

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



THE PRESIDENT
Islamic Republic of Pakistan

Islamabad,
December 26, 2007

Dear Mr. William Neukom,

Ambassador Durrani in Washington has informed me about your delegation's call on him recently. He conveyed your concerns over the recent judicial crisis and political developments in Pakistan. Your delegation called for restoration of the Constitution of Pakistan as it existed on 3rd November, 2007, reinstatement of judges of the superior judiciary who ceased to hold their offices in the wake of proclamation of Emergency in Pakistan on 3rd November, 2007, and release of detained lawyers and civil leaders.

Your keen interest in Pakistan is deeply appreciated. However, the demands put forth by the US Bar Association appear to be based on skewed information, about the developments, reaching the outside world. I, therefore, take this opportunity to place the matter in correct perspective for a comprehensive understanding of these complex issues.

Mr. Justice Iftikhar Muhammad Chaudhry was appointed as Chief Justice of Pakistan in June, 2005, strictly on merit, as he was then the senior most Judge of the Supreme Court. I had a cordial personal rapport with him, which was apparent by frequent meetings between us before 9th March, 2007, and personally it would not have mattered to me if he had continued as the Chief Justice. However, the Government of Pakistan headed by the then Prime Minister Mr. Shaukat Aziz had been receiving numerous complaints from different sources from time to time regarding the conduct of Justice Iftikhar, some of which were:-

- Exercise of illegal and undeserved pressure on the Prime Minister and other government functionaries for unlawful career progression of his son.
- Discrepancy between judgments orally announced in open court and written orders issued subsequently.
- Abuse of official position to influence judgments of higher as well as lower courts.
- Undue pressure for appointment/elevation of disreputable judges loyal to him against the advice tendered by the Chief Justices of the High Courts.
- Misuse of a large fleet of official cars far in excess of the entitlement.
- Securing use of helicopters and planes to which he was not entitled.
- Insistence on extravagant and undue protocol - use of large cavalcades of protocol vehicles not allowed under the rules which were a constant cause of inconvenience to the public.



These incidents had become subject of press reports, magazine articles and media comments by senior and respected members of the Bar and former members of the Superior Judiciary. Ground check through multiple intelligence agencies not only confirmed the veracity of these reports but revealed other incidents of conduct unbecoming of Chief Justice of Pakistan (*Profile annexed*).

In view of serious nature of reports in respect of former Chief Justice of Pakistan, concerned Departments of the Government deliberated on merits of the case and eventually the Prime Minister sent a self-speaking advice to me, as required under the Constitution, to refer the case to the Supreme Judicial Council. Under Article 209 of the Constitution of the Islamic Republic of Pakistan, Supreme Judicial Council of Pakistan is a standing body comprising five senior most judges of the country. This body inquires into the allegations of misconduct against Judges of the Superior Judiciary including Chief Justice of the Supreme Court. The Council is competent to take cognizance of the alleged misconduct of a Judge on a Reference by the President or alternatively on its own motion, under the Constitution.

Even though I am constitutionally obliged to act on advice tendered by the Prime Minister, I referred the matter to the Supreme Judicial Council only after satisfying myself about merits of the case through the intelligence sources available to me and after bringing these to the notice of the former Chief Justice. Simultaneously, after moving the "Reference" against the former Chief Justice, he was sent on leave under a law available on the statute books since 1970.

Whereas, Government's action was strictly in accordance with the Constitution of the country, lawyers of the former Chief Justice, wary of the inherent weakness of their client's case, embarked upon a strategy to politicize the issue and mobilize public opinion by portraying it as a struggle for the independence of judiciary. The exploitation was geared not only to exert pressure on the judiciary but also to further their personal agenda of drawing political premium from the commotion. A handful of activists, who have charmed the West through fiery speeches at international fora, joined the legal community to get full advantage of the situation by playing to the gallery. Some media sections with a clear political tilt joined hands with these activists and indulged in subjective reporting to malign the Government. Biased media coverage became so pronounced that during the Red Mosque incident in Islamabad, the terrorists were shown as victims and the security personnel as criminals.

Under Article 211 of the Constitution, the proceedings before the Supreme Judicial Council cannot be called into question in any Court (even the Supreme Court). However, in violation of the Constitution, the Supreme Court decided to hear the "Reference" against the former Chief Justice and thus rendered Supreme Judicial Council entirely irrelevant and non est, thereby making the judges immune from inquiry into their conduct and beyond accountability. Furthermore, without going into its merits, the "Reference" was declared invalid. The Supreme Court also reinstated the former Chief Justice by scrapping the law under which he was sent on leave. All these decisions were taken in a haphazard manner through a Short Order issued without giving any reasons. The hollowness of the Short Order is evident from the fact that detailed judgment was never written.



The Government on its part accepted the Short Order as a manifestation of the respect for the rule of law and deference to the Superior Judiciary, despite its apparent shortcomings. The Government made clear overtures to the former Chief Justice to work harmoniously. The situation did not improve even though I had accepted without reservation the restoration of the former Chief Justice.

Reinstated in a dubious fashion, the former Chief Justice assumed an arrogant posture and unleashed a period of unprecedented judicial activism. It was part of these excesses that the Supreme Court under his influence/pressure ordered release of more than 60 hardcore terrorists arrested during the Red Mosque incident in Islamabad. These terrorists have become instruments in the hands of terrorist networks and could be fully involved in the recent spate of terrorist attacks in the country, as their motivation is a notch higher than the rest.

The belligerent posture of judiciary demoralized the Law Enforcement Agencies and discouraged Civil Servants from taking any action. This resulted in upsurge of terrorist activities not only in the Federally Administered Tribal Areas (FATAs) but was also instrumental in its spill over into the settled districts bordering FATA and spreading to other parts of Pakistan.

During 2007, militancy, extremism and terrorist activities had been in ascendance, particularly in some districts of NWFP where the writ of the government was being eroded and non-State militants were gaining control. There had been a number of bomb blasts and suicide attacks in other parts of the country. Up to October, 2007, 1322 precious lives were lost and 3183 persons injured. However, the executive measures taken against extremist elements to contain militancy and terrorist activities were, on a number of occasions, called into question by some members of the judiciary, making effective action impossible.

The Supreme Court of Pakistan thus completely paralyzed functioning of the Government and demoralized the Law Enforcement Agencies. Economy which had been stabilized after years of hard work and was on a high growth trajectory suffered serious setbacks – Pakistan's credit rating and other economic indicators were adversely affected and foreign direct investment dipped to its lowest in recent years. Overall the nation was engulfed in an environment of uncertainty and despondency.

The Supreme Court once again created a crisis at the time of Presidential Election which was held in a most transparent manner and within the timeframe given in the Constitution. I secured 57 percent of the votes of the whole Electoral College comprising the Senate, National Assembly and Assemblies of the four Provinces. Amongst those who were present and voting, 99 percent voted in my favour, still the former CJP maneuvered to challenge the sovereignty of the Parliament and independence of the Election Commission by stopping issuance of the notification declaring results of the Presidential Election. Furthermore, the former CJP realizing that majority of judges of the 7-member bench hearing the petition were likely to uphold the detailed judgment of the Election Commission of Pakistan rejecting objections to my eligibility, enlarged the bench to 9 members. Still sensing that his motives may not fulfilled, he added 2 more members and raised the number of judges to 11 to ensure that a negative verdict emerged. The people of Pakistan and their representatives in legislature considered this an affront to their



constitutional right to elect the President. These developments derailed the political process towards restoration of full democracy: a course which we were assiduously pursuing since I took over eight years ago. It remains my deepest regret that the process was disrupted when it had entered the last stage.

A situation thus arose, where Government of the country could not be carried on in accordance with the provisions of the Constitution as it did not provide any solution for such an impasse. These excesses, the paralysis of the administration and the growing threat of extremism and militancy compelled me to take the decision to impose Emergency on 3rd November, 2007, with the promulgation of a Provisional Constitution Order (PCO). This was a most difficult decision that I took following extensive deliberations and discussions with a cross-section of the civil society, politicians, businessmen, industrialists and senior members of the armed forces, majority of whom demanded immediate rectification of the situation. The extraordinary measures were the only recourse to put the political process back on rails and avert turbulence and chaos in the country. I was fully aware that this option was fraught with risks for me, personally but no half-hearted measures would have sufficed. I found myself between a rock and hard surface as the choice was either taking full action to salvage the situation or no action at all, which would have plunged Pakistan deeper into anarchy.

In this backdrop, I hope the US Bar Association will re-evaluate their views conveyed to the Ambassador of Pakistan in Washington. The Constitution, as amended in exercise of special powers under the Proclamation of Emergency, already stands revived. With the revocation of the Proclamation of Emergency, the President no more enjoys the powers to further amend the Constitution or undo the amendments already made. The next Parliament would be the only competent forum to review the Constitution and amend the same, if deemed appropriate.

Likewise, Judges of the Superior Judiciary who have ceased to hold offices also cannot be reinstated. The Judges appointed in the Superior Judiciary during the period the Proclamation of Emergency was in force have since taken oath under the Constitution. They cannot be removed, except in accordance with the procedure laid down in Article 209 of the Constitution.

Most of the lawyers and civil activists detained during emergency have already been released. A few who remain under house arrest are those who continue to incite public to street agitation and violence – something we cannot afford in the country. They would be released on normalization of political situation in the country.

Pakistan today stands at crossroads and the path we choose would determine the future of our nation. A strong, stable and prosperous Pakistan depends upon our success in rooting out the forces of extremism and terrorism, which have kept the entire country hostage. This higher objective at times requires measures, which in normal circumstances, I do not stand for. As you must be aware, the Proclamation of Emergency has been revoked, the Provisional Constitution Order repealed, and the Constitution revived. Pakistan is now well set on the path to the holding of transparent, fair and free elections, which will be conducted by the independent Election Commission of Pakistan, and comprehensively monitored by national and international media and foreign observers.



In the past eight years, Pakistan has made tremendous achievements. Our economy has witnessed unprecedented growth. For the first time in the history of Pakistan, the Parliament completed its Constitutional term of five years. Elections to Local Governments were held in 2001 and 2005, which administratively and financially empowered the deprived segments of the society, including women and minorities. I take pride that media had never been as free as in the last eight years. It is during this period that more than 50 private channels have been allowed to operate with a dozen of them dedicated to news and talk shows. They freely invite opposition leaders and eminent persons of diverse point of view who are often relentlessly and at times unjustly criticizing me and the government to promote their own political interests. I believe in democracy and my track record shows that I have done more than any leader in the past to strengthen democratic institutions and bringing full democracy to the country. As we look to consolidate these gains, we expect the support and understanding of our friends and well-wishers, like the US Bar Association, at this crucial juncture in our history.

I wish you and your colleagues in the US Bar Association a very happy new year.

With warm regards,

Sd/-

(Pervez Musharraf)

Mr. William Neukom,
President, US Bar Association,
Washington DC.