



Jammu & Kashmir Council for Human Rights (JKCHR)

Registered Charity in England and Wales. No.1007297

Most Urgent Communication - By Fax

Mr. Dato' Param Cumarawamy
UN Special Rapporteur on the Independence of Judges and Lawyers
United Nations Office at Geneva
Palais des Nations
CH-1211 Geneva 10
Switzerland

13 March 2001

Dear Mr. Cumaraswamy

**Re: Independence of Judiciary in Pakistan
Planned Conviction of Ms. Benazir Bhutto**

JKCHR commends your efforts in defending the Independence of the Judiciary and the Rule of Law, which in your words is 'pivotal for democracy and sustainable development in any country'.

Your most recent action of registering your concern with the Government of Zimbabwe on a 'direct assault on the rule of law' has brought into focus the jurisprudence of UN Basic Principles on the Independence of Judiciary and the Vienna Declaration and Programme of Action of 1993 World Conference on Human Rights. It is heartening to recount that both of us made a contribution to the Plenary and the Main Committee of the Vienna World Conference.

I respectfully submit that there is an urgent need to conjoin your recent concern on Independence of the Judiciary and the Rule of Law with a similar urgent action on the Independence of the Judiciary and the Rule of Law in Pakistan.

The Supreme Court of India in 1971 has said that 'justice is not a cloistered virtue and she must be allowed to suffer the scrutiny and respectful even though outspoken, comments of ordinary men'. I am confident that you shall concur with me in the understanding that a judgement is always a public document. Therefore its reasoning or lack of it, is open to criticism. What is proscribed is that no motives or mala fides should be imputed. For that would have the effect of

bringing the entire system of the administration of justice into disrepute. The system is sacrosanct. The Rule of Law depends on it.

The question of Independence of the Judiciary and the Rule of Law in Pakistan has offered your office a direct and immediate challenge on the following four counts:

(A)

1. In a letter dated 29 January 2001 one A. Rahim Deputy Director Intelligence Bureau Government of Pakistan addressed to the President, Islamic Republic of Pakistan, Islamabad and copies forwarded to General Pervez Musharraf, The Chief Executive of Pakistan, Honourable Chief Justice of Pakistan, Major. General Rafi-ullah Khan Niazi, Director General, Intelligence Bureau Government of Pakistan and Mr. Jehangir Mirza, Joint Director General, PPHQ – IB Lahore and in a sworn Affidavit dated 6/12/2000, has yielded that he was officially deployed by the then Prime Minister, Mr. Nawaz Sharif to spy on and wire tape Justice Malik Qayyum, to ensure that he was following the instructions of Chief Justice Rashid Aziz of Lahore High Court, Mr. Saif-ur-Rehman, Chairman Accountability Bureau and the Federal Law Minister Khalid Anwar, to 'implement the pre-determined conviction of Ms. Benazir Bhutto'.
2. The said IB official has forwarded a 65 minutes long audio recorded conversation revealing that the trial of the former Prime Minister, Ms. Bhutto was 'fixed'. The audio-recorded conversation has revealed that Nawaz Sharif, the former Prime Minister was intent on securing Ms. Bhutto's conviction at any cost.
3. Senior Officials, including the chief justice of Lahore High Court and the federal law minister, are said to have made it clear to the trial judge that he must bring in a guilty verdict.
4. Ms. Bhutto was sentenced in absentia to five years imprisonment in 1999.

(B)

1. The information fell in public domain on 4th February 2001 when Sunday Times of London published the details of this rough justice titled "Bugging tapes reveal 'fixing' of Bhutto trial". The information is available on The Sunday Times Website www.Sunday-times.co.uk under South Asia Chapter.

©

1. The Pakistan Peoples Party [PPP], through a memorandum has requested the UN Secretary General Kofi Annan, during his visit to Pakistan, to ask the UN Rapporteur to observe the proceedings in Benazir Bhutto's appeal in the Supreme Court, likely to be concluded within two weeks.

2. The memorandum also points to the continued arrest and maltreatment of Ms. Bhutto's husband Senator Asif Zardari. JKCHR is minded to take up the issue of the medical condition of Senator Asif Zardari separately and would wish to profit from your support as well. Her father in law a senior politician Hakim Ali Zardari is sick and is also kept in a hospital in Karachi.

(D)

1. The said tapes and the transcripts were submitted by the appellants to the Court on March 12th and the Supreme Court has now ordered to seal the tapes and keep in safe custody.

The evidence pointing to the 'preplanned conviction' of Ms. Bhutto, confirms that the civil society in Pakistan has failed to create and defend the big institutional sites of power – the Legislature and the Judiciary in particular. The State coercion of the Judiciary in the Benazir Bhutto's case is a sad attribute to the 'trustees of justice'.

I hope that you would concur with my understanding that the Courts have a network of restrictive principles which require statutory powers to be exercised reasonably and in good faith, for proper purposes only and in accordance with the spirit as well as the letter of the empowering Act. The new Human Rights Act, loans to courts more power and determination to act 'in defence of the citizenry'.

Courts have to intervene as a matter of public ethics as a safeguard against an abuse. The intra vires character of a court is that it proceeds according to the rules of reason and justice, not according to any private opinion and according to law and not humour.

Justice and the institutional sites of justice mark or mar the character of a civil society. Throughout human history, judicial institutions, have refused and resisted the State desire to turn them into 'docile bodies', through the use of 'micro-physics of power'.

It is not encouraging to find that State behind the backs of an enfranchised people of Pakistan, a nation borne out of its right of self-determination, has used techniques of surveillance, observation, recording and marching drill, to produce 'docile bodies' out of the 'trustees of justice'.

The scandal of regarding the members of judiciary as objects and as instruments of exercise, is a 'mad' and a 'bad' exercise of power. When a State acts over the members of the judiciary like a sergeant over recruits or a teacher over pupils, it is important that the civil society calls upon its 'plurality of resistance' against the disciplinary regime.

The woe befallen 'trustees of justice', too, have to offer themselves, ex aequo et bono, to a composite test regime – of honesty, reasonableness, gauge the implications of bad faith and the prejudice caused by the failure to apply the science of justice, to the rights and wrongs of Benazir Bhutto's case in particular and more so to the 'institutional site of justice' in Pakistan.

It needs to be recounted that the elementary principles of justice – of 'natural justice', 'equity' and the primitive rules of fairness, and that justice should be seen to have been done, all add up to make the 'trustees of justice' and the 'institutions of justice'.

Once the trustees of justice err to act 'within the limits of fair dealing', or yield as 'docile bodies' to the corrective 'micro-physics of power', there hardly remains a scope for a progressive and a decent tomorrow.

Benazir Bhutto case falls within the domain of public interest and that the question of 'judicial trust' is the inviolable touch stone of an enfranchised civil society, merits attention.

Ms. Bhutto has distinguished herself as a democrat and as a firm believer in institutions. She addressed the UN Human Rights Commission in Geneva in defence of the fundamental rights and freedoms and for the first time in the history of Pakistan established a Ministry for the Promotion and Protection of Human Rights.

You are therefore respectfully requested to defend a defender of Human Rights and Fundamental Freedoms and the Independence of the Judiciary and the Rule of Law in Pakistan. In this regard, JKCHR volunteers to place all co-operation and assistance at your disposal. We have to assist the enfranchised population of Pakistan to flex its ability to make the political system respond.

Kindly rest assured of my best regards and highest considerations.

Yours Sincerely


Dr. Syed Nazir Gilani
Secretary General – JKCHR &
World Society of Victimology Representative to the UN
Advocate of Supreme Court

Cc
Kuala Lumpur Office [By Fax]

Greg Wayne

Room 3060

Ph. 41 22 917 9130
41 22 917 9006

re 15/3/07