International Republican Institute
Washington, D.C.
Thursday, December 20, 2007

Thank you, Mr. Chairman and Members of the Subcommittee. I thank you for this opportunity to appear before you today to discuss the upcoming parliamentary elections in Pakistan. This topic has occupied much of my time and that of the International Republican Institute's time in the last few years. I returned from Islamabad on December 15 and will return there next week in preparation for IRI's election observation mission.

The International Republican Institute (IRI) is actively engaged in programs to support the democratic process in Pakistan, from public opinion polling, work with nongovernmental organizations (NGO) and a political party strengthening program. These activities have been funded through the National Endowment for Democracy (NED). With recent funding from the U.S. State Department's Bureau of Democracy, Human Rights and Labor and the U.S. Agency for International Development, IRI has also undertaken a comprehensive elections effort which includes a pre-election assessment, deployment of long-term observers to provincial cities and capitals and fielding of a 65-person international Election Day observer team.

For the October 2002 elections, IRI conducted a get-out-the-vote training effort and a series of pre-election, Election Day and post-election polls to provide feedback to decision makers and other interested parties on voter attitudes on national priorities and towards the political process. In August 2005, IRI observed local government elections in coordination with international and domestic election observers. In September 2005, IRI opened its first office in Pakistan. For the last two years, IRI's focus in Pakistan has been on political party strengthening and public opinion polling.

Our polling has revealed that Pakistanis are committed to democracy and concerned about the future direction of their country. In IRI's February 2007 poll, 81 percent were optimistic that democracy would improve their lives. Over the course of the past year, increasing numbers expressed their desire for the Army to remove itself from civilian government and for President Pervez Musharraf to resign his post as Army Chief of Staff. And even when President Musharraf was at his peak of popularity, strong majorities supported the return of exiled leaders Benazir Bhutto and Nawaz Sharif in order to contest elections.

Our most recent poll, conducted last month, found that voters overwhelmingly opposed the President's declaration of emergency. This move has polarized the country and split the electorate into two parts. Throughout the poll findings, 25 to 33 percent remained supportive of President Musharraf and were positive about the condition of the country. Seventy-five to 66 percent expressed anger at the current state of affairs and desired change.

When asked if they supported or opposed the declaration of emergency, 26 percent said they supported it while 70 percent said they opposed; 57 percent said that they strongly opposed the measure. Voters were also opposed to the various measures that accompanied the state of emergency declaration. For instance, 71 percent opposed the suspension of the constitution, and 76 percent opposed the closure of TV news channels. Seventy-six percent also opposed the crackdown on lawyers and civil society, and the house arrest of opposition leaders, and 62 percent supported anti-declaration protests.

One day before President Musharraf declared the November state of emergency, an IRI delegation concluded a mission assessing preparations for parliamentary elections. The assessment was conducted with IRI's firm conviction of the need for credible and transparent provincial and national elections.

During the eight-day mission, assessment team members -- from academia, Congressional staff from this committee and international NGOs -- reviewed the technical and political preparation for constitutionally-mandated elections. IRI's assessment team, following one done a few weeks before by our sister organization National Democratic Institute, met with Pakistani government officials and representatives of political parties, civil society and media in Islamabad before deploying to provincial capitals Karachi, Lahore and Quetta. Team members met with national and local leadership of 12 political parties, media and government officials at various levels.

Even with the impending rumors of a declaration of emergency prior to November 3, IRI found a strong commitment on the part of civil society and political parties to engage in democratic elections, even among those who identified a lack of a level playing field in the pre-election environment. Across the board, opposition political parties and the media expressed concern that measures such as an emergency might be declared and elections delayed.

Prior to the emergency, an over-riding concern was the continued decline in law and order within Pakistan. Potential candidates expressed fears about their personal safety while they were electioneering; the media worried about the vulnerability of reporters and cameramen in carrying out their work to bring information to the public. A general feeling of insecurity prevailed among most Pakistanis. The concerns of election period security did not, however, lead the majority of Pakistanis with whom the assessment mission met to concur with governmental decrees to limit or ban political rallies and gatherings.

Questions as to the capacity of the Electoral Commission of Pakistan (ECP) to meet electoral needs in a timely and objective manner were often raised with IRI's delegation. A consistent issue of concern was the accuracy of the official voter list and the possible exclusion of eligible voters. In meetings with the commissioner and secretary of the ECP, as well as with provincial election officials, team members were informed of draft codes of conduct and regulation changes such as posting of balloting results. Formalizing and enforcing these draft rules of conduct would have significantly increased confidence in the pre-election preparations.

The ECP and the nation's political parties find it difficult to work together despite numerous attempts by various stakeholders to facilitate regular meetings on issues related to the conduct of the elections. In February 2007, IRI facilitated a one-day roundtable between political parties and the ECP to discuss election preparations. A renewed commitment by the ECP to continue such meetings, irrespective of the timing of elections, is needed, as is the commitment by the political parties to set aside partisan rhetoric and make all attempts to work with the ECP and its provincial branches.

The delegation observed that the return of former Prime Minister Benazir Bhutto visibly energized her political movement and heard from several camps, not merely those of the Pakistan Muslim League-Nawaz, that the return of former Prime Minister Nawaz Sharif would be necessary to assure the public that elections would be conducted with a fair and transparent intent. His return and freedom of movement about the country is a positive step.

The assessment team noted the needed and integral role played in the pre-election environment by Pakistan's private media. When looking back to 1999, the year during which General Musharraf took power in Pakistan, one notes the paucity of Pakistani media existing to cover the event.

During Musharraf's tenure in office, media outlet numbers have grown tremendously and today they play a vital role in the roadmap to democracy. In IRI's most recent polling, the media is the highest rated institution in the country, far outpacing the government and even the Army. That makes it all the more unfortunate that private television stations were removed from the airwaves in the declaration of emergency. Furthermore, even though the emergency has been lifted, media curbs remain in place. It is essential that they be allowed to broadcast and be given full constitutional freedoms to report.

As IRI publicly stated in its pre-election assessment, the declaration of emergency on November 3, 2007, was a significant obstacle to the restoration of democratic governance in Pakistan. Several individuals who met with IRI during the course of the assessment were or are now under arrest or face the threat of detention. Independent media, seen by the assessment team as one of the positive strengths of the pre-election environment, continues to be censored.

IRI's public opinion research program over two years has clearly proven a consistent Pakistani desire for democratic governance, regardless of which political personality led

in head-to-head, comparison polling. Recent polls also showed that an overwhelming majority, 70 percent, of Pakistanis were opposed to a declaration of emergency.

The government of Pakistan's decision to lift the emergency and proceed with elections in some ways offers hope that the process towards democratization may be restored. However, it is difficult to envision how elections conducted in a matter of only a few days and weeks with many erstwhile participants still under detention will achieve legitimacy in the minds of Pakistani citizens. Ultimately, it is for the Pakistani people to judge this election's credibility and based upon the findings of IRI polling this will difficult to achieve.

Within IRI, we have examined whether or not our presence as observers is necessary or desirable, given the already obviously flawed conditions in which this election is proceeding. As recently as last week, IRI was in consultations with Pakistani partners and others as to the viability of an observer mission. With the decision of the majority of parties to contest the election, IRI determined that its role, as an NGO promoting democracy, was to work with Pakistani partners on this election in the hopes that future elections can be improved to democratic standards.

In the next few weeks, IRI's long-term and short-term observer delegations will observe Pakistan's electoral process. They will not interject themselves into the process. Observers will be allowed to discuss the election with election officials but will not suggest changes in their behavior that could be interpreted as interference. The delegation will not take partisan positions but will seek input from all those participating in the election. Observers will maintain an independent and impartial posture and abide by all laws pertaining to international observers.

On Election Day, IRI teams will observe the opening of a polling station in their assigned area. They will also observe voting at that station and then voting at approximately seven to 11 other stations in their areas over the course of the day. In addition to observing the voting procedure at each station, the teams will evaluate the presence of political party and civil society poll watchers, voter turnout, adherence to physical regulations for polling stations, conflicts and conflict resolution processes. The teams will be instructed to observe both urban and rural polling stations if possible.

At the end of the day, each IRI team will either return to monitor closing procedures at the polling station where they observed opening procedures or, in the event that a team notices substantial problems at a polling station, to that polling station to observe closing procedures. Following each polling station closing, the IRI teams will observe the counting process. Again, IRI observers will note any conflicts and the conflict resolution processes during the ballot counting and report any urgent issues. Every effort will be made to observe polling stations in a manner consistent with Pakistan's rural and urban demographic spread.

IRI will attempt to field observers in all four provinces of Pakistan, security permitting. Preliminary mission findings will be presented shortly after Election Day at a press

briefing and the delegation will release a statement at IRI's command center in Islamabad. Approximately 45 days later, IRI will issue a comprehensive report assessing the entire election process and making recommendations to strengthen future elections in Pakistan. It is IRI's hope that the recommendations may set benchmarks that serve as a guide for Pakistan election officials, political parties and civil society on how future elections might improve the country's democratic standing.

Much of my comments today have rightly looked to the government's role in election issues. However, a review of history shows the causes of the problems facing Pakistani democracy are widespread among many of those politicians seeking office today.

A commitment by parties to run issue-based, rather than personality-centered, campaigns would hopefully break with the disastrous cycles of elections since 1970.

An important role to play by the parties, which remain personality based, would be to come forward with political programs, or platforms, which will motivate the people of Pakistan to participate in elections when they are held. Again, to look at IRI polling, the issues which predominate are not those concerned with U.S. foreign policy, but on bread and butter issues such as inflation.

When presented with a number of issues and asked to select which was the most important in determining which party they would vote for, 77 percent chose an economy related issue. Inflation was the top issue by far, having been selected by 53 percent of the respondents.

In closing, let me say on behalf of IRI that restoring public, as well as international, confidence in the electoral process will be difficult but the urge among Pakistanis for democracy remains strong. Scholars and political observers frequently identify national elections in 1970 as among the most free and transparent in Pakistan's history. Despite many issues which arose following those elections, it was a benchmark with one of Pakistan's highest turnouts in 60 years. I stress this high turnout because polls show a very high level of interest and intent to participate in the upcoming elections. The government of Pakistan and the ECP should take all efforts humanly possible to transparently address remaining voter list issues and ensure that Pakistanis on Election Day are able to cast their ballot.

Thank you.

Mr. TIERNEY. Mr. Schneider.

STATEMENT OF MARK L. SCHNEIDER

Mr. SCHNEIDER. Thank you, Mr. Chairman.

Let me again express our appreciation to you and to the subcommittee for maintaining this focus on U.S. relations with Pakistan and on the Musharraf government's performance on democracy, extremism and terrorism.

This hearing asks whether the parliamentary elections now scheduled for January 8th are going to be fair and free or fundamentally flawed, and it is appropriate that the question is asked now because election day is too late.

And, unfortunately, the answer today is that Pakistan's parliamentary elections will be fatally flawed unless fundamental, political, electoral and legal conditions are rapidly improved. Today, those conditions do not permit a fair and free election. It is December 20th. Martial law was lifted only 5 days ago. The elections will take place in 18 days. There is a very short time.

There is nothing like time for a long-term observation. That was long ago that the observation should have begun, and there should have already been a finding that the conditions that are required do not exist.

Election day, remember, is the final act of a democratic drama.

The first act is establishment of neutral rules and standards that all of the major players agree will permit a level playing field. That does not exist.

Act two is for all of the parties to be able to name their own candidates and then to be able to campaign freely and the press to be able to ask their questions of all parties. That again does not exist.

It is only finally when you get to the final act, if you will, when all eligible voters are permitted to vote, when votes are honestly and accurately counted and reported and when the complaints are heard before a neutral body, then one can say that the full drama is complete. At the moment, all of those factors are in high question as to whether or not those conditions will be met, because the emergency government of General Musharraf and now the current post-December 15th government of President Musharraf have violated the country's constitution and undermined the essential conditions for a fair and free election.

As you noted, I was in Pakistan the week before the emergency was declared. At the beginning of the week, the assumption was that there would be no emergency because people did not think the court would dare to rule against Musharraf on the two key constitutional challenges to his re-election, wearing the uniform at the same time as being president and attempting to be re-elected within 2 years of holding an office as a military officer.

By the end of the week, the views had changed; and that really gives you an indication of the timing for his action to declare an emergency. By the end of the week, in fact, it was viewed that the Supreme Court would disqualify him on one or both of the constitutional grounds; and, in addition, his government faced contempt charges for having refused to abide by the court decision to permit Nawaz Sharif to return to Pakistan from Saudi Arabia and forcibly deported him.

He essentially preempted the court on November 3rd. He imposed an emergency rule, he voided the constitution, he essentially adopted martial law. And there is a key disconnect between his justification of terrorism, the threat of terrorism, and his actions. The first people arrested were not terrorists. They were political party leaders. The first people released from prison were terrorists, in fact, those that had been linked to suicide bombings. They were exchanged for army hostages. Of the dozen or so paragraphs in the proclamation of emergency, 2 were solely linked to terrorism, 10 complained about an independent judiciary.

His actions in time revealed his fundamental motive, which was to maintain power. The reason for acting was to retain political power and not to fight terrorism, and martial law was the means.

To be frank, everybody in Pakistan I think was surprised by the level of repression that followed that decision. You've already heard some of it: Thousands rounded up and detained, Supreme Court justices, other justices removed. Remember, 13 of the 17 Supreme Court justices essentially were detained and have been fired; and more than 40 of the provincial High Courts, essentially the state Supreme Courts, have also been fired.

The independent judiciary has been undermined, fundamentally; and I'm going to get to the point, which is that the linkage between the judiciary and fair and free elections in Pakistan is fundamental.

Now, you have to understand that the reason that he did not use the emergency provision of the constitution and apply that as President, which I put into the testimony, is that would not have voided the roles of the other agencies of government. It would have kept the Supreme Court which had the power under the constitution to review his actions. He didn't do that. He voided the constitution. He essentially took the country back to 1999 and worse. Because what he said was that there will be no review of my action by the court or any other institution.

In fact, now when he lifted the emergency last Saturday, he acknowledged what he had done. He said—and I'm quoting—have I done anything constitutionally illegal? Yes, I did on November 3rd. His order deprived the courts of the authority to challenge any Executive order for unconstitutionality and gave him the power to amend the constitution.

Before they were placed under confinement, 7 members of the Supreme Court, a majority of the panel of 11, ruled that his actions were illegal and unconstitutional.

And then you asked the question about the reaction in Pakistan to what has occurred and to U.S. actions. Pakistanis and others found it utterly incomprehensible that President Bush asserted that Musharraf had not crossed any red line in terms of undemocratic actions.

This is the second time he crossed the red line. The first time was 1999, and the second time was when he voided the constitution on November 3rd.

Now, afterwards, I think the United States, the U.K. and the EU made appropriate statements expressing the view that the emergency rule was unwise and the martial law abuses are unacceptable; and it essentially said that he needed to give up his army

post, hold fair and free elections and end the emergency rule. But it is interesting that the U.S. Government at all levels has been utterly silent about the importance of an independent judiciary, it has been utterly silent about the need to restore the court and to restore the judges who have been fired, and that is a tragedy.

Now, to the casual observer, it may appear that Musharraf has met those three conditions. He gave up the army post November 28th, he announced the parliamentary elections would be held, and he issued the order Saturday ending the emergency. Unfortunately, he did so with caveats, with restrictions and with limitations which violate fundamental freedoms and which make fair and free elections highly dubious.

The day before he lifted the emergency, he imposed six new constitutional amendments, again which challenged the role of the judiciary; and his orders simply said that nothing that had occurred during the emergency period could be reviewed by the courts or by parliament.

And, by the way, some of those items—it is important to recognize what they were.

First, of course, it said that the 2-year bar would no longer apply to the President. Second, that the dismissal of the Supreme Court judges and High Court judges can't be challenged by or before any court. An amendment to the 1952 Army Act made retroactive from its military courts now to try civilians for a wide range of offenses, including causing public mischief. Another decree threatens freedom of association by giving the new hand-picked High Court the authority to disbar lawyers. And, again, none of these decrees are subject to review under his order.

The linkage between the judiciary and elections. The election commission of Pakistan is comprised of a retired Supreme Court justice and a serving High Court judge from each of the four provinces. Two of those remain unfilled. By permanently barring the previous Supreme Court provincial High Court judges who refuse to bow to his edict, he has basically assured that the commission represents only hand-picked judges that he is satisfied with.

But it is even more than that. In every province, above the polling station, when the returns are collated, if you will, at a district level—let's say first at a municipal level and here let's say at a county level—there are what are called district returning officers, returning officers and assistant returning officers who run that. They manage it. In Pakistan, they are either district judges, assistant district judges or civil judges; and they all have to respond to the high—to the High Court of that province. And so the judiciary in Pakistan fundamentally is responsible for running the elections. That judiciary has now been totally tarnished by Musharraf's actions.

And, in addition, it should be remembered that whenever there are complaints made, those complaints go to an electoral tribunal made up of judges and then from there to the High Court in each province and then to the Supreme Court, again, courts which now are filled with hand-picked Musharraf choices. By stacking the full range of High Courts, including, by the way, now naming a totally new High Court for Islamabad, he has essentially hijacked the electoral process.

In terms of ensuring credible elections, could it still be done? Possibly. But you'd have to do a range of actions:

One, establish a neutral caretaker government that doesn't exist. He has refused to do so.

Establish a neutral and accepted electoral commission. Tomorrow, he could go and ask the parties for recommendations, and there are scores of acceptable individuals if he would restore the judges who could form that commission.

The voters' rolls. You've heard just mention of them. But what occurred was that the commission established new voters' rolls for this election. By August, they had come up with 52 million names. There was a protest from the parties, because, in 2002, there were 72 million names, and it was clear that something was wrong. And it went to the Supreme Court and the Supreme Court said to the electoral commission, fix this.

What the electoral commission did was say, OK, here is the 2002 list. Here is the list we came up with. Those who aren't on our list that were in 2002 we'll add. They added about 25 million names. Nobody reviewed who died. Nobody reviewed who wasn't on—shouldn't have been on that list because they perhaps were terrorists and in jail. Nothing.

The parties said, put this on a mechanism where we can electronically go through it and try and say these people are dead, these people on our party lists are not on it. And when we were—when I was in Islamabad, I spoke to the electoral commission; and they said, yes, we can do it and we're figuring out how to and we'll do it shortly. That has not yet been done. So you still have voter rolls which are highly suspect.

Finally, you've heard mention of the code of conduct, so I won't go into that. But it basically establishes serious curbs on public statements, press statements and what the parties can say.

Let me just note as well that as one looks down the road what is needed: full restoration of the constitution, full restoration of independent judiciary, voiding the emergency period of press prohibition, press ordinances—by the way, they provide for criminal penalties, not simply civil penalties. Up to 3 years in jail, in addition to a $200,000 fine and loss of television licenses. And that's for anyone who publicly criticizes Musharraf, the military, the emergency, the emergency rule or foreign affairs.

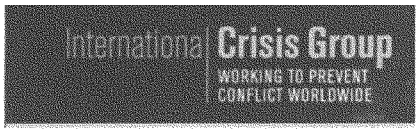
Establish a neutral electoral commission and a neutral caretaker government and consult with the parties on all of the issues relative to the elections and release from house arrest judges and their lawyers and the others detained for engaging in democratic protests.

The United States and Western allies must recognize that fair and free elections are the best option for a secular, moderate parliamentary majority, a unified country against extremists, Jihadi organizations, the Taliban and al Qaeda. A rigged election will produce the worst of all possible worlds. The election will not be credible, the parliament will not be credible, and the parliament will be controlled by a Musharraf-linked majority of religious parties who themselves have links to the Taliban, and the country will be fundamentally and sharply divided.

Thank you.

Mr. TIERNEY. Thank you, Mr. Schneider.

[The prepared statement of Mr. Schneider follows:]



Testimony by Mark L. Schneider, Senior Vice President, International Crisis Group to the House Committee on Oversight and Government Reform on "Pakistani elections: Will they be fair and free or fundamentally Flawed?"

20 December 2007
Washington, DC

I want to express once again the appreciation of the International Crisis Group for the continuing attention of the Committee and particularly Chairman John Tierney and the other members of the House Subcommittee on National Security and Foreign Affairs to U.S. relations with Pakistan and the performance of that government concerning democracy, Islamic extremism and terrorism.

This hearing asks whether the parliamentary elections scheduled for January 8th will be fair and free or fundamentally flawed. That question has to be asked now. After the elections it will be too late.

The sad answer today is that the January 8th parliamentary elections will be fatally flawed unless current political, electoral and legal environments are rapidly improved. Today conditions to permit a fair and free election do not exist. The required conditions are not limited to those that reign on Election Day. It is December 20; martial law was lifted five days ago and the election will be held in only18 days.

Election Day is the final act of a democratic drama. Act one requires objective and non-partisan rules and standards adopted and monitored by neutral authorities. Act two demands that parties are permitted to select their own candidates, candidates allowed to campaign without hindrance or intimidation, and a free press given unfettered opportunity to challenge, question, and report on candidates, parties and public issues — including the illegality of emergency rule and the actions of President Musharraf and Pakistan security forces.

The final act of a free and fair election requires that eligible voters can vote, that their votes are counted honestly and reported accurately, and that complaints are judged by independent entities---in Pakistan, ultimately the high courts.

The emergency government of Army Chief of Staff *General* Pervez Musharraf, and the government of *President* Pervez Musharraf as of 15 December, have violated the country's constitution and, thus far, undermined all efforts to establish basic and necessary conditions for a free and fair election.

Musharraf's Martial Law Regime

I was in Pakistan the week prior to the declaration of martial law by *General* Musharraf on 3 November. There was little expectation that emergency rule would be imposed because the Supreme Court was not expected to rule against Musharraf on two critical constitutional challenges to his re-election by the out-going lame-duck parliament; (a) that he held the dual offices of army chief and president and (b) that his re-election was illegal because of the two-year year bar on military or civil officials contesting for public office.

The court also was hearing a case in which the government was being charged with contempt by the court for disregarding its order permitting former Prime Minister Nawaz Sharif to return to Pakistan and for having forcibly deported him at the airport back to Saudi Arabia.

On 3 November, General Musharraf, concerned about the Supreme Court's pending decisions, pre-empted the Court, proclaimed an emergency and imposed a Provisional Constitutional Order (PCO) -- effectively martial law – in his words, to "save Pakistan from destabilization" and "to halt a wave of terrorism and militancy."

Yet there was a key disconnect in Musharraf's justification for martial law and his actions. Although he based the imposition of martial law on the terror threat, he targeted political opponents, not radicals. Even the text of his "Proclamation of Emergency" cites terrorism alone in only two of twelve substantive clauses. In the other ten, Musharraf complains about Pakistan's then-independent judiciary. Also the first people arrested were party leaders and the first people released from prison were accused or convicted terrorists, including those involved with suicide bombing, who then were exchanged for soldiers being held hostages.

Musharraf's actions and timing revealed his true motives: At the end of my week-long visit on 2 November, nearly every observer in Islamabad had become convinced the court would disqualify Musharraf's re-election on constitutional grounds. Retaining political power was his motive for acting, not fighting terrorism; martial law was the means.

Pakistan was taken by surprise. No one anticipated a repeat of 1999: the Constitution suspended again. This time, thousands of lawyers, human rights activists, political party officials and reporters were rounded up and detained. The Supreme Court was sacked, the provincial high courts were intervened, and judges were placed under house arrest.

To understand the full implication of Musharraf's actions and their implications for the parliamentary elections - it is vital to understand the difference between the state of emergency provision contained in article 232 (section 1) of Pakistan's constitution and the Provisional Constitutional Order (PCO) enacted by Musharraf, not as President but as Army Chief.

That emergency provision in Pakistan's constitution would have kept Pakistan's institutions intact and accepted Supreme Court review of the provisions of the emergency order and implementation. Musharraf's PCO gutted the independence of the judiciary, requiring all high court judges to swear an oath of allegiance to the PCO and barring any court or judgment against the Proclamation, PCO, or the President or any of his designated authorities. [1]

Even Musharraf now acknowledges that he acted neither constitutionally nor legally. "Have I done anything constitutionally illegal? Yes, I did on November 3," he said last Saturday. *General* Musharraf's Provisional Constitutional Order deprived the courts of the authority to challenge any executive order for unconstitutionality and gave him the power to amend the constitution.[2] Effectively, General Musharraf replaced constitutionalism and rule of law with open military rule.

Before they were placed under confinement and fired by the military, Pakistan's Chief Justice and six of his Supreme Court colleagues declared the PCO and Musharraf's actions illegal and unconstitutional.

Thus, Pakistanis and others found it incomprehensible that President Bush would assert, as he did, that Musharraf had not crossed any red lines that would mark him as un-democratic. In fact, this was Musharraf's second time across the red line; the first in 1999, the second on 3 November.

International Response

The United States, the United Kingdom and the European Union privately expressed disappointment and dismay and to a surprising and welcome degree publicly declared emergency rule to be unwise and martial law abuses unacceptable. The U.S., desiring to maintain its counter-terror relationship with Musharraf, called upon him to end emergency rule, give up his post of army chief, and hold free and fair and timely elections. The Administration talked of aid reviews being undertaken. Congressional leaders called for tougher measures, including adopting some conditionality in the foreign military aid provisions of the FY2008 State/Foreign Operations section of the Omnibus appropriations bill.

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[1] PCO Paragraph 2 (3) states "that the Supreme Court or a High Court and any other court shall not have the power to make any order against the President or the Prime Minister or any person exercising powers or jurisdiction under their authority."

[2] PCO Paragraph 3 (1) and (2).further declares that n that: "No court including the supreme Court, the Federal Shariat Court and the High Courts, any tribunal or other authority shall call or permit to be called in question this Order, the Proclamation of Emergency of the 3rd day of November 2007, the Oath of office....No judgment, decree, writ, order or process whatsoever shall be made...against the President or Prime Minister or any authority designated by the President

To the casual observer, it may appear that Musharraf has met those preconditions. He indeed gave up the post of army chief on 28 November. On November 19, he announced that parliamentary elections would be held on 8 January. And on 15 December, he issued a new order ending the emergency, repealing the PCO, and reviving the Constitution.

However, Musharraf imposed a new series of caveats, restrictions, and limitations that violate fundamental freedoms, thus making free and fair elections highly doubtful without an end to those impediments.

The day before he lifted the emergency, he acted once more to violate the Pakistan Constitution by adopting six Constitutional amendments by fiat. In Pakistan, constitutional amendments require a two-thirds parliamentary majority. The 1973 Constitution specifically gives the Supreme Court the authority to interpret the Constitution. Musharraf's amendments denied the courts and the parliament their constitutional prerogatives to challenge those amendments. The damage to the independence of the judiciary and freedom of the press directly affect the parliamentary election campaign.

The end result: the judiciary remains gutted and high courts have been stripped of any authority to challenge any of the actions taken during the PCO period, or the emergency proclamation or any of the amendments he promulgated by executive order.

Independence of the judiciary and the rule of law

On 15 December, in a televised address just hours after signing a proclamation formally lifting emergency rule, Musharraf declared that the 8 January elections would be "absolutely fair and transparent"." He also said: "The constitution is being fully restored". However, he rejected restoring the judges who refused to sign an oath to the PCO.

The Revocation of the Proclamation of Emergency maintains in force the mandates of the PCO and the provisional ordinances and decrees pronounced from 3 November until 15 December, including the following:

--The prohibition barring civil servants from running for office within two years of retirement no longer would apply to the office of the president.

--The dismissal of the Supreme Court judges and High Court judges by Musharraf cannot be challenged "by or before any court".

--An amendment to the 1952 Army Act, retroactive to 2003, permits military courts to try civilians for a wide range of offenses, including causing "public mischief."

--Another decree threatens freedom of association by giving the new hand-picked high court authority to disbar lawyers and violated the independence of bar associations.

His decrees stipulate that all constitutional amendments made since 3 November shall "not be called in question by or before any Court", including the Supreme and High Courts.

By taking on the powers to unilaterally amend the constitution, Musharraf has undermined constitutionalism and rule of law, including constitutionally guaranteed fundamental rights and protections. And by removing dissenting judges and packing the supreme court and the high courts with his hand-picked choices, Musharraf has undermined judicial independence, essential for any free and fair election.

By depriving the judiciary of their constitutionally guaranteed right to review the constitution, he has also laid the seeds for the disintegration of his post-8 January political order.

In the past too, military rulers, including Musharraf himself, had unilaterally amended the constitution but had subsequently sought indemnity for their acts through parliamentary sanction. His opposition, including the centre-right Pakistan Muslim League-Nawaz (PML-N) and centre-left Pakistan Peoples Party (PPP) have said that they will, once in parliament, challenge the legality of the manner in which he has sought to seek legal sanction for his unconstitutional acts.

JUDICIARY'S ROLE IN ELECTIONS:

It is crucial to understand that the judiciary in Pakistan is intimately involved in the conduct of elections. The Election Commission of Pakistan (ECP) is comprised of a retired Supreme Court justice and a serving High Court Judge from each province—two of these seats are unfilled.

Musharraf, by permanently barring the previous Supreme Court and the Provincial High Court judges who refused to bow to his edict, has assured that the commission will be comprised of his hand-picked choices. District Returning Offices, Returning officers and Assistant Returning Officers, who supervise the actual polling process in each province—are either district court judges themselves or are appointed by district court judges, all under the guidance of the provincial high courts, whose new members are suspect.

Remember that Musharraf has sacked 13 of the 17 Supreme Court judges and more than 40 High Court judges. And any electoral complaint of fraud, rigging or electoral law violation ultimately will be heard on appeal to those courts. Stacking the full range of high courts, nationally and provincially—including naming a totally new high court in Islamabad—amounts to hijacking the electoral process itself.

ENSURING A CREDIBLE ELECTION

Musharraf's actions prior to lifting the emergency and the nature of the 'restoration' of the constitution, show that the government does not intend to hold a free and fair election.

CARETAKER GOVERNMENTS

The partisan nature of the caretaker governments, national and provincial, has been strongly criticized by the opposition. Caretaker prime minister, Senate chairman Soomro is a member of Musharraf's Pakistan Muslim League-Quaid-i-Azam (PML-Q). Cabinet ministers in the centre and the provinces are either party members or Musharraf loyalists; some ministers even have close relatives contesting elections. The opposition parties say that the caretaker governments are already using the official machinery, including the administration, intelligence agencies and police, to influence the election outcome

Musharraf also dismissed an opposition demand to establish caretaker local governments during the election process. The opposition protested because local governments are stacked with Musharraf loyalists, the results of massively rigged local polls in 2005.

ELECTION COMMISSION

The opposition understandably has asked for the reconstitution of the ECP, a demand Musharraf has dismissed. The ECP's decision to reject the nomination papers of the Nawaz Sharif and his brother makes its subservience obvious. The Election Commission of Pakistan is an autonomous, constitutionally sanctioned entity entrusted with holding the national elections. It comprises a retired Supreme Court and one serving High Court Judge from each of the four provinces. Two of those seats are now vacant.

The Chief Election Commissioner (CEC) is also charged with appointing Election Tribunals, which deal with petitions in the event of an election dispute. These tribunals consist of High Court judges. Challenges against decisions of these tribunals end up before the provincial High Courts and finally the Supreme Court. Hence every stage of the election process is conducted and supervised by the judiciary.

The present ECP has failed to control abuse and fraud and provide free and transparent elections on any occasion during Musharraf's watch, including the 2002 national polls.

Other ECP related issues:

i. Voters Roll: There were millions of missing voters on the computerized list of some 52 million produced this summer by the ECP. The opposition protested since there were some 20 million names fewer than in 2002. The Supreme Court ordered a revision. However, 25 million voters' names were then added to the rolls from the 2002 list without verification, even whether they might no longer be living. In seeking to verify those names, the parties requested and the ECP initially agreed—including in conversations with the Crisis Group—to permit electronic review of the rolls by the parties and civil society. That review has not been permitted. Ironically the electoral registration process has been funded by the U.S. In short, not all eligible voters have been registered and the list of supposed eligible voters remains deeply flawed.

ii. Dispute resolution: The political parties have raised serious concerns about the lack of transparency in the complaints process and the ECP's lack of response to election complaints filed so far. The ECP has yet to take action to redress complaints about the inappropriate use of state resources, and intimidation by local government and intelligence agencies.

iii. Code of Conduct of 20 November for political parties and contending candidates: The new Code of Conduct places serious curbs on constitutionally guaranteed freedoms of speech and assembly. The political parties, for instance, cannot "propagate any opinion or act in any manner which defames or brings into ridicule the judiciary or the armed forces". Parties also are required to obtain the permission of local authorities to hold public meetings, and accept any "restrictive or prohibitory orders in force in the place proposed for the meeting". They cannot hold public meetings or rallies "on main streets and roads" without giving the police at least two days advance notice.

Political parties traditionally use public rallies to mobilize political support; and insist that these restrictions deny them this opportunity.

Freedom of Expression and Media

Although the lifting of the emergency and the repeal of the PCO formally restores fundamental rights of speech, ordinances issued since 3 November to curb media independence remain in force. To curb radio and television, Musharraf had issued an ordinance that prohibits any coverage which "defames or brings into ridicule the Head of State, or members of the armed forces, or executive, legislative or judicial organs of the state" and establishes a series of vague other restrictions and carries a maximum prison sentence of three years. A similar ordinance was issued for the print media. The Pakistan Federal Union of Journalists (PFUJ) and the All Pakistan Newspapers Society (APNS) all have condemned the fresh prohibitions against live coverage of political debates and other restrictions issued to private TV channels by the Pakistan Media Regulatory Authority, whose violations could result in three years in jail and cancellation of licenses.

In an interview with the Washington Post, Musharraf said: "The problem with the West and your media is your obsession with democracy, civil liberties and human rights". The West, including the US, has gained some lost credibility by insisting on free and fair elections. It must not lose the gains made by legitimizing a deeply flawed election.

U.S. ROLE

U.S. Ambassador Anne Patterson's well-publicized visits to detained human rights activists, to journalists, and to the suspended television stations after the declaration of emergency were extremely valuable. So too were her statements and the statements from others, including Secretary Rice, encouraging all moderate forces to come together to oppose extremism, to participate in fair and free elections, with full press freedom and to

see an end to emergency rule. They were correct that free and fair elections would lead to the victory of the moderate forces. A rigged election will only empower extremists.

One gaping omission in the Bush Administration stance has been its silence with respect to the handcuffing of the judiciary, the firing of high court judges, and the inadequacy of the provisions relating to the lifting of the emergency. The Administration has ignored the direct linkage between the independence of the judiciary and free and fair elections.

Given legitimate U.S. concern for a stable partner in the war against terrorism, it is even more important for the U.S. to err on the side of supporting the democratic process. Musharraf's popularity, as the IRI poll of 19-28 November shows, is at an all time low. Between 66-75 per cent of those polled were anti-Musharraf and wanted change. 70 per cent opposed the imposition of emergency; 66 per cent believed it was imposed, not to better fight terrorists, but to prevent the Supreme Court from overturning Musharraf's re-election to another term as president; 71 per cent opposed the suspension of the constitution; 70 per cent opposed the ban on political rallies and the crack down on lawyers and civil society and arrest of opposition politicians; and 77 per cent opposed the detention of the sacked Supreme Court judges.

The United States and the international community should press for:

- **Full restoration of the constitution—not just those portions of the constitution that sit well with President Musharraf;**
- **Restoring an independent judiciary and restoring the judges;**
- **Voiding the emergency period press ordinances which establish onerous controls over electronic media and which threaten all media with severe penalties---including the threat of three years in jail, loss of license, and $170,000 fine for those who violate the code of conduct imposed by the electoral commission which prohibits criticism of Musharraf, the military, emergency rule or foreign affairs;**
- **Establishing a truly neutral electoral commission and a truly neutral caretaker government during the campaign period;**
- **Allowing the political parties active consultation on the electoral process, including electronic review of the voting rolls, consultation on where polling places are located, agreement that results will be posted and announced at each polling station and unobstructed access of party monitors and independent observers to polling stations.**
- **Eliminating the provisions of the electoral code of conduct which restrict political parties and candidates from holding rallies and other assemblies without local government and police permission.**
- **Removing the power of military courts to try civilians and assuring that intelligence services and security forces take no further actions to interfere with the electoral process.**
- **Releasing from house arrest, judges and their lawyers and others detained for engaging in democratic protest.**

The US, and its Western allies, must recognize that fair and free elections are the best option for a secular and moderate parliamentary majority, a unified country against extremist jihadi organizations, the Taliban and Al Qaeda. However, a rigged election will produce the worst of all possible worlds. Unless there are major shifts in policy by the Musharraf government, likely only if strong international pressure echoes the demands of civil society and the moderate political parties, on January 9th, we will see a parliament without credibility, a government dominated by Musharraf linked religious parties with strong ties to extremists, a divided Pakistan.

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Mr. TIERNEY. Thank you, all of you. We went a little bit over the 5-minute line, as we thought we would, but I think it was worth listening to what you all had to say, and I appreciate it.

The very last thing that Mr. Schneider said—saving the best for last, I think, is really the crux of the matter, isn't it—that the United States, the Western allies have to recognize that free and fair elections are the best option for a secular and moderate parliamentary majority in a unified country against extremist jihadi organizations, the Taliban and al Qaeda. Do all of the panel agree with that statement, that is really the best option here?

Mr. DASCHLE. Well, Mr. Chairman, I certainly do. I think Mr. Schneider said it very well, and I'm concerned—and I will say that in answer to your questions, I'll speak for myself and not for NDI. But I'm concerned, as he noted, that there has been far too much silence with regard to the U.S. position on many of these fundamental questions in Pakistan today. But your question is appropriate, and I would answer in the affirmative.

Mr. TIERNEY. Mr. Garrett.

Mr. GARRETT. Yes, sir, I agree. I think that really our future policies should be determined in large part by whether or not these elections are conducted in any type of a rigged or free and fair manner.

Mr. TIERNEY. When I look at your polls, Mr. Garrett, and I see the number of people responding to this declaration and all, I'm hard pressed to think how without legitimacy—I mean, if there aren't free and fair elections and if somebody isn't given a legitimate mandate, how they are going to marshal all of the people in their country to help us in other countries push back against terrorists and al Qaeda? You're going to have a continuation, I would think, of what we see now as sort of the government fighting those secular forces, moderate forces, lawyers, judges and everything, just to stay in power, as opposed to focusing on these external and some internal problems. Am I right?

Mr. GARRETT. I would agree.

Mr. TIERNEY. So, following that, Mr. Garrett, I have an issue with you. Are you at all concerned that your IRI's mission is going to be seen as some sort of a validation of what might very likely be illegitimate elections? And how are you guarding against being put in that position?

Mr. GARRETT. It is difficult to say what the final report that we'd produce 45 days after the election is going to say at this time. However our pre-election statement which we have issued publicly—it is on our Web site—does say that we see this as a very troubled election, pre-election environment, flawed.

As I mentioned in my statement, I believe if the political parties of Pakistan had decided not to contest—and they are saying that they're contesting this knowing it is going to be highly flawed. If it weren't for them, we wouldn't be there. But we do feel like we need to stand with the political parties of Pakistan as they do make that courageous stand themselves for democracy and elections.

Mr. TIERNEY. I would ask just a series of questions; and, Mr. Garrett, if you feel uncomfortable answering them because you

have a report coming out afterwards, then just defer. But I would like the Senator and Mr. Schneider to answer.

I want to talk about what are the standards that have to be met for free and fair if the judges aren't reinstated. Have they failed to meet the standard?

Mr. DASCHLE. I don't see how you can meet the standard without a restoration of the rule of law. And the rule of law cannot be reinstated without the restoration of the judges. So I think it is pretty fundamental.

Mr. TIERNEY. Do you agree, Mr. Schneider.

Mr. SCHNEIDER. Absolutely.

Mr. TIERNEY. Do you want to defer, Mr. Garrett, or make a comment.

If you don't reinstate to the media the ability to report on election occurrences, including criticizing the President and other authorities on that, how can you have a free and fair election? Would that failure to reinstate their ability to do that, to not make them subject to a $200,000 fine, loss of a license and possible imprisonment for reporting a critical aspect, if that doesn't occur between now and January 8th, how can we infer that there are free and fair elections? Is that a fair statement?

Mr. DASCHLE. I think that is a fair statement, Mr. Chairman.

Mr. TIERNEY. Mr. Schneider.

Mr. SCHNEIDER. Absolutely.

Mr. TIERNEY. If we don't release from prison people like Aitzaz Ahsan, the president of the bar association, the senator of the PPP, a known democracy proponent and others that are imprisoned over there, how can we determine if it is a free and fair election? Am I right?

Mr. DASCHLE. That's exactly right.

Mr. TIERNEY. The voter polls, Senator Daschle, you made mention of that in your report and Mr. Schneider mentioned it again. Twenty-five million people all of a sudden mysteriously appear and get thrown on there. If that isn't corrected by allowing the parties to go through and scrutinize and make comments about who perhaps ought not to be on for whatever infirmity or ought to be on because they're missing, how can that be termed a free and fair election? Am I correct?

Mr. DASCHLE. Precisely.

Mr. TIERNEY. The problem that I'm seeing here is we have 3 weeks to go, some very, very serious impediments on that; and it is almost—and I didn't want to put Mr. Garrett in this position because he is going to put a report out. How in the world do you even think that there can possibly be free and fair elections unless President Musharraf has a sudden turn of heart here and within the next couple of days changes all these things? And I think it would be arguably possible to do if you did things today or tomorrow, but anytime beyond that you just run out of time and you don't have it.

So I think the next question is, how does the United States react? How are we to react if all of these things don't get changed so that the elections are put on a footpath toward free and fair elections?

Mr. DASCHLE. Mr. Chairman, again speaking for myself, I would say that the United States needs to be far more assertive, far more vocal, far more aggressive in stating our position, as Mr. Schneider noted and we've noted this morning. The silence is a message, and that silence cannot go unnoted.

We just passed the omnibus, as no one knows better than the chairman and Mr. Yarmuth. But that conditionality in the omnibus is a beginning, but it is only a beginning. I think it is a very mellow statement with regard to what it is that this government needs to do, but you have to start somewhere. I would hope that we could build on that in the future, and I would hope that we could be a lot more assertive with regard to the conditionality of assistance.

But, most importantly, in the next 3 weeks—and we won't be—you won't be in session during the next 3 weeks—I think it is very critical that the State Department step up to the plate and voice these concerns with a lot more vigor than I've seen so far.

Mr. TIERNEY. I have to agree with you.

My problem is that, other than ambassador Patterson, who has done, arguably, a good job on at least some of these aspects of being outspoken, I'm really concerned about Mr. Negroponte and Mr. Boucher and their statements. To say that it hasn't crossed any red line to me is absurd. They crossed when they declared the state of emergency and all the other things that followed from it. But then for Richard Boucher to indicate that it is a bump in the road—if it happened in this country, I don't think we'd look at it as a bump in the road. So I don't know what hope we can hold out for this administration really doing that.

For the record, I'll make note that the Senator referenced action that was taken on spending bills, appropriation bills last night where the House and the Senate decided to put some constraints on the financial aid that the United States was giving to Pakistan, a significant amount of money. $50 million was held aside until the Secretary of State can make certain representations about corrections of the conditions we mentioned here today, the judges and others being put out of jail, reinstated to the bench, the media being given back the license that it had to report and so on. So, also, money being put more toward development and education and other things, as opposed to just indiscriminate money to the Musharraf regime to do what they want to do.

And also directing some money away from money that had been spent militarily for things like F–16s and focusing it more on the battle against terrorism and the Taliban. Although the administration's surprising remark to that was they didn't quite know how that was going to happen because the F–16s were so important to Musharraf and the military. Notwithstanding the fact that F–16s, to my knowledge, haven't been used to fight terrorism and the Taliban and al Qaeda in that region of the world, nor do they need submarines or some of the other things it was being spent on.

So those are the things that were referenced there.

I'm going to have Mr. Yarmuth ask some questions. I have a number of questions I'd like to get back to, but I do want to let the other panelists—and I welcome Mr. Van Hollen who is joining us as well. Mr. Yarmuth.

Mr. YARMUTH. Thank you, Mr. Chairman. I appreciate the testimony of the witnesses.

I want to give the President the benefit of the doubt for a second, and I don't usually do that, but I'll do it for the time being. Is he in essentially—are we in a no-win situation in that the likelihood we're going to have to deal with President Musharraf in some way in terms of our fight against radical Islam versus our desire to have a pure democracy, an American-style democracy, is he—how much of a thin line is he treading here in terms of the real politic of the situation?

Mr. SCHNEIDER. I think really that is a fundamental question. I think the mistake is to assume that the Pakistan military is solely made up of President Musharraf. It is not. The Pakistan military has for its own reasons—if it is working with the civilian democrat, the elected government, efforts to try and stop the Islamic Jihadi forces which have been carrying out, as you know, suicide bombings and other attacks—the issue is that, politically, President Musharraf has linked himself to religious parties which are linked to some of the extremists, including Taliban, in order to gain a majority he hopes in the parliament. That is the problem. All the pressure is on him in terms of his own political interests, are to go soft on the terrorists.

On the other hand, both Benazir Bhutto, the PPP and the PML and Nawaz Sharif, their instinct and their desire is to have a secular, moderate majority; and they will be even more concerned about putting restrictions on the religious extremists. So, in a sense, it is a win-win for us to press for a fair and free democratic election which would produce, as we've heard from the polling numbers, a moderate majority. And I believe that if worst—if the United States is taking that position, along with its allies, the military will understand that if they take the position of supporting Musharraf against the majority of the Pakistan population again and put at risk their relationship in terms of aid with the United States and others, that is not in their institutional interests. And at some point—and I would suspect it would be sooner rather than later—they'll press President Musharraf to either change significantly or remove himself.

And I should say, by the way, that at this point it seems to me there is something that the State Department can do even at this 12th hour and that is to specify what are those conditions that are required to provide an opportunity for a relatively credible election on January 8th. Present those—and I mean this. They are not hidden. As you've heard from all of us, we all generally agree on what they are. Present those privately to President Musharraf and to the leadership in Pakistan. And if within a number of days that they have not begun to move, then publicly say these are the things which are—that publicly that we've asked because we think it is crucial to a fair and free election.

Because, relatively speaking, the short time period—if the people of Pakistan see that the United States is complicit with the steps that rule out any possibility of a democratic election, the future relationship with the United States is going to be, unfortunately, far worse than it is today.

Mr. DASCHLE. I would only add that if we learned anything from history it is that personality driven foreign policy will ultimately lead to a disaster within any country where it is practiced. Personality driven policies in Iran, in the Philippines and in many other countries today have complicated, not simplified, our challenges in the years to follow. We ought to learn those lessons here.

The people of Pakistan generally are very supportive of the people of the United States. But over and over again when I was there they asked the question, where is your government? Why aren't they speaking out? Why is it that they seem to be supporting Musharraf against us? And I think we have to make it clear we're with the people of Pakistan, not with the Musharraf government.

Mr. YARMUTH. That was actually going to be one of my followup questions, is how aware are the Pakistani people of what this government is doing, what our government is doing? Apparently, they're very aware.

Mr. DASCHLE. They are very aware.

Mr. YARMUTH. Mr. Chairman, I'm lost without the clock. I don't know when my time is up.

In terms of the ramifications for the international situation—again, our war on terror and so forth—are we—is the failure of a free and fair election in a few weeks, that we have the status quo—in other words, do we have a downside from where we are now? Can it make it worse? Or is there only an upside?

Mr. SCHNEIDER. Let me give you just one example.

Already, as you know, President Musharraf's party, the PML-Q, has indicated that it is going to align itself with the JUIF during the election campaign. That is the extreme religious right party that has been seen to be linked with Taliban. In other words, to create their majority, they're going to link themselves in the parliamentary elections and then in the parliament with that party.

That means that the pressures to go after the Taliban particularly—remember, the Taliban military and political headquarters, according to U.S. military sources testifying before the Congress, are in and around Quetta and Peshawar. These are cities. These are not mountain—isolated mountain regions. Any effort to go after them is going to be undermined by this process of an unfair election because it is going to result in a majority of the religious right linked to parties which have their own ties to the Taliban.

Mr. YARMUTH. I'll yield.

Mr. TIERNEY. I just want to add one thing, and that is we've seen this before. If we don't have free and fair elections now, when the prospects are that if they were held in that manner that people that were secular probably, at least were moderate and certainly and shared interests with others would be not likely to win. You have a fraudulent election or fundamentally flawed election and one or two terms down the road here you could end up with a team in there that you don't even want to see. That's why it is so disturbing to have this administration sitting on the sidelines and not speaking out.

Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Mr. Tierney; and thank you for holding this series of hearings on Pakistan. I thank all of our panelists, witnesses here today.

I just want to start by looking at the context by which we find ourselves in right now in Pakistan. I think we obviously need to look forward and anticipate what is going to happen after these elections, but it is also important to remind ourselves how we got here. And we did get here in large part because the U.S. Government, under the Bush administration, did not take action nearly early enough to put—keep pressure on Pakistan to move in the direction of greater democratization and essentially bought into Musharraf's argument that he was the only guy in Pakistan that was willing to stand up to the Taliban and be able to fight al Qaeda. When in fact, as you pointed out, Mr. Schneider, his ability to stay in power was in part due to the fact that he had at least the tacit support of some of the extreme religious groups within Pakistan and that they provided him his margin, in fact, for the majority. And if you looked at sort of the secular opposition, that they in fact represented a much greater threat, so to speak, to the Taliban and the extremists.

So what our policy did was reinforce Musharraf; and we sort of saw this in stark terms when Musharraf recently, instead of keeping his guns trained on al Qaeda and the extremists, actually turned against the lawyers and those fighting for democracy in the streets. So we sort of saw in very vivid form when push came to shove where he saw some of the threats within Pakistan coming from.

So I do think we've got a lot of work to do dealing with the Pakistani public in letting people know that we're on the side of democracy, let the chips fall where they may. And clearly his decision to remove the chief judge had everything to do with the fact that they were about to rule that he could no longer serve, he couldn't serve as President because of the constitutional limitations.

So given that we're in that situation and we're going forward now with the elections, if the elections are not perceived to be fair and given what you have all said with regard to the current judges and the election, you know, overseers who were all supporters of Musharraf at this point, if it is not perceived to be fair, where does that leave the United States and what should we both be doing right now?

You've answered some of that. But looking to the future, what kind of scenarios should we anticipate and what kind of measure should be willing to take if we judge—we, the U.S. Government, judge that the outcome was not fair?

Mr. DASCHLE. I'd say the three things that we ought to do.

First, as we've all said this morning, I think the most important thing in the immediate 3 weeks is to put as much pressure as we can verbally and in other ways on the government to do the right thing, to make them as free and fair as they can, given the limited time available to us.

Once the election has been held, I think it is important that we work with political leadership within the country, do as much as possible to ensure that, whatever the results of the election, we work with all interested parties to enhance the institutions of government themselves and not look at that election as the last word but only really the beginning of an ongoing effort to try to put Pakistan on the right path. I think that is critical.

And then, third, I think it is important for us to involve the international community as well. This shouldn't just be a bilateral experience. It is important for us to involve others as well in the region and around the world and add to that pressure on the Musharraf government and those responsible for making these decisions.

But that all has to be done both in the short term and in the longer term in a concerted way, And we can't afford to wait a day. It has to start now.

Mr. SCHNEIDER. I would just add to that really one thing, I think; and that is that, instead of the conditionality applying softly to 50 out of the 300, I think you should apply it to all 300 million. I think that anything that we provide thereafter should be clearly performance based in relation to going after Taliban fully, not in a half-way manner and that it should be based clearly on evidence that they have, in fact, taken significant steps to go after the Taliban leadership, the core leadership throughout the country and as well as al Qaeda. I think that is a minimum.

But, clearly, we should also be looking for ways to strengthen our relationship with the rest of the political—not just the political parties but civil society as well, the human rights groups, many of which have—their leaders have been detained, the women's organizations. All of those that represent civil society, we should be increasing our support for them. This is not going to remain—even if this outcome of these elections is, as we believe, not going to be fair and free, that is not going to be the future of Pakistan.

Mr. GARRETT. If I could just add to that. We feel very strongly at IRI that we don't need to fear the outcome of any free and fair elections in the country, but we do need to be very concerned in the United States about what is to come if it is seen as an American validation of a rigged election.

As my fellow witnesses have said, I think an investment needs to be made, a long-term investment, in Pakistani civil society. We are seeing the students now stepping up for, really, one of the first times in some years—the lawyers and the political parties—but an investment needs to be made in developing those groups.

Mr. VAN HOLLEN. Just to followup on that, Mr. Garrett, in terms of the tools that are at your disposal in terms of the election monitoring, what kind of cooperation have you gotten? What resources do you have at your disposal? At what point would you be in a position to give an assessment, again, prior to the election, as to whether or not you thought you had the resources and tools available to actually make a fair judgment? Because it gets to the point you just raised. We do not want to be in a position here of sort of certifying the fairness of an election or in suggesting we think it was fair if, in fact, we are not in a position to do so, and many in the country see it as unfair.

So what resources are at your disposal? At what point do you think you would be able to say that the election monitoring that is going to be put in place will be adequate to make a determination on the fairness of the election?

Mr. GARRETT. Well, the resources to date that we have been operating on were provided by the National Endowment for Democracy, and they have been our only funding source in the country,

until very recently, for this election when we did receive USAID money and State Department money to conduct the election observation itself. A 65-person observation delegation is fairly large. However, in a nation of 160 million people and tens of thousands of polling stations, you can see that will not go very far. That is why I think it is important that the work of our sister organization—the National Democratic Institute—trains the political parties to try to get as many of their own observers there. That has been very, very important to this.

There are Pakistani groups that are also domestic observers. As I understand it, as of today, they have still not been given credentials by the government, allowing them, although they are a very well-established NGO, to go out and to try to cover some of these polling stations on election day and to record their findings. There is one more thing that could be done, and that is to encourage the Government of Pakistan to allow its own domestic groups to participate in the election as monitors.

As for the resources for the future, as I say, I think we need to try to commit more to these very sectors and to try to do that, possibly, through our USAID programs as opposed to simply through the Pakistani Government.

Mr. VAN HOLLEN. Thank you.

Thank you, Mr. Chairman.

Mr. TIERNEY. Following on that thought, there are a number of areas of that country that are deemed to be not particularly safe by the Pakistani Government itself, and by our own government on that.

Are you going to be able to get into those areas with the IRI to monitor the situations there—into Balochistan, Peshawar and up in the FATA areas?

Mr. GARRETT. During the preelection assessment, we were able to get into Balochistan. We did not go to the frontier. I believe, a few weeks before, NDI was able to visit Peshawar during their preelection assessment. We do not really know as of now what is going to be happening on election day. There are certainly parts of the country that, I think, are just a "no go" for us, but for the most part I think we are going to see a fairly good distribution in all four provinces of our international observer team.

Mr. TIERNEY. Mr. Schneider, tell us a little bit about the alleged role of the intelligence services and their impact and intimidation, or at least alleged intimidation. Also, the local mayors and local authorities, what is their role in the election? What are their concerns around that?

Mr. SCHNEIDER. There are three things it seems to me that are of major concern.

You have already had the parties file complaints with the Election Commission about the intelligence services' having threatened and, in some cases, detained their party leaders at the local level. You have had the decision by the newly named high court judges in several of the provinces to move hundreds of local district judges around. Remember, I mentioned that they are going to be, essentially, the electoral voting managers on election day. Well, they have moved them out of their districts and have sent them else-

where. So you have a real concern about those kinds of administrative actions at the local level.

The state governments have the responsibility for the local administration. Again, there has been evidence—and you have some of it on your screen—of the use of government resources and of government security forces campaigning for Musharraf. So all of these things are major concerns that the parties have. Up to this point, the Electoral Commission has not responded to any of these complaints, so it is a major concern.

I will also note that with FATA right now, the political parties, the moderate political parties, are not able to operate there. In the past, in fact, the PPP won in FATA in the distant past, but now they cannot operate there, and the area is essentially controlled by the religious parties.

Mr. TIERNEY. It is disturbing on that.

I guess, Mr. Garrett—again, not wanting to be unfair to you, but I keep coming back to this—can you conceive at all of an outcome of this where you deem these elections to be free and fair if that judiciary continues to be stacked the way it is? Is that even a prospect? Would you take one of the other criteria, the fact that the media is still restricted and that they suffer the possibility of a prison sentence of up to 3 years under this code of conduct if they criticize the president or the military? If that does not change between now and then, can you even fathom saying that those elections were free and fair?

I think we all know it is not about how transparent the boxes are on the election day. You can monitor that all day long, but if none of this in the lead-up changes—the voter polls do not change, the ability of the press to report, the parties to participate, people to get out of jail, the judiciary to not be stacked—is it really even fair to think that you might come up with any kind of a stamp of approval on this or just a report about how bad it went?

Mr. GARRETT. Let me just say that we had our preelection assessment team in the country the day the emergency was declared. So, as we became aware of the emergency's being declared, it was one by one that the television stations were disappearing. You were watching one, and it was saying, "There are troops arriving in the capital. The Supreme Court has been surrounded." Then it went off the air. You would switch to the next station, and it would be on for a while, reporting, and it would go, so forth and so on. However, during that entire period up to today, there was still print media that was allowed, I think, to operate unfettered. It was the electronic media that was singled out. It was not the nation's substantial print media.

If you look at our polling, it says that in a free and fair election, over 50 percent of the seats would very likely go to a coalition of opposition parties. There are places where these political parties have a very solid basis of support. So I see these sorts of things, and I think that once again we cannot really prejudge, because we do not know what might change in the next few weeks.

Mr. TIERNEY. Well, the one thing that has changed is how the print media is subject to the code of conduct as well.

Mr. GARRETT. That is true. But as recently as this past week when I was there, they were printing their cartoons against the

president. They were doing editorials that were very well written, explaining what were the root issues with the emergency.

I would just say that it is going to be very difficult—I think I said that in my statement earlier—it is going to be very difficult to imagine how this election is going to emerge with any type of a positive reference given the things that we are already seeing going into it. It will be very difficult.

Mr. TIERNEY. All three of you probably have far more experience on previous elections than the panel up here does. But my understanding of the electioneering process that goes on out there is that parties take to the streets, that they have large rallies, that they motivate tens of thousands of people on that. There are serious constraints on that as I understand it.

How does that affect the ability of any one party to really go through with their historically understood to be the way of conducting an election? What impact is that going to have?

Senator Daschle.

Mr. DASCHLE. Well, Mr. Chairman, even by Pakistani standards, you are not going to have anything close to that resembling a free and fair election. I mean it starts with the ISI and Mr. Schneider's description of the circumstances involving the pervasiveness of ISI involvement at the local level now with regard to the elections. You have the incompetence and the intransigence of the Election Commission. You have serious problems with regard to the freedom of press. You have the inability on the part of parties to organize themselves and have the public demonstrations of support for candidates that you have just described. You have a Supreme Court that is now completely violated and that is not in standing within the country. So, as I say, even by past standards in Pakistan, the circumstances today are deplorable, and I do not see how you begin to change that.

Having said that, I think the parties have come to the conclusion of what is the alternative. What do you do in a situation like this when the alternative, probably, is Musharraf's dictatorship for an indefinite period of time and no opportunity for them to voice themselves and to be participants in the political process even under this corrupted basis? So I think they probably made the right decision, but we all like to know, going in, that this is really a joke in terms of the capacity to produce any real results.

Mr. SCHNEIDER. Could I, Mr. Chairman?

On the question of the press, I have just a couple of things.

Mr. TIERNEY. Sure.

Mr. SCHNEIDER. In the last couple of days, the Pakistan media regulatory authority has actually sent new letters to the owners of the private television stations, and they have basically told them that they are being watched and that they cannot do live coverage, live programs that deal with political issues in ways which, in their view, violate the code of conduct in terms of ridiculing or in any other way criticizing the president and the military, etc.

When we talk about intelligence agencies, they have also made it known to reporters that their actions are as clearly questionable with respect to some of the things they have written as it relates to individuals like President Musharraf. You have to remember that during the emergency period, then-General Musharraf issued

ordinances which increased the restrictions on both the electronic media and on the print media.

I was just looking at Ordinance No. 14, for example, on the print media. It says that any material, printed or graphic, that defames or ridicules members of the armed forces, etc., are barred, and they are potentially liable for 3 years in jail and for major fines.

So the kinds of restrictions that now exist are far greater than anything in the past. Obviously, this has an enormous chilling effect on all of the media.

Mr. TIERNEY. When we look at the unfortunate circumstances—I think, Mr. Garrett, you put it out in your testimony pretty well. We were looking at it, and we were thinking there was a really good system or that there were parties that would have a platform and that would stand for principles and policies. Historically, it has been very personality-driven, and I do not think that is going to change overnight.

So, given the fact that it has now prohibited Nawaz Sharif from even participating, what does that do to at least one of those major parties and their prospects in this election?

Mr. DASCHLE. I think it makes it almost impossible for the full participation of the parties of consequence to have the ability to participate openly and freely. I think once you have eliminated one of the major opponents in the political process, I mean, by the very nature of that act, you are not going to get where you need to go, aside from all of the other things we have already talked about.

Mr. TIERNEY. Thank you.

Mr. Schneider, you made mention in your testimony that 7 out of the 11 original judges on the highest court voted, before they were displaced, that the action of President Musharraf, or General Musharraf at that time, actually was unconstitutional.

Mr. SCHNEIDER. Right.

Mr. TIERNEY. What is the effect of that order now?

If that were put in place before they were actually removed or whatever, is it still valid? Has it been invalidated by his subsequent actions? Is it lingering out there?

Mr. SCHNEIDER. It is very difficult to say because, as I say, that action took place before they were removed from their position. So the argument could be made that still stands. There are some legal voices of impact who are going to say that is the case; that this was an unconstitutional act, that it was found unconstitutional by the court and that court ruling still stands. Obviously, President Musharraf subsequently has said that no order by any court can void what he has done during the emergency law period. But the entire order establishing the provisional constitutional order was declared unconstitutional by the court before it left office, before they were thrown out.

So I think at some point in time, you are going to go back. I do think that, at some point, you will have a democratic government. I do think at some point they will find that the original orders by General Musharraf were unconstitutional and invalid and that he could not, essentially, bar the court from reviewing his actions.

Mr. TIERNEY. One of the prospects that elections held is that the PPP takes some, that the PML-N takes some, and that, of course, the PML-Q takes some.

Are we looking at deadlock? Are we looking at a constitutional crisis? Is there any way that we can estimate at this time?

Mr. SCHNEIDER. Not at all.

Traditionally in parliamentary democracies, you have coalitions that are built after the elections because you rarely have an overwhelming majority. So, in this case, what seems likely is that you both will have the PPP and the PML-N, plus some of the individual regional parties, moderate regional parties, joining in an effective majority.

As I say, if the polling that the IRI has done is reflected in the voting and those votes are counted, then I think you will have a coalition that will be put together and that will choose its prime minister. At that point, I suspect that majority in the Parliament will challenge the actions that President Musharraf has taken and, in fact, may well challenge his reelection.

Mr. DASCHLE. I am actually somewhat encouraged for the reasons you have just heard, in the longer term, Mr. Chairman.

I think the parties and the people of Pakistan are increasingly determined to deal with these challenges in a very forceful and effective way. It is going to take some time. I do not think they are probably going to be able to do it in the next 3 weeks. After the election and with the continued effort to organize and to form the coalitions that Mr. Schneider just addressed, in the longer term and with the kind of pressure internally and from the external source, if it can be done as well as we have discussed today, especially by the United States, I think we have reason to be optimistic about the prospects in Pakistan, ultimately.

Mr. TIERNEY. I think the unfortunate consequence, however, is that coalition will be mindful of the fact that this U.S. Government did not speak up as strongly as it should have for the people, and it made their work harder for them. I think, also, that all of that focus on resolving those internal problems will probably detract from efforts that could be used to focus on the Taliban and on al Qaeda and on other situations. So it is unfortunate in that regard.

Do either of my colleagues have any more questions?

Mr. Yarmuth.

Mr. YARMUTH. Thank you, Mr. Chairman.

It seems like we have already decided here that in terms of our standards, there is no chance of a fair and free election there. And that the administration does not seem to want to at least set the stage by saying that is the case.

I am more concerned in this question as to what measures the Pakistani people themselves will judge this election by. I mean, is it going to be a repudiation of the Musharraf rule? With all due respect, it does not sound like it is going to be whether Mr. Garrett's organization says it was a free and fair election. The process is probably less significant than the outcome, but I would like your answer as to that. How are they going to judge whether it was a fair election or not?

Mr. DASCHLE. I would just say that the IRI poll was really helpful in creating sort of a picture of where the people of Pakistan are. I do not think anyone challenges the results of that poll. In fact, it has been cited all through the country and in the international community. I think the degree to which people, in spite of all these

problems, will find some confidence that the elections are at least accurate is whether they conform at all to the polling data that we know to be fairly accurate. I mean, if they do and if the results of the election reflect that degree of support for the political opposition that we know to exist, I think we can salvage a lot in spite of the difficulties.

Mr. SCHNEIDER. I will just add one other thing.

I do believe that the Pakistani press is not cowed by the restrictions that have been placed on them, and I have no doubt at all that they will be monitoring the voting. As to the degree that they also are reporting that voters are not permitted to vote who are on the rolls, and that others cannot find where they can vote, etc., they will be reporting that. If there is a general judgment that there has been an unfair process at that time, along with the view that the outcome does not conform to anything that one would expect given the polling, then you will see a fundamental rejection.

I just want to note here that this is not us. This is one of the leading newspapers in Pakistan, the newspaper DAWN. It says that Pakistan is recognized as a genuine democracy and all that goes with it—an independent judiciary, the equality of all before the law and a media that is truly free. The country can ill afford to go through another flawed exercise, which would be catastrophic.

The people who are the public opinion leaders in Pakistan, I think, will set the standards. They are not our standards. They are their standards. They do believe in democracy. I think that they will see what has occurred up to this point, and they will see the outcome on election day, and they will make their own judgments.

Mr. TIERNEY. Mr. Van Hollen.

Mr. VAN HOLLEN. Yes.

Just briefly, again, as we discussed earlier on, I think that the reason the Bush administration has been so slow to push Musharraf and others in Pakistan more quickly toward democratization has been this assertion made by Musharraf, and that was essentially picked up by the Bush administration, that he is the only guy standing in the way between the radical extremists taking over in Pakistan.

As you pointed out, Mr. Schneider, in your testimony, if you look at some of the sort of bases of operation of al Qaeda, we are talking about places like Quetta. We are talking about Peshawar. We have also seen that the deal President Musharraf struck many months ago with the folks in the federally Administered Tribal Areas was, essentially, that they entered into a nonaggression pact, and, according to the publicly announced portions of the National Intelligence Estimate here, which as you know represent the consensus position of all 16 U.S. intelligence agencies, that led directly to an increase in Taliban strength, and it increased the sort of sanctuary for al Qaeda-type elements.

So I think it is very important as we go forward here that people in the United States understand that Musharraf is not the bulwark against extremism in Pakistan. To the extent that you do not allow the political process to be more open, in fact, you strengthen the extremist elements.

So I would just like all of you to respond to: If you were to have the sort of secular opposition win this election and if we were to

continue to push Musharraf to more openness and to more democratization in the process, how would that affect Pakistan's policy with respect to the Taliban and to the anti-al-Qaeda effort? Would it hurt that effort or would it strengthen it or would it, essentially, represent——

Mr. SCHNEIDER. I think it would definitely strengthen it. Simply, as I said earlier, there would be no countervailing political pressures to try and go soft on the Taliban because they are linked to the religious parties in the case of Musharraf, that I support. So it seems to me that you are likely to see a much stronger, unified civilian leadership in the Parliament, pressing for the military to take actions against the Taliban and al Qaeda. Both parties—both the PPP and the PML-N—have stated in a coalition statement that they would go after al Qaeda and the Taliban terrorists.

Mr. GARRETT. I agree. I think it would strengthen this struggle that their country and our country are in.

Mr. DASCHLE. I think a lot of the government's actions, the repressive actions, have emboldened the extremist elements within the country and have given them all the more empowerment in these regions outside of the larger cities. I cannot think of a better anecdote to that than to empower the opposition and to give them an opportunity to work these areas and to say, "We are going to take back our government and, in your name and in the name of people across the country, restore the democracy that Pakistan is proud of."

Mr. SCHNEIDER. Could I just add one thing?

Mr. TIERNEY. Sure.

Mr. SCHNEIDER. Quetta is in Balochistan. One of the changes with a democratic government would be that—both the PPP and the PML-N have stated that they would end the direct confrontation with the Baloch national parties in Balochistan. That would then provide a unified government's aiming at restricting the Taliban and al Qaeda in that province, which you do not have now.

Mr. TIERNEY. Thank you.

I would like to give each of you gentlemen an opportunity to make some overarching closing statement if you would care to.

Senator Daschle.

Mr. DASCHLE. First of all, I want to reiterate how pleased I am that you are holding this hearing because I think it sends the message that there are people within this government who are very deeply concerned about circumstances in Pakistan, and I think that is exactly the message we need to send to the people there today.

I think we need to keep the pressure on, not only from the administration but from the Congress, and you are doing that, in part, with this hearing. I think we ought to go back and look at the conditionality of aid in the future, and we should not wait for a long period of time for us to revisit the question as to how far we should go with regard to conditionality.

Third, I think it is important for us to watch this very carefully and to respond as quickly as we can once the elections have been held.

Mr. TIERNEY. Thank you.

Mr. Garrett.

Mr. GARRETT. Let me also thank you for letting me appear before you today.

I think the people of Pakistan are watching what is done here, what is done in the United States. I just wanted to take that opportunity to say that it has been our consistency in our work with the people there that they desire democracy. I think they will see this as an important contribution toward being placed back on the road map to democracy.

So thank you.

Mr. TIERNEY. Mr. Schneider.

Mr. SCHNEIDER. I agree with everything said.

Again, Mr. Chairman, thank you for holding the hearing. I hope that you will consider holding a hearing early in January on the same issue, on what did the elections show and on where do we go from here.

I would just simply note something. Today, in Islamabad and in Pakistan, the newspapers are giving a great deal of attention to what the Congress did in terms of conditionality. So they are watching what the United States is doing, and it is crucial that the message from the United States—from both parties and from the administration as well as the Congress—be that the United States stands for democracy and that the United States believes that democracy is in the interest of Pakistan and in the interest of the United States.

Mr. TIERNEY. Well, thank you. You will be comforted to know that we do intend to have a hearing on the financial aspect of it, certainly, in January. We can certainly do a recapture of what happened with the elections as well. We think it is important, and we have a good bipartisan group on this panel and elsewhere that believes strongly that Congress has to speak up, given the silence of the administration. We have to try to get the administration to speak up as well.

I want to just publicly thank each of the three of you gentlemen. I am not sure the public is aware of the sacrifices you make in your personal lives with traveling, making the observations, and then in coming back and sharing them. It is important for us to have people willing to do that, to make observations on the ground and come back.

Mr. Garrett, in particular. I will note that you just got home this past weekend, and right after Christmas you are going back again and are staying through the election. So thank you for your service.

Thank you, Senator and Mr. Schneider, as well.

Your testimony here today has been incredibly helpful, and it helps us build a record, and it points us in a direction of where we go from here. We thank you for all of your assistance on that and for your public service. We look forward to the hearings in January as well.

I thank my colleagues for their input as well.

This meeting is adjourned.

[Whereupon, at 11:30 a.m., the subcommittee was adjourned.]

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