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PAKISTAN: ICJ South Asia Programme concludes High-Level Mission to Pakistan to examine the Independence of the Judiciary since the Lawyers' Movement

The International Commission of Jurists (ICJ) ended its six-day High-Level Mission to Pakistan today after studying the role of the judiciary and the separation of powers. The High-Level Mission, consisting of Judge Stefan Trechsel (Chair) and Graham Leung, visited Lahore, Karachi and Islamabad between September 7-8 and September 12-15, 2011. The Mission was a follow up to an earlier ICJ Mission which took place in 2007 during the height of the constitutional crisis that was occurring at the time.

The Mission interviewed and consulted with a broad range of actors in the judiciary, members of the legal profession, Government and civil society. It met with a number of Justices of the Supreme Court, the Chief Justice of the Lahore Court, a former Law Minister, some retired judges, politicians, key members of the Lawyers Movement and various members of the Bar. The Mission expresses its gratitude for the hospitality and willingness of all persons it met and interviewed to share their views on matters within its terms of reference. The Mission, however, deeply regrets that it was unable to meet with the Chief Justice of Pakistan despite insistent efforts to do so.

Below are the preliminary findings and observations of the Mission presented at a press conference held today in Islamabad. A final research and advocacy report will be prepared and disseminated after the Mission.

Preliminary Observations of Judge Stefan Trechsel and Graham Leung, ICJ Mission to Pakistan

The Mission notes with satisfaction the success of the Lawyers' Movement to restore the rule of law and the reinstatement of Iftikhar Muhammed Chaudhry as Chief Justice of Pakistan. This has marked the return of Pakistan to its constitutional order.

The legal profession and members of the Bar appear divided over the use by the Supreme Court of Pakistan of the *suo motu* proceedings. On the one hand some supported the current liberal practice. On the other hand, a number of lawyers and former judges felt that the SC had gone too far and that the practice endangered the rule of law.

For instance, when the Supreme Court takes up cases the parties involved may be deprived of any possibility of appeal.

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

Asia-Pacific Regional Office, 10/1 Soi Aree 2, Phaholyothin Road, Samsennai, Phayathai, Bangkok 10400, Thailand
Tel: + 66 (0) 2 619 8477 – Fax: +66 (0) 2 619 8479 – Website: <http://www.icj.org> - E-mail: icj-asiapacific@icj.org

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There seems to be widespread agreement that, while *suo motu* proceedings were as such justified and valuable in appropriate cases, the Supreme Court may have occasionally gone too far and ought to exercise more judicial restraint. No one, however, gave clear indications on how the limit ought to be drawn.

Concern has also been raised with regard to the allocation of cases to different benches of the Supreme Court. It appears that there may be a need for greater transparency in this respect.

To some degree, the judicial activism of the Supreme Court may be understandable given the perception in some quarters that the State has not been always able to discharge its responsibilities.

On the other hand, there are reasons that lead to some understanding for the activism of the Supreme Court. In fact, it appears that the Government is not able to fulfil its tasks. But while judicial interventions may bring relief in some cases, the Supreme Court is not constitutionally established to do the work of the Government. In turn, the actual practice of the Supreme Court is perceived by some observers as undue interference. It is alleged that some judgments have as yet not been implemented by the authorities.

The anecdotal evidence we have heard suggests that the problem of corruption in the lower levels of the judiciary is particularly acute and may be widespread. While it is not specific to the judiciary, it affects its functioning and undermines public confidence in the institution.

To sum up:

1. The Lawyers' Movement for the restoration of the rule of law including the re-instatement of Chief Justice Iftikhar Muhammed Chaudhry has been successful and merits admiration.
2. As a matter of principles, the Supreme Court falls to be commended for its concern for human rights including the institution of *suo motu* procedures.
3. It appears, however, that the Supreme Court is exceeding the limits of a reasonable use of this procedure.
4. This leads to a corrosion of the rule of law and a blurring of the constitutional separation of powers.
5. It is strongly recommended that the Supreme Court adopt rules setting out the criteria for the use of *suo motu* procedures and for the allocation of cases to benches.