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This Monitor of Civil-Military Relations covers the period of August 01, 2013 to December 15, 2013 analysing the key issues affecting civil-military relations in Pakistan during this period.

Appointment of new COAS and CJCS

Contrary to the pledge made by Mr. Nawaz Sharif ahead of General Election¹ that the post of Army Chief will only be filled on the principle of seniority, Lt. Gen. Raheel Sharif, the 3rd in seniority at present in the Army ranks, was appointed as the new Army Chief on November 28, 2013 ending months of speculation.

Although, there is no legal or constitutional bar on the Prime Minister to only appoint the senior most officer of the Armed Forces as the COAS, he had committed to abide by seniority as the key criterion for appointing Army Chiefs in the future.² It is indeed, the Constitutional right of a Prime Minister under Article 243 to promote any of the serving Lieutenant Generals to 4 star ranks. However, Pakistan's troubled history of civil-military relations have witnessed many Chiefs of Army, hand-picked by Prime Ministers disregarding the principle of seniority, who have turned on the very Premiers in booting them out of power through *coup d'états*.

Prime Minister Nawaz Sharif also filled the vacancy of the hitherto ceremonial office of the Chairman of the Joint Chiefs of Staff Committee (JCSC) with the more senior Lt. Gen. Rashad Mehmood, on the same day. The senior-most officer of the Pakistan Army, Lt. Gen. Haroon Aslam, resigned from his office on account of being superseded as per military traditions.

Gen Rashad Mehmood's appointment as Chairman of the Joint Chiefs of Staff Committee technically makes him the head of all armed forces as well as Pakistan's nuclear programme. The chairman's position, however, is largely a ceremonial one.

Consideration of reforms in the Higher Defence Organization (HDO) of Pakistan – Was an opportunity missed?

The election manifesto 2013 of the ruling Pakistan Muslim League - Nawaz presents detailed reforms that are required in Pakistan to fix the balance of civil-military relations. The change in guard at the top level (CJCS and COAS) provided a good opportunity to discuss such reforms ahead of the new appointments. Such reforms have been a subject of debate for the last many years among the knowledgeable military and civil circles but there is no evidence that the present government seriously considered or discussed such reforms in the higher defence organisation (HDO) of Pakistan before the appointments of the new COAS and Chairman JCSC. Certainly, no reforms were introduced.

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PILDAT and its staff have made their best efforts in ensuring the accuracy of the facts and events presented in this document. PILDAT, however, is not responsible for any error or omission as it is not deliberate.

1. March 08, 2013, PML-N offers hope in poll manifesto, The Nation, <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/editors-picks/08-Mar-2013/pml-n-offers-hope-in-poll-manifesto>
2. In his pre-election interview with Karan Thapar, Nawaz Sharif committed that he would appoint the most senior general as the next army chief to replace General Kayani. Please see for details, video link of Nawaz Sharif's interview with Karan Thapar, <http://tune.pk/video/1097631/Nawaz-Sharif-SOT>

Some experts in civil and military circles in Pakistan argue that, the present model of HDO in Pakistan is not in keeping with the needs of the time and modern trends across the globe and therefore reforms in the HDO is required. The structure of Pakistan's Higher Defence Organisation (HDO) was revamped in 1976. It has not been reviewed since. Many experts believe that the existing structure of the HDO needs review and revamp. A detailed case for HDO reforms has been published by PILDAT, authored by the former Chairman JCSC, Gen. (Retd.) Ehsan-ul-Haq.³

While a Cabinet Committee on National Security has been designed by the new regime, reforming the existing Defence Committee of the Cabinet, the revised structure only takes care of one aspect of the HDO, leaving behind the other areas. Reforms in the HDO would be a significant step towards the harmonization of civil military relations in accordance with democratic norms.

Prime Minister Sharif's Government also gave additional charge of Defence Ministry to Khawaja Muhammad Asif, MNA (NA-110, Sialkot-I, Punjab, PML-N), Federal Minister for Water and Power, apparently due to Supreme Court pressure for personal appearance of the Minister for Defense in the missing person's case. An empowered full time Minister of Defence in Pakistan will certainly be helpful in promoting a democratic balance on civil-military relations.

Cabinet Committee on National Security

It is now more than 3 months that the Federal Government established a Cabinet Committee on National Security (CCNS) on August 22, 2013 (78 days after the Prime Minister took oath). This body replaced the Defence Committee of the Cabinet (DCC), which infrequently met – only 12 times in 5 years of previous Government: 2008-2013 - and had no independent secretariat, staff or support infrastructure.⁴

While the new structure of CCNS is an improvement in some respects, the Committee can only be effective if it holds regular meetings on security challenges facing the country (at least once a month). However, in the passage of 3 months, since its re-organisation, the CCNS is yet to hold a single meeting. Part of the revised structure of the CCNS was creation of an independent Secretariat and two subsidiaries, the Planning Committee and an Advisory Board; however, little information is

available about developments, if any, in this regard. There have been media reports that a former diplomat will be appointed as the administrative head of the secretariat of the CCNS, but it is yet to be announced officially.

It will be appropriate that the rules of business of the CCNS should clearly stipulate the periodicity of its meetings. The British National Security Council meets every week under the Chairmanship of its Prime Minister. The previous PML-N Governments are not known for regular cabinet meetings but given the current security scenario faced by Pakistan, the CCNS should meet regularly every month if not more frequently.

The Terms of Reference of CCNS should focus on the national security agenda, with the aim to formulate a national security policy that will become the guiding framework for its subsidiary policies – defence policy, foreign policy, economic policy and more importantly, a comprehensive counter-terrorism strategy.

It may also be more appropriate if the body is renamed as National Security Council or National Security Commission because a Cabinet Committee can only have its membership from the Cabinet. Another alternative is that the three Service Chiefs and the Chairman Joint Chiefs of Staff Committee should continue to be invited to the CCNS on special invitation rather than making them regular members of the Cabinet Committee on National Security. Nevertheless, the need of an effective forum for consultation among the political and military leadership on national security matters was long felt and the Federal Government should be complimented to have initiated the process of creating such a forum within the first 100 days of taking office.

While the State has been battling with a number of national security issues over the years, there is a critical need to address these issues in a holistic manner through preparing a well-coordinated and comprehensive national security and defence policy of Pakistan. One of the first and foremost responsibilities of the CCNS should be to prepare a national security and defence policy of Pakistan by drawing on the input of all stakeholders.

Once the policy is final and made public, the CCNS should develop and make available for public discussion a periodic *Defence and Security Review of Pakistan* based on the national security and defence policy of Pakistan.

3. PILDAT Paper Higher Defence Organisation in Pakistan in English can be accessed at:

http://www.pildat.org/Publications/publication/CMR/RestructuringHigherDefenceOrganisationofPakistan_DiscussionPaper.pdf

4. For details, please see PILDAT Citizens Report on Performance of Cabinet Committee on Defence: March 2012-March 2013 can be accessed at:

http://www.pildat.org/Publications/publication/CMR/PerformanceoftheDefenceCommitteeoftheCabinet_Mar2012toMar2013.pdf

Dealing with Terrorism: Balance between Human Rights & Counter-Terrorism

There is an inherent tension world over in States struggling with maintaining a balance in laws designed to protect people from the threat of terrorism and the enforcement of these laws to be compatible with people's rights and freedoms. In the case of Pakistan, which is facing the worst-ever forms of terrorism in its history, the question is fraught with greater challenges. What, for instance, are the requirements of an effective counter-terrorism legislative regime? How do we strengthen and protect our security and law enforcement agencies as our first and most effective line of defence, while ensuring that they operate within the ambit of Constitution and law? How do we strike this delicate balance of civil-liberties and effective counter-terrorism regime while ensuring and maintaining the Constitutional primacy of the civilian, elected political Governments vis-à-vis the defence and security establishment.

Unfortunately, successive Governments in Pakistan have been unable to deal with the above challenges in an effective manner. With no shortage of intellect and expertise personified in such eminent persons as Prime Minister's Advisor on National Security, Mr. Sartaj Aziz, it is unclear why the PML-N Government has, so far, shied away from squarely taking on the responsibility of effective counter-terrorism regime.

The case of Missing Persons actively pursued by the Supreme Court until lately, presents one challenge of the delicate balance between civil liberties and effective counter-terrorism. The first and foremost question is whether we have what it takes, in terms of a legal regime, to carry out effective counter-terrorism. Our security agencies have continued to complain the absence of an effective anti-terrorism legal establishment essential for them to carry out their work effectively. However, with measures introduced through recent legislation including the Anti Terrorism (Amendment) Act 2012, the Anti Terrorism (2nd Amendment) Act 2013, the Fair Trial Act 2013 enacted during the tenure of the previous Government and the Pakistan Protection Ordinance (PPO) 2013⁵ promulgated by the PML-N Government in October 2013, it should be fairly clear whether there are any lingering deficiencies in anti-terrorism legal

regime. Sufficient powers have been granted through these laws to security agencies. Why then, the Government has been unable to articulate a clear perspective before the Court in the case of Missing Persons?⁶ There are questions about the PPO 2013 regarding its conformance to the basic minimum requirements of respect for civil liberties but these should be debated in the parliament and adequately addressed.

There are useful models available around the world that aim at striking the balance between counter-terrorism and civil liberties that Pakistan can learn from – and adapt, based on our own peculiar conditions and requirements. One such model - to find a middle ground between anti terrorism measures and civil liberties - is that of the Independent Reviewer of Terrorism Legislation in UK⁷ - an independent person tasked with reporting to the UK Parliament on the operation of counter-terrorism law in the UK.

Admittedly, the confusion on dealing with terrorism runs deeper in the society and the PML-N Government has, so far, settled to merely reflecting this confusion. While there is an announced willingness to talk to militants, the Government's objectives of doing so are not clear. There is a perpetuating lack of clarity by the Federal and some provincial Governments on how do we, as a country, characterize or define various groups fighting the State? Should the characterization be that such groups are “our brothers and sisters gone astray who need to be brought back into the fold” or that such groups are the “enemies of the State that need to be defeated in every possible way,” – or something in-between these positions. This lack of clarity is the most alarming phenomenon and one that will hamper any effort of developing a meaningful policy on national security and has been a grave cause of demoralization of our law enforcement agencies.

Since the conclusion of the All Parties Conference (APC) in the first week of September 2013,⁸ during which all political forces of the country had resolved to hold dialogue with the militants, there have been no tangible developments in this regard either. The APC which was termed to be held to discuss the “national security crisis besetting Pakistan,” ended up paying lip service to the issue only as the resolution emanating out of the APC called upon the Federal Government to “initiate dialogue with all

5. October 20, 2013, Anti terror: president approves Pakistan Protection Ordinance, The express Tribune, <http://tribune.com.pk/story/620059/anti-terror-president-approves-pakistan-protection-ordinance/>
6. December 10, 2013, SC orders to present missing persons in 7 days, The News, <http://www.thenews.com.pk/article-129721-SC-delivers-verdict-in-missing-persons-case>
7. The UK's Independent Reviewer's role is to inform the public and political debate on anti-terrorism law in the United Kingdom, in particular through regular reports which are prepared for the Home Secretary or Treasury and then laid before Parliament. The uniqueness of the role lies in its complete independence from government, coupled with access based on a very high degree of clearance to secret and sensitive national security information. For details, please see: <https://terrorismlegislationreviewer.independent.gov.uk/>
8. For full text of the APC Resolution, please see Text of the APC Resolution, The News, September 10, 2013: <http://www.thenews.com.pk/Todays-News-2-201085-Text-of-the-APC-resolution>

the stakeholders forthwith,” leaving to the Federal Government important pre-requisites of such a dialogue such as “development of an appropriate mechanism and identification of interlocutors.”⁹ Not only the Federal Government did not outline a National Security Policy, there is, to-date, no available framework of the proposed dialogue.

Another important element of precarious equation is legal remit and Parliamentary oversight on security and intelligence sector.

Ahead of the May 2013 General Election, one of the key pledges of the PML-N, relating to democratic control of defence, was its recognition to bring intelligence services under the ambit of parliamentary scrutiny. Even though the PML-N manifesto stopped short of proposing a law on intelligence agencies, and promised only Parliamentary Oversight on intelligence, it was probably understood by the framers of the party's manifesto that the Parliament can not engage in scrutiny and oversight on a sector whose ambit is not defined by law in the country. The PML-N's Manifesto 2013 committed that *it was important to “overhaul and modernize the security sector in order to establish democratic and parliamentary oversight on intelligence services and to achieve better surveillance, improved coordination among intelligence agencies and enhanced capacity for counter insurgency forces at different levels.”*¹⁰

This task for PML-N Government has been made easier by across-the-aisle political consensus achieved through the Senate Standing Committee on Human Rights which recommended, through a draft law, a legal remit for the intelligence agencies and a role of Parliament in oversight of intelligence.¹¹ A report, which carries the draft law unanimously adopted by the Committee, was presented in the House and Senate adopted it unanimously.¹² It is now up to the PML-N Government to benefit from the cross-party consensus and bring in a balanced and effective legislation covering the remit of intelligence agencies in Pakistan.

The law proposed by the Senate offers a good model of Parliamentary oversight on intelligence though its remit should include all other intelligence agencies that exist and work based

on an administrative order and not a law.

It is a well-recognised universal principle that Parliament must engage in a responsible and effective oversight on all sectors and areas where public funds are used. Therefore, an “us versus them” prism of looking at any intelligence related legislation that aims to establish democratic and Parliamentary oversight is both misplaced and counter-productive.

The issues of effective counter-terrorism, civil liberties and democratic control of defence and intelligence are entangled and inter-twined in Pakistan. The responsibility to effectively address them, however, falls squarely on the elected political Government.

Former Army Chief Jailed for life in Turkey

An important development in context of Civil Military Relation in Turkey was witnessed when on August 05, 2013, Turkey's former Armed Forces chief was jailed for life for plotting to overthrow the government, after five years of trials involving officers, lawyers, writers and journalists.¹³ Gen Ilker Basbug was among dozens of people convicted of involvement in the so-called Ergenekon plot.

Gen Basbug, who led the military between 2008 and 2010, was among at least five generals to be jailed for life. At least 21 people were acquitted, but dozens of others received long sentences.

The Ergenekon trials were based on a belief that there is a lingering “deep state,” said to be a network of army officers, business leaders, secularists and arch-nationalists who seek to undermine and even overthrow elected governments. In the Ergenekon case, the administration of Recep Tayyip Erdogan accused the “deep state” of conspiring to cause social unrest, which would then provoke a military coup. Since Mr. Recep Tayyip Erdogan came to power in 2002, hundreds of military officers - serving or retired - have been arrested. Critics say there is little evidence for the charges and accuse the government of trying to silence its secularist opponents. Mr Erdogan has denied any political interference in the case.¹⁴

9. Ibid.

10. PML-N Manifesto 2013: Page 86: <http://www.pmln.org/manifesto/>

11. November 04, 2013, Effective Monitoring of ISI by Parliament suggested, Dawn, <http://www.dawn.com/news/1053940/effective-monitoring-of-isi-by-parliament-suggested>

12. According to Rule 196 (3) of the Senate of Pakistan Rules and procedures and Conduct of Business, “After the motion is carried the decisions of the House shall be communicated to the Ministry concerned for implementation. In case the Ministry is unable to implement decisions of the House it shall inform the House within two months of the reasons thereof, and if the Ministry fails to do so the decisions of the House shall be binding”.

13. August 05, 2013, BBC World, Turkey Ergenekon case: Ex-army chief Basbug gets life, <http://www.bbc.co.uk/news/world-europe-23571739>

14. Ibid