

**AN OPEN LETTER TO:**

His Excellency  
The President of the European Parliament,  
Brussels.

His Excellency  
The President of France,  
Paris.

His Excellency  
The Prime Minister of the United Kingdom,  
London.

Her Excellency  
Ms. Condaleeza Rice,  
Secretary of State,  
United States of America,  
Washington D.C.

Professor Klaus Schwab,  
World Economic Forum,  
Geneva.

All through their respective Ambassadors, High Commissioners and representatives.

Excellency,

I am the Chief Justice of Pakistan presently detained in my residence since November 3, 2007 pursuant to some verbal, and unspecified, order passed by General Musharraf.

I have found it necessary to write to you, and others, because during his recent visits to Brussels, Paris, Davos and London General Musharraf has slandered me, and my colleagues, with impunity in press conferences and other addresses and meetings. In addition he has widely distributed, among those whom he has met, a slanderous document (hereinafter the Document) entitled: "PROFILE OF THE FORMER CHIEF JUSTICE OF PAKISTAN". I might have let this go unresponded but the Document, unfortunately, is such an outrage that, with respect, it is surprising that a person claiming

to be head of state should fall to such depths as to circulate such calumny against the Chief Justice of his own country.

In view of these circumstances I have no option but to join issue with General Musharraf and to put the record straight. Since he has voiced his views on several public occasions so as to reach out to the public at large, I also am constrained to address your excellencies in an Open Letter to rebut the allegations against me.

At the outset you may be wondering why I have used the words “claiming to be the head of state”. That is quite deliberate. General Musharraf’s constitutional term ended on November 15, 2007. His claim to a further term thereafter is the subject of active controversy before the Supreme Court of Pakistan. It was while this claim was under adjudication before a Bench of eleven learned judges of the Supreme Court that the General arrested a majority of those judges in addition to me on November 3, 2007. He thus himself subverted the judicial process which remains frozen at that point. Besides arresting the Chief Justice and judges (can there have been a greater outrage?) he also purported to suspend the Constitution and to purge the entire judiciary (even the High Courts) of all independent judges. Now only his hand-picked and compliant judges remain willing to “validate” whatever he demands. And all this is also contrary to an express and earlier order passed by the Supreme Court on November 3, 2007.

Meantime I and my colleagues remain in illegal detention. With me are also detained my wife and three of my young children, all school-going and one a special child. Such are the conditions of our detention that we cannot even step out on to the lawn for the winter sun because that space is occupied by police pickets. Barbed wire barricades surround the residence and all phone lines are cut. Even the water connection to my residence has been periodically turned off. I am being persuaded to resign and to forego my office, which is what I am not prepared to do.

I request you to seek first hand information of the barricades and of my detention, as that of my children, from your Ambassador/High Commissioner/representative in Pakistan. You will get a report of such circumstances as have never prevailed even in medieval times. And these are conditions put in place, in the twenty-first century, by a Government that you support.

Needless to say that the Constitution of Pakistan contains no provision for its suspension, and certainly not by the Chief of Army Staff. Nor can it be amended except in accordance with Articles 238 and 239 which is by Parliament and not an executive or military order. As such all actions taken by General Musharraf on and after November 3 are illegal and ultra vires the Constitution. That is why it is no illusion when I describe myself as the Chief Justice even though I am physically and forcibly incapacitated by the state apparatus under the command of the General. I am confident that as a consequence of the brave and unrelenting struggle continued by the lawyers and the civil society, the Constitution will prevail.

However, in the meantime, General Musharraf has launched upon a vigorous initiative to defame and slander me. Failing to obtain my willing abdication he has become desperate. The eight-page Document is the latest in this feverish drive.

Before I take up the Document itself let me recall that the General first ousted me from the Supreme Court on March 9 last year while filing an indictment (in the form of a Reference under Article 209 of the Constitution) against me. According to the General the Reference had been prepared after a thorough investigation and comprehensively contained all the charges against me. I had challenged that Reference and my ouster before the Supreme Court. On July 20 a thirteen member Bench unanimously struck down the action of the General as illegal and unconstitutional. I was honourably reinstated.

**The Reference was thus wholly shattered and all the charges contained therein trashed.** These cannot now be regurgitated except in contempt of the Supreme Court. Any way, since the Document has been circulated by no less a person than him I am constrained to submit the following for your kind consideration in rebuttal thereof:

**The Document** is divided into several heads but the allegations contained in it **can essentially be divided into two categories:** those allegations that were contained in the Reference and those that were not.

Quite obviously, those that are a repeat from the Reference hold no water as these have already been held by the Supreme Court to not be worth the ink they were written in. In fact, the Supreme Court found that the evidence submitted against me by the Government was so obviously fabricated and incorrect, that the bench took the unprecedented step of fining the Government Rs. 100,000 (a relatively small amount in dollar terms, but an unheard of sum with respect to Court Sanction in Pakistan) for filing clearly false and malicious documents, as well as revoking the license to practice of the Advocate on Record for filing false documents. Indeed, faced with the prospect of having filed clearly falsified documents against me, the Government's attorneys, including the Attorney General, took a most dishonorable but telling approach. Each one, in turn, stood before the Supreme Court and disowned the Government's Reference, and stated they had not reviewed the evidence against me before filing it with Court. They then filed a formal request to the Court to withdraw the purported evidence, and tendered an unconditional apology for filing such a scandalous and false documents. So baseless and egregious were the claims made by General Musharraf that on July 20<sup>th</sup>, 2007, the full Supreme Court for the first time in Pakistan's history, ruled unanimously against a sitting military ruler and reinstated me honorably to my post.

Despite having faced these charges in open court, must I now be slandered with those same charges by General Musharraf in world capitals, while I remain a prisoner and unable to speak in my defense?

There are, of course, a second set of charges. These were not contained in the Reference and are now being bandied around by the General at every opportunity.

I forcefully and vigorously deny every single one of them. The truth of these “new” allegations can be judged from the fact that they all ostensibly date to the period before the reference was filed against me last March, yet none of them was listed in the already bogus charge sheet.

If there were any truth to these manufactured charges, the Government should have included them in the reference against me. God knows they threw in everything including the kitchen sink into that scurrilous 450 page document, only to have it thrown out by the entire Supreme Court after a 3 month open trial.

The charges against me are so transparently baseless that General Musharraf’s regime has banned the discussion of my situation and the charges in the broadcast media. This is because the ridiculous and flimsy nature of the charges is self-evident whenever an opportunity is provided to actually refute them.

Instead, the General only likes to recite his libel list from a rostrum or in gathering where there is no opportunity for anyone to respond. Incidentally, the General maligns me in the worst possible way at every opportunity. That is the basis for the Document he has distributed. But he has not just deposed me from the Judiciary. He has also fired more than half of the Superior Judiciary of Pakistan – nearly 50 judges in all -- together with me. They have also been arrested and detained.

What are the charges against them? Why should they be fired and arrested if I am the corrupt judge? Moreover even my attorneys Aitzaz Ahsan, Munir Malik, Tariq Mahmood and Ali Ahmed Kurd were also arrested on November 3. Malik alone has been released but only because both his kidneys collapsed as a result of prison torture

Finally, as to the Document, it also contains some further allegations described as “**Post-Reference Conduct**” that is attributed to me under various heads. This would mean only those allegedly ‘illegal’ actions claimed to have been taken by me *after* March 9, 2007. These are under the heads given below and replied to as under:

1. “**Participation in SJC (Supreme Judicial Council) Proceedings**”:

(a) **Retaining ‘political lawyers’: Aitzaz Ahsan and Zammurad Khan:**

It is alleged that I gave a political colour to my defence by engaging political lawyers Aitzaz Ahsan and Zamurrad Khan both Pakistan Peoples' Party Members of the National Assembly. The answer is simple.

I sought to engage the best legal team in the country. Mr. Ahsan is of course an MNA (MP), but he is also the top lawyer in Pakistan. For that reference may be made simply to the ranking of Chambers and Partners Global. Such is his respect in Pakistan's legal landscape that he was elected President of the Supreme Court Bar Association of Pakistan by one of the widest margins in the Association's history.

All high profile personalities have placed their trust in his talents. He has thus been the attorney for Prime Ministers Bhutto and Sharif, (even though he was an opponent of the latter) Presidential candidate (against Musharraf) Justice Wajihuddin, sports star and politician Imran Khan, former Speakers, Ministers, Governors, victims of political vendetta, and also the internationally acclaimed gang-rape victim Mukhtar Mai, to mention only a few.

Equally important, Barrister Ahsan is a man of integrity who is known to withstand all pressures and enticements. That is a crucial factor in enaging an attorney when one's prosecutor is the sitting military ruler, with enourmous monetary and coercive resources at his disposal.

Mr. Zamurrad Khan is also a recognized professional lawyer, a former Secretary of the District Bar Rawalpindi, and was retained by Mr. Aitzaz Ahsan to assist him in the case. Mr. Khan has been a leading light of the Lawyers' Movement for the restoration of the deposed judiciary and has bravely faced all threats and vilification.

Finally, surely I am entitled to my choice of lawyers and not that of the General.

**(b) "Riding in Mr. Zafarullah Jamali (former Prime Minister)'s car":**

How much the Document tries to deceive is apparent from the allegation that I willingly rode in Mr. Jamali's car for the first hearing of the case against me on March 13 (as if that alone is an offence). Actually the Government should have been ashamed of itself for creating the circumstances that forced me to take that ride.

Having been stripped of official transport on the 9<sup>th</sup> March (my vehicles were removed from my house by the use of fork lifters), I decided to walk the one-mile to the Supreme Court. Along the way I was molested and manhandled, my hair was pulled and neck craned in the full blaze of the media, by a posse of policemen under the supervision of the Inspector General of Police. (A judicial inquiry,

while I was still deposed, established this fact). In order to escape the physical assault I took refuge with Mr. Jamali and went the rest of the journey on his car. Instead of taking action against the police officials for manhandling the Chief Justice it is complained that I was on the wrong!

**(c) “Creating a political atmosphere”:**

Never did I instigate or invite any “political atmosphere”. I never addressed the press or any political rally. I kept my lips sealed even under extreme provocation from the General and his ministers who were reviling me on a daily basis. I maintained a strict judicial silence. I petitioned the Supreme Court and won. That was my vindication.

**2. “Country wide touring and Politicising the Issue”:**

The Constitution guarantees to all citizens free movement throughout Pakistan. How can this then be a complaint?

By orders dated March 9 and 15 (both of which were found to be without lawful authority by the Court) I had been sent of “forced leave”. I could neither perform any judicial or administrative functions as the Chief Justice of Pakistan. I was prevented not only from sitting in court but also from access to my own chamber by the force of arms under orders of the General. (All my papers were removed, even private documents).

The only function as ‘a judge on forced leave’ that I could perform was to address and deliver lectures to various Bar Associations. I accepted their invitations. They are peppered all over Pakistan. I had to drive to these towns as all these are not linked by air. On the way the people of Pakistan did, indeed, turn out in their millions, often waiting from dawn to dusk or from dusk to dawn, to greet me. But I never addressed them even when they insisted that I do. I never spoke to the press. I sat quietly in my vehicle without uttering a word. All this is on the record as most journeys were covered by the media live and throughout.

I spoke only to deliver lectures on professional and constitutional issues to the Bar Associations. Transcripts of every single one of my addresses are available. Every single word uttered by me in those addresses conforms to the stature, conduct and non-political nature of the office of the Chief Justice. There was no politics in these whatsoever. I did not even mention my present status or the controversy or the proceedings before the Council or the Court, not even the Reference. Not even once.

All the persons named in the Document under this head are lawyers and were members of the reception committees in various towns and Bar Associations.

**3. Political Leaders Calling on CJP residence:**

It is alleged that I received political leaders while I was deposed. It is on the record of the Supreme Judicial Council itself that I was detained after being deposed on March 9. The only persons allowed to meet me were those cleared by the Government. One was a senior political leader. None else was allowed to see me, initially not even my lawyers. How can I be blamed for whomsoever comes to my residence?

Had I wanted to politicize the issue I would have gone to the Press or invited the media. I did not. I had recourse to the judicial process for my reinstatement and won. The General lost miserably in a fair and straight contest. That is my only fault.

#### 4. “Conclusion”:

Hence the conclusion drawn by the General that charges had been proved against me ‘beyond doubt’ is absolutely contrary to the facts and wide off the mark. It is a self-serving justification of the eminently illegal action **of firing and arresting judges of superior courts** under the garb of an Emergency (read Martial Law) when the Constitution was ‘suspended’ and then ‘restored’ later with drastic and illegal ‘amendments’ grafted into it.

The Constitution cannot be amended except by the two Houses of Parliament and by a two-thirds majority in each House. That is the letter of the law. How can one man presume or arrogate to himself that power?

Unfortunately the General is grievously economical with the truth (I refrain from using the word ‘lies’) when he says that the charges against me were ‘investigated and verified beyond doubt’. As explained above, these had in fact been rubbished by the Full Court Bench of the Supreme Court of Pakistan against which judgment the government filed no application for review.

What the General has done has serious implications for Pakistan and the world. In squashing the judiciary for his own personal advantage and nothing else he has usurped the space of civil and civilized society. If civilized norms of justice will not be allowed to operate then that space will, inevitably, be occupied by those who believe in more brutal and instant justice: the extremists in the wings. Those are the very elements the world seems to be pitted against. Those are the very elements the actions of the General are making way for.

Some western governments are emphasizing the unfolding of the democratic process in Pakistan. That is welcome, if it will be fair. But, and in any case, can there be democracy if there is no independent judiciary?

Remember, independent judges and judicial processes preceded full franchise by several hundred years. Moreover, which judge in Pakistan today can be independent who has before his eyes the fate and example of his own Chief Justice: detained for three months along with his young children. What is the children's crime, after all?

There can be no democracy without an independent judiciary, and there can be no independent judge in Pakistan until the action of November 3 is reversed. Whatever the will of some desperate men the struggle of the valiant lawyers and civil society of Pakistan will bear fruit. They are not giving up.

Let me also assure you that I would not have written this letter without the General's unbecoming onslaught. That has compelled me to clarify although, as my past will testify, I am not given into entering into public, even private, disputes. But the allegations against me have been so wild, so wrong and so contrary to judicial record, that I have been left with no option but to put the record straight. After all, a prisoner must also have his say. And if the General's hand-picked judges, some living next door to my prison home, have not had the courage to invoke the power of 'habeas corpus' these last three months, what other option do I have? Many leaders of the world and the media may choose to brush the situation under the carpet out of love of the General. But that will not be.

Nevertheless, let me also reassure you that I continue in my resolve not to preside any Bench which will be seized of matters pertaining to the personal interests of General Musharraf after the restoration of the Constitution and the judges, which, God willing, will be soon.

Finally, I leave you with the question: Is there a precedent in history, all history, of 60 judges, including three Chief Justices (of the Supreme Court and two of Pakistan's four High Courts), being dismissed, arrested and detained at the whim of one man? I have failed to discover any such even in medieval times under any emperor, king, or sultan, or even when a dictator has had full military sway over any country in more recent times. But this incredible outrage has happened in the 21<sup>st</sup> century at the hands of an extremist General out on a 'charm offensive' of western capitals and one whom the west supports.

I am grateful for your attention. I have no other purpose than to clear my name and to save the country (and perhaps others as well) from the calamity that stares us in the face. We can still rescue it from all kinds of extremism: praetorian and dogmatic. After all, the edifice of an independent judicial system alone stands on the middle ground between these two extremes. If the edifice is destroyed by the one, the ground may be taken over by the other. That is what is happening in Pakistan. Practitioners of rough and brutal justice will be welcomed in spaces from where the practitioners of more refined norms of justice and balance have been made to abdicate.

I have enormous faith that the Constitution and justice will soon prevail.



Yours truly,

Iftikhar Mohammad Choudhry,  
Chief Justice of Pakistan,  
Presently:  
imprisoned in the Chief Justice's House,  
Islamabad.