

Pakistan: Emergency Rule or Return to Democracy?

OVERVIEW

President Pervez Musharraf, facing his most serious challenge in nearly eight years of authoritarian rule, is likely to try to retain power despite growing opposition. Rumours abound in Pakistan that he will declare a state of emergency, which would suspend fundamental rights and in effect mean martial law. Given an increasingly assertive opposition following his 9 March 2007 decision to remove the Chief Justice of the Supreme Court, Iftikhar Mohammad Chaudhry, it will be impossible for the president and his military backers to maintain the status quo. Western friends of Pakistan, most influentially the U.S., can tip the balance by delivering a clear message that emergency rule is unacceptable and Pakistan should return to democratic government by holding free, fair and democratic elections by the end of the year.

The worst scenario is the imposition of rule by emergency decree and the use of force to suppress the expected massive opposition. This would immediately produce chaos and violence and ultimately increase the role of Islamist groups and, if Washington supports the move, cause further anti-U.S. feeling.

The best case is a transition to democratic rule through free and fair elections that would marginalise extremist forces and reduce the growing tensions in society. This could occur if the military feels it is in its interests to pull back from direct rule, as it has in the past.

The U.S. should lead a move by the international community, including the European Union and Japan, to urge a peaceful transition to democratic rule by:

- strongly and publicly warning against any imposition of emergency rule or any measures to stifle constitutionally guaranteed freedoms of speech, association, assembly and movement;
- pressing General Musharraf to refrain from any political interference in the case against the Chief Justice being heard by the Supreme Court; and
- urging the Pakistani military to allow a return to democracy through free and fair elections, including allowing the return of exiled political leaders.

I. MUSHARRAF'S CHOICES

In 1999, Musharraf declared a state of emergency and dissolved the parliament through a military coup.¹ After having himself elected president through a rigged referendum in April 2002 – the referendum was itself an unconstitutional device – he oversaw deeply flawed national elections later that year. The resulting parliament gave Musharraf a vote of confidence and allowed him to retain his post as army chief. That parliament ends its five-year life in October. Musharraf's five-year term as president also ends that month.

Musharraf could opt for one of three choices:

- He could attempt to retain absolute power, as he seems presently inclined, through electoral rigging and constitutional manipulation. As a first step, he would obtain another five-year presidential term by using the present, lame-duck assemblies as the Electoral College, rather than, as the opposition insists, the successor assemblies scheduled to be elected this year.²

With another five-year term in hand, Musharraf would then be in position to rig the national polls. After ensuring that his political allies – who would likely include the Islamist Muttahida Majlis-i-Amal in Balochistan and Northwest Frontier Province and the Sindh-based ethnic party, the Muttahida Quami Movement (MQM) – gained a comfortable parliamentary majority, he could then have another constitutional amendment passed (a two-thirds majority is required). The purpose of this would be to enable him to retain the post of army chief past December 2007, which is the expiration date for the special authorisation the present parliament gave him, in violation of the spirit of the 1973 constitution, to hold both offices.³

¹ For background to the present crisis, see previous Crisis Group reporting, available at www.crisisgroup.org.

² Pakistan's president is chosen not by popular vote but by an Electoral College consisting of the members of the bicameral national legislature (Senate and National Assembly) and of the four Provincial Assemblies.

³ According to the 1973 constitution, the president must not "hold any office of profit in the service of Pakistan or occupy

The opposition parties and civil society would inevitably reject the legitimacy of the exercise. The former have already threatened to challenge before the Supreme Court the notion that the present parliament should elect the next president and to also challenge Musharraf's retention of the dual hats of president and army chief. Musharraf and the military would thus be forced to resort again to manipulating the system to get the result they desire. The end result would be violence and instability.

- Musharraf could opt for a power-sharing agreement with former Prime Minister Benazir Bhutto and her Pakistan Peoples Party (PPP), which would likely win at least a simple majority in a free and fair parliamentary poll.

Bhutto insists that Musharraf must give up his post as army chief and stand as a civilian candidate if he wants another presidential term and that the newly elected assemblies, not the sitting ones, must form the Electoral College. If the electoral field for the approaching national elections is level, and she is allowed to return from exile and participate, however, she indicates she could be prepared for the party to support Musharraf's re-election candidacy in the new parliament, or at least abstain. This is a controversial position. Many influential PPP leaders oppose any power-sharing agreement with Musharraf on the grounds that the party would be tarred by association with the general. Given their mutual mistrust, it appears unlikely that such a deal would be reached or implemented, especially after Musharraf's MQM allies attacked and killed PPP workers in Karachi on 12 May.⁴

- Musharraf could step down as army chief and the military could opt for a democratic transition, with free and fair elections as the essential first step. If Musharraf and/or the military high command accepted this option, the president and the military could regain some credibility, perhaps making it more feasible for the PPP and other moderate parties to support Musharraf's presidential bid,

although this seems unlikely now, given the extent of popular opposition. This option is clearly the most desirable, since it would lead to an orderly return to democracy, empower moderate forces, marginalise Islamist radicals and stabilise the polity.

Musharraf, however, appears bent on a confrontation with the political opposition, which, in addition to the moderate political parties, includes almost all segments of civil society – lawyers, human rights groups and, after the recent attacks and clampdown, the independent print and broadcast media. As domestic opposition grows, the regime, now on the defensive, has become increasingly intolerant of dissent.

II. THE U.S. RESPONSIBILITY

The military high command can assess the extent of the domestic opposition, and it is well aware how important U.S. support has been to Musharraf's position over the years. Should Washington signal now that it would oppose emergency rule and expects 2007 to be the year democracy returns to Pakistan, Musharraf's military backers might well be willing to press him to resign and appoint a new army chief. The high command could rationalise supporting a democratic transition as the best way to regain its own legitimacy and establish a strong position from which to bargain after a fair election with the winners to retain privileges, autonomy and policy input.

However, any signal from Washington of unconditional support could encourage Musharraf to impose a state of emergency, taking Pakistan back to absolute military rule. Should this happen, Pakistanis would perceive the U.S. as an impediment to, rather than a supporter of, democracy, and it would lose all remaining vestiges of credibility in the country. Domestic resistance to military rule would inevitably increase, forcing Musharraf and his fellow generals to use force to suppress dissent.

III. A CONSTITUTIONAL PATH OUT OF THE CRISIS

As the most influential external actor, therefore, it is vital that the U.S. send Musharraf a clear message that any move to disrupt the electoral process would be unacceptable. U.S. spokespersons have repeatedly said that the domestic crisis should be resolved in accordance with Pakistani law. This line should be re-emphasised and Musharraf encouraged to respect the constitution, Pakistan's basic law, by allowing the new assemblies

any other position carrying the right to remuneration for the rendering of services".

⁴ The Muslim League of former Prime Minister Nawaz Sharif (PML-N), the PPP's main partner in the opposition Alliance for the Restoration of Democracy, favours resignations from the assemblies, national and provincial, if any attempt is made to allow them to vote for president before new elections. Like the PPP, it insists that only newly elected assemblies can make a legitimate presidential decision. The PML-N has also vowed to oppose Musharraf's candidacy in the new assemblies.

to hold presidential elections and by giving up the post of army chief.

The Supreme Court must have the right to judge, in the absence of executive interference, Musharraf's action against the Chief Justice. The Court is certainly in a position to help produce a compromise scenario. Constitutional petitions are likely to be brought before it on Musharraf's bid for re-election by the present assemblies and on his intention to retain the dual hats of president and army chief. The fear that the army chief could be publicly reprimanded by the judiciary could further motivate the military to ask him to resign or at least to be content with serving out his term as army chief until the end of the year. But this constitutional route to a stable democratic transition will only be open if the Supreme Court can deal with the cases without pressure from the executive. This would not be possible if Musharraf imposes a state of emergency.

Islamabad/Washington/Brussels, 6 June 2007

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