STATEMENT ON PAKISTAN

LRWC has continued to monitor events in Pakistan during 2009, which was less marked by upheaval during that year than in previous years, but which nevertheless compels continued observation. LRWC has written letters of concern and support for lawyers and other human rights defenders during the year. On balance, 2009 was a much better year for the concepts of rule of law and (formal) respect for human rights. Much effort has been required to restore the rule of law in Pakistan, these efforts have been headed by members of the Lawyers Movement and the Supreme Court under the restored leadership of Chief Justice Chaudhry.

In short, while the rule of law has not “finally” triumphed in Pakistan in 2009, it made truly momentous advances.

The Significance of the Lawyers Movement

Of crucial importance in the last three years has been what is termed the Lawyers Movement. This movement has been spearheaded by lawyers but has enjoyed support from other human rights defenders and a significant portion of the public at large. It has remained an active component of the country’s legal system (formally and informally) and of the country’s politics.

Well before the commencement of the more-heralded election campaign of 2007-2008, the Lawyers Movement had begun protests dealing with the entire unlawful chain of events undertaken by the Musharraf regime. These actions by the LM included actions as modest as one-hour strikes at courthouses (i.e., delaying appearances in court) to large mass “walks” from one city to another. Momentum increased February 15, 2008, when the Supreme Court (now under the control of Musharraf) rendered a judgment that validated the Proclamation of Emergency on November 3, 2007, the Provisional Constitution Order No 1 of 2007 and the Oath of Office (Judges) Order of 2007 (all were parts of a general thrust suspending the Constitution and individual rights and validating Musharraf’s rule).

During these protests, lawyers and supporters were beaten, arrested, detained, and mistreated in custody. Lawyers, dressed typically in their plain, black suits (traditional for members of the bar in Pakistan), were afforded no special privileges by the various branches of the police or intelligence services (i.e., secret police).

The Significance of Chief Justice Chaudhry and the Judiciary

The Lawyers Movement began as a response to the action of March 9, 2007, by General Pervez Musharraf calling upon Pakistan Supreme Court Chief Justice Iftikar Chaudhry to resign upon the assertion of charges of “misconduct” and “corruption”[[1]](#footnote-1). Chief Justice Chaudhry declined and General Musharraf purported to remove him from office and later to replace him with a judge more “amenable” to his view that the judiciary should be merely a rubber-stamp to the executive (i.e., General Musharraf).

A new oath (pledging loyalty to General Musharraf and in essence forgiving all unconstitutional actions by his regime was required of judges in order for them to continue in office; Chaudhry refused to sign this oath as did many other judges in the country (including some on the Supreme Court) and they underwent purported “removal”. He was replaced by a Musharraf loyalist, “Acting Chief Justice” Javed Iqbal. Chaudhry was placed under various levels of house arrest until his ultimate release and reinstatement as Chief Justice on March 16, 2009.

This action was preceded on November 3, 2007, by Musharraf ‘s actions declaring a State of Emergency and suspending the Constitution, and through the National Reconciliation Order issued on October 5, 2007 and like orders later. The NRO, inter alia, purported to grant amnesty to persons who acted during two previous periods of martial law; there was no constitutional basis for the issuance of the NRO.

Chief Justice Chaudhry suspended the NRO on October 12, 2007. The new Musharraf-approved Chief Justice, Abdul Hameed Dogar revived the NRO on February 27, 2008.

Political Campaigning and Parliamentary Politics

Meanwhile, while campaigning for elections then set to be held in January 2008, Benazir Bhutto (recently returned from exile) was assassinated on December 27, 2007.

Elections were held in February 2008, and Musharraf’s choice for Prime Minister (Syed Gilani) was sworn in. However, the Parliament elected at that time was increasingly critical of Musharraf, and sentiment for impeachment of Musharraf developed later in the year. On August 18, 2008, Musharraf resigned as President due to an impending impeachment from the coalition government. Asif Zardari was elected as the country’s president in September 2008. Musharraf now lives in the West and apparently is featured at speaking engagements.

Events of 2009

On March 16, 2009, as a large mass of lawyers and supporters (led by political leader Nawaz Sharif) headed towards Islamabad (the capital), the government permitted Chief Justice Chaudhry and other purportedly “deposed” judges to be formally restored to office. The Supreme Court on May 27, 2009, removed the disability of Nawaz Sharif and his party (Pakistan Muslim League) from holding office.

In April 2009, Pakistan ratified the International Covenant on Economic, Social and Cultural Rights and signed the International Covenant on Civil and Political Rights.

On July 30, 2009, the Supreme Court of Pakistan ruled that all the judges who had taken the oath under the Provisional Constitution Order (PCO), were formally removed from office, and they are now facing examination and charges by the Supreme Judicial Council. On August 1, 2009, President Asif Ali Zardari signed an order which officially removed all PCO judges from office.

In November 2009, the Supreme Court resumed hearings into arbitrary detention and disappearances of “terrorism” suspects, at the hands of the country’s intelligence services.

On December 16, 2009, the Supreme Court of Pakistan declared the National Reconciliation Ordinance unconstitutional; all the cases which have been put into legal limbo after issuance of the NRO have been revived as have all actions undertaken by the government having a purported legal basis in the NRO and related orders. What are sometimes identified as “Western diplomats” are sometimes quoted as expressing “concern” that this ruling will cause “instability” for the country. No doubt there will be some confusion within the Pakistan legal system as the result of this order, but the fault for this may be laid at the feet of General Musharraf. Restoration of the rule of law will likely cause discomfort throughout various levels of the government of Pakistan, but that is not the fault of those who seek its restoration.

Potentially, the declaration re: the NRO imperils government officials at all levels, as they may find application of the rule of law affects them, too.

The Significance of the Judiciary and the Background of Pakistan Political History

Since his restoration to his lawful office, Chief Justice Chaudhry and his allies have had to fight a continuing battle over judicial control over enforcement of the Constitution, and in January 2010, Chief Justice Chaudhry had to force a stand-off with the executive as to purported appointment of a member of the Supreme Court without the constitutional requirement that he first be consulted prior to such appointment.

The significance of the restoration of Chief Justice Chaudhry to office cannot be understated. The concept of the rule of law has had a rough history since the country became independent in 1947; much of the time since independence the country has been run by various military dictators, some of whom have paid little or no attention to even the patina of constitutionality. The concept of judicial enforcement of constitutional rights has had a similarly rough history; the courage of Chief Justice Chaudhry and the members of the Lawyers Movement is simply remarkable.

As further backdrop to events in 2009, we must consider the genuinely complicated nature of Pakistan politics between various parties within the country and within Parliament, and the interplay of various religious forces (stricter Islam vs. less strict Islam vs. more secularist forces). Pakistan politics constitutes a complicated and at times disharmonious matrix of conflicting groups, interests, and agendas (some of which are influenced or directed from outside the country). And as a further backdrop to events in 2009, we must consider the impact of increased US involvement in the country, seen as part of a larger battleground in the War on Terror (whether or not that explicit title is used at present). Pakistan security forces (and elements) within those forces (there are several versions, the largest of which is the Inter-Services Intelligence Agency), and the Army have or have not (depending on the faction) had relations with al-Qaida and the Central Intelligence Agency, and loyalties sometimes have been short-lived and shifting. While Pakistan under Musharraf had a sometimes rocky relationship with the US, it is unclear what the future holds for these relations, and the impact of these relations and influence of the US on the Pakistan Government and the legal system remains unclear. What remains clear is the commitment of Chief Justice Chaudhry and the members of the now more subdued Lawyers Movement to judicial control of the enforcement of the Constitution.

In Pakistan the rule of law has had a rough road, but the example set by the Lawyers Movement and courageous members of judiciary show just how much can be done in its furtherance.

1. The charges are summarized in this news article: http://www.thenews.com.pk/top\_story\_detail.asp?Id=6648 [↑](#footnote-ref-1)