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Pakistan – ICJ welcomes reinstatement of Chief Justice Chaudhry

Geneva, 20 March 2009

The International Commission of Jurists (ICJ) welcomes the reinstatement of Chief Justice Iftikhar Mohammad Chaudhry by the Government of Pakistan on 16 March 2009.

"The reinstatement of the Chief Justice is an historic milestone in reaffirming the rule of law and the independence of the judiciary in Pakistan," said Dato Param Kumaraswamy, ICJ Honorary Commissioner and former UN Special Rapporteur on the Independence of Judges. *"It will help restore public and international confidence in the judicial system, but for this to be effective, the Government must ensure functional independence of the judiciary, without any executive interference in the future."*

Judicial independence and separation of powers are fundamental principles of the rule of law and a cornerstone of democratic governance. Principle 4 of *the UN Basic Principles on the Independence of the Judiciary* prohibits any inappropriate or unwarranted interference in the judicial process.

The reinstatement of the Chief Justice is also a validation of the unprecedented two-year struggle by the Pakistan's lawyers and civil society to restore the independence of the judiciary, pivotal for the rule of law in the country.

"Since the Chief Justice was arbitrarily dismissed from office, Pakistan's lawyers have stood firm at the forefront of popular protests, enduring police brutality, mass arrests, arbitrary detention, torture and ill treatment," said Roger Normand, Director of ICJ's Asia-Pacific Programme. *"Their struggle was not for the reinstatement of one man, but for the restoration of constitutionalism and the principle that even the powerful must be subject to the rule of law."*

The dismissal of Chief Justice Chaudhry is emblematic of Pakistan's history of executive interference in the independence of the judiciary by both military and elected civilian governments. On numerous occasions in the past, the Supreme Court has invoked the controversial doctrine of necessity to retroactively ratify coups and martial law regimes that overturned the constitutional order.

Prior to being dismissed for the first time by President General Pervez Musharraf in March 2007, Chief Justice Chaudhry became a symbol of judicial independence and rule of law by issuing a series of popular, high profile judgements against the Government. In a notable corruption case, the Chief Justice disallowed the privatization of a state steel mill linked to Finance Minister Shaukat Aziz. Under the Chief Justice, the Supreme Court exercised *suo moto* powers to call for hearings on the fate of hundreds of cases of enforced disappearances, in the process compelling the testimony of Pakistan's powerful intelligence chiefs and provoking the wrath of the military. Human rights groups have linked the enforced disappearances to the "War on Terror", with many victims rendered into the custody of the United States.

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After the Chief Justice was reinstated by the Supreme Court, President General Musharraf dismissed him for the second time in November 2007 while declaring a state of emergency and suspending the Constitution. At the time, the Supreme Court was preparing to issue a ruling on the legality of President General Musharraf having stood for a re-election while retaining his position as Commander in Chief of the Army.

Popular protests for the restoration of the judiciary continued after the new Government was elected in March 2008. President Asif Ali Zardari reneged on a pledge to reinstate the Chief Justice, reportedly out of concern that the Supreme Court might review the Constitutionality of the National Reconciliation Ordinance passed by President General Musharraf, which summarily dropped hundreds of corruption and criminal cases against political figures, including President Zardari.

In the context of Pakistan's troubled history of suppressing judicial independence, the ICJ notes with concern reports that President Zardari sought to influence a recent Supreme Court ruling disqualifying his political rivals Nawaz Sharif and Shabaz Sharif from holding office.

The ICJ calls on the Government to demonstrate commitment towards the rule of law and separation of powers by ensuring that the reinstated Chief Justice assumes office as soon as possible, and further ensuring that the Supreme Court is able to perform its duties independently and without interference.

Background:

On 12 March 2007, Chief Justice Chaudhry was removed by President General Pervez Musharraf, purportedly acting under Article 2 (1) of the Judges (Compulsory) Order, 1970, ordering that the Chief Justice "shall be on compulsory leave with effect from March 9, 2007" (see *Pakistan – ICJ concludes Mission to assess developments related to Reference against Chief Justice Chaudhry*, preliminary press statement on 26 April 2007, at: http://www.icj.org/news.php?id_article=4154&lang=en). On 20 July 2007, Chief Justice Chaudhry was reinstated by a majority decision of the Supreme Court of Pakistan. This was hailed by the legal as well as international community (see, *Pakistan - ICJ welcomes reinstatement of Chief Justice Chaudhry*, 24 July 2007, at: http://www.icj.org/news.php?id_article=4197&lang=en).

On 3 November 2007, following the state of emergency and suspension of the constitution, security forces surrounded the Supreme Court with troops, and the Government for the second time in a year dismissed Chief Justice Chaudhry (see, *Pakistan - Suspension of constitution grave blow to rule of law. President urged to end attack on independence of judges and lawyers*, 4 November 2007, at: http://www.icj.org/news.php?id_article=4223&lang=en). The current Government was elected in March 2008 following parliamentary elections, and the new President, Asif Ali Zardari, was elected on 6 September 2008. The lawyers' protests continued until 16 March 2009, when Prime Minister Yusuf Raza Gilani announced the reinstatement of the Chief Justice Chaudhry and other superior judges.

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