

Pakistan Supreme Court ruling further undermines beleaguered president

Keith Jones**18 December 2009**

Pakistan's Supreme Court has unanimously struck down a presidential order—promulgated by former dictator General Pervez Musharraf—that gave the current president and Pakistan People's Party (PPP) boss Asif Ali Zardari and some 8,000 other cabinet ministers, politicians and government bureaucrats immunity from prosecution.

Issued late Wednesday evening, the judgment from Pakistan's highest court ordered the government to revive all cases terminated as a result of the National Reconciliation Ordinance or NRO. In a move that suggested strong skepticism about the government's intentions, the Court announced that one or more Supreme Court judges will be tasked with scrutinizing the fate of the reopened corruption and other criminal cases and said similar judicial "cells" will be established in each of the country's High Courts.

If there was any trace of doubt, the 18-page ruling makes clear that the court has Zardari very much in its sights.

It instructed the government to urge Swiss authorities to revive a corruption case against Zardari, chastised a previous Attorney-General for having urged the Swiss to drop that case, and said the Attorney-General had acted illegally when he authorized the return to Zardari of \$60 million the PPP leader was alleged to have received as illegal commissions on contracts awarded under governments headed by his late wife, Benazir Bhutto. The money had been seized from Swiss bank accounts as part of the case against Zardari and Bhutto.

The NRO was part of a deal that the administration of George W. Bush brokered between Musharraf and Benazir Bhutto in what proved to be an ultimately failed attempt to shore up Musharraf's rule. In return for the PPP lending its support to Musharraf's October 2007 "re-election" as president, Bhutto was to be allowed to return to Pakistan free from the threat of criminal prosecution and to contest the 2008 parliamentary elections. Washington's hope and expectation was that she would eventually serve as prime minister under the strongman and staunch "war on terror ally" Musharraf.

The General, to mollify opposition from his own supporters to the deal with the PPP and rally fresh allies, extended the NRO to cover much of the political class.

There is no question that under Musharraf, as under the governments of Nawaz Sharif and Benazir Bhutto, corruption

and other criminal charges were routinely politically manipulated. It is equally incontrovertible that corruption is endemic within Pakistan's venal ruling elite, including within the military high command, which has developed a vast network of military-affiliated enterprises.

The court's striking down of the NRO was widely anticipated after the PPP was forced, for want of support from its coalition partners, to withdraw a bill that would have given the NRO parliamentary sanction. The partners balked both because of the unpopularity of the Musharraf-authored NRO and because they are anxious to see Zardari cut down to size.

A spokesman for President Zardari insisted that the court ruling would have no impact on his presidency. He said Pakistan's constitution gives the president immunity from prosecution and vowed that the PPP leader will serve out his full 5-year term.

However, the legality of Zardari's election as president is now certain to be contested before the courts. It will be argued that without the "unconstitutional" NRO Zardari would not have been allowed to stand for president, since he would have been under indictment and deemed guilty of absconding under an automatic provision of Musharraf's "anti-corruption" or National Accountability Bureau ordinance.

At the very least, Pakistan's president will be facing a flurry of legal-constitutional challenges to his right to serve as head of state.

The revival of the various corruption cases against him also threatens to produce a long stream of unseemly charges and revelations. In documents presented before the Supreme Court as it considered the legality of the NRO, the National Accountability Bureau claimed that Zardari has amassed a personal fortune of \$1.5 billion.

Several other prominent PPP ministers and officials also face revived criminal charges, including Interior Minister Rehman Malik and Zardari's chief of staff, Salman Farooqui.

On Thursday, Pakistan Defence Minister Ahmed Mukhtar was stopped at Islamabad airport and prevented from leaving on an official visit to China because he now faces criminal charges and, therefore, is automatically deemed a threat to abscond.

Within hours of the court's striking down the NRO, Zardari

met with armed forces chief General Ashfaq Pervaiz Kayani to discuss the implications of Wednesday's ruling.

Politicians from the Pakistan Muslim League (Nawaz), the PPP's longtime bitter rival, have called for Zardari's resignation claiming he has lost the moral right to be head of state. "It will be in his own interest [to step down], it will be in the interest of his party and it will be good for the system," said PML (N) leader Khawaja Asif.

A key element of the 2007 Bhutto-Musharraf deal was the sidelining of Sharif. A right-wing businessman who began his political career as a protégé of the military, Sharif was deposed by Musharraf in a 1999 coup and subsequently sentenced to death on trumped-up charges.

The PML and the PPP's coalition partners have been pressing for Zardari to make good on his repeated pledges to repeal the enhanced presidential powers that Musharraf placed in the constitution. These include the power to dissolve the National Assembly and appoint the head of the armed forces.

Last month Zardari did agree to cede to Prime Minister Yousuf Raza Gilani the chairmanship of the committee that oversees the deployment of Pakistan's nuclear weapons.

But Zardari is clearly not reconciled to a return to the 1972 constitution under which the presidency is essentially a ceremonial position. For one thing, it would jeopardize his control over the PPP, where there is considerable resentment against his assertion of dynastic succession. It was one thing for Benazir Bhutto to lay claim to the mantle of her father after his execution by the military; quite another for her "playboy" husband, who earned the nickname "Mr. 10 Percent" because of the systematic manner in which he collected illegal commissions when his wife was prime minister, to claim to be leading the PPP until his and Benazir's son is ready to assume his birthright.

In recent months Gilani has repeatedly distanced himself from Zardari and in ways that suggest he is cultivating the support of the military.

Opinion polls have repeatedly shown that Zardari enjoys the confidence of only a tiny fraction of the population, commensurate with the level of popular support for Musharraf in the final days of his presidency. Pakistan's president is popularly perceived as corrupt, power-hungry, incompetent, and a lapdog of Washington.

The military has repeatedly undermined Zardari, as in its very public campaign against the new US aid bill. The military has never forgotten that decades ago the PPP under the leadership of Zulfiqar Ali Bhutto, himself a former protégé of the military dictator Ayub Khan, won mass support by opposing military rule and posturing as a voice of the oppressed.

But it is Zardari's attempt to enlist Washington as an ally in wresting political power from the high command that has most angered the military.

While Washington has been happy to have Zardari bend over backwards to serve US interests, it has also repeatedly made

clear that it views the Pakistani military, with which it enjoys a decades-long partnership, as its most effective and dependable ally. Chairman of the US Joint Chiefs of Staff Mike Mullen has repeatedly lauded Kiyani's leadership and democratic credentials.

The latest developments in Islamabad are causing anxiety in Washington. Another bitter struggle for pelf and power among Pakistan's military and political elite would cut across the US campaign to pressure Islamabad to do even more to support the US occupation of Afghanistan.

For decades the Pakistani elite and especially its military have served as satraps for the US's predatory interests and ambitions in the Middle East and Central and South Asia. But the relationship is fraught with tensions and resentments—tensions and resentments that have escalated sharply in recent months.

Pakistan's ruling elite fears that it is being forced to bear an inordinate cost of the US's drive to secure a strategic foothold in oil rich Central Asia. Much of the country's north-west is already embroiled in civil war. Pakistan's mercenary relations with the US, a country that has repeatedly supported and underwrote military regimes in Islamabad, is widening the already explosive divide between the country's toilers and the landlord-capitalist elite. And the Pakistani ruling class feels threatened by the US's drive to partner with its historic rival India, including Washington's support for India's civilian nuclear program and for New Delhi playing a major role in Afghanistan.

Reflecting the consensus opinion of the military and government, Zardari reportedly sent a 3-page letter to US President Obama this week rejecting Washington's demand that Pakistan initiate military operations against anti-US insurgents in North Waziristan forthwith.

According to repeated reports in both the *New York Times* and *Washington Post*, the US has threatened to dramatically increase drone attacks, extend them into Baluchistan and the large urban center of Quetta, and possibly to resort to cross-border land strikes, if Islamabad does not more vigorously suppress the Taliban and Taliban-aligned elements.

On Thursday, the *Times* reported that Pakistani officials have pushed back against Washington by mounting a harassment campaign that has seen US personnel, including military attachés and CIA officers, denied visas or visa extensions and the vehicles of US personnel repeatedly stopped and searched.



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