Pakistan: Rule of Law

On October 26, 2009, the WZB Rule of Law Center organized a one-day conference on Pakistan, in cooperation with the Heinrich Böll Foundation (HBF) in Berlin. The conference discussed structures and deficits as well as developments and challenges of rule of law in the case of Pakistan. In particular, the idea was to shed light on the current state of affairs, the parallel legal systems, the relationship between judiciary and politics and the role of political parties and the civil society. Almost 60 participants covering a broad range of areas from academic, scientific, political and civil society attended the workshop at the premises of the HBF. A high level delegation of politicians (Imran Khan, Ahsan Iqbal, and Bushra Gohar) and legal experts (Athar Minallah) from Pakistan and a number of distinguished academic speakers from Germany participated in three panels.

The first panel addressed the question of the parallel legal system, its myths and realities. The panel agreed that the current system was deficient, and that the rule of law was central in the fight against the Taliban. The government must try to expand soft power to the contested areas to win over rather than to use force, f.i. in the Federally Administered Areas (FATA). On the other hand, Pakistan must deal with layers of customary and tribal law, a strong heterogeneity within the society and various strands of Islam. Furthermore there are still remnants of a feudal law – where elite closed family circles decide on legal positions, postings, on what people do, or what kind of justice is dispensed – which need to be brought under official jurisdiction. Highlighting the gender issue, it was stated that criminals still get away with certain crimes against women. The Federal Shariah Court system, which is parallel to a supreme court, is known for its strong bias against women. The judgments of the eight muslim judges tend to restrict the rights of women, and there is no consensus on the utility and function of the Shariah laws.

The second panel stated that the current situation is economically, socially and security-wise one of the worst in history. Pakistan suffers from an extremely high level of corruption and so far, democracy has not properly functioned. The recent lawyers' movement created hope that there would now be a move towards general democracy. Additional complications appeared when the president became chief executive. Although according to the constitution he has only a symbolic role, the prime minister should be the chief executive, since a management system where authority and responsibility are divided cannot work. Furthermore, an independent judiciary needs to be complemented by a sovereign parliament.

The third final panel discussed the role of political parties, civil society and the rule of law in Pakistan. It was argued that feudal structures are finally starting to break, since as urbanization is increasing vastly, its spread would fundamentally change society. However, political parties still lack organizational capabilities – they prevailed throughout the military rule time because of strong roots from previous democratic periods. Recently the media also started to highlight the internal workings of the political parties and lack of inner democracy, thus creating further pressure for reform. Elections can only bring democracy in conjunction with rule of law, but the rule of law must come first. An academic panelist argued that institutions do not change that fast, as they need to be embedded in society, and that democratization is an endogenous process which can be supported, but cannot be substituted. As long as the military remains as a major veto power that acts when it perceives the political order at risk or when modernization is stuck, no real change can start to happen.
The conference came to several conclusions: democracies function well when, from the offset, rule of law is established as an equal condition with democracy. Pakistan needs to strengthen its rule of law to create a functioning democracy. It needs programmatic political parties that stabilize democracy, not its current charismatic or clientelistic ones. A working democracy needs an integrating type of civil society. Currently this does not exist in Pakistan but this type of society is needed to bridge the gaps in the ethnically segmented country.

Talat Mahmood