



Asia Pacific Bulletin

Number 175 | July 30, 2012

Restraint for Now: Pakistan's Supreme Court Seeks Compromise with Government

BY HUMA YUSUF

The institutional clash between Pakistan's judiciary and civilian government, which has paralyzed Islamabad in recent months, seems to have abated—for now. On July 25, rather than take legal action against Prime Minister Raja Pervez Ashraf for defying court orders as was expected, the Supreme Court gave the government until August 8 to come up with a compromise solution to the civil-judicial showdown. The issue at stake is a Supreme Court directive to the government to write to the Swiss authorities and request the reopening of longstanding corruption cases against President Asif Ali Zardari. Ashraf had earlier refused to heed the court's order and there were fears that the chief justice would move to disqualify the prime minister. Pakistani civil society has welcomed the court's restraint, but doesn't expect the conciliatory mood to last, even if the government seeks a middle-ground position. Unfortunately, these high-level power plays are unfolding at the expense of the Pakistani people.

Huma Yusuf, Columnist for Pakistan's *Dawn* newspaper, explains that “Historically, Pakistan's judiciary has supported military regimes against civilian governments, but in this case, the court is acting on its own stead.”

Until now, the ruling Pakistan People's Party (PPP) government has adopted a defiant stance: Pakistan's last prime minister, Yousaf Raza Gilani, refused an identical order and was dismissed from office in June after the Supreme Court convicted him of contempt for failing to pursue the corruption cases against Zardari. The PPP justifies its refusal to comply with the court's order by pointing to the immunity the president enjoys under the constitution.

The showdown between Zardari's PPP government and the Supreme Court, which is led by Chief Justice Iftikhar Muhammad Chaudhry, dates back to 2008, when Zardari opposed the reinstatement of the chief justice, who had been deposed in 2007 under the dictatorial regime of General Pervez Musharraf. Historically, Pakistan's judiciary has supported military regimes against civilian governments, but in this case, the court is acting on its own stead. Indeed, the Supreme Court's decision to keep up the pressure on the PPP government should be seen in the broader context of its newfound independence and popularity.

Chaudhry was reinstated in 2009 following a mass movement in support of an independent judiciary. Since then, the Supreme Court has earned the public's respect by pursuing corruption cases against politicians and investigating charges of human rights violations by the Pakistani Army. Senior lawyers and human rights activists describe the chief justice as an “activist” and have complained that he is interfering in parliamentary affairs, but the public largely approves of the judiciary's crackdown against what is perceived to be a venal political class. Growing respect for the Supreme Court has coincided with heightened disillusionment with democratic governance. In a recent poll by the Pew Research Center, only 42 percent of Pakistanis said they thought democracy is a good idea.



Despite its unpopularity, the government is not backing down. Zardari's term as president has been defined by a single-minded obsession to go down in history by making the PPP-led coalition the first elected civilian government to complete a full five-year term. The government was prepared for Gilani's ouster with a list of alternative prime ministers, all of whom are prepared to face the court's wrath. To prevent Ashraf from facing the same fate as Gilani, parliament also hastily approved the Contempt of Court (Amended) Bill 2012, a law that shields top government officials from contempt charges.

This bill now threatens to prolong the government-judiciary clash, no matter what the PPP decides to do on August 8. The Supreme Court is currently hearing petitions against the bill and the chief justice has argued that the constitution does not permit anyone to claim immunity to ridicule the court. Commentators have speculated that the court has sought a compromise because of this law, under which it cannot move against the prime minister. But the court is likely to throw out this "stillborn" law, and could then continue pressuring the government to implement its order.

The PPP could circumvent this by genuinely compromising with the Supreme Court. One option is for the government to write to the Swiss authorities and say that a letter written by the Musharraf-era attorney general—in which he withdrew a request for Swiss cooperation and described the cases against Zardari as politically motivated—is no longer considered legally valid. By doing so, the government could comply with court orders without actively inviting the Swiss to reinstate proceedings against Zardari, but it is unclear that the PPP will opt for this middle ground.

Already, to improve the chances that the PPP makes it to the polls without losing another prime minister, Ashraf has announced that the government will share its roadmap for the next general election in August. Originally scheduled for March 2013, it is now rumored that elections will be brought forward to this November in the hope that the earlier date will circumvent the Supreme Court's attempts to dismiss Ashraf.

While battling to stay in power, the government is failing to govern. Machinations against the judiciary are taking precedence over basic service delivery. In recent months, Pakistan's energy shortfall has severely worsened, thousands of children have not been vaccinated against polio owing to a Pakistani Taliban ban on immunizations, preparations for summer rains and subsequent flooding in rural areas are woefully inadequate, and economic growth remains slow. Moreover, suicide and other terrorist attacks against state security targets are on the rise, not only in the regions of the country that border Afghanistan, but also in the Punjab, Pakistan's most populous province.

A prolonged institutional clash also threatens to further complicate US-Pakistan relations: an embattled government does not make a good negotiating partner because it is in no position to take bold and prompt policy decisions. This problem was apparent in the delays in resolving disagreements with the United States over the reopening of the ground lines of communication transit corridors into Afghanistan.

Notably, even if the PPP agrees to partially comply with the Supreme Court, the institutional clash may continue. The ongoing hearings against the contempt bill could ignite new power plays. Moreover, the Supreme Court is currently hearing a petition against the newly appointed Chief Election Commissioner, retired Chief Justice Fakhruddin Ibrahim. A court ruling that finds Ibrahim, who was jointly selected by the government and opposition, ineligible could be perceived by the government as a judicial attempt to manipulate upcoming elections. This would be unfortunate—the last thing Pakistan needs is for its courts to hijack the space needed for democratic governance to flourish.

"A prolonged institutional clash also threatens to further complicate US-Pakistan relations: an embattled government does not make a good negotiating partner because it is in no position to take bold and prompt policy decisions."

The East-West Center promotes better relations and understanding among the people and nations of the United States, Asia, and the Pacific through cooperative study, research, and dialogue. Established by the US Congress in 1960, the Center serves as a resource for information and analysis on critical issues of common concern, bringing people together to exchange views, build expertise, and develop policy options.

The *Asia Pacific Bulletin* (APB) series is produced by the East-West Center in Washington. The views expressed in this publication are those of the authors and do not necessarily reflect the policy or position of the East-West Center or any organization with which the author is affiliated.