



## STATEMENT OF THE NDI DELEGATION TO PAKISTAN

*Islamabad, September 9, 2002*

This statement is offered by a multinational, bipartisan delegation organized by the National Democratic Institute for International Affairs (NDI), which visited Pakistan from September 3 to 9, 2002. The delegation assessed the political environment and the framework for Pakistan's transition to democratic civilian rule, in the context of the upcoming October 10 elections for the National and Provincial Assemblies.

The delegation included: Carole Hillard (United States), Republican Lieutenant Governor of the state of South Dakota who has extensive experience in international election observation and democracy promotion; Tunku Abdul Aziz Ibrahim (Malaysia), Vice-Chairman of the Board of Directors of Transparency International and the director of the Commonwealth Secretariat in London from 1985 to 1992; Philip Oldenburg (United States), until recently Associate Director of the Southern Asia Institute of Columbia University, where he specializes in comparative politics and the politics and government of South Asia; Mary Cummins (Ireland), NDI Country Director for Pakistan; and Patrick Merloe (United States), NDI Senior Associate and Director of Programs on Elections and Political Processes. Combined, the delegation has assessed electoral processes in more than 40 countries.

The delegation sought to express the interest and concern of the international community in the achievement of democratic civilian governance in Pakistan and to provide the international community with an impartial assessment of conditions relating to the transition toward civilian rule. It was welcomed by electoral and government officials, a broad spectrum of political party leaders and leaders from civic, human rights, women and bar associations, as well as representatives of the news media and international organizations. The delegation conducted its activities in accordance with internationally accepted practices for pre-election assessments and offers its findings and observations in the spirit of international cooperation and in recognition that it is the people of Pakistan who will determine how to characterize the meaningfulness of the upcoming elections and the transition to democratic civilian governance beyond the elections. The delegation did not seek to draw conclusions about the outcome of those processes, which are still developing.

### I. SUMMARY OF FINDINGS AND OBSERVATIONS

Since its independence in 1947, Pakistan has struggled to put itself on a solid track toward effective democratic governance. The leadership of the country, however, has been unable to attain that goal.

The framework for the October 10 balloting for the National and Provincial Assemblies provides for a very limited transfer of power to elected civilian representatives. The principal challenge facing Pakistan's leaders – both military and civilian – in the period following the October 10 polls therefore will continue to be developing a genuine and rapid transition from military rule to civilian governance.

The ability of Pakistan to achieve democratic governance will depend on whether its leaders demonstrate the determination and the political will required to address the systemic problems that have thus far impeded democratization. Just as the military must assume its proper role in a democratic system, political leaders must develop political parties and institutions that are accountable and open to democratic participation by those who have been left out of politics, and both military and political leaders must recognize in practice that the authority to govern derives from the will of the people.

Political parties and thousands of candidates are actively participating in the upcoming elections, despite the insufficient transfer of power to elected representatives that will be achieved by the October 10 polls. The views of a broad spectrum of political parties, as expressed to the delegation, are that the elections present an important opportunity to go to the people in order to create a means for establishing a democratic process, based upon a post-election negotiation between elected representatives and military leaders. They nonetheless emphasized forcefully that, although it has some positive aspects, they do not accept the amended constitutional framework that has been put in place by the military leadership, and they objected strenuously to the consequent fundamental flaws in the election process. The delegation shares these concerns.

The upcoming polls could provide a way to establish a peaceful transition to democratic civilian governance, if the election process is deemed credible by the people of Pakistan and if there are immediate steps following the elections to transfer full powers to Parliament and a democratically mandated government. The delegation hopes that the people will participate in the election process, that their will is respected and that the military transfers power immediately after the elections. Should this be the case, the October 10 voting may well come to be noted as a referendum on democracy. Should these developments not take place, however, the upcoming elections will have been a hollow exercise.

Many political and civil society leaders expressed apprehension that should the election process not be accepted as credible by the population, the country will be thrown into an acute post-election crisis. The delegation was deeply concerned that should the consequences of the election process fail to produce immediate, meaningful democratic developments the stability of the country could be jeopardized.

In Pakistan, where military rule, corruption and ineffective governance have deeply eroded public confidence in national institutions and processes, it is necessary for those in power to take extraordinary steps to demonstrate that they are indeed prepared to accept the will of the people and that they have put in place a process that guarantees the free exercise of that will. Sufficient steps have not yet been taken in Pakistan to establish public confidence in this respect. At the same time, political leaders must demonstrate that they are prepared to learn lessons from the past and establish clean and effective democratic governance in order to convince people to entrust them with their votes and provide them with a democratic mandate. The delegation recognizes that the people of Pakistan desire and deserve democracy, and the delegation hopes that the country's leaders, both military and civilian, are prepared to take the necessary measures in the period ahead to ensure that this fundamental right is realized.

## **II. CONTEXTUAL ISSUES**

The desire of Pakistan's people for democracy has been thwarted by military rule for half of its post-independence history. Corruption and ineffective governance under both civilians and the

military have exacerbated Pakistan's problems. At the time of the October 12, 1999 military coup, vast numbers of Pakistanis were alienated from the civilian political leaders and their parties. The military claimed that it was forced to act out of necessity, and the Supreme Court, which took an oath to uphold the Provisional Constitution Order imposed by the military, validated the military's action on spurious grounds, as was done in past coups.

The judiciary's acquiescence to military rule seemed to be coupled with the willingness by many people to give General Pervez Musharraf a chance to put the country onto a democratic course. Since that time, however, there has been an extraordinary concentration of power into President, General Musharraf's hands. This has been accomplished through his unilateral changes in the basic law of the land and an extra-constitutional referendum manipulated in an attempt to demonstrate a popular basis for his self-appointment as President for the next five years. These factors have led many to rightfully question the nature of the scheduled transition to civilian governance, even while they may continue to accept his intentions as sincere.

Democracy, after all, is not simply about accomplishing certain ends; it is also about the means used to achieve those ends. Democracy requires that changes of government take place through elections and democratic processes, rather than by coups d'état. Corruption and autocratic actions by civilian leaders may tempt the military to take power. However, when a military becomes politicized and substitutes its judgment for the will of the people, its credibility is sacrificed, and governance loses its basis of authority.

There have been a number of developments under the present military regime that many have characterized as positive, such as reserving for women 33 percent of the seats in the local government elections, setting aside seats for women in the National and Provincial Assemblies, taking some steps to restrict space in which violent extremists operate, abolishing separate voting for religious minorities, while retaining seats for representatives of religious minorities in the National and Provincial Assemblies. Nonetheless, the legal framework that has been put in place has caused a crisis of confidence in the judiciary and widespread cynicism about the nature of the promised transfer of power. In addition, the failure to confront corruption decisively and the failure to improve economic conditions for ordinary people, along with continuing difficulties in other areas, demonstrate that military governance is not the cure for Pakistan's ills.

**The Legal Framework for the Transition.** The Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution) has provided a touchstone for constitutional continuity. Upon seizing power, the military issued Provisional Constitution Order No. 1 of 1999, placing the Constitution in "abeyance". Other Orders have been promulgated since that time, setting the structure for the promised transition of power and the framework for the upcoming elections. Judges were required through the Oath of Office (Judges) Order, 2000, to take an oath to uphold the Provisional Constitution Order, and on May 12, 2000, the Supreme Court validated the military takeover based on a dubious doctrine of necessity, which has been used to justify previous coups in Pakistan.

On August 21, 2002, General Musharraf, as Chief Executive of the Islamic Republic of Pakistan and Chief of Army Staff, issued the Legal Framework Order, 2002, unilaterally decreeing 29 amendments to the Constitution, validating all of his Presidential Orders, Chief Executive's Orders and all other laws made after the military takeover. The Legal Framework Order (or LFO) also declared that these acts were valid notwithstanding any judgment of any court and could not be called into question before any court "on any grounds whatsoever". All orders and similar actions taken by governmental authorities pursuant to these acts were also validated by the LFO and placed

beyond court challenge. President, General Musharraf declared in a speech following his issuance of the LFO that he did not need parliamentary ratification of the LFO or the actions covered by it and that the constitutional amendments decreed in the LFO were “irreversible”, implying that he would dismiss Parliament rather than allow it to exercise its sovereign power to amend the Constitution and negate his amendments.

The LFO enacts a number of changes to the basic law of the country that run counter to achieving democratic civilian governance, including:

- Providing that General Musharraf shall be President of Pakistan for five years from a date he determines, based on his unilateral decision, rather than on constitutional provisions for electing the President;
- Empowering the President to appoint the Chairman of the Joint Chiefs of Staff Committee and the Chiefs of the Army, Navy and Air Staffs, without consultation with anyone;
- Allowing, by implication, General Musharraf to serve as President and simultaneously as Chief of Army Staff, thus equating the head of state and the head of the Army, while personifying those positions in one man and ensuring that the military is not subject to civilian leadership;
- Creating the National Security Council (NSC) as a forum for consultation “on a range of strategic matters pertaining to the sovereignty, integrity and security of the State; and the matters relating to democracy, governance and inter-provincial harmony”, and placing on it the Chairman of the Joint Chiefs of Staff Committee and the Chiefs of Army, Navy and Air Staffs in addition to key civilian leaders – thus establishing a formal, constitutional role for the military in governance, including on issues beyond military affairs, and establishing the NSC as a supra-parliamentary body that could in fact thwart as well as complement the parliamentary process;
- Providing the President with the power to dismiss the Parliament on his sole initiative;
- Providing that Governors, appointed by the President, with the power to dismiss the Provincial Assemblies on a Governor’s sole initiative;
- Stating that General Musharraf, as Chief Executive, may unilaterally make any further changes to the Constitution “as he may deem fit”;
- Empowering General Musharraf, as Chief Executive, to “revive” the Constitution – or simply specific provisions of the Constitution – on such day or days as he unilaterally determines, which could allow the Parliament to be convened without benefit of its constitutional powers or could force Members of the National Assembly, Senate and Provincial Assemblies to take their oath under conditions shy of a parliamentary democracy;
- Providing that the President may treat any constitutionally required “consultation” with the Prime Minister as non-binding, except concerning appointing Judges of the Supreme Court and the High Courts; and
- Eliminating constitutional provisions for joint sittings of the Houses of Parliament and substituting a Mediation Committee to work out differences where bills of one House are not approved by the other and providing that the President, upon non-binding consultation with the Speaker of the National Assembly and the Chairman of the Senate, may determine the rules of conduct of the Mediation Committee.

Discussions are underway among numerous parties to join immediately after the elections to pursue gaining full parliamentary powers and to address concerns about the elements of the LFO that undercut democratic civilian governance. Such discussions may facilitate the formation of a government. If Pakistan is to become a democratic state the military must engage constructively

with the newly elected representatives and agree to a speedy and effective transition to civilian governance.

At the same time, in order to gain the confidence of the public, which has grown to distrust political parties, the parties must demonstrate that they are prepared to undertake substantial internal democratic reforms and offer an action program for responsive and accountable parties and government.

The delegation also noted that there is a crisis of confidence in Pakistan's judiciary, which may inhibit use of the courts as a means for seeking remedies for complaints concerning the election process and the broader process of transition to democratic civilian governance. In a dramatic development, the leading Bar Councils and Associations have declared that they will not file cases before the Supreme Court or the High Courts concerning any matter of constitutional substance. Leaders of the Bar explained that their decision came about after a series of pro-government court judgments that ran contrary to provisions in the 1973 Constitution, which the Bar leaders considered were rendered on a political basis.

Leaders of the Bar reported to the delegation that their decision not to seek redress on constitutional matters before the courts is intended as a forceful statement of no-confidence in Pakistan's judiciary. Such developments highlight the necessity to restore confidence in the courts as one of the pillars of democratic governance. In the post-October 10 period, a number of controversies can be expected concerning amendments, laws, ordinances and orders issued since October 1999. In the past, the courts have played a central role in addressing such controversies following periods of military rule, and it is hoped that confidence in the judiciary can be restored concerning constitutional and other matters.

**The Electoral Environment.** The environment surrounding the upcoming elections is marked by a need to clearly demonstrate to the population why it should come out and vote. There has been a steady decline in voter participation in Pakistan's parliamentary elections from 1988 through 1997. Moreover, the widespread belief that the referendum was manipulated has raised questions concerning the credibility of election processes in general, along with rejection of the legitimacy of the referendum by many.

These issues present a major challenge for the upcoming elections, and concerted efforts are required by the electoral authorities, as well as by political and civic leaders, to convince the people that their participation in the election process is important to their future and the future of the nation. The delegation was encouraged to learn from the Election Commission and from the political parties that voter motivation campaigns will be mounted in the short period remaining before October 10.

Campaigning is only now getting underway in earnest. The constitutionally provided 90-day campaign period was truncated to 40 days, beginning September 1, and candidacies were only filed recently. Final determination of candidacies will be made on September 15. Many political parties complained to the delegation that the period is too short, but they stated that they nonetheless were preparing energetic campaigns.

The delegation was deeply troubled by the provision imposed by the military government in The Conduct of the General Elections Order, 2002, requiring that candidates for Parliament and the Provincial Assemblies must hold a bachelor degree or degree recognized as the equivalent. This requirement eliminates over 90 percent of Pakistan's population from standing for office, including

approximately 30 percent of prior Members. The requirement violates the internationally recognized fundamental right to participate directly in government by standing for elected office. This right is recognized in Article 21 of the Universal Declaration of Human Rights and Article 25 of the International Covenant on Civil and Political Rights. The denial of this fundamental right constitutes a fundamental flaw in the election process.

The delegation was also troubled by the prohibition against the candidacy of any person who has served two times as Prime Minister or as Chief Minister of a Provincial Assembly. While term limits are not uncommon in presidential systems, restricting the number of terms that a person may serve as Prime Minister in a parliamentary system runs counter to parliamentary traditions. Restricting candidacies based on age, citizenship, mental capacity and conviction upon due legal process for serious crimes, such as felonies, are generally accepted; however, post facto laws affecting fundamental rights, such as standing for office, and laws tailored to specific individuals do not comply with international standards for genuine elections.

The delegation received reports from many political parties of irregularities and alleged manipulations (rigging) in the pre-election context. Civil society leaders and news reports also raised these issues, a number of which have been presented with specificity. The allegations included: inconsistent and discriminatory application of requirements leading to disqualification of candidacies; pressures brought against potential candidates not to stand for office or to stand under the banner of political parties not of their choosing; partisan political activity by government officials, particularly at the local level; and use of state resources, including government facilities, to support the efforts of parties and candidates favorable to the government. While the delegation could not investigate such allegations, and while it encouraged parties to pursue such matters through official channels, nonetheless public perceptions of such activities undermines the credibility of the election process. Such matters therefore must be forcefully addressed to gain public confidence.

It is encouraging that the Election Commission has ordered that officials may not be transferred by government departments in the lead-up to the October 10 polls; this order is intended to block transfers aimed at putting partisan actors into positions that could affect electoral outcomes. The Election Commission has also required ministers to resign their office if they are standing for election. Effective action to prevent government officers, civil servants and election officials from abusing government authority for partisan political purposes must be enforced. The Election Commission also has issued directives on preventing misuse of state resources for electoral advantage and promulgated a code of conduct after consultation with political parties. Some police authorities have called for political neutrality of the police in the electoral context as well. Additional directives, orders and public declarations such as these could help ensure a more fair campaign environment. Forceful and consistent implementation of such actions also is required, however.

The delegation was encouraged that political parties expressed – and appear to be demonstrating – cooperation and respect for each other as the campaign gets underway. It is hoped that this will continue and that clashes of the past, sometimes violent, will be avoided. The formation of electoral alliances, even among previously bitter rivals such as the Pakistan People’s Party Parliamentarians and the Pakistan Muslim League (Nawaz), may contribute to mitigating violence in the election campaign.

The legal framework for the elections provides access for political parties to government-controlled broadcast media. The Election Commission has also directed the media to eliminate

political bias in its election-related news coverage. These are welcome developments, and the provisions should be fully implemented. Government-controlled broadcast media have carried the military's frequent negative portrayals of political parties since October 1999, while the parties have had little access to the broadcast media. The delegation hopes that this broadcast prejudice will not cause voters to refuse to consider messages from the parties, which will be needed to make an informed and free choice at the ballot box.

The delegation also was encouraged by reports from the Human Rights Commission of Pakistan and other civil society organizations about their plans to monitor the election process, including on election day. Nonpartisan election monitoring by such competent and respected organizations has played an important role in promoting electoral integrity and building public confidence in elections and resulting governments around the world. It is hoped that these efforts in Pakistan will be encouraged by the government and political parties and be allowed to take place without impediment.

The delegation also was reassured by the presence in Pakistan of professional international election observation missions from the European Union and the Commonwealth. It is anticipated that other delegations will be present for the balloting as well. Domestic and international election observation can complement each other and enhance integrity and confidence in the electoral process. Almost everyone with whom the delegation met stressed the importance of expressions of concern by the international community in support of genuine democratic elections and a transition to democratic civilian governance.

### **III. NDI'S OBSERVATION IN PAKISTANI ELECTION PROCESSES**

NDI has closely followed political developments in Pakistan for more than a decade. The Institute organized international observer delegations for the 1988, 1990 and 1993 national elections and conducted extended activities before and after Pakistan's 1997 elections. The Institute issued statements and/or reports concerning each of those elections. NDI also published a report on strengthening the accountability process and parliamentary reform, which contained recommendations made by participants at a post-election parliamentary roundtable in 1997 that was hosted by NDI and the Human Rights Commission of Pakistan. In March 2002, NDI and the International Republican Institute (IRI) launched a program to assess the state of political parties in Pakistan. This program focuses on identifying issues of concern to the general public, including issues related to the need for party reform. In addition, NDI is conducting a modest program to assist efforts of the political parties to better prepare their agents (pollwatchers) for the October 10 polls. The activities of this delegation have been conducted independently of NDI's programs with Pakistani political parties.

There have been several recurring themes in NDI's reports concerning Pakistan's elections and broader democratization process. Among them is the need to address decisively corruption and to develop politically neutral and impartial accountability processes that are institutionalized, nonpartisan and fair. As early as 1993, the Institute pointed out that the military had been called upon to ensure the integrity of the election processes. NDI noted that while the armed forces played a positive role in that respect, civilian democratic institutions should be strengthened to obviate such a need. Among those institutions identified were "democratic political parties, active civic organizations, vigilant and independent media, a strong independent electoral commission, and a government and parliament responsive and accountable to the citizenry." These points are relevant nine years later and reflect the need for effective democratic civilian governance in Pakistan.

#### **IV. CONCLUSION**

The delegation would like to express its appreciation to everyone with whom it met. Without their taking time and sharing their knowledge and insights, the delegation would not have been able to accomplish its work.

Pakistan stands at a critical juncture in its history. The period ahead will determine whether the country can put itself successfully on a course to genuine democratization. The transition process that must follow the October 10 polls will be central to this, and the ability of the population to accept the upcoming elections as fair and credible, based on free voting and open competition, is critical to set the stage for the post-election transition. The delegation hopes that those presently holding power and the elected representatives will take decisive steps in the period immediately ahead to ensure that the people's desire for and right to democracy is realized.

Pakistan plays an important role in the region and in the world. Its ability to achieve a system by which its population can make peaceful changes through democratic processes and institutions and achieve improved conditions for living will make a significant contribution not just in Pakistan but beyond. The international community should pay careful attention and provide needed assistance to realize these goals. NDI will continue to follow developments and offer support to those working to advance the democratic process in Pakistan.