

After Bhutto's Murder: A Way Forward for Pakistan

I. OVERVIEW

Gravely damaged by eight years of military rule, Pakistan's fragile political system received a major blow on 27 December 2007, when former Prime Minister Benazir Bhutto was assassinated. Her murder, days before the parliamentary elections scheduled for 8 January 2008 and now postponed to 18 February, put an end to a U.S. effort to broker a power-sharing deal with President Pervez Musharraf which the centre-left Pakistan Peoples Party (PPP) leader had already recognised was unrealistic. Her popularity and the belief Musharraf and his allies were responsible, directly or indirectly, have led to violent countrywide protests.

Stability in Pakistan and its contribution to wider anti-terror efforts now require rapid transition to legitimate civilian government. This must involve the departure of Musharraf, whose continued efforts to retain power at all costs are incompatible with national reconciliation; an interim consensus caretaker government and a neutral Election Commission; and brief postponement of the elections to allow conditions to be created – including the restoration of judicial independence – in which they can be conducted freely and fairly.

Bhutto's death has drawn the battle lines even more clearly between Musharraf's military-backed regime and Pakistan's moderate majority, which is now unlikely to settle for anything less than genuine parliamentary democracy. Many in Pakistan fear that the federation's very survival could depend on the outcome of this struggle.

Belying his reiterated slogan of "Pakistan first", Musharraf is placing regime survival and his personal political fortune first, just as he did in November. That month he imposed martial law, suspended the constitution, imprisoned thousands of lawyers and politicians and sacked the judiciary with the sole objective of preventing the Supreme Court from challenging the legitimacy of his re-election as president by a lame-duck and stacked Electoral College.

Musharraf gave up his position of Army Chief on 28 November under U.S. pressure, but the legitimacy of his presidential election remains contested. He withdrew martial law formally on 15 December, ending the emergency and reviving the constitution. At the same time, however, he not only did not restore the dismissed judges or void the repressive decrees he had issued but also unilaterally and without any legal basis proclaimed amendments to the constitution purporting to deny the courts and the parliament their constitutional prerogatives to challenge his changes.

Bhutto's PPP and the centre-right Muslim League (Pakistan Muslim League-Nawaz, PML-N) of former Prime Minister Nawaz Sharif had reluctantly agreed to participate in the 8 January elections, motivated primarily by the desire to expose Musharraf's intention to rig the vote. Stacked courts, partial caretaker governments, a subservient Election Commission, the gagging of the media, curbs on political party mobilisation and association and the actions of the security agencies all undermined the essential conditions for free and fair elections.

The regime's international backers, particularly the U.S., continue to give signs of wanting to retain Musharraf in the presidency in the belief that he and the military (his sole support base) are the only guarantors of stability in a crucial country. But after Bhutto's murder, and with the extent of popular anger now evident, elections that are not seen as free and fair would have disastrous consequences. The person of Musharraf has become so unpopular that his continuation in a position of power guarantees increasing domestic turmoil. By continuing to back him, Western governments might not just lose the battle for Pakistani hearts and minds, but could also be faced with the nightmare prospect of a nuclear-armed, Muslim-majority country of 165 million descending into violent internal conflict from which only extremist forces would stand to gain.

Bhutto's party will survive her demise, and will, should her successors act wisely, remain a force for moderation and stability in Pakistan. Sharif's party has vowed to work with the PPP to restore democracy, peace and stability in the country. The U.S. and its Western allies must recognise that

Musharraf is not only not indispensable, but he is now a serious liability. Instead of backing a deeply unpopular authoritarian ruler who is seen as complicit in the death of Pakistan's most popular politician, they must instead support democratic institutions and the people of Pakistan. It is time that the West acknowledges that only a legitimate elected government, led by one of the moderate parties, would have the authority and the popular backing to return Pakistan to its moderate democratic moorings.

In summary, the policy outcomes that need to happen over the next two months, and which should be strongly and consistently supported by the international community, and particularly those like the U.S. most capable of influencing them, are:

- Musharraf's resignation, with Senate Chairman Mohammad Mian Soomro taking over under the constitution as acting president and appointing neutral caretaker governments at the national and provincial levels with the consensus of the major political parties in all four federal units;
- postponement of the polls, accompanied with the announcement of an early new election date. The Election Commission announced on 2 January a postponement until 18 February. This is reasonable in and of itself but it said nothing about the other crucial changes discussed in this Briefing and which are needed if this step is to contribute to restoration of democracy in Pakistan;
- full restoration of the constitution, including an independent judiciary and constitutionally guaranteed fundamental freedoms of speech, assembly and association and safeguards against illegal arrest and detention;
- reconstitution of the Election Commission of Pakistan, with the consensus of all major political parties; and
- the transfer of power and legitimate authority to elected civilian hands.

II. THE ASSASSINATION

A. WHAT HAPPENED

On 27 December 2007, addressing a public rally at Liaquat Bagh in Rawalpindi, Benazir Bhutto issued an impassioned call for an end to military rule and vowed, with the people's support, to defeat the extremists who were trying to establish their writ in the Northwest Frontier Province (NWFP) and near the Afghan border. "The country is in danger", she said, "We have to save the country with the power of the people", adding that "the country had to suffer whenever a dictator took over".¹

As the Rawalpindi rally ended and her car was leaving the venue, she was assassinated. PPP Senior Vice Chairman Makhdoom Amin Fahim and Bhutto's political secretary Naheed Khan, who were accompanying her in the car, as well as other eyewitnesses, insist that she was killed by gunshot.² The government has repeatedly changed its version of the murder. At first, it claimed Bhutto died in the bomb explosion that immediately followed the firing of shots and killed at least 21 and wounded more than 50. It then changed its story, claiming that shrapnel from the explosion caused her death, and subsequently that her death was the result of a fractured skull suffered when she fell into her car, jarred by the force of the explosion.³ After private television stations aired footage of a gunman apparently targeting Bhutto, the government again backtracked and is now asking the public for information about at least two suspects, including the gunman.⁴

These differing accounts underscore the importance, as discussed below, of an impartial external investigation into the attack. Regardless of the findings of that enquiry, should one be held, the murder has transformed the country's political landscape beyond recognition.

¹ Daud Khattak, "Widespread gloom after Bhutto's killing", *Daily Times*, 28 December 2007.

² "Bhutto party accuses government", Reuters, 29 December 2007; "Benazir aide says government explanation 'pack of lies'", *Dawn*, 29 December 2007; Behzad Khan, "Telltale images expose fatal security flaws", *Dawn*, 30 December 2007.

³ The doctor who had initially told the media that the death was caused by a bullet reversed his statement. Muhammad Saleh Zafar, "Cause of death turns into huge controversy", *The News*, 29 December 2007; Maqbool Malik, "Analysts question government's conflicting statements", *The Nation*, 29 December 2007; Syed Irfan Raza, "Government gives new twist to probe", *Dawn*, 29 December 2007.

⁴ Shaheen Sehbai, "Caretaker government apologies for Interior Ministry blunder", *The News*, 1 January 2008.

B. WHAT IT MEANS

Bhutto's return to Pakistan on 18 October 2007 after eight years of exile had been marked by controversy.⁵ The Bush administration had cajoled her to enter into a power-sharing arrangement with Musharraf and had pressured Musharraf to accept her return, hoping that a partnership would lend legitimacy to its military ally's troubled rule.⁶ Late that first evening, an assassination attempt on her welcoming procession in Karachi left more than 140 dead and hundreds wounded.

Musharraf's refusal to accept PPP demands for an independent international investigation into the Karachi attacks strained relations between the two. Despite U.S. urging, the prospects of an alliance dimmed further as he refused to share even a modicum of power, choosing instead to impose martial law in November.⁷

Calling for the restoration of democracy, Bhutto launched a protest campaign. The PPP, she said, "does not accept the emergency which is, in fact, martial law".⁸ She had initiated a dialogue with Musharraf in the hope of a smooth transition to democracy, she explained, but now believed that it was "time for him to leave".⁹

In an interview before her return to Pakistan, Bhutto had emphasised: "My goal is to prove that the fundamental battle for hearts and minds [in Pakistan] can be accomplished only under democracy". Extremism, she said "looms as a threat, but will only be contained as it has been in the past if the moderate middle can be mobilised to stand up to fanaticism. I

return to lead that battle".¹⁰ During the election campaign after the emergency was lifted on 15 December, Bhutto linked military rule with the spread of Islamic extremism and repeatedly stressed that her party, if it came to power, would rid the country of the threat. Days before her death, she said, "they [military rulers] always try to stop democratic forces but don't make any effort to check extremists, terrorists and fanatics".¹¹

Bhutto did not live to fight that battle. The nationwide anger and grief that has followed her death, however, provides ample evidence that the majority of Pakistanis sympathised with and supported a leader who was not just willing to publicly denounce Islamic extremism but who had also made the elimination of such radicalism a central part of her party's electoral platform.

By mending her fences with Nawaz Sharif in the weeks before her death, Bhutto empowered the moderate majority in the struggle for democracy and against the military-dominated regime and its Islamist allies. In December, the two leaders of Pakistan's largest, mainstream moderate parties had agreed to evolve a joint strategy against Musharraf's bid to retain power through undemocratic means.¹² Already facing a more united opposition and with his popularity at an all time low,¹³ Musharraf's domestic standing has been undermined even further by Bhutto's assassination. Many within and outside the PPP hold him personally responsible for the murder. They believe that the assassination was directly linked to his government's repeated refusal to provide her the security measures she had repeatedly asked for.¹⁴

The opposition does not accept the government's claim that it has a taped telephone conversation in which Baitullah Mehsud, a tribal militant linked to al-Qaeda, discusses the successful operation with his

⁵ For analysis of the political situation as Bhutto prepared her return and in the period leading up to her assassination, see Crisis Group Alert, *Pakistan: Emergency Rule or Return to Democracy?*, 6 June 2007; Crisis Group Asia Report N°137, *Elections, Democracy and Stability in Pakistan*, 31 July 2007; and Crisis Group Asia Briefing N°70, *Winding Back Martial Law in Pakistan*, 12 November 2007.

⁶ Helene Cooper and Steven Lee Myers, "Salvaging U.S. diplomacy amid division", *The New York Times*, 28 December 2007.

⁷ Musharraf claimed he took the difficult decision to impose emergency rule guided by his motto of "Pakistan first". He said that: "My guiding principal has always been Pakistan first". "Emergency imposed in larger national interest", Associated Press of Pakistan, 3 November 2007.

⁸ "Bhutto rules out talks with Musharraf", *The News*, 14 November 2007.

⁹ "Bhutto: Time for Musharraf to go", CNN, 13 November 2008.

¹⁰ Benazir Bhutto, "When I return to Pakistan", *The Washington Post*, 20 September 2007.

¹¹ "Govt. failed to combat militancy: Benazir", *Dawn*, 24 December 2007.

¹² Ansar Abbasi, "Last Benazir-Bhutto meeting focused on rigging", *The News*, 30 December 2007.

¹³ In the International Republican Institute (IRI) poll of 19-28 November 2007, 66 to 75 per cent of those questioned described themselves as anti-Musharraf and wanting change.

¹⁴ In an email to Mark Siegal, her U.S. spokesperson, two months before her death, Bhutto had said that if she were killed, Musharraf should be held responsible: "I have been made to feel insecure by his minions". She said that the denial of the security measures she had requested, such as additional police protection and jamming devices, could not have happened without Musharraf's knowledge. "Bhutto said she'd blame Musharraf if killed", CNN, 30 December 2007.

followers.¹⁵ The government's subsequent refusal to accept the PPP's requests for an independent enquiry by international experts into the attack is further fuelling suspicions of complicity. As violence continues countrywide, with the death toll presently over 48, the healing process will not begin until such an investigation takes place.

III. AN INVESTIGATION

No investigation will satisfy everyone or be a panacea for the deep rifts in Pakistani society, but a truthful report and a thorough judicial process have the potential to reduce long-term tensions.

A. PAST INVESTIGATIONS

Any investigation will be hindered by the lack of an autopsy,¹⁶ failure to have sealed the crime scene and inadequate domestic forensic capability. An investigation conducted by or under the control of the current government or judiciary would have no credibility in Pakistan given the regime's self-interest and its inadequate handling of the October attack on Bhutto, as well as the military's long history of links to jihadi organisations that Musharraf's spokespersons now claim are responsible for the assassination.¹⁷

The investigation into the deadly 18 October attack, in which suicide bombers narrowly missed Bhutto,

¹⁵ When asked why the intelligence agencies had been unable to trace Mehsud if they were capable of taping his conversation, the interior ministry spokesman, Brigadier General (retired) Javed Iqbal Cheema, said it was difficult to apprehend a man who was always on the move. Denying the accusation, a spokesperson for Mehsud said, "we don't strike women". Syed Irfan Raza, "Government gives new twist to probe", *Dawn*, 29 December 2007; Zeeshan Haider, "Bhutto party accuses government", Reuters, 29 December 2007.

¹⁶ The widower, Zardari, refused permission for an autopsy of the body. When asked at a press conference why, he said he had lived in Pakistan "long enough to know" how such a procedure would be handled. "PPP wants polls on Jan. 8: Zardari", *Daily Times*, 31 December 2007. PPP figures and many others interviewed by Crisis Group in Pakistan in the days following Bhutto's death have shared Zardari's scepticism.

¹⁷ For background on links between the military and jihadi groups, see Crisis Group Asia Reports N°73, *Unfulfilled Promises: Pakistan's Failure to Tackle Extremism*, 16 January 2004; N°49, *Pakistan: The Mullahs and the Military*, 20 March 2003; N°130, *Pakistan: Karachi's Madrasas and Violent Extremism*, 29 March 2007; and N°125, *Pakistan's Tribal Areas: Appeasing the Militants*, 11 December 2006.

was plagued by controversy from the start, and no progress has been made in finding those responsible. The chief investigator, Manzur Mughal, was withdrawn from the case after Bhutto accused him of being present when her husband, Asif Ali Zadari, was tortured in custody in 1999.¹⁸

Bhutto had repeatedly alleged that elements within the security forces were involved in the October attack and called for international assistance in finding the culprits. The government dismissed both the allegations and the appeal for foreign help. The country has a long history of half-hearted investigations into assassinations going back to the murder of its first prime minister, Liaquat Ali Khan, in 1951, at the same venue where Bhutto was killed in Rawalpindi.

B. INTERNATIONAL ASSISTANCE

International assistance is needed for an investigation to be both thorough and credible. The participation of experts from the U.S. and the UK, two close allies of Musharraf, in a domestic Pakistani investigation would not be enough to assuage public concerns.¹⁹ What is needed is an international investigation backed by a United Nations Security Council mandate, similar to the commission examining the killing of former Lebanese Prime Minister Rafiq Hariri.²⁰

The Hariri investigation offers some lessons:²¹

- ❑ the investigation must be time-bound, with a clear deadline for reporting;
- ❑ broad international support is needed on the Security Council and elsewhere;
- ❑ the resolution establishing the investigation should provide a clear link from the start to a judicial process, preferably one using a reconstituted and independent Pakistani

¹⁸ Haroon Siddique, "Detective withdraws from Bhutto attack investigation", *The Guardian*, 24 October 2007.

¹⁹ The caretaker prime minister, Mohammadmian Soomro (who is also chairman of the Senate, the upper house of the parliament), rejected an independent international investigation, saying "we are a sovereign country, and we have the expertise to investigate". He added: "But if there is a need for inviting any foreign investigator at some time, we can consider it". "No foreign probe into Benazir's killing: Soomro", *Daily Times*, 1 January 2008.

²⁰ UN Security Council Resolution 1595 (7 April 2005) established the commission investigating the death of Hariri in a bomb attack on 14 February 2005.

²¹ Crisis Group interviews, New York, 27 and 28 December 2007.

judiciary, but if this is not possible to an appropriate existing or ad hoc international tribunal;

- ❑ the resolution should explicitly direct the Pakistani security forces to provide all possible cooperation to the investigation;
- ❑ the independence and scope of the enquiry must be established from the start to avoid later interference from Security Council members and others;
- ❑ an international team of respected lawyers and investigators should direct the investigation, led by a personality unlikely to become a focus of diversionary political attacks and with participation by independent Pakistani figures; and
- ❑ international supporters should leave the way clear for the investigation by agreeing in advance there should be no parallel efforts.

C. THE JUSTICE SYSTEM

Any investigation will need to be followed by a trial of those against whom sufficient evidence has been uncovered and who can be apprehended. Ideally that trial should be conducted in Pakistan's judicial system. Musharraf's efforts over the past year to undermine judicial independence, including sacking the chief justice and dismissing more than 40 senior judges, mean that a trial in the Pakistani judiciary system as presently constituted could not win public acceptance.²²

Restoration of the judiciary, however, is a critical aspect of dealing with the assassination and its aftermath, including for free and fair elections, since it is the institution with supervisory responsibility for electoral exercises. So far, Western governments have chosen not to press Musharraf on this issue, passively accepting his ransacking of the justice system despite the consequences that step has had and continues to have on national stability. Fully re-establishing a truly independent judiciary will take many years, but the essential first step is reversal of Musharraf's dismissal of critical judges and intimidation of the entire legal profession. The international community must insist on the restoration of independent courts as a priority.

²² See Crisis Group Report, *Winding Back Martial Law in Pakistan*, op. cit., and Crisis Group Asia Report N°86, *Building Judicial Independence in Pakistan*, 9 November 2004.

IV. THE ELECTION

A. THE PAKISTAN PEOPLES PARTY

1. Choosing a new leader

On 30 December, three days after Bhutto's death, her party's Central Executive Committee (CEC) met in Naudero, her hometown in Sindh, to choose her successor. Her only son, nineteen-year-old Bilawal Bhutto Zardari, was named chairman.²³ Since he is young, inexperienced and yet to finish his education at Oxford, the CEC designated his father, Asif Ali Zardari, as co-chairman. Senior Vice President Makhdoom Amin Fahim and Punjab President Shah Mahmood Qureshi were appointed as advisers to the new chairman.

By keeping the party leadership in the family's hands, the decision honoured Bhutto's will.²⁴ Aware of the risks she faced, Bhutto sought to protect the unity of her party in the event of her untimely death by naming her political heir.²⁵ Bilawal's appointment will also help the party to reassure its angry supporters that Benazir's sacrifice for her party and people will be honoured. Unless the current arrangement is regarded as an interim measure, taken out of sheer necessity, however, it could divide the party at a time when unity is necessary for its very survival.

2. Power and personality: a party under threat

Benazir inherited the mantle of party leadership when her father, Prime Minister Zulfikar Ali Bhutto, was executed following a controversial conviction for murder in April 1979 by General Zia's military regime, which had ousted him in July 1977.²⁶ The CEC's decision to nominate Amin Fahim, who ran the party within the country while Benazir was in exile from 1999 until October 2007, as its

²³ At the press conference, Zardari added the Bhutto name to Bilawal to symbolise the continuity of leadership from grandfather to mother to son. "Asif takes charge, wants polls on schedule", *Dawn*, 31 December 2007.

²⁴ Bhutto had named Zardari as her successor; he in turn nominated Bilawal.

²⁵ "I put my life in danger and came here because I feel this country is in danger", she told the Rawalpindi rally just hours before she was killed. "Daughter of East slain", *Daily Times*, 28 December 2007.

²⁶ Bhutto wrote: "I have led an unusual life. I have buried a father killed at age 50...I made my choice when the mantle of political leadership was thrust upon my shoulders after my father's murder. I did not shrink from that responsibility then, and I will not shrink from it now". "When I return to Pakistan", op. cit.

parliamentary leader after the 2008 elections, and hence the future prime minister should it win, will certainly help it stay united during the traumatic transition. Qureshi is widely respected in his southern Punjab constituency. The widower, Zardari, is a far more controversial figure, held responsible by some observers for the corruption that marred Benazir's two terms in office.²⁷ Having had little hands-on experience in running the party in recent years, he must understand and accept the importance of listening to and following the advice of senior, seasoned leaders if the party is to hold together.²⁸

The PPP is a disciplined and organised party, which has remained united against all odds in the face of repeated attempts by successive military governments to splinter it. The central leadership should not, however, take the dedication of party workers for granted. In the medium and longer term, the ability of the PPP and other political parties to steer Pakistan towards democracy and political stability will depend on long-overdue internal reform. Dynastic succession should be replaced by regular elections for all levels of leadership, including the top posts, if parties are to keep the best and brightest motivated and loyal.²⁹

In the immediate political context, the CEC decision, also taken at Naudero, to participate, without any apparent preconditions, in a deeply flawed election as early as the scheduled 8 January 2008 date could bode ill for the party's future.³⁰ Should the PPP win the election, the top leaders, particularly Zardari, will need to be conscious of the risks of succumbing to the temptations of power – and U.S. persuasion – and agreeing to share power with a deeply unpopular president.³¹

Some party leaders may have chosen to participate post-haste in the election process in the belief that the PPP would benefit from a large sympathy vote. It might well. In the process, however, it could lose the trust of its supporters if it were to form a government without first ensuring civilian supremacy over the military. Party leaders might also attempt to justify their decision on the grounds that Bhutto had initially accepted a power-sharing arrangement with Musharraf at U.S. bidding. She reversed course, however, when the Bush administration failed to live up to its side of the bargain to push Musharraf for a free, fair and democratic election that would lead to a genuine democratic transition.

The new leadership must bear in mind that Bhutto had strongly opposed Musharraf's martial law. Although she decided to participate in the elections, she also reached out to Sharif to establish a common democratic front against authoritarian rule. It is this commitment to democracy that her party now needs to honour.

Should a potentially victorious PPP in effect replace the PML-Q as Musharraf's civilian surrogate, the party leadership would be hard-placed to justify its actions to its workers. Such an arrangement would also almost certainly and quickly prove untenable, since Musharraf's track record strongly suggests he would use the powers he has delegated himself through his constitutional amendments to disrupt the stable functioning of civilian democratic government.

B. THE POSTPONEMENT ISSUE

The U.S. appears to place the highest priority on the earliest possible election, even one with serious flaws, with a view to Musharraf obtaining a democratic façade for his continued hold on power.³² Musharraf

²⁷ Zardari rejects the allegations; he has yet to be convicted on any charge of corruption.

²⁸ The party would be well served if leaders such as Senate opposition leader Raza Rabbani, Central Information Secretary Sherry Rehman and many others, including former Senator Farhatullah Babar, Benazir Bhutto's spokesperson, were allowed to help guide it through this transitional period.

²⁹ See Crisis Group Asia Report N°102, *Authoritarianism and Political Party Reform in Pakistan*, 28 September 2005.

³⁰ Nawaz Sharif announced a boycott of the elections to protest Bhutto's assassination, but his party subsequently decided to participate at the PPP's urging. Sharif also disclosed his willingness to form a coalition government with the PPP to restore democracy. "Nawaz in tune with PPP on elections", *The News*, 1 January 2008.

³¹ On the day of Bhutto's death, U.S. Secretary of State Condoleezza Rice contacted Zardari and Fahim to express condolences but also to persuade the PPP to participate in the general elections. Robin Wright and Glenn Kessler, "U.S.

strives to keep footing in tangled Pakistan situation", *The Washington Post*, 30 December 2007.

³² U.S. officials told *The Washington Post* that the administration was still wedded to Plan A, "the creation of a political centre revolving around Musharraf". A senior U.S. official said, "Plan A still has to work". Soon after Bhutto's assassination, U.S. diplomats in Washington and Islamabad urged that the elections be held on 8 January as scheduled. Wright and Kessler, "U.S. strives to keep footing in tangled Pakistan situation", op. cit. The U.S. stance on the election date changed only after the Musharraf government expressed concern about holding the polls on time. A State Department spokesperson said: "We want to see the democratic process move forward in Pakistan, and if all the parties on the ground agree that January 8 is not the right day for that, then we're fine with that". Larry Margasak, "Regardless of date, U.S. wants free and fair elections in Pakistan", Associated Press, 31 December 2007. The following day a deputy press

may nevertheless decide to postpone the polls for another ten to twelve weeks since he is aware that, without massive rigging, Bhutto's assassination could severely affect the already endangered status of his unpopular party, the Pakistan Muslim League (Pakistan Muslim League – Quaid-i-Azam, PML-Q). Suspending its election campaign "because of the prevailing situation", PML-Q spokesman Tariq Azeem, Musharraf's former information minister, admitted: "We do not have a climate in which we can canvass voters".³³ That is certainly true, since enraged PPP loyalists have attacked PML-Q offices countrywide and those of allied parties such as the Muttahida Qaumi Movement.

On 2 January, the Election Commission announced the postponement of elections until 18 February, saying polling was not possible due to the disturbances following Bhutto's assassination.³⁴ Under the present circumstances of widespread rage against Musharraf, his government and civilian allies, a brief postponement is desirable to let emotions calm and to allow the parties and the election machinery sufficient time to restart the process. Yet, stability will remain elusive if the postponement is not accompanied by a radical restructuring of the military-dominated and distorted political system.

The violence following Bhutto's death might temporarily fade, but tensions will worsen if Musharraf and the military remain the main beneficiaries of a deeply-flawed political process. Only a stable democracy is capable of holding multi-ethnic, multi-regional Pakistan together.³⁵ On Musharraf's watch, military actions against the Baloch have destabilised the country's largest and

most resource-rich province.³⁶ Following Bhutto's assassination, Sindhi violence and anger against Punjabis and Mohajirs is unlikely to disappear unless the federal parliamentary constitution is restored in its entirety, and power and legitimate authority is transferred to civilian hands after a free and fair election process. This anger and alienation could as well be directed against opposition parties, particularly the PPP, if they opt to give Musharraf an opportunity to perpetuate his rule.³⁷

V. A REAL WAY FORWARD

A. A NEW PRESIDENT

Musharraf's Western backers, particularly the U.S., must realise that he is no longer, if he ever was, a factor for stability because he lacks domestic legitimacy. Following Bhutto's assassination, he has become even more a source of divisiveness.³⁸ His departure would not violate the democratic process, because he is president only by having violated democratic norms. The judiciary was on the verge of striking down his presidential election by a stacked, lame duck parliament when he declared emergency rule, fired the judges and then handpicked new ones to rule in his favour.

Suicide attacks, political assassination and an expansion of terrorist and jihadi presence are all already occurring under Musharraf's rule. There is no objective reason to anticipate that his departure would worsen the instability that already exists. Nor would it be likely to weaken Pakistan's cooperation against terrorism, since his

spokesman said, "The key here is that there be a date certain for elections. We would certainly have concerns about some sort of indefinite postponement of the elections". "Delay Expected in Pakistani Elections", Associated Press, 1 January 2008.

³³ "Pro-Musharraf PML-Q suspends campaigning: spokesman", Agence France-Presse, 30 December 2007.

³⁴ "Pakistan postpones elections to February 18", Reuters, 2 January 2008.

³⁵ Pakistan is a multi-ethnic, multi-regional state, with four federal units, Balochistan, Northwest Frontier Province (NWFP), Punjab and Sindh. Bhutto was an ethnic Sindhi. The military is predominantly Punjabi, particularly in the higher ranks. Many Sindhis see Bhutto's assassination as a Punjabi conspiracy to murder a Sindhi leader, just as the execution of her father, Prime Minister Zulfikar Ali Bhutto, by the military in 1979 was perceived in Sindh as the Punjabi-dominated military's decision to eliminate a Sindhi head of government.

³⁶ See Crisis Group Asia Report N°119, *Pakistan: The Worsening Conflict in Balochistan*, 14 September 2006 and Asia Briefing N°69, *Pakistan: The Forgotten Conflict in Balochistan*, 22 October 2007.

³⁷ As the CEC met to decide the party's course of action on the polls, thousands of its faithful outside Bhutto's family home shouted: "Musharraf is a killer". Zardari responded to them: "Benazir Bhutto sacrificed her life for Pakistan's survival and democracy. We will continue Bhutto's mission". "Benazir Bhutto's son Bilawal named chairman of PPP", *The Nation*, 30 December 2007.

³⁸ A defence analyst and former army officer commented: "Every day that goes by he [Musharraf] puts us deeper into a mess. As someone who values his friendship, one now acknowledges with a heavy heart that he must seriously re-evaluate his position" since he has, after Bhutto's assassination, become "part of the problem....Pakistan desperately needs a genuine neutral caretaker setup, the country's future existence depends upon the setup being credible". Ikrām Sehgal, "The 2008 resolution", *The News*, 1 January 2008.

record in that area, especially with regard to Afghanistan, is a dubious one, and a military freed of the political preoccupations of government would have more resources to devote to legitimate security responsibilities. Nor should nuclear weapons, which are well controlled by the military establishment, be at risk of falling into the hands of extremists.

If Musharraf refuses to resign voluntarily, it is in the interest of that military establishment, his sole bastion of support, to distance itself from its former chief lest it, instead of him, become the target of public hostility. Particularly the U.S., which maintains close ties with it, should encourage the military leadership under General Ashfaq Kiani's command to protect its ability to continue to serve Pakistan by persuading Musharraf to resign in the interest of national reconciliation.

According to Article 49 of the constitution, "if the office of the President becomes vacant by reason of death, resignation or removal of the President, the Chairman [of the Senate] shall act as President" until a new chief executive is elected, in accordance with the constitution, by an Electoral College composed of the bicameral national legislature – the National Assembly (the lower house) and Senate (the upper house) – and the four provincial assemblies.³⁹ Following Musharraf's resignation, the Senate chairman, Mohammadmian Soomro, would thus serve as acting president until elections were held for the new assemblies, which would then determine the new president.

B. A NEW TRANSITIONAL GOVERNMENT

Mohammadmian Soomro's first task as acting president should be the appointment of truly neutral caretaker governments, national and provincial, to oversee the election process. The partisan nature of the current caretaker governments has been strongly criticised by the opposition, composed as they are either of PML-Q party members or other Musharraf loyalists; some ministers even have close relatives who are standing for office. The opposition parties say that the caretaker governments have been actively using the official machinery, including the administration, intelligence agencies and police, to influence the election outcome.

To ensure neutrality and buy-in from all stakeholders, since Soomro is also a member of the PML-Q, the caretaker governments should be appointed with the consensus of all major political parties in all four

federal units. As such, the caretakers in the centre and in the provinces would constitute, as closely as possible, a government of national unity, but in accordance with constitutional provisions. Guided by the caretaker governments, Soomro should then decide on the new election schedule, which would be announced by the Election Commission.

C. NEW ELECTIONS

1. Judicial independence

A credible election such as is necessary to produce a stable and sustainable democratic transition is impossible without the full restoration of the constitution, including an independent judiciary and constitutionally-guaranteed fundamental freedoms of speech, assembly and association and safeguards against illegal arrest and detention.

Judicial independence is particularly crucial for a credible process, since the judiciary is intimately involved in the conduct of elections. The Election Commission of Pakistan (ECP) is comprised of a retired Supreme Court judge and a serving High Court judge from each province. Musharraf explicitly barred the Supreme Court and Provincial High Court judges who refused to bow to his edict in November 2007, in order to ensure that the commission would be controlled by his choices.⁴⁰ District Returning Officers, Returning Officers and Assistant Returning Officers, who supervise the actual polling process in each province, come from the subordinate judiciary, and all work under

³⁹ Article 41 (4).

⁴⁰ Musharraf's Provisional Constitution Order (PCO), issued during emergency rule in November 2007, gutted the independence of the judiciary, requiring all High and Supreme Court judges to swear an oath of allegiance to the PCO and barring any court from issuing a judgement against the PCO, the president or any of his designated authorities. He also used the emergency to issue decrees, including an amendment to the 1952 Army Act, made retroactive to 2003, permitting military courts to try civilians for offences such as causing "public mischief" and empowering his hand-picked civilian courts to disbar lawyers and intervene in the affairs of the bar association. Musharraf's 15 December 2007 order repealing the PCO and reviving the constitution also unilaterally and without any legal basis proclaimed amendments to the constitution and denied the judiciary as well as parliament the right to question them or other provisions introduced pursuant to the PCO or to challenge the dismissal of those High and Supreme Court judges who had refused to swear allegiance to military rule. Under the 1973 constitution, amendments require a two-thirds parliamentary majority, and the Supreme Court is authorised to interpret that basic document, including all amendments to it. See also Crisis Group Briefing, *Winding Back Martial Law in Pakistan*, op. cit.

the guidance of the Provincial High Courts, whose members appointed since November are now suspect. Any complaint of electoral law violation would be ultimately heard on appeal to those courts.

Stacking the full range of high courts, nationally and provincially, as Musharraf did under emergency rule – including naming a totally new high court in Islamabad – amounted to hijacking the electoral process. Restoring the dismissed judges is the only credible way to ensure rule of law, constitutionalism and the sanctity of the election process.⁴¹

By acting as a check on the executive, an independent judiciary would also help, post-election, to keep the democratic transition on track. By enforcing the constitution, it would likewise act as a bar to future military intervention.

2. Election Commission of Pakistan

The ECP should be reconstituted with the consensus of all major political parties. An autonomous, constitutionally sanctioned entity, it is entrusted with holding the national elections, but the present body has failed to control abuse and fraud and produce free and transparent elections on any occasion during Musharraf's watch, including the 2002 national polls.

The ECP's subservience was more than evident in the decisions to reject the nomination papers of Nawaz Sharif on 3 December and of his brother, Shahbaz, also an important opposition figure, two days earlier. Nor has the ECP addressed the parties' complaints on issues integral to any credible election such as the voters roll. The opposition protested that the computerised list of 52 million produced in mid-2007 had some 20 million fewer voters than in 2002. The Supreme Court, headed by the subsequently dismissed Iftikhar Chaudhry, ordered a revision, after which 25 million names were added from the 2002 list but without verification. The current list, which has been funded by the U.S., is thus as problematic as the original. If the election process is to be credible, the ECP must place the list on its website and give parties sufficient time to review it.

⁴¹ Former U.S. Senate Majority Leader Thomas Daschle, who led a National Democratic Institute (NDI) election assessment mission to Pakistan in late October 2007, and Thomas Garrett, director of the International Republican Institute (IRI) election observation teams in the country, testified on 20 December 2007 to the Oversight and Government Reform Subcommittee on National Security and Foreign Affairs of the U.S. House of Representatives that failure to restore the legitimate judiciary would make a free and fair election impossible.

3. Freedom of expression and the media

Musharraf's Code of Conduct for the political parties has imposed serious curbs on constitutionally-guaranteed freedoms of speech and assembly. These curbs should be removed and a new Code of Conduct adopted by the ECP, after consultations with the political parties.

A credible election process also requires open and complete access for and to the media, but this sector has been severely curbed in turn by Musharraf, through ordinances that prohibit live coverage of political events or criticism of the head of state, armed forces, judiciary or other organs of the state. Violations can result in prison sentences of up to three years and thousands of dollars in fines. If the mistakes of past flawed democratic transitions are not to be repeated, an independent media will be even more essential after the elections.

VI. CONCLUSION

Bhutto's assassination has unleashed a wave of anger in a population that is fed up with military rule. Eight years of Musharraf have enfeebled Pakistan's institutions and allowed Islamic militants to make major gains. Far from being a source of stability, his continued rule would threaten Pakistan's survival as a coherent state.

It is time for the international community, and particularly the U.S., to reconsider its support for authoritarian rule in Pakistan and recognise that democracy, not an artificially propped-up, defrocked and widely despised general, has the best chance of providing stability and turning back the gains of Islamic extremists.

It is also time for the Pakistani armed forces to recognise that Musharraf's presidency is seriously undercutting their reputation. If it is to retain its standing in the country and contribute to real stability, the military must turn away from politics in the next crucial weeks and focus on the re-organisation necessary to tackle extremism. International support should be conditional on it doing precisely that.

Only a genuinely democratically-elected government will have the legitimacy to take the difficult steps needed to tackle extremism. There can be no such government – and thus no stability in Pakistan – as long as Musharraf remains president.

Islamabad/Brussels, 2 January 2008

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