International Crisis Group
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Parliament's Role in Pakistan's Democratic Transition

Asia Report N°249 | 18 September 2013

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Executive Summary

Because of repeated direct or indirect authoritarian interventions during Pakistan's history, its parliaments have either been absent, short-lived or rubber stamps for the military's policies, their proceedings hollowed out and meaningless. Even under civilian rule, an overactive judiciary has repeatedly encroached on parliamentary prerogatives, while the executive branch has dominated the governance agenda; legislative advice and consent has been more a matter of form than substance. Five and a half years after the democratic transition began in February 2008, the legislature is still developing its institutional identity. The thirteenth National Assembly (2008-2013), led by the Pakistan Peoples Party (PPP), was far more assertive. Some of the most prominent committees exercised their authority to oversee the executive and to engage the public. But the political system will remain unstable so long as the legacy of military rule is kept alive. The current legislature must resume the unfinished work of democratic reform if it is to fully restore parliamentary sovereignty and stabilise a volatile polity.

The 2013 elections and their aftermath marked the first-ever transition from one elected government to another, 40 years after the 1973 constitution established a federal parliamentary democracy. While the previous parliament missed many opportunities for reform, it nevertheless passed major legislation to restore democratic governance. It also represented an era of bipartisan cooperation that was unlike the vendetta-driven, winner-take-all politics of the 1990s democratic interlude.

The key achievement of the thirteenth National Assembly was the eighteenth constitutional amendment, passed unanimously in April 2010. This removed many of the constitutional distortions of General Pervez Musharraf's military regime, enhanced fundamental rights and laid the foundations for more transparent and accountable governance. Its most consequential provision was the devolution of power from the centre to the provinces, addressing a longstanding political fault line that had largely contributed to the country's dismemberment in 1971. The shift towards greater cooperation across the aisle also helped ensure the survival of a fragile political order that faced constant challenges from an interventionist military and a hyperactive judiciary.

The second phase of the democratic transition now underway offers opportunities to entrench parliamentary democracy. With incumbents losing at the centre and in all but one province in the 2013 elections, the parties now in power at the federal and provincial levels, particularly Nawaz Sharif's Pakistan Muslim League (PML-N), must prioritise governance and deliver on campaign pledges if they are to retain their positions. The opposition parties, too, should realise that they will be better placed to unseat their political rivals if they are an effective government-in-waiting in parliament, presenting alternative policies, budgets and other legislation, rather than merely obstructing ruling party proposals and bills.

If the legislature is to respond to public needs and also exercise oversight of the executive, it must reinvigorate the committee system that was largely dormant during Musharraf's military regime. While several important committees were far more active in the previous assembly, pursuing official misdeeds and even questioning the military's role in the polity, legislation was not enacted to provide for parliamentary authority to hold the security apparatus, including its intelligence agencies, accountable.

The committees' additional value lies in their ability to lead the debate on specific policies; conduct detailed investigations and inquiries on issues of public importance; and engage civil society in the legislative process. Particularly urgent issues include electoral reform, public expenditure and budgetary allocations, law and order and human rights.

There is still a long way to go. Committee achievements to date have been largely due to proactive members, usually the chairs, rather than broader institutional capacity. For committees to fulfil their potential, their members require much more research, analysis and technological support. They currently lack dedicated, trained staff, a problem that also plagues the National Assembly and Senate secretariats. Library resources are likewise inadequate, with the upper and lower houses maintaining separate facilities that unnecessarily add to costs without producing better research. As a result, committees depend on briefs from the executive, often prepared by an unreformed bureaucracy that, like its military counterpart, has little interest in strengthening representative institutions.

The committees, moreover, operate within a broader parliamentary framework that is still pitted with gaps, some legal, some political. Parliament's constitutional remit does not, for example, extend to the Federally Administered Tribal Areas (FATA). The recent reforms, particularly the eighteenth constitutional amendment, have strengthened parliamentary democracy but failed to remove some of the constitutional distortions of past military regimes, particularly Islamisation provisions that still undermine the legislature's authority. To become more dynamic and assume its role as a co-equal branch of government, the new parliament should build on its predecessor's steps, putting itself at the centre of the domestic and foreign policy debate.

Recommendations

To restore parliamentary sovereignty, as envisioned in the original 1973 constitution

To the National Assembly and Senate:

1. Pass a constitutional amendment package to:
   a) repeal Article 227, which prevents parliament from passing laws that violate "Islamic injunctions";
   b) abolish the Federal Shariat Court, which undermines legislative authority; and
   c) restore Articles 62 and 63 to their original form, repealing all arbitrary morality clauses for electoral candidates.
2. Pass a constitutional amendment to extend parliament's remit to the Federally Administered Tribal Areas (FATA).

To enhance parliament's power of the purse and to reinvigorate the committee system

To the Government of Pakistan:

3. Abolish discretionary development funds for parliamentarians.
4. End the practice of passing large supplementary budgets, ex post facto, and instead require that supplementary appropriations be approved by parliament before the money can be spent.
5. End the practice of using statutory regulation orders (SROs) to override the legislature in enhancing or reducing taxes and duties on specific goods.

To the Parliamentary Standing Committees:

6. Hold regular hearings on relevant ministry performance, summoning federal secretaries and other high-level officials to testify on their performance, including execution of policy and use of financial and other resources.
7. Review ministries' proposals before the budget's formulation, and use the process also to assess the value of government programs and policies, through consultations with officials, civil society and constituents; and in the case of the National Assembly's finance and revenue standing committee, hold pre-budget consultations, with chambers of commerce, trade union, small business, industry and other civil society representatives.
8. Exercise their authority to review expenditures of ministries and departments at the end of the budget cycle and hold officials accountable for anomalies.
9. Hold regular public hearings on issues under their remit, inviting government, non-government and private sector experts; ensure a wide range of opinion when preparing the witness list; and respect all – including potentially contentious – viewpoints.

To assert civilian control over the security apparatus and to reform the criminal justice system

10. The parliamentary committee on national security should hold public hearings on issues under its remit, with a wide range of government and non-government witnesses.
11. The National Assembly should rigorously debate the annual budget when it is introduced and also demand greater transparency in defence allocations.
12. The mandate of the defence and interior committees should be expanded to include oversight of military and civilian intelligence agencies.
13. The defence committee, in the case of the military's main intelligence agency, the Inter-Services Intelligence (ISI) directorate, and the law, justice and human rights committee, in the case of the civilian-controlled Intelligence Bureau (IB), should draft legislation defining the legal parameters and civilian chains of command.
14. The standing committees on interior and law, justice and parliamentary affairs should draft legislation to modernise the basic bodies of criminal justice-related law: the Pakistan Penal Code (PPC), Criminal Procedure Code (CrPC) and Evidence Act.

To strengthen parliamentary functioning

To the National Assembly and the Senate:

15. Give all committee members a work space and adequate staff.
16. Enhance standing committees' oversight of the executive branch by empowering them to vet and approve senior civil service appointments proposed by the Federal Public Services Commission, to ensure they are made on merit rather than personal or political affiliation.
17. Enforce the requirement that each standing committee submit an annual report on its activities that goes beyond an account of proceedings to analysis of its impact on policy.
18. Extend protection of parliamentary speech to witness testimony in parliamentary hearings; and enhance transparency of parliamentary proceedings by setting a threshold for closed-door hearings, such as consent of one quarter of a committee's members on the request of a witness whose security is endangered; and discussion of classified or other confidential information.
19. Build the capacity of the National Assembly and Senate secretariats to support parliamentary committees and parliamentary work in general by:
    a) establishing and enforcing clear educational and professional criteria for appointments to the secretariats;
    b) developing and enforcing a uniform code of conduct for the National Assembly and Senate secretariats;
    c) training specialists, including legal draftsmen, archivists, researchers and policy analysts, on policy issues and parliamentary procedure; and
    d) merging the National Assembly and Senate libraries, with a consolidated research and analysis wing, and ensure the stock is continually updated.

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Parliament's Role in Pakistan's Democratic Transition

I. Introduction

On 16 March 2013, President Asif Ali Zardari dissolved the National Assembly and transferred authority to a caretaker government to oversee the 11 May elections. This marked the first time since the 1970s that an elected government completed a full five-year term.[1] Zardari's Pakistan Peoples Party (PPP) had led a tenuous coalition government after the restoration of democracy in 2008, following almost a decade of military rule. On 5 June, Pakistan's first ever transition from one elected government to another through a democratic, constitutional process was completed when Mian Mohammed Nawaz Sharif was sworn in as prime minister. Winning a strong mandate in the elections, with an absolute majority in the National Assembly, the lower house of parliament, the Pakistan Muslim League-Nawaz (PML-N) is far better placed to ward off challenges from the political opposition or unrepresentative institutions than its predecessor.[2]

Although this relative stability could expand opportunities to enact and implement much needed reforms, the parliament faces the considerable challenge of consolidating a transitional democracy that is still constrained by an interventionist military bent on retaining control over security, defence and foreign policies, an excessively activist judiciary and an unreformed bureaucracy.[3] While these challenges would test any young democracy, they are compounded in Pakistan by violent militancy and extremism that are eroding the state's authority, as well as an uncertain external environment that provides spoilers, including the military, ample opportunities to undermine civilian control.[4]

[1] For Crisis Group analysis of electoral challenges, see Asia Briefing N°137, *Election Reform in Pakistan*, 16 August 2012; and Asia Report N°203, *Reforming Pakistan's Electoral System*, 30 March 2011.
[2] The bicameral parliament consists of the National Assembly (the directly-elected lower house) and the Senate (the indirectly-elected upper house). In the provincial assembly elections, the PPP and Awami National Party (ANP), which had led a coalition government in Khyber Pakhtunkhwa (KPK), lost almost all their seats there. Imran Khan's Pakistan Tehreek-e-Insaf (PTI) and the Islamist Jamaati-Islami (JI) now head the provincial government. In Balochistan, a PPP and Pakistan Muslim League (Quaid-e-Azam, PML-Q) coalition was replaced by one led by the Baloch nationalist National Party (NP) and the Pashtun nationalist Pakhtunkhwa Milli Awami Party (PkMAP), along with PML-N. Winning absolute majorities, the PPP formed the government in Sindh and the PML-N in Punjab.
[3] For challenges posed to the democratic transition by the military, judiciary and civil bureaucracy, see Crisis Group Asia Reports N°247, *Drones: Myths and Reality in Pakistan*, 21 May 2013; N°242, *Pakistan: Countering Militancy in PATA*, 15 January 2013; N°227, *Aid and Conflict in Pakistan*, 22 June 2012; N°196, *Reforming Pakistan's Criminal Justice System*, 6 December 2010; N°185, *Reforming Pakistan's Civil Service*, 16 February 2010; N°178, *Pakistan: Countering Militancy in FATA*, 21 October 2009; N°164, *Pakistan: The Militant Jihadi Challenge*, 13 March 2009; N°160, *Reforming the Judiciary in Pakistan*, 16 October 2008; and N°157, *Reforming Pakistan's Police*, 14 July 2008.
[4] For analysis of Pakistan's security challenges, see Crisis Group Reports, *Drones*; and *Pakistan: Countering Militancy in PATA*, both op. cit.

Pakistan is entering the second, unprecedented phase of its democratic transition, still in urgent need of consolidating its democracy. The reported 55 per cent turnout in the 2013 elections reflected popular support for parliamentary democracy, but open questions remain, including whether the ruling party and its parliamentary opposition will collaborate on enacting long overdue legislative reform; the ruling party and its parliamentary allies will use their legislative strength to prioritise governance and deliver on electoral pledges; and the opposition will exercise oversight of the executive within parliament.

This report examines the legislature's role in Pakistan's democratic transition, analysing legal and political constraints and identifying ways to overcome them. It emphasises the committee system as the nucleus of the parliamentary process, including oversight, legislation and engaging the public, with focus on the national legislature, in particular the National Assembly, the directly elected and most influential body. It is based on interviews with parliamentarians, political party workers and other relevant actors. Since some were conducted before the May elections, the names of those who subsequently assumed cabinet or other senior government positions have been withheld.

II. Curbs on Parliamentary Sovereignty

For most of Pakistan's history, direct or indirect authoritarian interventions reduced parliament to a short-lived, dysfunctional institution lacking effective powers, or a rubber stamp for military regimes.[5] The first military regime, General Mohammed Ayub Khan's, banned parties and in 1959 enacted the Elective Bodies Disqualification Order (EBDO) to exclude civilian opposition from the electoral process.[6] The Political Parties Order (1962) restricted the right to stand for office. Ayub created a local government scheme (Basic Democracy): a democratic façade and civilian constituency, with Basic Democrats electing the president, who led the centralised government his 1962 constitution created, as well as members to a unicameral National Assembly on a non-party basis. That body could discuss, not reject government bills, so a member was reduced to relieving constituent grievances. "When you have a fixed national policy, decided in the presidency, the focus turns to local issues, such as 'fix my road'", said the secretary general of the independent Human Rights Commission of Pakistan (HRCP).[7]

The first directly elected parliament, led by Zulfikar Ali Bhutto's PPP, came into being soon after Pakistan's dismemberment and Bangladesh's creation.[8] Tasked with forging a new social contract for the truncated multi-regional, multi-ethnic country, the parliament unanimously adopted the 1973 constitution that established a federal parliamentary system, with a directly elected lower house, the National Assembly, and an indirectly elected upper house, the Senate.

While the number of provincial and Islamabad Capital Territory seats in the National Assembly were determined by population, the Senate was configured on the basis of parity, with an equal number of seats for each province. The president, elected by the national and provincial legislatures, was the titular head of state but also had the power to promulgate ordinances. The locus of executive authority was vested in the prime minister, the head of government, and a cabinet drawn from and answerable to the National Assembly. National and provincial assembly members were elected representatives not just of their constituencies, but also of their political parties. The prime minister's mandate also came from a parliamentary party or coalition.

The National Assembly served a five-year term, unless the president, on the advice of the prime minister, dissolved it sooner (with a new assembly elected within 90 days). Senators were elected for six-year terms, half every three years. The upper house was not subject to dissolution.[9]

The National Assembly's remit did not, however, extend to the Federally Administered Tribal Areas (FATA) or Provincially Administered Tribal Areas (PATA). To date,

[5] See Crisis Group Asia Reports N°102, *Authoritarianism and Political Party Reform in Pakistan*, 28 September 2005; N°49, *Pakistan: The Mullahs and the Military*, 20 March 2003; and N°40, *Pakistan: Transition to Democracy*, 3 October 2002.

[6] EBDO prohibited "anyone from holding public office who used his political position for personal advantage, or to the detriment of [the] State", but was selectively used against opposition politicians. See Crisis Group Report, *Authoritarianism and Political Party Reform*, op. cit.

[7] Crisis Group interview, I.A. Rehman, Lahore, 29 April 2013.

[8] The refusal of General Yahya Khan, Pakistan's second military ruler, to transfer power after the 1970 election to the predominately Bengali Awami League, followed by a brutal military operation, sparked the civil war.

[9] For detailed analysis of the electoral process and structure of the two houses of parliament, see Crisis Group Report, *Reforming Pakistan's Electoral System*, op. cit.

no acts of the national or provincial legislature extend to those regions without presidential assent. Both maintain parallel legal frameworks. FATA citizens are denied fundamental human, political and economic rights, and lack representation at the provincial level and access to a formal justice system.[10] While limits on parliamentary authority in the FATA context were built into the 1973 constitution, subsequent amendments during military rule abolished the concept of parliamentary sovereignty almost entirely.

A. *Islam and Moral Policing*

Bhutto's government was toppled by General Zia-ul-Haq's 1977 coup. During the 1980s, the Zia regime promulgated far-reaching reforms that diluted the constitution's democratic character as part of an Islamisation process to legitimise itself. A provision was inserted into the constitution's Article 227 requiring that "all existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions".[11] While this was first articulated in the 1949 Objectives Resolution, it now became a substantive part of the constitution.[12] Laws made or contemplated in parliament thus can be challenged on religious grounds. For instance, the PPP-led government had considered abolishing the death penalty in 2008, but the Supreme Court stayed action saying it would violate Islamic injunctions.[13] Under parliamentary rules, if a legislator's objection to a bill on religious grounds is supported by two fifths of the house, parliament may refer it to the Council of Islamic Ideology for an advisory opinion.

Zia also established a Federal Shariat (Islamic law) Court (FSC) to ensure that all legislation conformed to Islamic injunctions. But the FSC also has quasi-legislative functions, since it can give binding directions on the content of law. In 1990, for example, it ruled that a blasphemy conviction must carry a mandatory death penalty, with no possibility of pardon. In 1992, it ruled that the *qisas* (retribution) and *diyat* (blood money) law also applied to murder cases, giving the victim's immediate relatives the right to pardon the killer in return for blood money.[14] That law thus provides legal cover to "honour killings" – the murder of a female relative, justified on the grounds of disgracing the family's honour – and privileges those who can afford to pay for a pardon.[15] Although the FSC has been relatively inactive in recent years, its continued existence negates parliamentary supremacy.

Zia's constitutional reforms also set new eligibility requirements for elected office. Article 62 was revised, going beyond basic requirements for candidacy such as age and absence of a criminal record to include morality clauses, based on Islam. Retained

[10] See Crisis Group Asia Reports, *Pakistan: Countering Militancy in PATA*, op. cit.; and N°125, *Pakistan's Tribal Areas: Appeasing the Militants*, 11 December 2006.
[11] This was done under the Third Constitutional Amendment Order of 1980.
[12] According to the Objectives Resolution, adopted by the Constituent Assembly, sovereignty would "belong to Allah Almighty alone and the authority which He has delegated the State of Pakistan, through its people". The state would enable citizens to "order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam". See Crisis Group Asia Report N°216, *Islamic Parties in Pakistan*, 12 December 2011.
[13] See Crisis Group Report, *Reforming Pakistan's Judiciary*, op. cit.
[14] The law allows a person suffering bodily harm to seek monetary compensation from the perpetrator.
[15] Crisis Group Reports, *Reforming Pakistan's Judiciary*; and *Pakistan: The Mullahs and the Military*, both op. cit.

by successive parliaments, the criteria now include "good character", adherence to "Islamic injunctions", "adequate knowledge of Islamic teachings and [practice of] obligatory duties as prescribed by Islam", and abstinence from "major sins". Non-Muslim candidates are not subject to these provisions but are required to have a "good moral reputation". All candidates must be "sagacious, righteous and non-profligate, honest and *ameen* [observant], there being no declaration to the contrary by a court of law".[16]

The constitution's disqualification clauses for parliamentarians were also radically revised. Under Article 63, an elected member could be disqualified if found to be of unsound mind by a competent court; ceased being a Pakistani citizen or acquired another nationality; or held "any office of profit in the service of Pakistan other than an office declared by law not to disqualify its holder". The member could also be disqualified by act of parliament. To this, the Zia regime added numerous new clauses. Most notably, parliamentarians could now be disqualified if found by a competent court to be "propagating any opinion, or acting in any manner, prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or morality, or the maintenance of public order, or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan". They could also be disqualified if convicted "for any offence which in the opinion of the Chief Election Commissioner involves moral turpitude, and sentenced to imprisonment for a term of no less than two years".[17] Parliamentarians can now, as discussed later, be disqualified through court rulings.

These provisions disproportionately empowered the superior judiciary, warping the checks and balances of a parliamentary system. Superior court judges can act as moral arbiters of the electoral and legislative process, with a profound impact on political stability, as manifested during the last parliament and the 2013 elections (see below).

In 1985, Zia introduced another constitutional provision, Article 58.2(b), giving the indirectly elected president the power to dismiss elected governments, with judicial endorsement. This gave the doctrine of necessity (discussed below), legal cover. It was used to justify premature dismissals of parliament in 1985, 1990, 1993, and 1996, each validated by the Supreme Court. During the democratic interlude of the 1990s, parliament repealed Article 58.2(b) through a constitutional amendment in 1997.[18] However, the rubber-stamp Musharraf parliament restored this presidential power and centralised authority in the executive through the seventeenth constitutional amendment (December 2003).

B. *Judicial Interpretation and Parliamentary Sovereignty*

Clashes between the legislative, executive and judicial branches date back to the early years. In the 1950s, the Supreme Court developed what came to be known as the "doctrine of necessity" in judgments justifying extra-constitutional dismissals of the

[16] Article 62, constitution.
[17] Article 63, constitution; President's Order 14 (1985), Revival of the constitution of 1973 order, Gazette of Pakistan, Extraordinary, Part 1, 2 March 1985.
[18] See Crisis Group Reports, *Reforming Pakistan's Judiciary*; and Asia Report N°86, *Building Judicial Independence in Pakistan*, 9 November 2004; both op. cit.

legislature, culminating in Ayub Khan's 1958 coup.[19] After the restoration of democracy, Article 6 was inserted in the 1973 constitution, holding that "[a]ny person who abrogates or attempts or conspires to abrogate, subverts or attempts or conspires to subvert the Constitution by use of force or show of force or by other unconstitutional means shall be guilty of high treason".[20] Meant to prevent coups, it failed to protect parliamentary democracy, since the superior judiciary repeatedly legitimised authoritarian interventions on the grounds of necessity, as in the Supreme Court's validation of Zia's 1977 and Musharraf's 1999 coups.

Judicial interpretation has also constrained parliament in other ways. In a 1996 decision, the Supreme Court identified a "basic structure" or "salient features" of the constitution that parliament could not amend, even with the mandated two-thirds majority. In addition to parliamentary democracy and federalism, the protected areas included Islamic provisions. This doctrine, which could limit parliament's power to repeal Zia-era provisions, such as Articles 62, 63 and 227 and the FSC, was subsequently expanded to include fundamental rights and judicial independence.[21]

The eighteenth constitutional amendment, passed unanimously by both houses of parliament in April 2010, included a provision for superior court appointments. Rather than being the president's prerogative, these were now to require a seven-member judicial commission, chaired by the chief justice, to nominate a candidate for a High Court or Supreme Court vacancy (except for the chief justiceship of a superior court, which is filled by the senior-most judge of the relevant bench). For confirmation, the nominee would then need a three-fourths majority from an eight-member bipartisan parliamentary committee.

The Supreme Court was unwilling to accept a judicial appointment process it no longer controlled. Invoking the salient features doctrine, in October 2010 it directed the government to revise the process to give the chief justice discretion in nominating candidates before the judicial commission; require that the parliamentary committee explain any rejection of a nominee in writing; and grant the Supreme Court authority to rule on that explanation. It also ruled that parliamentary committee hearings be held in-camera.[22] Complying with the court's directives, the parliament passed the nineteenth constitutional amendment (December 2010), diluting the related provisions. By successfully pressuring the legislature to water down the eighteenth amendment, the judiciary constrained parliament's authority to amend the constitution. In August 2013, the Pakistan Bar Council was reportedly planning to file a petition regarding the chief justice's dominant role in the appointment process.[23]

The Supreme Court has also undermined parliamentary authority through activism that goes well beyond the exercise of judicial review. Its interpretations and exercise of suo motu[24] powers, in the name of "public importance",[25] have often amounted to a bid to make the judiciary the pre-eminent branch of government.

[19] Ibid.
[20] Article 6, constitution of Pakistan.
[21] See "Text of order dated 21-10-2010 of Supreme Court of Pakistan passed in 18th Amendment cases", at: www.supremecourt.gov.pk/web/page.asp?id=433.
[22] Ibid.
[23] Amir Wasim, "Senate to debate judges' appointment tomorrow", *Dawn*, 25 August 2013.
[24] A Latin term roughly translating to "on its own motion".
[25] Article 184 of the constitution grants the Supreme Court original jurisdiction over cases in which "it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved".

Possibly the most prominent instance was its June 2012 dismissal of Prime Minister Yousaf Raza Gilani for contempt of court. As noted, Article 63 of the constitution establishes specific conditions under which a member of parliament may be disqualified. Beyond these, it also provides that:

> [If] any question arises whether a member of Majlis-e-Shoora (Parliament) has become disqualified … the Speaker [of the National Assembly] or, as the case may be, the Chairman [of the Senate] shall, unless he decides that no such question has arisen, refer the question to the Election Commission within thirty days and should he fail to do so within the aforesaid period it shall be deemed to have been referred to the Election Commission.

The Election Commission of Pakistan (ECP) is to decide the case within 90 days; if grounds for disqualification are established, the member's seat falls vacant.[26]

The Supreme Court subverted these provisions, convicting Gilani on 26 April 2012 of contempt of court for refusing to comply with its orders to write to the Swiss authorities to reopen a money-laundering case against President Zardari. The government had refused to write the letter on the grounds that the president enjoyed constitutionally-guaranteed immunity against prosecution while in office. The verdict, which found Gilani guilty of ridiculing the judiciary, overstepped the original charge that he had merely defied the court's instructions. The judges gave Gilani a symbolic sentence – the time it took for the judges to retire to their chambers.[27] On 19 June 2012, however, overriding the speaker and ECP's authority, the Supreme Court enhanced the sentence, ruling that Gilani had ceased to be prime minister after the 26 April judgment.[28] By dismissing the prime minister, it also intruded on the legislature's authority to hold the executive accountable.

In a separate assenting note, a judge observed that the court's power to convict the prime minister, under Article 204 of the constitution:

> … ensures that the court is not a helpless bystander incapable of ensuring that the command of the people is fulfilled. The court can effectively perform the role of the peoples' sentinel and guardian of their rights by enforcing their will; even against members of parliament who may have been elected by the people but who have become disobedient to the constitution and thus strayed from their will. This mechanism provides a straightforward governance paradigm, controlled ultimately by the people.[29]

This was a broad interpretation, since Article 204 does not mention disqualification from elected office.[30]

[26] Article 63, constitution.
[27] "Verdict out: SC convicts Gilani of contempt", *The Express Tribune*, 26 April 2012.
[28] Text of the 19 June 2012 short order, at: http://tribune.com.pk/story/395960/speakers-ruling-full-text-of-supreme-courts-short-order.
[29] "Text of separate note, Justice Jawwad S. Khawaja, in the Supreme Court's detailed judgment in the NA Speaker ruling case", *The News*, 4 July 2012.
[30] Article 204 of the constitution authorises the Supreme Court to punish any person who "(a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court; (b) scandalises the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt; (c) does anything which tends to prejudice the determination of a matter pending before the Court; or (d) does any other thing which, by law, constitutes contempt of the Court".

The legislature should act to thwart judicial interference in its functions. In June 2013, the PPP called for establishment of a constitutional court, as envisioned in the 2006 Charter of Democracy.[31] PPP Senator Farhatullah Babar said, "the time has come to carry out a dispassionate study of the impact of judicial overreach".[32] While the Supreme Court may well resist such a legislative effort, even after Chief Justice Iftikhar Chaudhry's retirement in December 2013, on the grounds that it would violate the basic constitutional feature of judicial independence, it should understand that its repeated resort to broad interpretations, including of its contempt powers, have raised concerns about partisanship and the separation of powers.

[31] Signed in London in May 2006 by Benazir Bhutto and Nawaz Sharif, the Charter of Democracy committed the two main opposition parties to numerous measures to end Musharraf's military rule and restore and strengthen democratic governance. http://beta.dawn.com/news/192460/text-of-the-charter-of-democracy.

[32] Amir Wasim, "PPP calls for setting up constitutional court", *Dawn*, 17 June 2013.

III. The Thirteenth National Assembly (2008-2013)

A. *Restoring Parliamentary Democracy*

Despite numerous setbacks and missteps during the PPP-led government (March 2008-March 2013), including poor governance and attempts by the military and judiciary to destabilise it, the political process was significantly more open and transparent than it had been for decades. The National Assembly in particular, despite some lost opportunities, achieved major successes in restoring constitutionalism and parliamentary democracy and setting precedents for constructive bipartisanship.

During Musharraf's military regime, the two most popular parties, the PPP and PML-N, had jointly struggled to restore democracy, including by signing their May 2006 Charter of Democracy, which in time provided the thirteenth National Assembly's framework for constitutional reform. Consolidating their partnership through the March-July 2007 movement to restore the Supreme Court chief justice and other judges sacked by Musharraf, they jointly opposed his November 2007 state of emergency and collaborated on his removal. This cooperation took on greater urgency after Benazir Bhutto's 27 December 2007 assassination.[33]

The two parties' decision to form a national unity government after the February 2008 elections was a far cry from their acrimonious relationship during the democratic interlude of the 1990s. The non-partisan role the speaker, a senior PPP member, played in the new National Assembly was a welcome change from earlier parliaments, in which that office was considered a ruling party office.[34] Although the PPP and PML-N forced Musharraf's resignation from the presidency in August 2008, the coalition fell apart soon after over the PPP's refusal to restore the sacked judges, including Chief Justice Chaudhry. Tensions between the parties subsequently peaked when President Zardari imposed governor's rule in Punjab, suspending the PML-N-led provincial government of Shahbaz Sharif in March 2009. The crisis was defused when the PPP, pressured by the PML-N and public opinion, restored the judges and lifted governor's rule.

Their relationship also gradually improved in parliament, where they cooperated on major legislation, including the eighteenth, nineteenth and twentieth constitutional amendments, to restore and strengthen parliamentary democracy.[35] The National Assembly's role in democratic development was largely possible because of this collaboration.

The parliament functioned more transparently than its predecessors, publishing information on sittings and proceedings through its website, which carried orders of the day and details of legislative business as well as details of the question hour, when members put questions to the executive, including ministers.[36] More importantly, in sharp contrast to the 51 bills passed by Musharraf's rubber-stamp parliament, it passed 134 bills.[37] Eighteen were private member bills, many of which were substantive. The Criminal Law (Third Amendment) Act, 2011, inserted a new chapter in the

[33] See Crisis Group Asia Briefing N°70, *Winding Back Martial Law in Pakistan*, 12 November 2007.
[34] Crisis Group interviews, parliamentarians, government officials and political activists, Islamabad and Lahore, April-July 2013.
[35] The constitutional amendments were, respectively, in April 2010, December 2010 and February 2012.
[36] National Assembly website, www.na.gov.pk.
[37] "National Assembly completes five years", *Daily Times*, 16 March 2013.

Pakistan Penal Code expressly prohibiting women from being deprived of inheriting property, forced into marriage or "married" to the Quran.[38] The Acid Control and Acid Crime Prevention Bill was adopted unanimously in 2011 to control import, production, storage and sale of acid, and enhance punishment for acid attacks. These private member bills were introduced by female legislators, giving "meaning to women's participation in parliament, and a fillip to the women's movement. Earlier, such bills would die on the assembly floor".[39]

The eighteenth amendment, the most significant of the constitutional legislation, demonstrated the potential of a democratic process when ruling and opposition parties support a common reform agenda over obstructionism. The PPP had prepared a draft bill in 2008 that it said was open to debate and revision. Instead of introducing that version, which many considered too weak,[40] the ruling party opted for discussion, political bargaining and revision, finally presenting a revised draft in 2010 that had buy-in from all the mainstream parties. Both houses of parliament unanimously approved the amendment in April of that year.[41]

The amendment restored parliamentary democracy, removing Musharraf's constitutional distortions that had resulted in a quasi-presidential system. The removal of Article 58-2(b) meant the president, the nominal head of state, could no longer dismiss elected governments, thus depriving the military of a tool it had repeatedly used in the 1990s to disrupt democratic functioning. The president's executive powers were once again limited to granting pardons and remitting, suspending or commuting sentences and promulgating ordinances when the Senate and National Assembly were not in session. The reforms also established new limits on such ordinances, which now have the effect of law for 120 days, unless parliament decides by a resolution to extend their validity for another 120 days, after which they expire.

The amendment made key appointments to the superior judiciary and ECP more transparent, consultative and subject to parliamentary scrutiny and approval. A well-informed political observer noted: "Now, if there is no parliament, there are no judges. No parliament, no ECP". Similarly contrasting the appointment mechanism for a caretaker government under the twentieth amendment with earlier practices, he added: "In the 1990s, candidates for caretaker prime minister and ministers were interviewed in army safe houses".[42] All this made parliament more central to governance.

While the eighteenth amendment likewise made free education a fundamental right and enhanced protection of other such rights, its most far-reaching provision was devolution of power from the centre to the provinces. This addressed a long-standing, tense fault line that had largely contributed to the country's 1971 dismemberment. The amendment removed the "concurrent list" of subjects both federal and provincial governments could legislate[43] – 47 provisions ranging from criminal law to marriage and divorce; wills and succession rights; transfer of property; drugs, medicines, the environment; labour provisions and trade unions; social welfare; and

[38] The latter refers to a woman's oath on the Quran to remain unmarried, thus losing her inheritance right.
[39] Crisis Group interview, I.A. Rehman, HRCP secretary general, Lahore, 29 April 2013.
[40] For its strengths and weaknesses, see Crisis Group Report, *Reforming Pakistan's Judiciary*, op. cit.
[41] Constitution (Eighteenth Amendment) Act, 2010.
[42] Crisis Group interview, Zafarullah Khan, executive director, Center for Civic Education, Islamabad, 25 March 2013.
[43] In case of discrepancies, between federal and provincial laws, the latter was to be considered void. Article 143 of original (un-amended) constitution.

the education syllabus. This list existed in addition to a federal legislative list of some 65 to 70 provisions. The result had been an overly centralised state, ill suited to an ethnically and regionally diverse polity.[44]

With the repeal of the concurrent list, 40 of its 47 subjects were transferred to the provinces, while the remaining seven were added to the federal list; some 20 ministries and divisions were similarly devolved. The eighteenth amendment revised Article 142(d) of the constitution to explicitly limit the National Assembly's legislative authority to subjects in the federal list, unless specifically authorised by a provincial assembly under Article 144. The reforms also revitalised the Council of Common Interests (CCI), mandated under the original constitution to regulate policies on which the federal and provincial governments could both legislate. The virtually defunct body gained more clout, because it was given a permanent secretariat, was required to meet at least once every 90 days, and the prime minister became its chairman.[45]

By cooperating in parliament on this far-reaching reform agenda, the ruling PPP and its PML-N opposition helped stabilise the first stage of a fragile democratic transition. A PML-N parliamentarian, now a minister in Sharif's cabinet, acknowledged that despite the government's failure to provide good governance, it deserved credit for "improving the structure and framework for democracy to succeed".[46] Similarly, a senior PPP member acknowledged that "the PML-N opposed us without putting enough stress on the system to roll us back to square one".[47] Siddiqul Farooq, the PML-N spokesperson, added: "We operated under the principle that the worst democracy was better than the best dictatorship".[48]

The PPP government failed to follow through on some good legislation. For example, in May 2012, President Zardari signed a bill for creation of a national commission on human rights (discussed below), which has yet to be established. Some ministries devolved under the eighteenth amendment, such as religious affairs and welfare – described by a senior opposition member in the previous parliament as "cash cows" – remain with the federation.[49] While the old health ministry was devolved, a new capital administration and development ministry was created to address health issues; then the cabinet division established a regulations and services ministry that was replaced in turn in October 2012 by a new public health services ministry.[50]

More importantly, parliament left democratic reform unfinished, providing opportunities for the judiciary and other actors to undermine the political process. This became especially apparent during the 2013 elections. The new parliament must reform a flawed electoral political and legal framework that otherwise could undermine democracy in the future.

[44] Moreover, Article 142(d) of the constitution had given the National Assembly "exclusive power to make laws with respect to matters not enumerated in either of the [federal and concurrent] Lists for such areas in the Federation as are not included in any Province". For the concurrent list's impact on the public education system, for example, see Crisis Group Asia Report N°84, *Pakistan: Reforming the Education Sector*, 7 October 2004.
[45] Constitution (Eighteenth Amendment) Act, 2010, and Articles 153 and 154 of the constitution.
[46] Crisis Group interview, Islamabad, June 2013.
[47] Crisis Group interview, Islamabad, April 2013.
[48] Crisis Group interview, Islamabad, April 2013.
[49] Crisis Group interview, Islamabad, April 2013.
[50] Imran Tipu, "Regulations ministry to undergo a change", *The News*, 24 October 2012.

B. *The 2013 Elections: Missed Opportunities*

Some important election-related reforms were included in the eighteenth and twentieth constitutional amendments of 2010 and 2012, respectively. Electoral laws were also revised to update and amend the voter rolls.[51] However, while these measures were significant, the 2013 polls showed them to be insufficient.

The president previously handpicked the Chief Election Commissioner (CEC) and the other four commissioners. The eighteenth amendment made the appointment process more transparent, requiring consultation between the prime minister and the leader of the opposition and the nominees to be approved by a bipartisan parliamentary committee. On 9 July 2012, the joint parliamentary committee unanimously approved the appointment as CEC of a widely respected former ad hoc judge of the Supreme Court, Fakhruddin G. Ebrahim.

The twentieth amendment established the terms for an incumbent government to transfer authority to a caretaker government to oversee the election, so as to alleviate concerns that the polls would be rigged. The prime minister and leader of the opposition are now to decide on a caretaker prime minister; if they fail to agree, they are to forward three names to a bipartisan parliamentary committee. If the committee cannot agree, the ECP chooses one of the three. A similar process was established for caretaker provincial governments. On 24 March 2013, after the ruling party and its parliamentary opposition failed to agree on a candidate, the ECP appointed Mir Hazar Khan Khoso, a former Balochistan high court chief justice, as caretaker prime minister.

The Election Laws (Amendment) Act, 2011, which amended the Electoral Rolls Act, 1974 and the Representation of the People Act, 1976, made the possession of a valid computerised national identity card (CNIC), with embedded biometric features, issued by the National Database and Registration Authority (NADRA), mandatory for voter registration and participation. For the 2008 elections, the Musharraf regime had allowed both NADRA-issued and non-computerised identity cards that were particularly vulnerable to misuse.[52]

While these amendments were a step in the right direction, the parliament fell short of overhauling a dysfunctional electoral system. Musharraf-era restrictions that were used to rig the 2002 and 2008 elections, including on campaign financing and transportation of voters to polling stations among others, were not removed. Parliament also failed to repeal Zia's morality clauses in Articles 62 and 63 of the constitution through the eighteenth amendment. As a result, it allowed the Supreme Court to frame the terms of the 2013 elections. In June 2012, that body directed the ECP to apply Musharraf-era restrictions, while the superior and subordinate judiciary colluded to enforce Zia's morality clauses.

Under section 7 of the Representation of People Act, 1976, the ECP is to appoint returning officers (ROs) from a pool composed of officers from the federal, provincial and local authorities.[53] Historically, however, ROs have been drawn from the subordinate judiciary, a practice the Supreme Court, under Chief Justice Chaudhry's leadership, had pledged to end. The National Judicial Policy of 2009 insisted on re-

[51] See Crisis Group Briefing, *Election Reform in Pakistan*, op. cit.

[52] "The old identity cards were easily duplicated and allowed unscrupulous candidates to produce hundreds, if not thousands, of bogus entries. On a computerised electoral roll, it will be a lot harder to fabricate voter registration". Senior electoral official quoted in ibid, p. 4.

[53] Chapter 3, Representation of People Act, 1976.

moval of judges from all executive assignments, including as ROs.[54] Ahead of the 2013 polls, the Supreme Court reversed this, ostensibly in response to an ECP request and, in the reported words of the court's registrar, in the "supreme national interest".[55]

Although ROs fall under the ECP's authority, in the 2013 elections, as in earlier polls, they remained subordinate to the superior judiciary. Following the Supreme Court's directive to apply the morality clauses of Article 62 during the nomination period, they used issues such as unpaid taxes and utility bills and adherence to Islam to disqualify candidates. These powers were granted though Chief Justice Chaudhry acknowledged corruption in the subordinate judiciary.[56] The directives also contradicted earlier Supreme Court decisions such as the 31 July 2009 judgment that Zia's "notorious Eighth Amendment" – that the Court now directed ROs to apply – had "undeniably … mutilated" the constitution.[57]

The nomination scrutiny process turned into what a PPP national candidate from Lahore described as "an exercise meant simply to humiliate candidates". She added: "In earlier elections, it was martial law and the military [that rigged the process]; today it is the judiciary".[58] Returning officers instructed candidates to recite particular prayers and the call to the prayer, answer questions about Islam and (particularly the women) give intimate details about personal lives.

Candidates were also disqualified if they, their spouses or dependents had outstanding loans or utility bills – which, as the EU Election Observation Mission noted, made "candidacy contingent to other people's financial status or behaviour and are thus not consistent with Article 25 of the ICCPR [International Covenant on Civil and Political Rights] which refers to the individual right to stand".[59] According to a PML-N candidate from Lahore, "someone filed a complaint against me on my taxes, even though I had filed my returns. Did either the lawyer who filed the reference against me, or the returning officer, have the competence to evaluate my returns? Did they engage tax consultants? This was completely out of their jurisdiction".[60] A political party worker in Punjab's Sialkot district said, "we have a complicated tax code, full of exemptions. You need a professional to evaluate this all before you say this person hasn't paid his taxes".[61]

The Supreme Court and ECP also invoked an outdated bachelor (undergraduate) degree electoral requirement that Musharraf had imposed in 2002 to disenfranchise large segments of his political opposition. Many candidates had acquired forged degrees to circumvent the ban in 2002 and 2008. Although the PPP-led government

[54] It said, "the Conduct of General Elections Order 2002, Representation of the People Act, 1976 and Local Government Ordinance 2001 do not contain any provision which requires that the elections are to be held under the supervision of the Judiciary. Therefore, in future, the Judiciary should remain aloof from the process of election to focus on disposal of cases". "National Judicial Policy 2009: A Year for Focus on Justice at the Grassroots Level", National Judicial (Policy Making) Committee, Secretariat, Law and Justice Commission of Pakistan, 2009, p. 12.

[55] "Chief justice speaks: 'in supreme national interest'", *The Express Tribune*, 8 April 2013.

[56] See for example, Chief Justice Iftikhar Muhammad Chaudhry, "Justice at the grassroots level", foreword to "National Judicial Policy 2009", op. cit., pp. 1-4.

[57] Text of the judgment at: http://archives.dawn.com/archives/76175.

[58] Crisis Group interview, Bushra Aitzaz, Lahore, 29 April 2013.

[59] "General elections 11 May 2013", Pakistan Final Report, EU Election Observation Mission, July 2013, p. 22.

[60] Crisis Group interview, Sardar Ayaz Sadiq, Lahore, 29 April 2013.

[61] Crisis Group interview, Sialkot, 20 April 2013.

repealed the law in April 2008, the Supreme Court ordered the disqualification of scores of national and provincial parliamentarians on the grounds that their candidacies in 2008 had been illegitimate – a retroactive application of an invalid law. The ECP also disqualified those who forged their degrees in 2008 from the 2013 elections, invoking Zia's morality clauses.[62]

On 4 April 2013, a broad coalition of professional bodies, trade unions and other civil society groups issued a statement criticising the ECP's actions as "Zia-era vigilantism and a disguised return to the 'accountability before elections' mantra". The statement added: "This whole exercise smells of malafide intentions".[63] The chief justice reiterated his instructions in a 7 April 2013 address to returning officers and assistant returning officers in eight districts.[64] A prominent human rights activist described the chief justice's actions as "goading the ROs".[65]

The application of the morality clauses was selective and inconsistent. For example, former President Musharraf was rejected in three of the four constituencies where he filed nomination papers but accepted in the fourth. The PML-N's Ayaz Amir, a highly respected columnist, was disqualified for writing two columns "against the ideology of Pakistan".[66] An appellate tribunal overturned the decision. PPP and PML-N party workers in Amir's constituency of Chakwal, Punjab, described the scrutiny process as "a mockery of all of us, where one day we're told this man cannot run, the next day we're told he can. It was all a waste of time and money".[67]

Overturning former Prime Minister Raja Pervez Ashraf's disqualification, a Lahore High Court bench held that neither a returning officer nor an appellate tribunal had the authority to invoke Article 62 unless a court had convicted or otherwise declared the candidate unfit to contest the election.[68] While the majority of disqualifications were similarly overturned on appeal, the exercise undermined the ECP's credibility and reinforced suspicions about the Supreme Court's intentions.

The Supreme Court also instructed the ECP to apply unreasonable Musharraf-era restrictions on campaign financing, a very low 1.5 million-rupee (about $15,000) ceiling, and a ban on wall chalkings (political graffiti).[69] Parties were likewise prohibited from transporting voters to polling stations in a country with limited public transport, particularly in rural areas, though the ECP acknowledged it lacked resources to provide such service.[70] Most of these decisions were announced less than a year before the polls. According to the HCRP secretary general, Rehman, "The ECP and Supreme Court had no business to make orders at the eleventh hour. The whole argument for a permanent ECP is that this is ongoing business, so what were they doing for five years?"[71]

[62] Sajid Chaudhry, "Crackdown on forged degree holders still on: ECP", *Daily Times*, 19 February 2013.
[63] "ECP urged to shun 'dictatorial-era' tactics", *Dawn*, 5 April 2013.
[64] "Chief justice speaks: 'in supreme national interest'", *The Express Tribune*, 8 April 2013.
[65] Crisis Group interview, I.A. Rehman, secretary general, HRCP, Lahore, 29 April 2013.
[66] "ECP rejects nomination papers of PML-N's Ayaz Amir", *The Express Tribune*, 4 April 2013. Amir subsequently quit the PML-N, when he failed to obtain the party nomination.
[67] Crisis Group interviews, Chakwal, 25 April 2013.
[68] "LHC allows Raja to contest election", *Dawn*, 23 April 2013.
[69] In remote rural areas, where there is limited space for posters and banners, wall chalkings are integral to electoral campaigns, particularly for poorer candidates. Crisis Group interviews, political party workers, northern Punjab, April-May 2013.
[70] Maqbool Malik, "ECP starts e-ticket service for voters today", *The Nation*, 6 May 2013.
[71] Crisis Group interview, Lahore, 29 April 2013.

The gamut of restrictions stifled a major objective of a national election: public debate on important issues. As in past elections, the morality restrictions also worked, during the nomination process, to the advantage of sectarian and other extremist religious actors. While scores of candidates from moderate parties were disqualified, 40 members of the banned Sunni extremist group, Lashkar-e-Jhangvi (LeJ) and its parent organisation, Sipah-e-Sahaba Pakistan (SSP), including SSP leader Maulana Ahmad Ludhianvi, were declared eligible.[72] All were on the Fourth Schedule of the 1997 Anti-Terrorism Act, a terrorist watch list. Fifteen others belonging to various religious parties and on that list similarly qualified.[73]

This was particularly disturbing given the terror attacks and threats that constrained the electoral activities of moderate parties. As elections neared, militant groups identified the PPP, the urban Sindh-based Muttahida Qaumi Movement (MQM) and the secular Pashtun nationalist Awami National Party (ANP) as specific targets, warning voters not to attend their rallies. From January to mid-May 2013, some 150 attacks on their leaders, workers and voters killed 170 people and injured over 700.[74] The Khyber Pakhtunkhwa-based ANP was the primary target, severely curtailing its ability to campaign.[75] ANP leader Asfandyar Wali Khan asked:

> Can one call these elections free, fair and transparent when [Tehreek-e-Taliban leader] Hakimullah Mehsud decides the rules and tells us which party will and which party will not contest elections? Who is the referee here? Fakhruddin G. Ebrahim [the CEC] or Hakimullah Mehsud?"[76]

Terrorist threats and attacks extended well beyond Khyber Pakhtunkhwa (KPK) and Sindh's capital, Karachi. In northern Punjab districts, for instance, the PPP could not hold rallies and public meetings.[77] The ANP and PPP lost almost all their seats in KPK and, in the PPP's case, in Punjab. While this can be attributed to their poor performance in government, it was also the result of a skewed playing field that benefited parties excluded from the militants' hit list, such as Sharif's Muslim League and Imran Khan's Pakistan Tehreek-e-Insaf (PTI).

Despite terror threats, judicial interference and a disempowered ECP, the 2013 polls were a major political milestone. The 55 per cent turnout reflected support for parliamentary democracy, and the result was the first ever transition from one democratically-elected government to another. But the manner in which the elections were held also underscored the need for further reform.

Such reform should be among the parliament's top priorities if the next polls are to be free, fair and democratic. The importance of removing Zia's morality clauses is evident. The ECP applied Articles 62 and 63 to candidates for the July 2013 presidential election, again making bureaucrats and judges moral arbiters of an electoral process.[78] The articles also continue to be evoked to disqualify elected representatives and candidates in by-elections. The judiciary's interference in the electoral process likewise persists. In July 2013, for instance, the Supreme Court disqualified two

[72] Banned in 2002, SSP now operates under the name Ahle Sunnat Wal Jamaat.
[73] Amir Mir, "55 charged terrorists allowed to contest polls", *The News*, 24 April 2013.
[74] "Elections 2013: violence against political parties, candidates and voters", Pakistan Institute for Peace Studies, May 2013.
[75] Crisis Group interviews, ANP members, Peshawar and Nowshera, KPK, May 2013.
[76] Ismail Khan, "Asfandyar – running campaign from Islamabad", *Dawn*, 8 May 2013.
[77] Crisis Group interviews, PPP district-level officeholders and workers, Jhelum, 11 May 2013.
[78] Iftikhar A. Khan, "Articles 62, 63 to come into force", *Dawn*, 21 July 2013.

PML-N and one Pakistan Muslim League (Quaid-e-Azam, PML-Q)[79] Punjab Assembly legislators for holding forged degrees and suspended a National Assembly member because the Higher Education Commission had yet to verify his. It also instructed the ECP to continue inquiries into the authenticity of legislators' degrees. The same month, the ECP banned a PTI candidate from a Punjab by-election for holding a fake degree.[80]

The fourteenth National Assembly must complete the unfinished business of electoral and other democratic reform. By building on the achievements, and avoiding some of the pitfalls, of its predecessor, it can play a major role in strengthening and broadening the democratic enterprise.

[79] The PML-Q was Musharraf's civilian proxy party in the 2002 parliament, comprising defectors primarily from the PML-N. See Crisis Group Report, *Authoritarianism and Political Party Reform*, op. cit.

[80] Iftikhar A. Khan, "Fake degrees case: SC disqualifies two MPAs, suspends MNA", *Dawn*, 19 July 2013; also "Unverified degrees: 2 PML-N provincial assembly members suspended", *The Express Tribune*, 11 July 2013. Mubashar Zaidi, "Fake degree: PTI candidate from Mianwali 'home seat' faces by-poll ban", *Dawn*, 27 July 2013.

IV. Strengthening the Legislature

A. *Parliamentary Committees*

Beyond broad constitutional and legal reforms, the best case for parliamentary supremacy rests in the day-to-day exercise of its legislative functions. The thirteenth National Assembly had marked another historic shift: in the role of parliamentary committees. Upon introduction in the house by a minister or a private member, all bills, except finance bills, are referred to a standing committee for consideration. It is only after the committee's approval that a bill is considered in the full house. Although such committees should be the lifeblood of a legislature, they had been largely dormant until 2008.

Article 67 of the 1973 constitution had empowered the National Assembly and Senate to make rules regulating their procedure and conduct of business. Until they did so, the president would make those rules. In August 1973 he enacted the rules of procedure and conduct of business for the legislature, under which committees were chaired by the relevant federal minister, thus negating the principle of executive accountability to the legislature. The committees could only take up matters referred to them by ministers or other parliamentarians, and on the instructions of the speaker.[81]

These rules remained in force until the Senate passed its own in 1988, during Benazir Bhutto's first PPP government, and the National Assembly followed in August 1992, during Nawaz Sharif's first government. The new rules gave parliamentary committees enough authority to be effective checks on the executive. While the changes have given national committees real power, provincial assemblies have yet to use their power to pass similar reform. Provincial parliamentary committees can still only consider business sent them by the speaker. Most lie dormant as a result, especially in legislatures that lack an effective opposition.

According to their present rules, the parliament's standing committees, constituted in both houses for every federal ministry, are empowered to examine all aspects of the functioning of ministries, including administration, expenditure, legislation and other policies. Rather than be chaired by ministers, committees elect chairpersons from their members. National Assembly standing committees have to be constituted within 30 days after directions from the speaker. The relevant ministers are ex-officio members but cannot vote unless they are members of the National Assembly.[82]

On 21 August 2013, the fourteenth National Assembly established 34 standing committees.[83] These can receive public petitions pertaining to their relevant ministry; forward findings and recommendations to that ministry, which is required to respond within a specified time; and can subpoena any legislator, relevant official or "such papers and records as may be required and considered necessary for the discharge of their duties". Committees are also authorised to hold public hearings and consult experts outside government and to initiate proceedings on their own. Any committee

[81] Crisis Group interview, Fakhr Imam, former National Assembly speaker, Islamabad, 11 June 2013.
[82] Chapter 20, Rules of Procedure and Conduct of Business in the National Assembly, National Assembly of Pakistan at www.na.gov.pk/uploads/publications/rules_procedure.pdf.
[83] They include Defence; Defence Production; Foreign Affairs; Kashmir Affairs and Gilgit-Baltistan; Inter-Provincial Coordination; Law, Justice and Human Rights; Parliamentary Affairs; Finance, Revenue, Economic Affairs, Statistics and Privitisation; Industries and Production; Water and Power; and Religious Affairs and Inter-faith Harmony. For the full list, see National Assembly website, www.na.gov.pk.

member can move parliament to consider a report by his or her committee, regardless of executive branch consent.[84]

The public accounts committee (PAC) has a maximum number of 23 National Assembly members and the finance minister as an ex-officio member. It examines the government's annual financial accounts, the report of the auditor general, and any other matter referred by the finance ministry. It also scrutinises appropriations accounts. The PAC must be satisfied that funds have been disbursed legally and spent appropriately, and that any re-appropriations have been made in accordance with finance ministry rules. It also examines incomes and expenditures of state corporations, trading and manufacturing schemes and projects and autonomous or semi-autonomous official bodies.[85]

In addition to standing committees and the PAC, other permanent committees include rules of procedure and privileges; house and library; government assurances; and business advisory. Non-permanent select and special committees can also be formed. Since the eighteenth amendment, new parliamentary committees, drawn equally from the ruling party and its allies and the parliamentary opposition, approve appointments to the higher judiciary and can appoint the CEC if the prime minister and leader of the opposition fail to agree on a candidate.

During the 1990s, parliamentary committees were dysfunctional, because successive elected governments were dismissed by the military before they completed their full term of office. The PPP and the PML-N, the two major parties throughout that decade, made little effort to strengthen the committee system. The opposition's membership in key committees did not reflect its numbers in the bitterly divided, winner-take-all parliaments.

Chosen in the massively rigged 2002 election, the twelfth National Assembly did little more than rubber-stamp Musharraf's measures, which stripped power from elected bodies. Parliamentary committees took as long as eighteen months to form, and, as in earlier parliaments, their composition disproportionately favoured the ruling party and its allies. Since ruling coalition legislators considered themselves responsible to the military regime, not the electorate or parliament, an informed observer spoke of a "complete deterioration of parliamentary ethics".[86] The military's proxies in the civil bureaucracy refused to accept parliamentary committees' authority. For instance, in July 2004, the Pakistan International Airlines (PIA) refused Senate defence committee demands for documents related to suspected inflated Boeing 777 lease deals, reportedly on Musharraf's orders.[87]

Among numerous proposals, the PPP/PML-N 2006 Charter of Democracy called for "bipartisan working of the parliament through [a] powerful committee system".[88] This included giving the opposition leader authority to appoint the potentially powerful PAC chair, so as to ensure more government transparency. After 2008, with chairmanships given to various parties, many key committees had equal ruling party

[84] Raja Asghar, "NA gets 34 standing committees", *Dawn*, 22 August 2013.
[85] Chapter 20, Rules of Procedure and Conduct of Business in the National Assembly, op. cit.
[86] Crisis Group interview, Marvi Sirmad, Islamabad, 11 July 2013. Sirmad is project manager of the UNDP-supported parliamentary strengthening program.
[87] "PIA refuses to provide key documents to defence committee of senate", *South Asia Tribune*, 11 July 2004; "Report of the standing committee on defence and defence production on Pakistan International Airlines", presented by Senator Nisar Ahmed Memom, committee chair, January 2009, at www.senate.gov.pk/uploads/documents/1362111140_559.pdf.
[88] Charter of Democracy, op. cit.

and opposition representation. The fourteen-member national security committee (PCNS) had members from nine parties and an independent (from FATA), but only three from the ruling PPP. Chaired by the opposition leader, Chaudhry Nisar Ali Khan (now interior minister), the PAC became far more active, holding regular hearings into official misdeeds, issuing several reports and reportedly recovering millions of misappropriated rupees. High-profile inquiries were made into illegal quotas to liquefied petroleum gas (LPG) companies and corrupt practices by the National Logistics Cell, a military construction entity, that implicated 88 retired army officials, including generals.[89]

Other opposition-chaired committees produced similar results. The National Assembly's standing committee on railways, for example, chaired by the PML-N's Sardar Ayaz Sadiq, held regular hearings and issued nine reports, including one on the Musharraf government's allotment of Pakistan Railways land in Lahore to a golf club that reportedly cost the treasury sixteen billion rupees (roughly $160 million). The findings implicated three retired generals and a retired brigadier, including a former Inter-Services Intelligence (ISI) chief.[90]

Some Senate committees were equally active. In March 2013, the standing committee on defence held hearings on military-owned property and cantonments, including defence housing authorities (DHAs). It proposed that DHA administrators should be appointed by the defence ministry, not the army chief as at present. An Islamabad DHA bill was consequently revised to reduce the military's discretion in appointing the DHA management.[91] The committee also took exception to military personnel refusing to respect members of parliament, directing the ministry to prepare a Standard Operating Procedure (SPO) on this.[92]

While the work of these committees bolstered the legislature's role, according to HRCP's secretary general, I.A. Rehman, "these experiments are in their initial stages and need to be nursed with care and imagination before they can achieve the goal of broadening the democratic base of governance".[93] For the legislative branch to fulfil its mandate, other committees will have to be similarly assertive, including those chaired by ruling party members, since such chairpersons are often averse to antagonising the government.[94]

For instance, the performance of the PPP-chaired finance, revenue and planning and development committee in the previous National Assembly was unimpressive. Given the pressing need for economic reform, this committee should make itself central to the national policy debate. Other National Assembly standing committees that are equally important to the reform agenda include foreign affairs; interior; law, justice and human rights; parliamentary affairs; inter-provincial coordination; and water

[89] Khawar Ghumman, "Distinguished figures among LPG quota beneficiaries", *Dawn*, 7 January 2010. Zahid Gishkori, "Dodgy dealings: corruption taints 88 armed forces officials", *The Express Tribune*, 3 November 2011.

[90] Crisis Group interview, Sardar Ayaz Sadiq, Lahore, 29 April 2013. Sadiq was the chairman of the National Assembly standing committee on railways at the time of these investigations. He is now the speaker of the National Assembly. Also, Ijaz Kakakhel, "NA body directs NAB to investigate ex-army officials", *Daily Times*, 29 June 2012.

[91] "National Assembly adopts Islamabad DHA bill, 2013 with amendments", *Business Recorder*, 26 February 2013.

[92] "Appointment powers: limit role of army chief's role in DHAs, states panel", *The Express Tribune*, 5 March 2013.

[93] I.A. Rehman, "The issue is governance", *Dawn*, 23 May 2013.

[94] Crisis Group interviews, PPP and PML-N members, Islamabad and Lahore, April-May 2013.

and power. The bicameral national security committee (PCNS), created in 2008 by a joint session of parliament, could be important – if it refrains from simply doing the military's bidding.

Parliament should also constitute special committees on electoral reform and to oversee the decentralisation process. That will not make a difference, however, if important bills continue to languish in committee. By parliamentary tradition, the Senate chair, a minister or the mover of a private member's bill can give a committee a deadline for returning a bill to the full house. Senate committees usually observe these deadlines, but bills often sit in National Assembly committees for years.[95]

Parliament has yet to fully exercise its authority to check the powerful civil bureaucracy, including overseeing the administration and expenditures of ministries. Committees can summon and question officials in public hearings about the use of public funds and other resources, personnel appointments, management and other performance-related matters.[96] The unreformed bureaucracy is more than capable of bypassing, if not completely ignoring, its elected masters, not least because most parliamentarians lack hands-on government experience, due to regular interruptions of the democratic process.

The bureaucracy has often defied committees. In March 2013, for instance, as the electoral reforms special committee was considering amendments to legislation, the ECP wrote the Senate that:

> No committee of either house or a joint parliamentary committee can meddle or exercise oversight on the mandate given to the ECP by the constitution .... The parliament is all-powerful to make or amend the laws to give more powers to the ECP to accomplish its mandate in accordance with the provisions of the constitution. However, it is bereft of any power to make inroads in the constitution except ... to the extent of empowering the ECP and not to digress from the powers already given to the ECP.[97]

According to a senator on the special committee, "we deliberated, and responded saying that parliament has a right to legislate and oversee .... We made it clear that we were not interfering in the ECP's day-to-day functions, or its independence. But the ECP still has not accepted the committee's right to oversight, and as a result the committee has yet to be fully empowered".[98]

Similarly, in late 2012, the defence ministry, opposing public scrutiny of the defence establishment, tried to block a bill in the Senate subcommittee on the right to information. In June 2013, the subcommittee finally rejected its objections, but they had delayed committee approval for eight months. A senior member, Senator Far-

[95] For example, the government presented a bill in December 2008 for a national human rights commission, discussed below, and referred it to the National Assembly standing committee on human rights. The committee did not present its report on the bill until January 2011.

[96] For analysis of the civil bureaucracy's functioning, see Crisis Group Report, *Reforming Pakistan's Civil Service*, op. cit.

[97] Iftikhar A. Khan, "ECP rejects senate committee's reform proposal", *Dawn*, 17 March 2013. As a special body, the electoral reforms committee has far less authority than a permanent committee, which is possibly why the ECP has rejected its proposed amendments.

[98] Crisis Group interview, PPP senator, Islamabad, May 2013.

hatullah Babar, observed: "No executive organ had been so contemptuous towards a committee of the house".[99]

The Supreme Court has also rejected attempts by the Public Accounts Committee to examine its accounts and audits. The Supreme Court Registrar, its chief accounting officer, has repeatedly refused to appear before the committee on the grounds that it was not competent to examine the court's expenditure. In January 2013, the PAC presented a report to the National Assembly, calling on parliament to seek lawful ways of ensuring compliance.[100]

Some parliamentarians who support more vigorous oversight of the civil and military bureaucracies believe that the committees must first prove themselves within parliament and gain credibility with the public.[101] "Then, people will start to support those new powers", said a former speaker of the National Assembly.[102]

B. *Bringing the Public to Parliament and Parliament to the Public*

The National Assembly and Senate are located in Islamabad's high security "red zone", where restricted access symbolises the gulf between elected representatives and the public. That gulf has widened over decades of rigged elections and direct and indirect military interventions, with parliament rarely perceived as either truly representative of the electorate or a real centre for decisions. The ongoing democratic transition offers an opportunity to expand the public's knowledge of and input into the parliamentary process.

State and private television channels cover parts of some key parliamentary sessions. However, a dedicated private, non-profit endeavour, along the lines of the U.S. Cable-Satellite Public Affairs Network (C-SPAN), could make the parliamentary process more transparent to larger segments of the electorate.

Parliament should further open its proceedings not just to citizens' scrutiny but also to their input. The National Assembly's rules allow committees to hold public hearings. While Senate rules do not specifically mention such hearings, they authorise a committee to "invite or summon any person or member having a special knowledge to give an expert opinion or give evidence in relation to any matter under its consideration".[103] Indeed, the upper house has been much more proactive than the National Assembly in initiating such proceedings.

In September 2012, the Senate defence committee invited experts to discuss such sensitive issues as nuclear policy, the military's role in internal security – including its support to extremist outfits – and stabilisation of the tribal borderlands.[104] In November, it held a public hearing on civil-military relations. According to its chair, Senator Mushahid Hussain Syed, "the supremacy of parliament cannot be established

[99] Qamar Zaman, "Ensuring transparency: senate panel finalises draft Right to Information Act", *The Express Tribune*, 14 June 2013.
[100] "Non-appearance of Supreme Court registar: PAC presents its special report to the National Assembly", *Business Recorder*, 24 January 2013.
[101] Crisis Group interviews, PPP, PML-N parliamentarians, Islamabad, Lahore, May-June 2013.
[102] Crisis Group interview, Fakhr Imam, Islamabad, 11 June 2013.
[103] 187 (3), Rules of procedure and conduct of business in the senate, 2012, Senate of Pakistan.
[104] See minutes of the meeting, www.sdpd.org.pk/index.php/2012-10-16-09-11-33/2012-10-16-09-23-19/first-public-hearing-meeting-minutes-on-defence-committee-senate/minutes-of-the-first-public-hearing-of-the-senate-standing-committee-on-defence-and-defence-production.

by words alone or by simply referring to clauses in the constitution. This has to be done through performance and leadership in ideas, issues and initiatives".[105]

In October 2012, the Senate special committee on electoral reform held a public hearing, consulting several local and international civil society organisations to identify priorities. With no Senate elections due until 2015, its committees have operated uninterrupted. On 8 June, for example, the Senate standing committee on petroleum and natural resources held a hearing, with expert witnesses, on an underground coal "gasification" project in Sindh province's Thar field.[106] The same month, its inter-provincial coordination committee invited experts and officials to discuss education reform. An expert at the hearing said it provided a major advocacy platform that should be replicated by other parliamentary committees.[107]

In the absence of detailed rules, such hearings remain stand-alone exercises, driven by committee chairs, with members often given insufficient notice and/or little input into the selection of witnesses.[108] When there is a large proportion of inexperienced legislators, as in the current National Assembly, senior members tend to dominate. "The hearings end up becoming more like a seminar", said an informed observer. "Instead of asking questions and engaging the witness on the issues, members start lecturing".[109]

Public hearings can help inform legislative oversight and law-making. The Senate should amend its rules to include a specific provision for them; the rules of both houses should encourage standing committees to hold periodic public hearings on issues under their remit, inviting a diverse range of witnesses from within and outside government.

All such hearings should be open to the public. Under National Assembly rules, "[a]ny evidence produced or information tendered before a Committee shall be treated as confidential or secret, unless the Committee, in the public interest decides otherwise".[110] It would be in parliament's interest not just to gauge but also to advise and guide public opinion constructively. Nor should the parliament allow itself to be used to justify military-dictated and devised policies. The PCNS, established by a fourteen-point joint parliamentary resolution, has held only closed hearings, including those on Pakistan-U.S. relations in December 2011-January 2012, following the November 2011 NATO air raid that killed 24 Pakistani soldiers at a border post in FATA's Mohmand Agency. Among the witnesses who testified were Army Chief Ashfaq Parvez Kayani and ISI Director General Shuja Pasha. According to a person privy to the session, "no MNA [member of the National Assembly] dared ask them any questions. There was a feeling that they were there at the army's pleasure, so they should not abuse it".[111]

[105] "Public hearings on: towards a new defence strategy & civil-military relations", Report of the Senate committee on defence and defence production 3, Senate of Pakistan, p. 7.
[106] Khaleeq Kiani, "Thar gasification project being ignored: scientist", *Dawn*, 9 June 2013.
[107] Crisis Group interview, Mosharraf Zaidi, campaign director, Alif Ailaan, Islamabad, 25 June 2013. Alif Ailaan is a civil society coalition for education reform, www.alifailaan.pk/about.
[108] Crisis Group interviews, parliamentarians, Islamabad and Lahore, April 2013.
[109] Crisis Group interview, Islamabad, 10 July 2013.
[110] Rule 230, National Assembly rules of procedure and conduct of business, op. cit.
[111] Crisis Group interview, Islamabad, June 2013. In March 2010, General Kayani had presided over a meeting of federal secretaries, ahead of the start of a new U.S.-Pakistan strategic dialogue, the first ever such meeting during a civilian government.

Even in public hearings and during regular parliamentary proceedings, former and serving parliamentarians say that the chairperson, whether the National Assembly speaker or the Senate or committee chair, often interrupts speakers airing controversial views and strikes the comments from the record.[112] This contravenes a cornerstone of legislative debate: freedom of parliamentary speech, protected under Article 66 of the constitution.[113] Some suspect that this could become even more prevalent in public hearings that invite a broader spectrum of (potentially contentious) public opinion. Already, there are reports of committee chairs striking parts of witness testimony from the record.[114]

The parliamentary leadership should not view public hearings and other proceedings as a pursuit of blanket consensus or consider certain issues off-limits. Committees should ensure a diverse range of opinion when selecting witnesses, who should have ample opportunity to refute testimony by other speakers, including government officials; and the protection of parliamentary speech should be extended to their witness. The National Assembly should amend its rules on the confidentiality of evidence, establishing a threshold for closed-door hearings, such as consent of a quarter of the committee's membership to the request of a witness whose security is endangered; or when classified or other confidential information is to be considered.[115]

Committees are required to report annually to the National Assembly about their impact on the ministries they oversee and related policies and issues. According to an informed observer, "the committees are in a sense imprisoned by a very literal interpretation of the rules, so the reports are just a compilation of minutes from their proceedings, instead of analysis that would make them more useful".[116] As of mid-September 2013, only seven committee reports were available on the National Assembly's website, the first from April 2009, the last from January 2013. Only three were from standing committees.[117]

C. *Shaping the Policy Debate*

Parliamentarians have to reconcile their roles as representatives of their constituencies, parties and committees. As party representatives, they are legally obliged to follow its directives when voting on major legislation, such as the budget and constitutional amendments. Under the constitution, if they vote against party directives on a money bill, they are deemed to have defected from the party and are thus disqualified.[118] In the absence of a right to dissent, the greatest policy value of individual members lies in informing legislation before bills are presented formally for consideration. They can and should use the committee system to obtain expert input, gauge public opinion and then guide their party leadership on a range of public policy issues. The following should be among the priorities.

[112] Crisis Group interviews, Islamabad, June 2013.
[113] Under this article, "No member shall be liable to any proceedings in any court in respect of anything said or any vote given by him in [parliament]".
[114] Crisis Group interviews, observers privy to committee hearings, Islamabad, June 2013.
[115] National Assembly rules merely stipulate that "the sittings of a Committee may be held in-camera if so determined by the Committee". Rule 226, National Assembly, op. cit.
[116] Crisis Group interview, Islamabad, 10 July 2013.
[117] National Assembly website, www.na.gov.pk/en/committee_reports.php.
[118] Article 63-A.

1. Public expenditure

Although the parliament's power partly lies in its ability to vote on public expenditure, its control over such expenditure is limited. Money bills originate in the National Assembly, presented by the finance minister or, in his absence, any other minister authorised by the leader of the house. No other business can be transacted on the day the budget is introduced. Following general discussion on the budget as a whole and on appropriations, parliamentarians vote on requests for grants, made by ministries and government divisions. During the general discussion, no motions are moved, nor is the budget submitted to a vote. Members may subsequently move "cut motions", the passage of which amounts to a vote of no confidence in the government. As in the British House of Commons, upper house approval is not required on a money bill, though the Senate does review and make non-binding recommendations.[119]

The rules allow rigorous discussion, but the budget is often "passed after one sitting, in three hours, with no opportunity for real debate".[120] Formulation is opaque, largely dominated by the bureaucracy, with the finance and revenue committee playing a marginal role. The large defence portion is a single line item, in effect off-limits for debate, thus allowing the military to operate free of parliamentary oversight.

The significance of the annual budget process is also regularly undermined by supplementary budgets that often add 15-20 per cent to the original expenditures and are approved ex post facto, after the money has been spent.[121] The extra-parliamentary tool of Statutory Regulatory Orders (SROs) also allows the executive to override the legislature in enhancing or reducing taxes and duties on specific goods. According to a former senior government official, "when you want government by fiat, or if you simply want to avoid a debate in the legislature, you use an SRO".[122] Such discretionary powers, coupled with the complexity of tax laws, excessive rates and the lack of accurate documentation in the private sector, enable widespread tax evasion and makes the income tax and customs and excise departments reportedly among the most corrupt in the bureaucracy.[123]

Until the eighteenth amendment put curbs on their exercise, the president's powers to promulgate ordinances and, under Article 99 of the constitution, to "make rules for the allocation and transaction of the business of government" were also regularly misused to bypass parliament. Imposing limitations on presidential ordinances, the amendment also transferred Article 99 rule-making authority from the president to the "federal government".[124] However, under schedule four of the government's rules of business, unelected bureaucrats retain the authority "to make and execute orders and other instruments in the name of the President".[125] Federal secretaries, not their

[119] Chapter 19, National Assembly, op. cit.
[120] Crisis Group interview, former parliamentarian, Islamabad, June 2013.
[121] Crisis Group telephone interview, Fakhr Imam, former National Assembly speaker, Islamabad, 25 July 2013. In June 2013, at the end of the fiscal year 2012-2013, the National Assembly approved supplementary expenditure of 1.44 trillion rupees (around $14.5 billion), beyond an original appropriation of 9.46 trillion rupees ($99.5 billion) – a roughly 15 per cent increase. Khaleeq Kiani, "Rs1.44 tr supplementary budget approval likely", *Dawn*, 17 June 2013.
[122] Crisis Group interview, Islamabad, May 2013.
[123] Crisis Group Report, *Reforming Pakistan's Civil Service*, op. cit., p. 16. Less than a million Pakistanis pay income tax, the vast majority of them salaried employees, with taxes deducted from their salaries. "Only 900,000 pay taxes: Mandiviwalla", *The Nation*, 3 March 2013.
[124] Article 99, constitution.
[125] Schedule IV, Rules of Business 1973, cabinet secretariat, cabinet division.

elected ministers, have final authority to issue executive orders, although ministers must approve a summary. A senior PPP member said, "the bureaucracy knows how to keep ministers happy, and because the bureaucracy controls the purse strings, ministers want to keep the bureaucracy happy – so, much of the time, they approve [the summaries]".[126]

Other practices have also eroded the legislature's power of the purse. In the 1980s, the Zia regime, to weaken party loyalties and create political clients, introduced discretionary development funds for each legislator. This undermined parliament's authority over expenditures. Moreover, according to a senior PPP member, "municipal politics overtook national politics. Now the question was no longer about national policy; it was, 'how many *nallas* [gutters] and roads did you build?'"[127] With the practice continuing, such access to generous discretionary funds – now around 20 million rupees ($200,000) per MNA – negates the importance of using regular budgetary allocation processes for constituencies. Since they are not dependent on the support of the cabinet, the legislature and even their own parties, some parliamentarians, an informed observer said, operate more as "ATM machines" in their constituencies than legislators.[128] But while legislators on good terms with the government get these grants on time, grants to the government's opponents are often delayed and in some cases never given.[129]

The 2013-2014 budget abolished the prime minister's and cabinet ministers' discretionary funds.[130] The new cabinet has also agreed in principle to abolish development funds for National Assembly members. By following through on this quickly, the Sharif government would send a strong signal that it intends to end patronage and plug drains on the treasury during a grave economic crisis.

Despite the PTI's pledge to abolish the discretionary funds once in power in Khyber Pakhtunkhwa, it has earmarked 20 million rupees ($200,000) for every KPK assembly member under its 2013-2014 annual development program.[131] The Balochistan government abolished discretionary funds for the chief minister and provincial assembly members in June 2013, despite opposition by some legislators.[132] Other provincial governments should follow that example.

The role of parliamentary standing committees in the budget formulation process was institutionalised by the last parliament. In January 2013, after the presentation of a report and recommendations by the standing committee on rules of procedure and privileges, the National Assembly rules were revised to enhance standing committees' input. Each federal ministry is now required to "submit its budgetary proposals relating to [the] Public Sector Development Program (PSDP) for the next financial year to the relevant Standing Committee not later than the 31st January of [the] preceding financial year".[133] Each standing committee is empowered to scrutinise

[126] Crisis Group telephone interview, Islamabad, July 2013.
[127] Crisis Group interview, Islamabad, March 2013.
[128] Crisis Group interview, Islamabad, 10 July 2013.
[129] Crisis Group interviews, serving and former parliamentarians, Islamabad, June-July 2013.
[130] "Discretionary funds of 34 departments abolished", *Business Recorder*, 14 June 2013.
[131] Intikhab Amir, "Negation of PTI's manifesto: KP lawmakers to get uplift funds", *Dawn*, 9 June 2013.
[132] Babar Dogar, "Balochistan govt seeks support of tribal heads to end terror", *The News*, 17 July 2013.
[133] The PSDP is the main instrument for providing budgetary support to the federal government's development project and programs.

the relevant ministry's budgetary proposal, suggest amendments and recommend its PSDP for the next financial year, before the proposal is sent to the finance ministry for inclusion in the federal budget. The concerned committee is to make its recommendations by 1 March of every year; if it fails to do so, the ministry's budgetary request "shall be deemed to have been endorsed by the Standing Committee".[134]

Since the 2013-2014 budget had to be passed less than a month after the Sharif government took office and before National Assembly standing committees were formed, the new rules have yet to be put into practice, but they have potential for an enhanced legislative role in a main policy process. The standing committees must seize the opportunity for subsequent budgets, using the process to assess the value of government programs and policies. The National Assembly's finance and revenue standing committee should hold pre-budget consultations, inviting representatives from chambers of commerce, trade unions, small business, industry and other actors. Members should educate themselves about the implementation, effectiveness and impact of government-funded programs via regular consultations with constituents, officials and civil society. Standing committees should also exercise their authority to review expenditures of their related ministries and departments at the end of the budgetary cycle and hold officials accountable for anomalies in actual expenditures against appropriations.

2. Taming the bureaucracy

While the execution of policy is an executive prerogative, standing committees have the power to examine the expenditure and administration of ministries. This has political as well as economic implications. Historically the junior partner during decades of direct or indirect military interventions, the bureaucracy is an impediment to reform during democratic transitions.[135] An unreformed bureaucracy was largely responsible for impeding change and effective service delivery during the first phase of the present transition.

Attempting to reduce the bureaucracy's size during the late 1990s, the second Sharif government privatised several public sector institutions. Also suspending new recruitment into government service, it laid off some 250,000 employees.[136] The Musharraf regime removed the ban and to consolidate its rule created new bureaucratic entities, such as the National Accountability Bureau (NAB), the National Reconstruction Bureau (NRB) and the National Commission for Human Development (NCHD). Ostensibly aimed at improving governance and promoting accountability, these were used to target political opponents and, more generally, to undercut the national and provincial assemblies.[137] Requiring a massive infrastructure and staff, they also significantly added to government costs. More than five years after the return to civilian rule, most continue to exist, providing the bureaucracy opportunities to

[134] See, "Assembly debates", www.na.gov.pk/uploads/documents/1360646026913.pdf, 29 January 2013.
[135] Crisis Group Report, *Reforming Pakistan's Civil Service*, op. cit.
[136] Crisis Group interview, Khwaja Mohammed Asif, Islamabad, 7 March 2013. Asif, privatisation minister when these steps were taken, is now federal water and power minister.
[137] See Crisis Group Asia Briefing N°43, *Pakistan's Local Polls: Shoring Up Military Rule*, 22 November 2005; Report, *Authoritarianism and Political Party Reform in Pakistan*, op. cit.; and Asia Report N°77, *Devolution in Pakistan: Reform or Regression*, 22 March 2004.

both shape policy and oversee implementation without the oversight of representative institutions.

Under the recent PPP-led government, the bureaucracy was further empowered. According to a PPP parliamentarian, there was "an explosion of recruitment and promotions", with "more promotions to grade 22 in four years than what we saw in 60 years".[138] After passage of the eighteenth amendment, as responsibility over local government was restored to the provinces, it did abolish one bureaucratic entity, the NRB.[139]

According to a senior PML-N member, now a minister, the biggest drain on the treasury is not salaries but waste, particularly in large, publicly funded schemes and projects, with delays in implementation increasing borrowing costs. Poorly managed public sector entities, such as PIA, Pakistan Steel Mills and the Pakistan Electric Power Company (PEPCO), he contends, are "haemorrhaging funds at the same time as the government is failing to generate more revenue".[140] The National Assembly's finance and revenue standing committee should form subcommittees to hold hearings on the management, performance and reform of such institutions and then decide if they should be financed by public funds. These subcommittees should also assess the utility and performance of parallel bureaucratic institutions and recommend the abolition of those incapable of justifying their existence to the legislature and the cabinet.

The National Assembly should give the standing committees the power to vet and approve the senior-most civil service appointments proposed by the Federal Public Services Commission, the civil service's recruiting agency, as well as by the cabinet.[141] Parliamentary approval should also be required to approve any premature transfers of those officials. These measures would be far more effective in improving service delivery than channelling discretionary funds to constituencies, which promotes patronage politics.

Using the example of local-level police appointments, a political party worker in northern Punjab said:

> People think that the police station is a local issue; therefore, whoever can help us with the SHO [station house officer, the head of a station] will get the vote. But above the SHO is the ASP [assistant superintendent of police], above him the SP [superintendent], above him the DSP [district superintendent], above him a DIG [deputy inspector general], and finally the IG [inspector general]. If you have an honest, effective IG, who appoints honest, effective DIGs, it filters down [to] the police station. So if we are voting on the issue of the police, we are not looking for

[138] Crisis Group interview, Islamabad, February 2013. Grade 22 is the bureaucracy's highest.
[139] At the federal level, the NRB was restructured as a 22-member "policy analysis unit". Syed Irfan Raza, "Functions of NRB given to provinces", *Dawn*, 16 July 2010.
[140] Crisis Group interview, Islamabad, May 2013. In September 2011, the National Assembly's standing committee on water and power described PEPCO as "the most corrupt and inefficient" public entity. In August 2013, the Sharif government launched an investigation into corruption and mismanagement at Pakistan Steel Mills that has allegedly caused losses of billions of rupees. In mid-September 2013, the prime minister decided to partially privatise PIA to reduce monthly losses of 3.3 billion rupees (over $30 million). See "Pepco most corrupt, inefficient: NA committee", *Dawn*, 7 September 2011; Zafar Bhutta, "Government kicks off probe into steel mill corruption", *The Express Tribune*, 7 August 2013; and Khawar Ghumman, "26 pc of PIA shares to be privatised", *Dawn*, 13 September 2013.
[141] See Crisis Group Report, *Reforming Pakistan's Civil Service*, op. cit., p. 16.

> a local MNA who can help us out with the SHO. We are looking for the party that wants a good police force and will appoint good people at the top.[142]

This view was endorsed by several party workers in Punjab.[143] A common criticism of legislators, even in parliament, is that they focus almost exclusively on their constituencies at the cost of national policymaking. Regressive reforms, such as Zia's discretionary funds, have encouraged this tendency. The 2013 elections demonstrated the limits of fragmented, localised politics, as the electorate ousted several incumbents who had reportedly channelled massive funds to their constituencies, but whose parties failed to deliver better governance.[144]

3. Holding the judiciary at bay

While in opposition and mainly to pressure the PPP-led government, the PML-N repeatedly petitioned the judiciary to adjudicate policy matters. For instance, in November 2011, Nawaz Sharif petitioned the Supreme Court to investigate claims by a Pakistani-American businessman that the ambassador to the U.S., Hussain Haqqani, had dictated a memorandum at President Zardari's behest, seeking Washington's help in averting a military takeover following the May U.S. raid in Abbottabad that killed Osama bin Laden.[145] The PML-N approached the Supreme Court, although a parliamentary commission had been formed to investigate. The Supreme Court formed a three-member commission, consisting of Chief Justices of three High Courts that submitted its findings in June 2012. Going well beyond its fact-finding mandate, it called for Haqqani to be charged with treason.[146]

Use of the judiciary as a political tool is dangerous, since it gives an ambitious bench opportunities to settle political scores. By circumventing the legislature, political leaders also undermine the parliament's development into an effective, co-equal branch of government. The ruling party and its parliamentary opposition should instead use legislative oversight and deliberation to conduct inquiries into matters of public importance, thus reclaiming the public interest debate from the judiciary.

4. Law and order

In October 2008, parliament adopted a fourteen-point resolution outlining national counter-terrorism policy guidelines that a former senior police official, Tariq Khosa, described as a "reflection of political will and priorities". The speaker of the National Assembly then formed a seventeen-member committee (one member from each party in parliament), chaired by the PPP's Senator Raza Rabbani. In April 2009, it produced a 23-page report on a national security policy framework. The implementation of this major civilian-led initiative was blocked, said Khosa, "because the stakeholders in national security were not on the same page, with the civilian/military disconnect being the main stumbling block".[147]

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[142] Crisis Group interview, PML-N worker, Chakwal, 25 April 2013.
[143] Crisis Group interviews, PPP and PML-N workers, Rawalpindi, Chakwal, Jhelum, and Sialkot districts, April-May 2013.
[144] For detailed analysis, see Mohammad Shehzad, "How the mighty fall", *Newsline*, June 2013.
[145] "Memogate: SC admits Nawaz petition for regular hearing", *The Express Tribune*, 28 November 2011.
[146] Sidrah Moiz Khan, "Memogate: commission's report says Haqqani authored memo", *The Express Tribune*, 12 June 2012.
[147] Crisis Group interview, Lahore, 29 April 2013.

The executive also failed to deliver. The federal cabinet's defence committee, which lacks a secretariat, did not take the lead on implementing the recommended framework. The main institutional by-product of the initiative, the National Counter-Terrorism Authority (NACTA), was hobbled by political turf battles and the absence of a legal framework. This was a missed opportunity, given the significant domestic and international buy-in.[148] The legislature opted repeatedly, with no legal sanction or follow-up, for non-binding parliamentary resolutions, of which there were close to 30 security-related ones.

Towards the end of its term, the National Assembly did pass some important security-related legislation, including the Fair Trial Bill (December 2012),[149] the Anti-Terrorism (Second Amendment) Act (ATA, March 2013) and, the same month, the NACTA Bill, which finally gave NACTA legislative cover. The first two bills address broader legal frameworks for counter-terrorism – including intelligence gathering, enhanced punishments and making more explicit the kinds of groups and actions subject to the Anti-Terrorism Act.[150] They do not specify the nuts and bolts of better law enforcement, still a provincial subject. The provincial assemblies have not followed through with similar bills, undermining the effectiveness of the laws. Given the military's continued control over security policy and the aversion of its intelligence agencies to collaborate, including on information sharing, with civilian counterparts, the impact of these laws may be limited.

The laws are also inadequate because many provisions give legal cover to the military's intelligence agencies, instead of building the police and civilian intelligence agencies' capacity to counter terrorism and extremism through law enforcement. The military's control over national security was amply demonstrated when it successfully pressured President Zardari to expand its powers to counter militancy in FATA and PATA without legislative endorsement. In August 2011, the president promulgated the Actions in Aid of Civil Power (AACP) regulations for FATA and PATA, giving the military virtually unchecked powers of arrest and detention there.[151]

Even if the national legislature at this early stage of the democratic transition is unwilling or unable to wrest control over the security agenda from the military, it can at least influence it. While policing is a provincial subject, criminal justice remains federal. The National Assembly standing committees on interior and on law, justice and human rights should initiate public hearings on modernising the basic bodies of criminal justice-related law – the Pakistan Penal Code (PPC), the Criminal Procedure Code (CrPC) and the Evidence Act. Taking committee recommendations into consideration, the party leaderships should draft bills accordingly. Going beyond legislation, the committees should closely monitor the performance of the civilian

[148] For more on NACTA, see Crisis Group Report, *Reforming Pakistan's Criminal Justice System*, op. cit.

[149] See on this bill Crisis Group Report, *Pakistan: Countering Militancy in PATA*, op. cit.

[150] The ATA now applies to those who use force against law enforcement agencies, are involved in jihadi preaching and interpretations through FM stations or other forms of communication without the government's consent, or attack government premises, schools, hospitals and other installations. Importantly, it explicitly exempts peaceful demonstrations, which have previously been targeted via anti-terrorism provisions. Text of ATA (Second Amendment), 2013, at www.na.gov.pk/uploads/documents/1365050846_309.pdf.

[151] For more on the AACP, see Crisis Group Report, *Pakistan: Countering Militancy in PATA*, op. cit.; and Asia Report N°212, *Reforming Pakistan's Prison System*, 12 October 2011.

law enforcement agencies, summoning senior police officials and holding them to account for failure to enforce the law.

Legislative oversight of the national security apparatus is far more challenging and important. There are already some signs parliament is willing to take on this role. For example, in June 2013, after Interior Minister Chaudhry Nisar Ali Khan told the Senate two terrorist attacks in Quetta were the result of a "serious security lapse" and "lack of coordination" between military and civilian law enforcement agencies, there was a bipartisan demand for civilian oversight of the military's intelligence agencies.[152] This requires new legislation. A former senior police official said:

> The legislature's oversight of the intelligence agencies is crucial for public accountability. At present, there is no parliamentary committee on intelligence matters. The defence and interior parliamentary committees have no mandate to question or assess the strategic and operational framework of the intelligence services. Such sensitive policies and practices are too important to be left to the security establishment.[153]

Civilian and military intelligence agencies operate in a legal vacuum; neither the Intelligence Bureau (IB) nor ISI have a legal framework, making oversight and accountability nearly impossible. The Senate and National Assembly defence committees for ISI, and law, justice and human rights committees for the IB, should hold both public and in-camera hearings, with expert witnesses and relevant ministers. They should then draft legislation defining the legal parameters and civilian chains of command over the intelligence agencies. The military's intelligence agencies, including ISI and Military Intelligence (MI), should be confined to countering external threats. Fair Trial Bill provisions that give ISI surveillance powers in domestic terrorism and other criminal cases should be repealed.

5. Human rights

Zia's Islamisation program in the 1980s has yet to be reversed, including the constitutional provisions discussed above and substantive law. Arbitrary, discriminatory legislation includes the blasphemy and anti-Ahmadi laws and the Hudood Ordinances, which particularly target religious minorities and women. In a country that lacks adequate access to justice, the penal code also contains over twenty offences punishable by death, among the most in the world.[154]

The PPP-led government ratified the International Covenant on Civil and Political Rights and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in June 2010, committing to an array of human rights obligations and reporting requirements. It also imposed a death penalty moratorium. In May 2012, President Zardari signed the National Commission for Human Rights Act. The commission is:

[152] Amir Wasim, "Senators want civilian control over agencies", *Dawn*, 18 June 2013.
[153] He added: "All law-enforcement agencies and even civil armed forces such as the FIA [Federal Investigation Agency], the Frontier Corps, Rangers and the Coast Guards have laws and statutes. Why are the intelligence agencies beyond the ambit of the law". Tariq Khosa, "The deep state", *Dawn*, 9 June 2013.
[154] See Crisis Group Reports, *Reforming Pakistan's Criminal Justice System*; and *Reforming Pakistan's Judiciary*, both op. cit.

> ... empowered to investigate violations of human rights, abetment or negligence in the prevention of such violations by a public servant, either in response to a petition or on its own motion. It can intervene in any court proceeding involving allegation of a human rights violation, by applying to be made a party to the proceeding; and can visit, or authorise someone else to visit, any jail, place of detention or any other institution or place under the control of the Government or its agencies, where convicts, under trial prisoners, detainees or other persons are lodged or detained.[155]

The commission is also authorised to review constitutional and legal safeguards for human rights and empowered to recommend new legislation, amendments to laws and administrative measures for their effective implementation. Other responsibilities include reviewing the factors that inhibit observance of human rights and recommending remedies, maintaining a database of complaints and researching human rights-related issues and development of human rights norms.[156] Although the decision to form it is a step in the right direction, the commission is prohibited from addressing or investigating the actions of the military or its intelligence agencies, which a Human Rights Watch representative described as "a cruel joke on Pakistanis whose rights have been violated".[157]

The human rights standing committee must press the executive to establish the commission, urgently address the worsening human rights environment and build the legislative consensus to reverse the discriminatory Zia-era legislation. Parliament should also urge the president to revoke the AACP in FATA and PATA, which has given legal cover for the military's human rights abuses.[158]

Reforming or repealing discriminatory legislation depends on political will, courage and commitment to a human rights agenda. After Punjab Governor Salman Taseer and Religious Minorities Minister Shahbaz Bhatti were assassinated in 2011 for opposing the blasphemy law, Islamist extremists successfully prevented parliament from amending that law. Understandably, the killings provoked fears in elected leaders. PPP's Sherry Rehman, who had presented a private member's bill to the National Assembly to make the blasphemy law less open to abuse, was pressured by her party to withdraw it after Taseer's assassination. According to a Lahore-based human rights activist, the opposition PML-N had also prepared amendments, but did not press them for fear of a backlash.[159]

Parliament also failed to seize on subsequent opportunities, such as the public outrage in August 2012 when Rimsha Masih, a fourteen-year-old Christian girl, reportedly suffering from Down's syndrome, was arrested in Islamabad for blasphemy after allegedly burning pages of the Quran and of a religious textbook while disposing of garbage. Her accuser, a local cleric, was subsequently reported to have added pages of the Quran to what Masih had burnt. He was arrested on 31 August 2012. On

[155] National Commission for Human Rights Act, 2012.
[156] Ibid.
[157] It can only ask the federal government to investigate allegations against the military and can only recommend actions. It cannot itself investigate. And (Section 15), the "functions of the commission do not include inquiring into the act or practice of intelligence agencies". "Pakistan: Revise national human rights commission law", Human Rights Watch, 17 May 2012.
[158] Crisis Group Reports, *Pakistan: Countering Militancy in PATA*; and *Reforming Pakistan's Prison System*, both op. cit.
[159] Declan Walsh, "Pakistan MP Sherry Rehman drops effort to reform blasphemy laws", *The Guardian*, 3 February 2011. Crisis Group interview, Lahore, April 2013.

7 September, Masih was released on bail and acquitted by a trial court on 20 November.[160] While the case generated significant international and domestic condemnation, renewing debates in the media about repeated abuse of the blasphemy provision, parliament did not act.

On 9 March 2013, a mob of thousands burned some 180 houses in a mostly Christian neighbourhood of Lahore's Badami Bagh area. This was sparked by accusations that a Christian resident had blasphemed during an argument with a Muslim friend. Similar allegations had provoked a mob to burn more than 45 homes and churches in Punjab's Gojra town in 2009. Police failed to stop the Badami Bagh attack, despite threats the day before.[161] On 14 March, the National Assembly's standing committee on human rights summoned the Punjab police inspector general for the failure to protect the lives and properties of Christians. However, it stopped short of calling for review of the blasphemy law, which vigilantes will continue to exploit to target minorities, fellow Muslims and women.

Revising or repealing discriminatory Islamist legislation will produce a backlash from violent Islamists and their allies among religious parties. The democratic transition, however, offers opportunities to mobilise political and grassroots support for a reform agenda. Despite fielding almost 90 candidates under a single platform, the Muttahida Deeni Mahaz (MDM),[162] composed of extremist groups and other Islamist actors, did not win a single National Assembly seat in the 2013 elections, even in strongholds such as Punjab's Jhang district, where the PML-N's Sheikh Mohammed Akram, a vocal advocate of sectarian minorities, defeated Maulana Ahmed Ludhianvi, the head of the Sunni extremist Sipah-e-Sahaba.[163] While extremist outfits retain capacity for violence, the election results reflect their limited support base. With broad political buy-in, meaningful reform of discriminatory legislation that has empowered the extremists is possible. But if it fails to act, the parliament will continue to cede space to them.

D. *The Parliamentary Opposition*

Political leaders across party lines have long acknowledged the potential value of shadow governments. Shadow ministers act as watchdogs, monitoring and holding cabinet ministers and ministries accountable. Shadow cabinets give opposition parliamentarians knowledge and expertise in their portfolios that will benefit their government if their party comes to power. In September 2004, during its opposition to the Musharraf government, the PPP formed a shadow cabinet in the Punjab assembly and later one in Sindh, but not at the national level.[164]

A senior PML-N leader said his party had considered creating a shadow government in the PPP-led parliament but abandoned the idea, as members felt "insecure,

[160] In August 2013, the cleric was acquitted for lack of evidence.
[161] See Zohra Yusuf, chairperson, Human Rights Commission of Pakistan (HRCP), press release, "Joseph colony incident: HRCP holds police, administration responsible", 13 March 2013.
[162] The MDM evolved from the Difa-i-Pakistan (Defence of Pakistan Council, DPC), an earlier coalition of extremist groups and Islamist parties. The MDM's head, Maulana Samiul Haq, was DPC's co-chair, along with Hafiz Saeed, leader of the Lashkar-e-Tayyaba, responsible for the November 2008 Mumbai attacks. Muzaffar Ali, "New electoral alliance MDM takes birth", *Pakistan Observer*, 6 December 2012.
[163] "Bane of Pakistan's Shia community, Ludhianvi eyes election win", *Newsweek*, 5 May 2013.
[164] See Crisis Group Report, *Authoritarianism and Political Party Reform in Pakistan*, op. cit.

because they believed that the choice of shadow ministers would reveal the leadership's choices if and when the party did come to power. So then the party leaders didn't want to tip their hand and create discontent before the election".[165] PML-N spokesperson Siddiqul Farooq said, "given our history of military intervention, the parliamentary opposition has not yet assumed the role that it does in consolidated democracies. Our goal [during the PPP-led government] was the survival of the system".[166] Now that the transition has entered its second phase, the PPP, as the largest opposition party, should form a shadow government at the centre and shadow cabinets in KPK, Punjab and Balochistan.

Instead of readying their parties for running government, opposition parties have a propensity to oppose the ruling party for the sake of opposition. During the PPP-led government, recalled a PPP member who then served in government, "the [PML-N] opposition said, 'don't raise gas prices, don't raise petrol prices', but offered no counter-proposals [in parliament] to meet the budget deficit".[167] A senior PML-N leader blamed ruling party and opposition members alike for "nursing their constituencies rather than doing the serious work of legislation". While criticising the PPP-led government's performance, he admitted that the parliamentary opposition, particularly his own party, had been "more interested in rhetoric and making speeches than formulating alternative proposals".[168]

The PPP and other opposition parties have an opportunity to play a more constructive role in this parliament. The PPP and its Awami National Party ally should use their control of the Senate, at least until the 2015 elections, to press and persuade the ruling party to support legislation that reflects their priorities, including human, minority and women's rights.

[165] Crisis Group interview, Lahore, May 2013.
[166] Crisis Group interview, Islamabad, 8 April 2013.
[167] Crisis Group interview, Islamabad, March 2013.
[168] Crisis Group interview, Islamabad, March 2013.

V. Parliament's Human and Technical Resources

If parliament is to exercise its oversight role effectively and table appropriate legislation, trained and qualified staff, equipped with up-to-date technological tools, is essential. Poorly trained committee and secretariat staffs with limited research experience and without good access to computers and the internet cannot provide adequate support. The National Assembly, with 342 members, has only four research associates.[169] Lacking professional staff, beyond stenographers and administrative assistants, committee members and other legislators have no choice but to rely on executive branch briefs. This especially hinders the opposition, which has limited access to the executive. Given the lack of qualified staff, any relatively skilled secretary is often assigned to several committees. "The others don't even know how to take proper notes", said a National Assembly member.[170]

Committee staff is drawn from the National Assembly and Senate secretariats. The Senate chair and National Assembly speaker have sole authority to hire staff, through an open process against advertised posts. The National Assembly secretariat is mainly composed of political appointees, recruited largely on cronyism, not merit. Unlike the civil service, the parliamentary secretariat staff is not subject to government rules or the Civil Establishment Code, which consists of laws, rules and regulations, as well as terms and conditions of employment for federal bureaucrats. There have been proposals that parliamentary staff must pass the Central Superior Services exam held by the Federal Public Services Commission, and should be subject to the Civil Establishment Code.[171] The outdated exam and code, however, have done little to develop a professional, dedicated civil service.[172] The parliament should develop its own code of conduct to ensure professional competence, integrity and non-partisanship.

While the National Assembly speaker and Senate chair should retain the prerogative to hire and fire secretariat personnel, both houses should establish educational and professional criteria for appointments. Specialists, including legal draftsmen, archivists, researchers and policy analysts, need to be familiar with policy issues and parliamentary procedures if they are to help educate parliamentarians on procedures, such as points of order, questions of privilege and adjournment motions. For research and library-related positions, candidates with a graduate degree and research or policy experience should be appointed. A permanent professional staff would ensure continuity and institutional memory that successive parliaments could build on and that could help orient new members.

The National Assembly and Senate lack orientation and training programs for new members, and outsource this to donors and donor-funded organisations, such as the "Strengthening Parliamentary Democracy Project" of the UN Development Programme (UNDP). While such programs are well intentioned and could be valuable, the secretariats must take responsibility for designing orientation and training courses tailored to Pakistan's political system, including the challenges to parliamentary sovereignty and performance. A legislator familiar with the UNDP program said, "new

[169] Crisis Group interview, Marvi Sirmed, program manager, UNDP, 10 July 2013.
[170] Crisis Group interview, Islamabad, June 2013.
[171] Crisis Group interviews, parliamentarians, Islamabad, July 2013.
[172] Crisis Group Report, *Reforming Pakistan's Civil Service*, op. cit.

members often don't have the confidence to tell an international expert, 'these are our challenges; this is the training we need'. They let the experts run the show".[173]

Parliamentarians and staff also lack adequate technical resources. They have spacious living accommodations but not offices or computers, possibly indicating, said an observer, "the state's desire to see that elected representatives are comfortable, but [don't] work".[174] While giving every parliamentarian an office or converting residential space to work space may be impractical in the short term, parliament should at least give every committee an office and meeting place for members. Committee chairs have offices, but members can only meet in a committee room during sessions, so rarely discuss agendas before hearings.[175]

An ex-National Assembly speaker proposed three changes to bolster the committee system during his tenure and continues to advocate them: a workplace for committee members, with a dedicated assistant, to address parliamentary business and constituency work; a permanent professional staff for each committee; and a well-stocked library with qualified research staff. This, he said, would "create a think-tank for parliamentarians, so that when members want to raise or debate a particular issue, they could consult the library and its staff, who could quickly produce a brief on the issue".[176]

In December 2008, parliament established the Pakistan Institute for Parliamentary Services (PIPS), an autonomous statutory body. Its board of governors includes the Senate chair and deputy speaker of the National Assembly, who alternate annually as the president, and seventeen other members, including the parliamentary affairs minister, the speakers of the four provincial assemblies, and twelve others drawn from the Senate and National Assembly.[177]

While the research, analysis, training and other services will assist legislative functioning, the value of a parallel, autonomous body outside the legislative branch is limited. Parliamentary researchers, lacking work space in PIPS, tend to avoid it. Legislators are also less likely to use resources away from the assembly buildings.[178] The National Assembly and the Senate maintain separate and relatively well-stocked libraries, but much material, such as several poor quality official publications, is of little use and rarely updated. Describing the National Assembly, Senate, and PIPS libraries, the Senate library committee chair, PPP Senator Sughra Imam said, "we've got three parallel structures doing the same work, each with big overhead costs, so we're fracturing our resources, creating a labyrinthine bureaucracy – and all for very negligible intellectual output".[179]

PIPS should complement, not substitute for a single, well-resourced parliamentary library. Several legislators support a research and analysis set-up along the lines

[173] Crisis Group interview, Islamabad, June 2013.
[174] Crisis Group interview, Islamabad, July 2013.
[175] Crisis Group interviews, parliamentarians, Islamabad, June-July 2013.
[176] Crisis Group interview, Fakhr Imam, Islamabad, 11 June 2013.
[177] www.pips.org.pk. The mandate is to "assist parliamentarians in making informed policies by conducting or commissioning independent research on topical issues; conduct professional development and orientation programs for elected parliamentarians and staff of the national ... and provincial assemblies; gather and organise data as well as provide complete, accurate, timely and relevant information to facilitate parliamentarians in their work ... and provide technical support and various intellectual and knowledge resources to parliamentarians".
[178] Crisis Group interviews, former and serving parliamentarians, Islamabad, June-July 2013.
[179] Crisis Group telephone interview, Islamabad, 25 July 2013.

of the U.S. Library of Congress' Congressional Research Service.[180] U.S. assistance helped establish PIPS.[181] Donors, including the U.S., should enhance research-related programming, but tailor it to the needs of the legislature after extensive consultation with parliamentarians.

The 1990s saw some efforts to upgrade parliament's research capacity, including hiring of professional librarians. But, an international expert noted:

> Parliamentary librarians, like many of the civil servants assigned to legislative bodies, suffered professionally during the years that the legislatures were dismissed, dissolved, or otherwise suspended. There were not many opportunities to assert innovation and initiative in library services if one's primary clientele was absent.[182]

In the early 1990s, the National Assembly and the Punjab assembly libraries also started maintaining microfilm records of legislative debates and other key documents. Currently, there are plans to digitise select material from those records. In 2012, the Senate and National Assembly converted to the Koha open-source library management system that can accommodate several languages and scripts, including Urdu and Sindhi, is in use worldwide, and to which the provincial assembly libraries had begun converting several years earlier. The next step, according to Senator Imam, is to merge the Senate and National Assembly library systems, enabling parliamentarians from either house to log in and access the other's digital resources – a step toward an eventual physical merger.[183]

[180] Crisis Group interviews, former and serving parliamentarians, Islamabad, June-July 2013.
[181] The U.S. Agency for International Development (USAID) provided roughly $10.7 million for construction of the PIPS building. See its website, http://transition.usaid.gov/pk/db/sectors/cross-cutting/project_96.html.
[182] Ellie Valentine, "Pakistan parliamentary libraries: a historical excursion and hopes for the future", in Gro Sandgrind, Hermina G.B. Anghelescu (eds.), "Changing Visions: Parliamentary Libraries, Past, Present, and Future", *Library Trends*, vol. 58, no. 4, Spring 2010, pp. 527-548.
[183] Crisis Group telephone interview, Islamabad, 25 July 2013.

VI. Conclusion

It has taken 40 years, since the 1973 constitution established a federal parliamentary system of government, for Pakistan to witness a transition from one democratically-elected parliament to another. This parliament must ensure the continuation and broadening of the democratic process. But, as the experiences of its immediate predecessor demonstrated, the threats to democracy have not subsided.

In a sense, the democratic transition began with the 2006 PPP/PML-N Charter of Democracy and took tangible shape after the restoration of democracy in 2008. The parliament sworn in following the February 2008 elections inherited a nationwide security crisis, weak economy and distorted constitution. It was constantly challenged by an interventionist military, ambitious judiciary and unreformed bureaucracy. In the words of the HRCP secretary general, it "was given very little space to work".[184] Despite these challenges, the thirteenth National Assembly managed, with bipartisan support, to successfully restore parliamentary democracy through meaningful constitutional reform.

Like its predecessor, the Sharif-led parliament has inherited a security crisis and a downward spiralling economy. It will inevitably face challenges from unrepresentative institutions, but it has also inherited more sophisticated parliamentary tools with which to address them. In contrast to perceptions of a weak and static body, the parliament is undergoing what an observer described as a "silent revolution".[185]

The government, the National Assembly speaker and the opposition leader are the key drivers of parliamentary reform. They need to invigorate the new National Assembly's standing committees. Although the PML-N has an absolute majority in the National Assembly, the PPP retains control of the Senate. Since any major legislation requires bipartisan support, committees in both houses should play key roles in achieving the necessary consensus on democratic reforms, as in the transition's first phase.

By consolidating the gains of the past five years and enacting long overdue legislative reforms, the new parliament can take a vital part in sustaining democratic governance. If, however, the ruling party and its parliamentary opposition use the legislature as a forum for settling political scores, those gains will soon be lost, as will the prospects of the country continuing to move along the democratic path.

Islamabad/Brussels, 18 September 2013

[184] Crisis Group interview, I.A. Rehman, Lahore, 29 April 2013.
[185] Crisis Group interview, Marvi Sirmed, program manager, UNDP, Islamabad, 11 July 2013.

Appendix A: Map of Pakistan

Based on UN Map No. 4181 Rev. 1 (January 2004), "North-West Frontier" has been changed to "Khyber Pakhtunkhwa".

Appendix B: Glossary

AACP	Actions (in Aid of Civil Power) Regulations 2011, applicable to the Provincially Administered Tribal Areas (PATA) and Federally Administered Tribal Areas (FATA), promulgated in August 2011
ANP	Awami National Party (ANP), a secular Pashtun-dominated party, headed a coalition government in KPK with the PPP from 2008-2013
CCI	Council of Common Interests, a constitutional body responsible to parliament, tasked with regulating policies related to matters on the federal legislative list
CEC	Chief Election Commissioner
DHA	Defence Housing Authority
ECP	Election Commission of Pakistan
FATA	Federally Administered Tribal Areas
FSC	Federal Shariat Court
HRCP	independent non-governmental Human Rights Commission of Pakistan
IB	Intelligence Bureau, the main civilian intelligence agency
ISI	Inter-Services Intelligence directorate, the military's main intelligence agency
KPK	Khyber Pakhtunkhwa, formerly known as the Northwest Frontier Province (NWFP)
PAC	Parliamentary Public Accounts Committee
PATA	Provincially Administered Tribal Areas
PCNS	Parliamentary Committee on National Security
PIPS	Pakistan Institute for Parliamentary Services, established in December 2008 through an act of parliament
PML-N	Pakistan Muslim League-Nawaz, led by Prime Minister Nawaz Sharif, currently heading a majority government at the centre and in Punjab
PPP	Pakistan Peoples Party, founded by Zulfikar Ali Bhutto in 1967. Since Benazir Bhutto's assassination in December 2007, the party is headed by her widower, former President Asif Ali Zardari, and son, Bilawal Bhutto Zardari. It led the coalition government in the centre from 2008 to 2013 and is currently the largest opposition party in the National Assembly. It also heads the provincial government in Sindh.
PTI	Pakistan Tehreek-e-Insaf, founded by Imran Khan, currently heading the Khyber Pakhtunkwa provincial government
RO	Returning Officer, the top election official in a district
SRO	Statutory Regulatory Order
UNDP	United Nations Development Programme