

Winding Back Martial Law in Pakistan

I. OVERVIEW

General Pervez Musharraf imposed martial law in Pakistan on 3 November 2007. He suspended the constitution, sacked the chief justice of the Supreme Court and removed other judges of that court who declared his act illegal. Police immediately began arresting lawyers, politicians and human rights activists. Independent television channels were taken off the air and reporting restrictions imposed. Thousands have since been jailed, journalists threatened and protests by lawyers and others suppressed. Replacing dissenting judges with hand-picked appointees, and ruling by decree, Musharraf's objective is to retain personal power by gaining judicial approval for martial law, followed by the creation of a democratic façade through rigged elections. The international community should demand the immediate restoration of constitutional order, the rule of law and the legitimate judiciary, the release of political prisoners and the appointment of an impartial caretaker government to oversee free and fair elections.

Musharraf has said he expects polls before 9 January and will take off his uniform before taking his oath for a new presidential term. But this offer does not go far enough. No proper elections can be held under martial law, supervised by a Musharraf-controlled Election Commission and a judiciary that has been purged and hand-selected by the military, and while some political leaders are in jail and others are barred from standing.

Musharraf claims he acted to restore stability but in fact he has sought to stamp out demands for democracy after eight years of military rule. The general's claims to legitimacy had worn thin, and he was facing a challenge by the Supreme Court to his re-election as president by a lame-duck and stacked electoral college in October. While saying he was tackling extremism, the arrests of non-violent, secular people showed his true intentions. Even as the military was filling the jails with lawyers and journalists, they were releasing 28 militants, some of whom had been convicted of terrorism, in yet another deal with violent extremists.

In response to all this, the U.S., the UK and the European Union (EU) have expressed disappointment, but

signalled they wish to continue cooperation with President Musharraf and his government, particularly on counter-terrorism. The focus has been on the need for Musharraf to remove his uniform and conduct elections – not on the necessity of restoring the constitutional order and the rule of law. The mistakes of the international response in the past to Pakistan are being repeated. The general has used the issue of terrorism with skill for years, drip-feeding anxious Western governments limited intelligence on jihadi groups while doing little to address extremism at home. Officials in Washington and London have been particularly prone to mistaken belief that the choice in Pakistan is between democracy and stability. Apart from handing over a few high-level al-Qaeda members, Pakistan has done little else: it has refused to close Taliban camps and jihadi madrasas or end extremist recruitment and fundraising. Driven by what is even in the short term a highly questionable interpretation of their security interests, Western governments have weakened their long-term security by supporting military rule rather than democratic institutions and the people of Pakistan.

A strong international response to military dictatorship has been hampered by anxiety that Pakistan might become another Iran, hostile to Western interests and yet a greater security threat if Musharraf were to leave the scene, as happened when the Islamic Revolution deposed the Shah in 1979. The analogy is false. Pakistan is a very different country, with a vibrant civil society, courageous and respected judicial and media institutions and above all a long democratic tradition and civilian parties that are widely popular and experienced in government. Its extremist forces have gained what status they have in the country's politics as the beneficiaries of military manipulation, not broad citizen support.

This latest coup makes it essential to rethink policy towards Pakistan and to recognise that Musharraf is not only not indispensable; he is a serious liability. Extremism would be better reduced now and would be more assuredly barred in the future by the rule of law under a democratic government led by one of the moderate political parties.

In response to martial law, the international community should take the following steps:

- speak out unequivocally for democracy in Pakistan, rejecting the idea that martial law is needed for stability, and demand a return to constitutional order;
- outline a series of graduated sanctions starting immediately with suspension of high-level talks on military cooperation, suspension of new military training, review of military aid to distinguish what is essential counter-terrorism (CT) help from general assistance, and establishment of performance-based conditionality on all non-CT military assistance until constitutional order is restored;
- follow this up – if Musharraf makes it necessary by not giving up his post as army chief by 15 November when his parliamentary dispensation to hold that post as well as the presidency expires, and does not restore the constitution, release political prisoners, restore the independent judiciary and accept its judgement on the legality of his October 2007 re-election as president, and set a date for elections – with gradually tougher sanctions, including suspension of all non-CT military aid and visa bans for top military and government officials;
- if these steps are not taken within 30 days, restrict non-CT arms sales; freeze officer training abroad and foreign assets of the military and its foundations and businesses; and refuse to accept high-level visits by Pakistani officials for as long as the constitution is not restored and the military holds politicians, lawyers and civil society actors under arrest and otherwise restricts their civic freedoms; also insist that the International Committee of the Red Cross (ICRC) be given unrestricted access to prevent torture and abuse in custody; and simultaneously
- expand aid for education, poverty reduction, healthcare and relief work, channelling money through secular non-governmental organisations (NGOs).

II. MARTIAL LAW

A. WHAT IT MEANS

Musharraf has imposed martial law¹, not – although he has disingenuously used this language – a “state

of emergency” of the kind provided for in the constitution, which can be imposed by the president if the country faces a grave external threat or internal disturbance.² While some articles of the constitution can be suspended, the constitution itself cannot be put in “abeyance” as Musharraf announced on 3 November.³

The general’s proclamation was made in his capacity as army chief, not as president. This is unconstitutional. In his capacity as army chief, he also issued a Provisional Constitutional Order (PCO),⁴ thereby replacing constitutionalism and rule of law with open military rule. The emergency proclamation makes this clear. It says, “a situation has...arisen where the Government of the country cannot be carried on in accordance with the Constitution and as the Constitution provides no solution for this situation, there is no way out except through emergent and extraordinary measures”.⁵

Any executive order can be challenged for unconstitutionality in the Supreme Court, which has the constitutional “power to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it”. It also has the power to consider “a question of public importance with reference to the enforcement of any of the Fundamental Rights”.⁶ The PCO, however, states – on no basis except Musharraf’s will – that no court, including the Supreme Court, shall “have the power to make any order against the President” or “call or permit to be called in question this Order, the Proclamation of Emergency or any Order made in pursuance thereof”.

Although the PCO asserts that the federal and provincial assemblies and the state apparatus remain intact and function as normal, Musharraf has assumed all powers for himself.⁷ Under its terms, he can “amend the

Democracy?, 6 June 2007. See also Crisis Group Asia Report N°137, *Elections, Democracy and Stability in Pakistan*, 31 July 2007.

² “If the President is satisfied that a grave emergency exists in which the security of Pakistan, or any part thereof, is threatened by war or external aggression, or by internal disturbance beyond the power of a Provincial Government, he may issue a Proclamation of Emergency”, Constitution of Pakistan, Article 232 (1).

³ “I hereby order and proclaim that the Constitution of the Islamic Republic of Pakistan shall remain in abeyance”, text of emergency proclamation law, *The News*, 4 November 2007.

⁴ Text of the Provisional Constitutional Order, *Daily Times*, 4 November 2007.

⁵ Emergency proclamation law, op. cit.

⁶ Constitution, Article 184 (3); Article 187 (1).

⁷ The parliament’s five-year term ends on 15 November 2007. General elections must be held within 60 days. The Constitution

¹ In June 2007, Crisis Group warned that any kind of imposition of rule by emergency decree would seriously destabilise Pakistan. See Crisis Alert, *Pakistan: Emergency Rule or Return to*

Constitution, as is deemed expedient”; no “judgment, decree, writ, order or process whatsoever...[can] be made or issued by any court or tribunal against the President...or any authority designated by the President”.

The Chief Justice of Pakistan, Iftikhar Mohammad Chaudhry, and six further judges of the Supreme Court declared the PCO and Musharraf’s actions illegal and unconstitutional before they were placed under confinement and fired by the army.⁸ Pakistani constitutional experts are in no doubt that the effect of their two-page Supreme Court order is that the PCO has no legal standing, and that Musharraf’s subsequent removal of the signatories from office equally has no legal foundation.⁹

Musharraf’s action was motivated by the transparent desire to retain his dual positions as head of the army and president. On 15 November, his term as president was due to end, as was parliamentary approval for his dual responsibilities. It was increasingly clear that the Supreme Court, which was to resume its hearing on the legality of his presidential election on 5 November, would rule against him on at least one of two grounds: that it was illegal for him to hold both offices and that he was bound by the bar on senior military officers standing for public office until they have been retired for two years.¹⁰

While self-preservation was the motive for tearing up the constitution, Musharraf hopes to gain international support, or at least toleration, and to ward off punitive

measures by justifying his actions on the grounds of increased terrorist threats and activity. Hence the Proclamation of Emergency highlights the “visible ascendancy in the activities of extremists and incidents of terrorist attacks” posing “a grave threat to the life and property of the citizens of Pakistan”. It then accuses some members of the judiciary of undermining the executive’s efforts “in the fight against terrorism and extremism, thereby weakening the government and the nation’s resolve and diluting the efficacy of its actions to control this menace”. The judges are also accused of demoralising the police and thwarting the intelligence agencies “in their activities” and preventing them from pursuing terrorists. This language is specifically aimed at the U.S. but also the UK, the latter of whose policy can be expected to heavily influence the EU.

Musharraf has also defended his position by referring to the judiciary’s release of terrorist suspects, including those detained in the Lal Masjid (Red Mosque) operation earlier in the year. But Justices Nawaz Abbasi and Faqir Muhammad Khokhar, who have taken the oath under the general’s PCO, were two thirds of the three-member bench that ordered the release of those arrested in that operation. In Pakistan, where conspiracy theories thrive, it is commonly believed that the two judges were party to a military plot to subvert the judiciary. One commentator said, “it has now transpired that the two judges who released these terrorists have taken oath[s] under PCO and are sitting pretty in the reconstructed Supreme Court. Is this a punishment or reward? This has yet to be determined”.¹¹

The higher courts have in the past released terror suspects too, not because judges were sympathisers but simply because the government and its security agencies failed to present legally compelling cases.¹² Chief Justice Chaudhry said his court had taken measures to expedite terrorism cases, including holding monthly meetings of a committee specially constituted for the purpose. However, he explained, the courts could not punish people without evidence.¹³

Musharraf’s charges that an interventionist judiciary had demoralised the police force have equally little to back them. The regime’s frequent use of the police

states: “A general election to the National Assembly or a Provincial Assembly shall be held within a period of sixty days immediately [following] the day on which the term of the Assembly is due to expire, unless that Assembly has been sooner dissolved” in which case, a general election “shall be held within a period of ninety days after the dissolution”. Article 224.

⁸ In the order, the seven-member bench “restrained” the “Government of Pakistan, i.e., President and Prime Minister of Pakistan” from “undertaking any such action which is contrary to the independence of judiciary”. It restrained the “Chief of Army Staff, Corps Commanders, Staff Officers and all concerned of the Civil and Military Authorities” from “acting on PCO”, and also restrained Supreme and High Court judges from taking an oath “under PCO or any other extra-constitutional step”. Text of the Order against Pakistan Emergency Rule, Pakistan Supreme Court, at http://thenews.jang.com.pk/banners/pco_scan.gif. The judges have refused to accept their dismissal.

⁹ Crisis Group interviews, Islamabad, November 2007.

¹⁰ On 30 November 2004, parliament passed an act to allow Musharraf to hold the dual offices of president and Chief of Army Staff until the end of his presidential term. “President to Hold Another Office Act, 2004”, Act No. VII of 2004, Gazette of Pakistan, Islamabad, Part I, 2004, pp. 177-178.

¹¹ Mir Jamilur Rahman, “Emergency saves democracy”, *The News*, 10 November 2007.

¹² See Crisis Group Asia Reports N°95, *The State of Sectarianism in Pakistan*, 18 April 2005; and N°86, *Building Judicial Independence in Pakistan*, 9 November 2004.

¹³ Ansar Abbasi, “Justice Iftikhar tells “The News he will come back”, *The News*, 4 November 2007.

to conduct political vendettas and to target its civilian opposition has in fact severely undermined their capacity to enforce rule of law, let alone abide by the law and protect the citizenry.¹⁴

B. THE COURTS

On 5 November, the Supreme Court was to resume hearing petitions on the legality of Musharraf's presidential election.¹⁵ On 15 November, Musharraf's term as president was to end, as was parliamentary approval for him to serve concurrently as president and army chief. Musharraf imposed martial law on 3 November to pre-empt an adverse judgement, not to cope with any terrorist threat or collapse of public order.

Unlike previous coups, including Musharraf's in 1999, which were aimed at the political leadership and parties, the judiciary is the key target of this action, since it threatens the military regime's survival. The Proclamation of Emergency blames the judiciary for "constant interference in executive functions" and "overstepping the limits of judicial authority" by taking over "executive and legislative functions". Once again, with an eye on international opinion, the proclamation singles out "some judges", and commits the government to "the independence of the judiciary", so long as judges "confine the scope of their activity to the judicial function and not to assume charge of administration".

The first hours of military rule consequently focused on subverting judicial independence. Judges were forced to step down for refusing to swear an oath of allegiance to military rule (i.e., the Provisional Constitutional Order), instead of the 1973 constitution.¹⁶

A large majority of judges have refused to comply. Only five of the Supreme Court's nineteen judges have taken

the oath under the PCO. The others, including Chief Justice Chaudhry, have been dismissed, with most placed under house arrest. Scores of judges in the Punjab, Sindh and Peshawar High Courts have also refused, including the Chief Justices of the Sindh and Peshawar High Courts. In all, 64 of the 97 judges of Pakistan's superior courts have been removed after they refused to swear allegiance to the illegal martial law regime.¹⁷ Musharraf has moved quickly to appoint loyal judges as Chief Justices of the Supreme and High Courts.¹⁸ Because loyalists have been or will be appointed to the vacant positions, a free and fair election is impossible under Musharraf's watch. It will remain so unless the independence of the judiciary is restored by reinstating the dissenting judges.¹⁹

The Election Commission of Pakistan (ECP) is an autonomous, constitutionally-sanctioned entity entrusted with holding the national elections. "It shall be the duty of the Election Commission...to organise the conduct [of] the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against".²⁰ Its responsibilities include preparation of the schedule and polling schemes, delimitation of constituencies, appointment of polling personnel, assignment of voters and arrangements for maintenance of law and order.²¹ The Chief Election Commissioner (CEC) is also charged with appointing Election Tribunals, which deal with petitions in the event of an election dispute.

¹⁴ Condemning violent police action in September against peaceful demonstrators during protest rallies against Musharraf's controversial and then imminent presidential re-election, for instance, representatives of human and civil society organisations warned that it would harm the fabric of society and the future of the country. Zulfiqar Ghuman, "HRCP Chairman says Chief Election Commissioner was informed but did not act", *Daily Times*, 30 September 2007.

¹⁵ An eleven-member bench of the Supreme Court, headed by Justice Javed Iqbal, was hearing cases filed by a Pakistan Peoples Party (PPP) leader, Makhdoom Amin Fahim, and former Supreme Court Judge Wajihuddin Ahmad, contesting the re-election of President Musharraf on 6 October 2007.

¹⁶ The constitution states: "All executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court". Article 190.

¹⁷ M. Ilyas Khan, "Musharraf takes on Pakistan's judges", BBC News, 4 November 2007. See also Shahid Hussain, "64 judges refuse to take oath under PCO", *Gulf News*, 5 November 2007; Muhammad Ahmad Noorani, "Majority of judges refuse to take oath under new PCO", *The News*, 5 November 2007.

¹⁸ Justice Abdul Hameed Dogar was appointed Chief Justice of Pakistan, replacing Justice Chaudhry.

¹⁹ Refusing to accept the legitimacy of the new judicial appointees, the Pakistan Bar Council and the Supreme Court Bar Association have asked lawyers to boycott all courts presided over by judges who have taken an oath under the PCO and have also asked those judges to withdraw their oath. Supporting the ousted judges, the bar associations stressed: "We regard them as legitimate judges who should resume their duties and functions under the Constitution as and when physical impediments laid in their way by the Musharraf regime are removed". Sohail Khan, "Pakistan Bar Council asks lawyers to protest till ouster of PCO judges", *The News*, 8 November 2007. See also "Supreme Court Bar Association, Lahore High Court Bar Association ask lawyers to boycott PCO judges", *Daily Times*, 6 November 2007.

²⁰ Constitution, Article 218 (3).

²¹ ECP website at www.ecp.gov.pk.

However, the ECP has failed to control abuse and fraud and provide free and transparent elections on any occasion during Musharraf's watch, including the 2002 national polls, and the opposition understandably believes that Musharraf's appointee, CEC Justice (ret.) Qazi Mohammad Farooq, is unlikely to do so this time.²² Since the Supreme Court is empowered to deal with any question of "public interest"²³ and the "power to issue such directions, orders or decrees as may be necessary for doing justice in any case or matter before it", the court's newly found independence had raised hopes that it would serve as a watch dog over the ECP and intervene as necessary to provide a remedy for subservience to the executive.²⁴ The military government has now destroyed that independence.

C. CURBING DISSENT

The government has suspended the following constitutionally-guaranteed fundamental rights: security of person (Article 9); safeguards as to arrest and detention (Article 10); freedom of movement (Article 15); freedom of assembly (Article 16); freedom of association (Article 17); freedom of speech (Article 19); and protection of property (Article 25).²⁵

It has swiftly moved against key representatives of the bar associations during its widespread crackdown.²⁶

²² During the 2002 national and 2005 local government polls, the ECP was unwilling to or incapable of redressing complaints brought prior to the polls and on election day, as well as those brought with respect to rigged results. See Crisis Group Asia Briefing N°43, *Pakistan's Local Polls: Shoring up Military Rule*, 22 November 2005; Crisis Group Report, *Elections, Democracy and Stability in Pakistan*, op. cit.

²³ Constitution, Article 184 (3).

²⁴ Presiding over the Supreme Court bench hearing petitions against Musharraf's presidential election, Justice Javed Iqbal said that the court had jurisdiction to intervene directly if the general election was not free and fair. When the attorney general responded, "then it means that the Election Commission has no role in holding the elections, and you conduct the elections", another judge on the bench commented, "if someone comes to the Supreme Court complaining that elections are not being held fair, then the apex court could intervene". "Supreme Court can intervene if elections not free, fair", *The News*, 1 November 2007.

²⁵ Text of Provisional Constitutional Order, op. cit.

²⁶ Opposition parties believe that more than 8,500 have been arrested, 5,000 from the PPP alone on the eve of the party's aborted rally in Rawalpindi on 9 November. Official figures put the number at less than 2,000. "Arrests and fallout", *The Nation*, 10 November 2007. See also "Pakistan's opposition says 5,000 of its supporters have been arrested ahead of major rally", Associated Press, 9 November 2007; Steve Graham, "Pakistan police to stop Bhutto rally", Associated Press, 7 November 2007.

Pakistan Peoples Party (PPP) Senator Aitzaz Ahsen, who is president of the Supreme Court Bar Association (SCBA), is in prison and has been denied access to his lawyer; two former SCBA presidents, Muneer Malik and Tariq Mahmood, have also been arrested and are being held in solitary confinement. Other leading members of the bar associations are in hiding. Protesting lawyers have been beaten by police and thousands of lawyers and ordinary citizens have been arrested, many under anti-terrorism laws, after demonstrations countrywide or to prevent their demonstrating as in the case of the protest rally Benazir Bhutto called for 9 November.

Civil society leaders and groups are also under attack. Asma Jahangir, Chairperson of the independent Human Rights Commission of Pakistan (HRCP) and UN Special Rapporteur on the Freedom of Religion or Belief, has been placed under house arrest for 90 days, and her HRCP colleagues were detained merely for holding an emergency meeting.²⁷

Attempts are being made to muzzle the media. To curb radio and television, Musharraf has issued an ordinance that prohibits any coverage which "defames or brings into ridicule the Head of State, or members of the armed forces, or executive, legislative or judicial organs of the state" and carries a maximum prison sentence of three years.²⁸ A similar ordinance has been issued for the print media.²⁹ Independent television channels and radio stations have been shut down, unless they are willing to abstain from political reporting. The offices of Aaj TV, which covered key events live including the 12 May 2007 attack on the Karachi rally for Chief Justice Chaudhry, and of the Jang Press in Karachi, were raided; the owners of the Jang Group of newspapers, which includes the

²⁷ Individuals detained at the HRCP meeting have since been released. Asma Jahangir is a member of the Crisis Group Board of Trustees. In a statement, Jahangir said: "We believe that Musharraf has to be taken out of the equation and a government of national reconciliation put in place. It must be backed by the military. Short of this there are no realistic solutions". Emailed statement obtained by Crisis Group, 5 November 2007. See also Crisis Group media release, "Release Crisis Group Board Member Asma Jahangir: Return the Country to Its Constitutional Order", 6 November 2007.

²⁸ Ordinance no. LXV of 2007, "An Ordinance to amend the Pakistan Electronic Media Regulatory Authority, Ministry of Law, Justice and Human Rights", Government of Pakistan, Islamabad, 3 November 2007.

²⁹ Ordinance no. LXIV of 2007, "An Ordinance to amend the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002", Ministry of Law, Justice and Human Rights, Government of Pakistan, Islamabad, 3 November 2007.

influential Islamabad-based daily, *The News*, have been threatened by intelligence agencies.³⁰

The vast majority of journalists have rejected the attempts to silence them. The print media has strongly condemned Musharraf's martial law since the day it was imposed. *The News* called 3 November "another dark day in Pakistan's political and constitutional history" and "one of General Pervez Musharraf's gravest errors of judgment". Under a headline "General Musharraf's second coup", *Dawn* said that "virtual martial law...could put the country's political future into disarray". *The Nation's* lead editorial said Musharraf had "sent the country into a tailspin just to save his job". General Musharraf, Talat Hussain of Aaj TV said, wanted journalists to "take an oath to the new PCO" by accepting his ordinances.

Mazhar Abbas, secretary-general of the Pakistan Federal Union of Journalists, whose union has rejected imposition of a "mini-martial law" in the guise of a state of emergency, said "accepting these ordinances would be like committing suicide because that would mean sanctioning the regulation of information. That is not acceptable to Pakistani journalists".³¹ The government now has two options: to ban newspapers outright or accept this criticism.

III. WHY MARTIAL LAW MAKES THE SITUATION WORSE

A. ILLUSIVE LEGITIMACY

Musharraf has been careful to buff his international image as an essential U.S. ally in the "war on terror" but at home he is widely seen as tarnished and illegitimate. In domestic terms, 2007 has been a year of setbacks for him.³² His first attempt in March 2007 to oust Chief Justice Chaudhry on trumped-up charges of corruption produced massive protests by lawyers and was rejected by the Supreme Court. The drawn-out battle to end jihadi control of the Lal Masjid (Red Mosque) in the heart of the capital in July proved a deep embarrassment and highlighted how little the military government

has done to control extremism. Worsening violence in the Federally Administered Tribal Areas (FATA), the Swat district of Northwest Frontier Province (NWFP) and across Balochistan has seriously undermined the military's image and popularity. Inflation, inequality and an explosion of corruption scandals have blown apart the argument that the military offers a safer pair of economic hands than civilian politicians.³³

Opposition to military rule has grown across the country. Musharraf's deep unpopularity was exposed in a poll released by the U.S.-based International Republican Institute (IRI) on 11 October 2007, which showed his approval rating at 21 per cent, down from 63 per cent in a similar survey in 2006.³⁴ Three quarters of those polled felt the country was on the wrong track, and 62 per cent said the military should not play a role in politics. Some 76 per cent expressed the wish that Musharraf resign his army post, around 74 per cent specifically opposed his re-election as president, and 83 per cent said they opposed any declaration of emergency.³⁵

B. A GRUDGING ALLY

Musharraf has positioned himself as a key player in the U.S. "war on terror" but his actual commitment has been widely questioned, not least by Pakistanis themselves, who have said they feel less secure.³⁶ A series of misguided deals to appease the Pakistani Taliban in the FATA have come undone, in effect ceding the strategic region bordering on Afghanistan to radical Islamists.³⁷ The military has focused its efforts in Balochistan on crushing an insurgency by secular, anti-Taliban Baloch struggling for constitutionally-guaranteed political, civil and economic rights but has

³⁰ "Threats to bomb media offices, kill owners slated", *The News*, 8 November 2007.

³¹ "PFUJ chastises raids on private TV news channels and FM radio stations", *Dawn*, 5 November 2007; Nizamuddin Siddiqui, "Journalists reject media curbs", *Dawn*, 6 November 2007.

³² See Crisis Group Report, *Elections, Democracy and Stability in Pakistan*, op. cit.

³³ Perceptions of corruption in Pakistan have shown no change since 2001, according to Transparency International; see www.transparency.org.

³⁴ The International Republican Institute (IRI) polled 4,009 adults in 256 rural and 144 urban locations between 29 August and 13 September 2007. The margin of error is 1.58 per cent; see www.iri.org/mena/pakistan/2007-10-11-pakistan.asp.

³⁵ The question asked in the poll assumed that a state of emergency would be consistent with the constitution. It can be assumed that the manner in which Musharraf proceeded would have even less support.

³⁶ "When asked if they agreed or disagreed with the statement 'I feel more secure this year than I did last year', 23 per cent said that they agreed (down from 39 per cent in June) while 65 per cent said that they disagreed (up from 56 per cent in June)". IRI poll, op. cit.

³⁷ See Crisis Group Asia Report N°125, *Pakistan's Tribal Areas: Appeasing the Militants*, 11 December 2006.

yet to tackle the Afghan Taliban, who have found refuge there.³⁸ Despite pledges in January 2002 to reduce extremism, particularly in the education system, nothing has been done to register madrasas or overhaul secular schools.³⁹

The U.S. has provided more than \$10 billion in aid to Pakistan since 2001, excluding covert funding that may amount to many hundreds of millions of dollars.⁴⁰ Most of this money has been for the military and counter-terrorism; less than 10 per cent has been general development or humanitarian aid, including that for the 2005 earthquake in Pakistan-administered Kashmir and NWFP.⁴¹ The UK, the EU, Japan and the international financial institutions have provided billions more in support, all of which has sustained the relatively high levels of growth in the past eight years.⁴² But

there have been very few efforts to bring about the moderate, enlightened society Musharraf promised.⁴³

The Musharraf regime has even failed to take action against Pakistan-based Islamist radicals operating in Afghanistan and Indian Kashmir. In the Indian context, despite Musharraf's repeated pledges to end all terrorist activity from Pakistani soil, the infrastructure of groups such as Lashkar-e-Tayyaba and Jaish-e-Mohammad remains intact. Banned by his government in 2002, these groups have been allowed to re-emerge under changed names. As the earthquake relief efforts in Pakistan-administered Kashmir in 2006 revealed, they still retain the military's patronage.⁴⁴

Critical to the West has been the refusal of the Pakistan military to bring Taliban activities under control, not just in the FATA but also in Balochistan's capital Quetta and in NWFP's capital, Peshawar.⁴⁵ Afghan Taliban leaders have been allowed to remain in these centres despite the heavy presence of Pakistan military and intelligence forces.⁴⁶

³⁸ See Crisis Group Asia Briefing N°69, *Pakistan: The Forgotten Conflict in Balochistan*, 22 October 2007; and Asia Report N°119, *Pakistan: The Worsening Conflict in Balochistan*, 14 September 2006.

³⁹ See Crisis Group Asia Reports N°130, *Pakistan: Karachi's Madrasas and Violent Extremism*, 29 March 2007; N°36, *Pakistan: Madrasas, Extremism and the Military*, 29 July 2002; and N°84, *Pakistan: Reforming the Education Sector*, 7 October 2004.

⁴⁰ See, among other sources, Craig Cohen, "A Perilous Course: U.S. Strategy and Assistance to Pakistan", Center for Strategic and International Studies, 24 September 2007, at www.csis.org/images/stories/pcr/070727_pakistan.pdf. Musharraf claimed in his autobiography that the CIA had paid Pakistan's military hundreds of millions for turning over members of al-Qaeda. Pervez Musharraf, *In the Line of Fire: A Memoir* (New York, 2006). Estimated total economic, military and counter-terrorism assistance for fiscal year 2007 is \$1.77 billion. For fiscal year 2008, the administration has requested almost that much, \$1.7 billion, for Coalition Support Funds alone, its primary mechanism for reimbursing Pakistan for counter-terrorism activity. "Direct Overt U.S. Assistance to Pakistan, FY2001-FY2008", prepared for the Congressional Research Service by K. Alan Kronstradt, 8 November 2007.

⁴¹ Cohen, "A Perilous Course", op. cit.

⁴² The Pakistan government claims that the country's "upbeat economic momentum remains on track", with economic growth averaging 7 per cent in 2006-2007 and real GDP growing at an average rate of 7 per cent from 2003 to 2007. Economic Advisor's Wing, Finance Division, Government of Pakistan, at <http://finance.gov.pk/summary/EcoPerformanceFY07.pdf>. This, has not, however, made many Pakistanis feel economically more secure. In the IRI poll, op. cit., more than half said their economic situation had worsened in the past year. When asked an open-ended question as to the top issue that would determine their vote in elections, 37 per cent said inflation, 20 per cent unemployment and 11 per cent poverty. Although GNP has risen under military rule, there has been little improvement in productivity, infrastructure or education.

⁴³ Musharraf's first address to the nation, 17 October 1999, at www.presidentofpakistan.gov.pk/SpeechaddressList.aspx.

⁴⁴ Maulana Masood Azhar has changed Jaish-e-Mohammad's name to Khudam-ul-Islam and Hafiz Muhammad Said has changed the Lashkar's name to Jamaat Dawa. See Crisis Group Asia Briefing N°46, *Pakistan: The Political Impact of the Earthquake*, 15 March 2006. See also Crisis Group Asia Reports N°130, *Pakistan: Karachi's Jihadi Madrasas and Violent Extremism*, 29 March 2007; and *The State of Sectarianism in Pakistan*, op. cit.

⁴⁵ Pakistan is obliged under UN Security Council resolutions to tackle terrorism. Resolution 1373 (2001) calls upon states to prevent and suppress the financing of terrorist acts, suppress recruitment and eliminate weapons supplies, exchange early-warning information with other states, deny safe haven, prevent the use of state territories for terrorism, ensure perpetrators are brought to justice and ensure terrorist acts are established as serious criminal offences in domestic laws. Resolution 1566 (2004) calls upon states to ensure that such acts are punished by penalties consistent with their grave nature and become party to relevant international conventions and protocols relating to terrorism. Resolution 1624 (2005) calls upon states to criminalise and prevent incitement to terrorism, strengthen international borders and enhance terrorist screening and passenger security procedures and take measures to counter incitement of terrorist acts. In reference to the "Consolidated List" of individuals or groups associated with the Taliban or al-Qaeda, Resolutions 1390 (2002), 1526 (2004), 1617 (2005) and 1735 (2007) call on states to freeze financial assets of those individuals, prevent their entry into or transit through their territories and prevent the supply or sale of weapons and ammunition and military vehicles, as well as military training and technical advice.

⁴⁶ See Crisis Group Briefing, *The Forgotten Conflict in Balochistan*, op. cit.; Crisis Group Reports, *Appeasing the Militants* and *The Worsening Conflict in Balochistan*, both op. cit.

More important to Pakistanis has been the failure to control extremism at home. At the Red Mosque in the heart of Islamabad, jihadis were able to stockpile weapons, violate the law and take police hostage all under the noses of the intelligence agencies. Violence has flared in Swat district, once a tourist area in NWFP. The largest segment of the popular vote in Swat eight years ago was won by former Prime Minister Benazir Bhutto's PPP and the moderate Pashtun Awami National Party (ANP). After six years of rule by the Musharraf-led six-party religious alliance, the Muttahida Majlis-i-Amal (MMA), Islamist extremists have appropriated the space created by the military's marginalisation of the secular parties. The area is now dominated by extremists, with the military unable or unwilling to challenge their control.⁴⁷ The day after martial law was introduced, 28 jihadis, including three convicted on terror charges, were released in South Waziristan in exchange for 213 soldiers taken hostage in August.⁴⁸

C. RESURGENT POLITICAL PARTIES

Pakistan's political parties have taken a beating under military rule.⁴⁹ Despite rigged elections, the exiling of their leadership and intense pressure on elected politicians to defect to the ruling Pakistan Muslim League – Quaid-i-Azam (PML-Q), the two national-level centrist parties, Bhutto's PPP and Nawaz Sharif's Pakistan Muslim League-Nawaz (PML-N), have maintained significant support. IRI polling in September 2007 showed that Bhutto and Nawaz Sharif both had higher personal approval ratings than Musharraf.⁵⁰

Harsh security measures were used to prevent supporters from greeting Nawaz Sharif, and thousands of party workers were arrested countrywide, when the PML-N leader, exiled by the military government since December

2000, attempted to return home on 10 September 2007. He was held at Islamabad airport and immediately deported despite the Supreme Court's August ruling allowing him to return.⁵¹ Bhutto returned to a massive welcome on 18 October after eight years of exile. An assassination attempt killed 140 of her supporters as she travelled through Karachi. "The attack", Bhutto said, "was to warn the people against exercising their right to participate in the political process....It is imperative for all of us to fight to save Pakistan by saving democracy". It is dictatorship, she added, that "fuels the forces of extremism".⁵²

The MMA has certainly been the main beneficiary of military rule, forming the government in NWFP as a result of rigged elections in 2002, and joining a coalition government with Musharraf's PML-Q in Balochistan. In a free and fair election, without the opportunity for military patronage, the MMA's electoral performance would far more accurately reflect its limited constituency, which has shrunk even more by its association with Islamist extremism and the military regime and its failure to deliver effective governance. Musharraf's PML-Q is a party of opportunists and defectors that will last only as long as its principal patron. Even its officials expect it will suffer significant defections to Sharif's party if the PML-N leader is permitted to return.⁵³

Scores of political leaders and thousands of political workers from the moderate parties have been detained countrywide since 3 November, with the numbers continuing to mount. These include the leaders of moderate parties such as PML-N acting president Javed Hashmi; PPP senator Aitzaz Ahsen; the leaders of the two moderate Pashtun parties, the ANP's Asfandiyar Wali Khan and the Pashtoon Khwa Milli Awami Party's Mahmood Khan Achazkzai; and the leaders of the Baloch moderate parties, the National Party's Hasil Bizenjo and the Balochistan National Party's Habib Jalib Baloch. While these arrests continue, militants in such areas as Swat continue to operate freely, making a mockery of Musharraf's claims that martial law was imposed to counter extremism.

⁴⁷ Pakistani Taliban, led by Maulana Fazlullah, control three key towns in Swat district. The Taliban demands include enforcement of Sharia law in Swat and the rest of Malakand division and the withdrawal of all criminal charges against the militants. "Fazlullah's militants seize another town", *Daily Times*, 7 November 2007; Hameedullah Khan, "Swat militants free 48 militiamen", *Dawn*, 3 November 2007.

⁴⁸ Any successful attempt to win hearts and minds of the people in FATA needs to incorporate a willingness to end colonial-era administrative and judicial systems by integrating the region into NWFP under executive control of the province and jurisdiction of provincial and national court systems and with representation in the provincial assembly. See Crisis Group Report, *Appeasing the Militants*, op. cit.

⁴⁹ See Crisis Group Asia Report N°102, *Authoritarianism and Political Party Reform in Pakistan*, 28 September 2005.

⁵⁰ IRI poll, op. cit.

⁵¹ The Supreme Court had ruled that, under Article 15, Nawaz Sharif has an "inalienable right to enter and remain in the country" and asked the government not to restrain, hamper or obstruct his return. A contempt of court case regarding Sharif's subsequent expulsion was being heard by the Supreme Court when Musharraf declared martial law. "Sharif can return: Supreme Court", *Daily Times*, 24 August 2007.

⁵² Press conference, Karachi, 19 October 2007, at www.ppp.org.pk/news_events/oct/19-10-2007.html.

⁵³ Crisis Group interviews, Islamabad, October 2007.

D. LAWYERS, CIVIL SOCIETY AND THE MEDIA

The IRI poll showed that Pakistan's lawyers and journalists are more highly regarded than its military.⁵⁴ The media has always challenged military rule and has defended its independence fiercely, winning for itself the approval of the Pakistani public. IRI's findings, however, reflect a new respect for a superior judiciary that had condoned previous authoritarian interventions but has recently demonstrated a willingness to stand up to military pressure. Indeed the coup's focus on these institutions indicates that the military considers them, along with the moderate political parties, the most serious challenges to its power.

Pakistan has also seen considerable growth in private media, particularly television channels. These have been kept off the air since 3 November, except for a few, mainly business-focused, channels that have clearly agreed to abstain from objective political reporting. Unless and until the government decides to close down the print media, however, the country's vibrant press will continue to challenge military dictates and restrictions.

Lawyers were galvanised in March 2007 by the sacking of the chief justice. Protests across the country were the most significant demonstrations against military rule since Musharraf took over. Lawyers have been at the forefront of protests against the November coup, with thousands demonstrating in major cities.

Civil society also has a more considerable role. The Human Rights Commission of Pakistan (HRCP) has led criticisms of military policies, particularly disappearances of opponents in Balochistan, one of the issues that prompted Musharraf's move against the chief justice in March.⁵⁵ An emergency meeting in Lahore of the HRCP immediately after martial law was proclaimed was broken up with force and its participants jailed.

⁵⁴ See IRI press release, 11 October 2007. "Over the past year, the Army has been the most highly regarded institution in Pakistan, according to IRI polls. In September's poll, however, the Army slipped into third place. Although still rated very highly (70 per cent saying that they rated the institution favorably), this represents a 10-point drop from the June poll. Meanwhile, the media maintained its first place position (80 per cent favourable rating) while the courts jumped 15 points to 77 per cent and second place".

⁵⁵ Chief Justice Chaudhry's decisions in a number of cases had raised the possibility that the Supreme Court might rule in accordance with the spirit and content of the constitution on issues of particular sensitivity, such as Musharraf's dual status as army chief and president and the use of the lame-duck assemblies as the presidential Electoral College. Crisis Group Report, *Elections, Democracy and Stability in Pakistan*, op. cit.

The lawyers' brave movement, the confident media and the growth of civil society, combined with long-established, experienced political parties that have retained their constituencies against all odds, represent a country that is ready for the end of military rule. Any policies, active or tolerant, by Pakistan's allies that result in its prolongation will only serve to further destroy popular respect and support for the West.

IV. A FIRMER RESPONSE

Too often the U.S. and European nations, particularly the UK, have interpreted their interests as lying with those of the Pakistani military rather than the Pakistani people.⁵⁶ They have justified this by presenting entirely unlikely and apocalyptic scenarios such as extremists getting hold of nuclear weapons or the Islamist parties winning an election.⁵⁷ While thinking they were preventing the worst from happening, they have in fact allowed the military to indulge militants and undercut the democratic majority.

In his address to the nation on 3 November, Musharraf urged the international community to accept his draconian measures. "Please do not expect or demand your level of democracy that you have learnt over a number of centuries...please give us time", he said. "Please also do not demand and expect your level of civil rights, human rights, which you have learnt over the centuries".⁵⁸ Pakistan, he told the West, especially the U.S., the EU and the

⁵⁶ The military, which numbers around 650,000, with another some 200,000 reserves and 300,000 in paramilitary forces, consumes at least 35 per cent of the state budget and approximately 3.5 per cent of GDP. Even these figures are misleadingly low, however, since major military expenses are included in the civilian budget, such as military pensions, allocations for paramilitary forces and the coast guard, military educational institutions and the Pakistan Atomic Energy Commission. The defense budget itself is a single non-transparent line in budgets presented to parliament: "to defray salary and other expenses". Farhatullah Babar, "Demystifying the military spending", *The Nation*, 12 June 2006. See also *SIPRI Yearbook 2007: Armaments, Disarmament and International Security*, Stockholm Peace Research Institute (Stockholm, 2007); and *The Military Balance 2007*, The International Institute for Strategic Studies (London, January 2007).

⁵⁷ For background, see Crisis Group Asia Report N°49, *Pakistan: The Mullahs and the Military*, 20 March 2003. In 2002 the Islamist alliance won just 11.3 per cent of the votes in an election heavily rigged in its favour. In a free and fair election, few people expect it would get much more than 5 per cent.

⁵⁸ President Musharraf's address to the nation, Associated Press of Pakistan, 3 November 2007.

Commonwealth, was on the verge of destabilisation because of extremism and terrorism.⁵⁹

The U.S. has expressed concern about Musharraf's "extra-constitutional actions" and support, as has the EU, the UK and Canada, for the restoration of the democratic process, including free and fair elections by 15 January 2008. On 8 November, hoping to defuse international pressure,⁶⁰ Musharraf announced that general elections would be held on or by mid-February and that he would also quit as army chief but only after his hand-picked Supreme Court ruled on the validity of his October presidential election.⁶¹ He updated his expected poll date to 9 January during a press conference on 11 November, the first since he imposed martial law, but also said the emergency would not be lifted; hence elections would be held under martial law.⁶² While Musharraf's move was seen in Pakistan as yet another attempt to retain power through unconstitutional means,⁶³ the U.S. was quick to welcome the

announcements. "We think it is a good thing that President Musharraf has clarified the election date", said a White House spokesperson.⁶⁴

Washington and London must understand, however, that retaining Musharraf in a future Pakistani political dispensation through, for instance, an alliance with the PPP, is no longer a viable option. Instead, the international community must take urgent steps to stabilise Pakistan by immediately and robustly supporting a rapid democratic transition. Specifically, it must strongly urge Musharraf to:

- ❑ cancel martial law and restore fundamental freedoms;
- ❑ respect judicial processes and restore judicial independence, including by restoring to office the dismissed judges of the Supreme Court and other superior courts;
- ❑ respect rule of law and human rights and immediately release political detainees;
- ❑ give up his post of army chief when the parliament's dual-hat approval ends on 15 November and accept the judgement of the restored Supreme Court on whether his October re-election to the presidency was legal;
- ❑ permit formation of a neutral caretaker government, in consultation with all parties, to oversee the polls, and reconstitution of the Election Commission of Pakistan; and
- ❑ allow free, fair and transparent elections to be held as scheduled, within 60 days if parliament completes its five-year term on 15 November or within 90 days if parliament is dissolved earlier, with participation of all political parties and leaders, including those in exile.

Pakistan's military has a keen sense of how to survive. Without domestic support and legitimacy – since the overwhelming majority of citizens want democratic government – it seeks at least understanding and toleration abroad. This makes it vulnerable to outside pressure, particularly from the U.S. Washington's assistance has been key in providing high technology

⁵⁹ In her statement, Crisis Group Board member Asma Jahangir said: "Ironically the President said he had to clamp down on the press and the judiciary to curb terrorism. Those he has arrested are progressive, secular-minded people, while the terrorists are offered negotiations and ceasefires". She added, "We want friends of Pakistan to urge the United States administration to stop all support of the unstable dictator, as his lust for power is bringing the country close to a worse form of civil strife. It is now time for the international community to insist on preventive measures, otherwise cleaning up the mess may take decades".

⁶⁰ The U.S. Congress is increasingly indicating a willingness to review or suspend at least some military aid to Pakistan. S. Res. 372, a resolution submitted 8 November 2007 by Senator Kerry on behalf of himself, Joseph Biden, Barack Obama and others, expressing the sense of the Senate, recommended that "United States military assistance to Pakistan should be subjected to careful review, and that assistance for the purchase of certain weapons systems not directly related to the fight against Al Qaeda and the Taliban should be suspended if President Musharraf does not revoke the state of emergency and restore the Constitution of Pakistan, relinquish his position as Chief of Army Staff of Pakistan and allow for free and fair elections to be held in Pakistan". A similar measure H. Res. 810 also was introduced on 8 November in the House of Representatives by 21 members of Congress. Performance-based conditionality on both military aid of some \$300 million and counter-terrorism related Coalition Support Funds already had been attached to the pending FY2008 funding bills moving through the U.S. Congress.

⁶¹ Musharraf said, "the Supreme Court now has to decide, when they allow this notification (of his election results), that is the time when I can take oath as president and remove the uniform". "Elections by February 15 at the latest: Musharraf", *The News*, 9 November 2007.

⁶² David Rohde and Jane Perlez, "Musharraf sets no date to end emergency rule", *The New York Times*, 12 November 2007.

⁶³ Bhutto, for instance, insisting on the restoration of the constitution and reinstatement of the dismissed judges, dismissed

Musharraf's pledges as "vague and insufficient" and demanded that he give up the post of army chief on 15 November. "Ousted judges should decide Musharraf case: BB", *The Nation*, 9 November 2007; Amir Wasim, "Benazir wants pre-emergency judges to decide cases", *Dawn*, 9 November 2007; "This is too little and vague: BB", *The News*, 9 November 2007.

⁶⁴ Anwar Iqbal, "U.S. welcomes poll pledge", *Dawn*, 9 November 2007. See also "Musharraf sets no date to end emergency rule", *The New York Times*, op. cit.

weaponry and training as well as prestige and international connections. Pakistan could turn to China for some of this, as it has done in the past, but the military knows it would suffer, particularly with respect to the widening technological gap with India.

The military is more heavily involved in business within the country than ever before. Even if counter-terrorism objectives and assistance to Afghanistan might require continued cooperation with some military-run companies, the international community could easily impose targeted sanctions on other enterprises such as military-run banks and insurance companies and private security firms.⁶⁵

Military rulers have used sanctions in the past to stir up nationalist resentments; to counter that tactic, any sanctions against the military should be tightly focused and balanced with an expansion of assistance that would benefit ordinary Pakistanis, who have long suffered from the misallocation of resources under military rule.⁶⁶

Pakistan military leaders have also used the threat of withholding support in the fight against terrorism and the Taliban as a way to ensure continued support. In reality, their cooperation has been highly selective and is likely to decline under martial law as the government focuses on crushing dissent within the secular democratic forces and holding on to its own power at all costs.

Musharraf should be offered a graceful exit and strongly encouraged to restore the constitution and the judiciary. If he does not do so, a graduated series of sanctions should be imposed, with ample warning given to the government that further measures are being prepared. There should immediately be:

- ❑ suspension of high-level talks on military cooperation;
- ❑ suspension of new military training;
- ❑ review of military aid to distinguish what is essential for counter-terrorism (CT) from general military assistance; and

- ❑ establishment conditionality on all non-CT military assistance until constitutional order is restored.

If by 15 November Musharraf fails to restore the constitution, give up his post as army chief, release prisoners, restore the judiciary and commit to accepting its judgement on the legality of his new presidential term, this ought to be followed up with:

- ❑ a travel ban on Musharraf, the prime minister and cabinet and their families;
- ❑ a ban on new contracts with military-owned companies;
- ❑ a freeze on appointments of Pakistani officers to UN missions;
- ❑ a ban on new loans from foreign banks to the Fauji Foundation, the Army Welfare Trust and the Shaheen Foundation; and
- ❑ a suspension of non-CT military aid.

If these steps do not produce results within 30 days, these additional steps should be taken:

- ❑ the freezing of foreign military training programs;
- ❑ extension of the travel ban to all officers above the rank of brigadier general;
- ❑ a freeze on sales of non-CT military equipment and spare parts;
- ❑ a freeze on foreign assets of the military foundations; and
- ❑ restrictions on Pakistani banks handling military money.

Support for democratic institutions and functioning would empower the country's moderate majority, thereby marginalising violent extremists. If the threats of terrorism from and within Pakistan are to be effectively countered, the international community must use its assistance wisely. It would be best served by offering a series of incentives, including market access and expanded financial support, to ensure that a democratic transition is stable and sustained. Enhanced support for poverty reduction, education and healthcare would benefit the people. Support for judicial reform, including assistance to bar associations and councils, political party capacity building and support for human rights organisations and media watchdog groups would strengthen democratic functioning. Such assistance would also help persuade citizens that the priorities of the international community, particularly the U.S., the UK and their EU allies, have finally changed from a partnership with the military to one with the people of Pakistan.

⁶⁵ The military's heavy involvement in such enterprises deforms the economy. Targeted sanctions, therefore, would have the secondary effect of helping to free up Pakistan's economy and make it more competitive.

⁶⁶ Even by official and inexact estimates, Pakistan's expenditure in 2004-2005 was 0.6 per cent of GDP for health and 2.1 per cent for education, far less than for defence. "Economic Survey of Pakistan", cited in Ayesha Siddiqi, *Military Inc.: Inside Pakistan's Military Economy* (Karachi, 2007), p. 163.

V. CONCLUSION

Martial law will only bring more violence and instability to Pakistan. The imprisonment of secular leaders of civil society boosts jihadi groups. The targeting of moderate political parties empowers the Islamists. Censorship of the media makes the mosque more potent as a means of communication. The destruction of the institutions of the rule of law opens the door wider to extremism. Military rule has not brought peace to Pakistan in the past eight years; indeed conflict has worsened across the country. There is absolutely no reason to believe that its continuation in any form, including with a civilian façade such as might be created by rigged elections, would do better.

The time has come to take a principled stand that will benefit the real security, both immediate and long-term, of all who face the threat of extremism in Pakistan and elsewhere. Military rule has given jihadis the political space and support that has allowed them to prosper. The only way to tackle extremism effectively in Pakistan today is through a democratic government that has the legitimacy to move against it and the political means to find solutions. A return to democracy is essential for stability in Pakistan and security around the world.

Islamabad/Brussels, 12 November 2007

APPENDIX A

MAP OF PAKISTAN



APPENDIX B

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