Justice Iftikhar Muhammad Chaudhry, the twentieth Chief Justice of Pakistan was suspended by President General Musharaff in March last year leading to a worldwide uproar against this act. However, by a landmark order handed down by the Supreme Court of Pakistan, Justice Chaudhry was reinstated. We at the CJEI were delighted and hoped that this would put an end to the ugly confrontation between the judiciary and the executive. However our happiness was short lived.

On November 3, 2007, President General Musharaff suspended the constitution and declared a state of emergency. Soon the Pakistan army entered the Supreme Court premises removing Justice Chaudhry and other judges. The Constitution was also suspended and was replaced with a “Provisional Constitutional Order” enabling the Executive to sack Chief Justice Chaudhry, and other judges who refused to swear allegiance to this extra-constitutional order. Ever since then, the judiciary in Pakistan has been plunged into turmoil and Justice Chaudhry along with dozens of other justices has been held incommunicado in their homes.

Any onslaught on judicial independence is a matter of grave concern to all more so to the legal and judicial fraternity in countries that are wedded to the rule of law. In the absence of an independent judiciary, human rights and constitutional guarantees become meaningless; the situation capable of jeopardising even the long term developmental goals of a country. As observed by Viscount Bryce, “If the lamp of justice goes out in darkness, how great is the darkness.” This is really true of Pakistan which is presently going through testing times. The CJEI in unequivocal terms condemns the overarching executive interference in judicial affairs and fervently hopes that the lamp of justice would be allowed to shine and that the majesty of rule of law and judicial independence would be respected. Without an independent judiciary, Pakistan’s journey back to a democratic polity could prove virtually impossible.

This is a special issue dedicated to the judicial heroes of Pakistan who stood against the abrasive and un-ceremonial manner in which Rule of law was buried and Constitutionalism seriously shaken.

The Right Honourable Sir Dennis Byron
President, CJEI
The Judicial Heroes of Pakistan

The Commonwealth Judicial Education Institute honours the following Justices for their valour in upholding the principles of Rule of Law and Judicial Independence despite their personal hardships.

Supreme Court of Pakistan:
1. Chief Justice Iftikhar Muhammad Chaudhry
2. Justice Rana Bhagwan Das
3. Justice Javed Iqbal
4. Justice Khalil-ur-Rehman Ramday
5. Justice Falak Sher
6. Justice Sardar Muhammad Raza
7. Justice Tassaduq Hussain Jillani
8. Justice Ghulam Rabbani
9. Justice Shakir Ullah Jan
10. Justice Raja Muhammad Fayyaz
11. Justice Syed Jamshed Ali
12. Justice Nasir-ul-Mulk
13. Justice Ch. Ijaz Ahmed

Sindh High Court:
1. Chief Justice Sabih Uddin Ahmed
2. Justice Rehmat Hussain Jafferi
3. Justice Khilji Arif Hussain
4. Justice Amir Hani Muslim
5. Justice Gulzar Ahmed
6. Justice Maqbool Baqar
7. Justice Muhammad Athar Saeed
8. Justice Faisal Arab
10. Justice Zafar Khan Sherwani
11. Justice Salman Ansari
12. Justice Abdul Rasheed Kalhwar
13. Justice Arshad Siraj
14. Justice Mushir Alam

Lahore High Court:
1. Justice Khawaja Muhammad Sharif
2. Justice Mian Saqib Nisar
3. Justice Asif Saeed Khan Khosa
4. Justice Muhammad Sair Ali
5. Justice Ijaz Ahmed Chaudhry
6. Justice M. A. Shahid Siddiqui
7. Justice Muhammad Jahangir Arshad
8. Justice Iqbal Hameed-ur-Rehman
9. Justice Muhammad Ata Bandial
10. Justice Sheikh Azmat Saeed

Peshawar High Court:
1. Chief Justice Tariq Pervez Khan
2. Justice Ejaz Afzal Khan
3. Justice Shah Azam Khan
4. Justice Dost Muhammad Khan
A BRIEF ACCOUNT ON THE ILL FATED DAY WHEN THE INDEPENDENCE OF THE PAKISTAN JUDICIARY WAS SLAUGHTERED: A REPORT FROM PAKISTAN

(We carry excerpts from a Report provided to us by one of the members of the embattled judiciary. The name of the contributor is being withheld.)

**Treatment of Judges**

1. Guards were taken away the same night when the emergency was declared. (Saturday 3rd November) and Provisional Constitutional Order (PCO) was imposed on the judiciary and the Press.

2. On Sunday, a PCO Judge went to court and ordered the Protocol officer to have all the judges who did not take the oath to immediately remove their belongings from their chambers. At the same time, orders had also been passed that their official cars will not be allowed into the High Court premises. Their belongings were dumped into sheets and were taken to their houses.

3. The night when the Martial Law Order was imposed, nearly twenty judges went to meet Chief Justice Sabihuddin Ahmed at his residence. All the judges were very vocal in their support for the unity of the judges and assured the Chief Justice that they will not take oath under the PCO.

4. While the Chief Justice was in meeting with the judges, the Governor of Sindh telephoned the Chief Justice and advised that the meeting be disbanded immediately. The Chief Justice responded that he is under constitutional duty to advise judges to follow the Order of the Honourable Supreme Court, and refused to be bogged down by the threat.

5. Immediately thereafter, armed personal surrounded the house of Chief Justice and dismantled the security tent and forced the drivers of the Honourable Judges to report immediately to the headquarters. They roughed up the judges and drove them out of the house of Chief Justice and put him under house arrest.

6. Chief Justice is under house arrest; no formal orders of house arrest have been passed.

7. All judges, who did not take oath under PCO (in fact it is Martial Law Order), assembled and proceeded to High Court at 8.30 AM, to attend their court work but were stopped at the entrance gate by the armed personals and were forced to return.
8. The judges are being threatened that if they do not take the oath they will lose their pension and privileges and will not be allowed to practice in the High Court.

9. On 5th November 2007, the Honourable Chief Justice was brought to the House of Justice Mushir Alam in police custody to attend the funeral of his sister-in-law, but he was prevented from going to the graveyard.

10. A two pronged approach of inducements and threats are being used. They are being told that they should take the oath in the larger interests of the judiciary.

11. Chief Justice Sabihuddin, Justice Zaheer Jamnali and Justice Fakhruddin Ebrahim’s sons were arrested. However, they have been released.

12. Some judges have received calls from Brigadiers telling them to take the oath . . .

The International Commission of Jurists in its submission to the Human Rights Council’s Universal Periodic Review of Pakistan (February, 2008), raised among other issues, the recent attacks by the Government on the rule of law, the independence of the judiciary, and the legal profession. Below, we reproduce excerpts from this Report:

Systematic attacks on the rule of law and independence of judiciary

The ICJ is gravely concerned by the Pakistani military and civilian authorities’ attacks on the rule of law and judicial independence since March 2007.

. . . All of these actions have done grave damage to constitutional order in Pakistan. They have weakened the courts’ ability to guarantee basic human rights to the people of Pakistan. Lawyers and judges risk administrative or criminal sanctions if they investigate enforced disappearances or other human rights violations and acts of official corruption. The result has been increasing impunity for authorities that engage in human rights violations, and a furthered climate of lawlessness. The chaos in the courts and the use of the police as agents of repression rather than law enforcement has reduced the ability of the justice system to address even ordinary criminal offences. Pakistanis have increasingly become victims of street crime. . . .

Relationship between attacks on the rule of law, judicial independence and terrorism

The weakening of the justice system not only allows government officials to commit human rights violations with impunity but also creates more room for the operations of terrorists.
The general breakdown in operations of the law enforcement system means that terrorist attacks are less likely to be investigated and prosecuted. The expanded use of special Anti-Terrorism Courts and military courts has created a dangerous parallel system of justice that weakens the rule of law. These courts magnify the problems with professionalism and transparency found throughout the Pakistani justice system, and impede the efforts of Pakistani rights advocates and persons accused of terrorism to challenge the use of improper procedures, illegal methods of interrogation, and flawed evidence. Their increasing use in non-terrorism-related cases such as those concerning peaceful opposition to the Government, stifles democratic debate and undermine the rule of law, law-enforcement efforts and the legitimacy of Pakistan’s fight against terrorism. The same is true regarding the use of laws, such as the Army Act and the Anti-National Activities Act, whose original purpose to combat terrorism has been changed through the addition of vague wording prohibiting activities such as “making statements conducive to public mischief.” This in turn impedes the authorities from using these laws and legal institutions for the purpose for which they were originally constituted, namely combating terrorism.

Conclusions

The ICJ therefore calls on the Human Rights Council to:

...  
• Repeal the amendments to the Constitution and laws passed during State of, including post-Emergency laws reaffirming or continuing emergency measures;  
• Release all judges and lawyers remaining in detention, reinstate the justices and judges dismissed during the State of Emergency, and restore the licenses of all lawyers suspended or disbarred during the State of Emergency;  
• Restore all rights under the Constitution, withdraw charges arising from peaceful protest and lift restrictions on the media; ...  

Announcing the Fifteenth Annual Intensive Study Programme for Judicial Educators (June 8 – June 28, 2008)

This flagship event of the CJEI seeks to prepare judicial educators to design and deliver judicial education programmes that respond to the reform needs of their jurisdictions and to establish a network of Commonwealth Judicial Educators.

For further details contact us at: E-mail: cjei@dal.ca, Tel: +1 902 494 1002 or Fax: +1 902 494 1031.
Reasons why the deposed Justices should be restored to their judicial positions

1. In a democracy, the judiciary has the responsibility to ensure that constitutional, civil and human rights are respected. This requires the judiciary to be independent from Executive and other interference. A strong and independent judiciary is essential to protect the citizens of Pakistan from intrusion into their constitutional civil and human rights by the Executive and the rich and powerful.

2. Democracy cannot function without an independent judiciary. Democracy has never had the time span to spread its roots in Pakistan. At regular intervals in its history, Pakistan has slipped into dictatorial forms of government. A strong and independent judiciary is essential for Pakistan to achieve true democracy.

3. The Justices deposed in Pakistan have earned domestic and international respect and admiration for their judicial valour at great personal expense to maintain the Rule of Law. As a result of their sacrifice, they have been without salaries and benefits placing them under intense financial pressure. For these respected and admired judges to be placed in such circumstances as a result of properly carrying out the power entrusted to them will undermine the judicial independence for other judges who will be concerned about the consequences of emulating their highly professional behaviour. For the future of Pakistan it is essential these judges of strength and integrity be and be seen to be restored to their rightful office.

4. Economic development requires an independent judiciary administering the law even-handedly and a well-functioning justice system to attract local and foreign investors. Social development requires economic development to fund it.

5. The application of the law in such a way that shows that no person - no matter how powerful he or she may be - is above the law is an essential characteristic of a well-functioning democracy. Such even-handed justice that attracts the trust and confidence of the public is essential for civil harmony.

6. The deposed judges steadfastly protected constitutional rights; they are an asset to the judiciary and have won the trust and confidence of the people. Restoring them to their office to administer justice will increase the confidence of the people of Pakistan in democratic institutions.

7. Behind every judge is a huge investment both in time and money to the state. It is the expectation that judges will serve the nation for a fixed tenure. By prematurely terminating these very competent judges who are familiar with the jurisdiction and jurisprudence at the higher level, it is the nation and people of Pakistan that stand to suffer. Resources should be utilized in the best possible manner and not laid to waste.

Sandra E. Oxner, Chairperson, CJEI
Dear Chief Justice,

I am writing to inform you of the efforts the CJEI is making to assist your colleague Patron Chief Justice Chaudhry of Pakistan and the members of his judiciary who have sought to protect the independence of the judiciary by refusing to take a new oath to the emergency regime.

We have petitioned CHOGM through various means to seek their support for the immediate restoration of the constitutional judiciary of Pakistan – those judges who refused the new oath.

We have asked CHOGM to press for the immediate restitution of salary and benefits to these judges who have been cut off financially without even pensions after years of service. If the Government of Pakistan gets away with this, it will greatly strengthen the power of the Executive to control the judiciary. This will lessen the likelihood of future judges emulating the courage of the judges who stood up against their unconstitutional dismissal and further deprive the people of Pakistan of an independent judiciary.

Justice John Tsekoooko of the Supreme Court of Uganda will represent the CJEI at CHOGM in Kampala to put forward the need for this support by CHOGM at every opportunity.

We have been emailing and telephoning our Pakistan Fellows to let them know we are working on their behalf and to try to keep their spirits up during this difficult time for them.

Should you wish to do so, we would be very pleased if you would communicate our concerns and efforts to your delegation at CHOGM.

We believe we have found an informal path to get messages of CJEI support to Chief Justice Chaudhry. Should you wish to send him messages and have no other means, we would be pleased to send them on although we cannot guarantee their transmission.

After CHOGM, we will avail ourselves of other appropriate opportunities to support our Pakistan colleagues in distress. Should you have any suggestions or comments, we would be pleased to receive them.

Sincerely,

Sandra E. Oxner
EXCERPTS FROM MESSAGES OF SUPPORT FROM
ACROSS THE COMMONWEALTH

**Honourable Anthony Smellie, Chief Justice, The Cayman Islands**
“Committed as all judges must be to democratic governance and the rule of law, the judiciary of the Cayman Islands too are obliged to register our condemnation of the unconstitutional actions of the Executive of Pakistan. This initiative of the CJEI has our full support therefore and we ask that you convey, if you might, word of our support to our Fellows in Pakistan.”

**Honourable Jacobus P Annandale, Chief Justice, High Court of Swaziland**
“It is with extreme sadness that I have come to know about the atrocious events in Pakistan, which so recently culminated in the extraordinary purported dismissal of the incumbent Judiciary. At least there is a press which has kept the world abreast of this unthinkable atrocity. I can only speak for myself and every other right thinking judge, jurist and human being when the strongest condemnation is expressed against this abuse of executive power with total disregard of the inevitable consequences that surely are to follow. Abuses of this magnitude bode ill for not only a constitutional abrogation of the rule of law and a severe attack on human rights, but it surely can only lead to anarchy and lawlessness of the highest magnitude if left unchallenged. It is for us, as members of equally fragile judicial institutions, to raise our joint and unanimous voices as a chorus to demonstrate against this despicable attempt to shut down the judicial voice of fairness, reason and a balanced check on freedom and liberty. The recent antecedents in Pakistan point an ominous finger against the core values which are to be jealously protected by a judiciary which is free, impartial, secure and objective. This was not shown to have been eschewed by the Pakistani Judiciary. I render my personal full hearted support to my colleagues in Pakistan . . . If we as Commonwealth Judiciaries leave this unchallenged, it may well be that we follow them next time around . . .”

**Honourable Sir Brian Alleyne, Chief Justice (Ag.), Eastern Caribbean Supreme Court**
“I am gratified to note that CJEI is taking a firm position in support of the constitutional judiciary in Pakistan. The judiciary of the Eastern Caribbean Supreme Court is scandalized by the concept that the Head of State of a supposedly democratic Commonwealth country can arbitrarily dismiss a judicial officer, not to say a substantial portion of the judiciary, on the basis, apparently, that the judiciary does not conform to the wishes of the executive. We are of the view that such an action is a wholly unacceptable attack on the fundamental democratic principles of the Rule of Law, the Separation of Powers and the Independence of the Judiciary, and is not acceptable. Please be assured of our full support and communicate our sentiments to Chief Justice Chaudhry and the members of his judiciary, with whom our judiciary stands in full solidarity . . .”
Honourable Peter S Shivute, Chief Justice of Namibia
“CJEI’s initiative enjoys my full support.”

Honourable A. O. Conteh, Chief Justice of Belize
“. . . [W]ithout wishing to interfere in member states internal affairs, the assault on the independence of the Judiciary by the government of Pakistan at this critical juncture is of such magnitude that I believe it would be in place for Chief Justices of Commonwealth to come out with a declaration of support and a reaffirming of the Latimer House Principles on the independence of the Judiciary. For far too long, we have been quintessential in the face of blatant attacks on the Judiciary. This, the Pakistan case, is one that we should collectively take a stand on, and publicly, if needs be.”

Honourable M.L. Lehohla, Chief Justice of Lesotho
“At this stage I can only say your efforts have won my full support.”

Honourable Vincent De Gaetano, Chief Justice of Malta
“I agree with the contents of the email, and I support the initiative of the CJEI.”

Honourable Lord Phillips of Worth Matravers, Lord Chief Justice of England & Wales
“. . . I of course share the concern about events in Pakistan and am grateful for your offer of a communications link . . .”

The Right Honourable Lord Hamilton, Lord Chief Justice General of Scotland and Lord President of the Court of Session on behalf of the Judges of the Supreme Courts of Scotland
“We have grave concerns regarding recent events in Pakistan - in particular the action that has been taken against the Judiciary by the Executive there. We are aware that the effect of the oaths they took when they became judges was that they undertook to discharge their functions for the maintenance of the Rule of Law over the whole range of human activities within the nation and in furtherance of the objective of affording access to justice for all. A number of them are now being prevented from doing so through direct Executive action to remove them. Further, that action has been taken without regard to the Rule of Law and without regard to the provisions of Article 209 of the Constitution of Pakistan, and in particular Article 209((7) thereof. For that reason alone, we welcome all efforts that are being made to support those who have stood up for the Independence of the judiciary and are now suffering penalties as a result.”

Honourable Mr. Justice Murray Gleeson Chief Justice, High Court of Australia
“Thank you for keeping me informed of the important work of the CJEI in support of Chief Justice Chaudhry and his judicial colleagues. Your observations on the importance of judicial independence are pointed and timely.”
Honourable Mr. Justice Richard Ground, Chief Justice of Bermuda

In expressing solidarity, the Honourable Chief Justice sends us his speech delivered at a meeting organized in Bermuda to protest against the happenings in Pakistan, the text of which is reproduced below:

"It is very appropriate that this ceremony here today involves the Bar of Bermuda and the Judiciary coming together to express their outrage at the indignities inflicted on their colleagues in Pakistan, and to affirm their belief in the fundamental importance of the independence of both the Legal Profession and the Judiciary. There is a vital symbiosis here – the existence of a free and fair judiciary is of little use without an independent Bar ready, willing and able to represent those who seek to enforce their Constitutional rights. I firmly believe that the independence of the Judiciary and of the legal profession are pre-requisites not just of a free and fair society, but also of a prosperous one. We are privileged here in Bermuda to enjoy both.

The standard for the Commonwealth is set out in a document known as the Latimer House Guidelines, originally formulated at a colloquium in 1998, they were adopted by CHOGM – the Commonwealth Heads of Government - in Abuja in 2003. This document establishes the Commonwealth’s core values on judicial independence. I think it important to remind ourselves what the Guidelines say –

“The Three Branches of Government
Each Commonwealth country’s Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability.

Independence of the Judiciary
An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice. The function of the judiciary is to interpret and apply national constitutions and legislation, consistent with international human rights conventions and international law, to the extent permitted by the domestic law of each Commonwealth country.”

It then sets out various measures necessary to secure impartiality, and concludes: “Judges should be subject to suspension or removal only for reasons of incapacity or misbehaviour that clearly renders them unfit to discharge their duties.”

I have read that at length because it is the key Commonwealth document on this subject, to which all members of the Commonwealth subscribed. President Musharraf himself would have endorsed them at the CHOGM meeting in Abuja in 2003.
As to the present situation there is little that one can add to the words of the President of the Law Society of England and Wales, who said:

Events in Pakistan must be of concern to everyone who supports the rule of law, and they underline once again that the rule of law is nothing without lawyers. I can think of no starker demonstration of this commitment to the law than the extraordinary courage, fortitude and bravery of the lawyers we see in Pakistan. They have rightly demonstrated against the government measures. The suspension of the Constitution, the denial of fundamental rights and repeated attacks on the judiciary removes any semblance of a just and civilized society.

Throughout this crisis, the CJEI made consistent efforts to be in contact and to extend all possible support and help to the judicial officers of Pakistan. We were deeply concerned about their safety and that of their loved ones. We carry excerpts from emails send to us from some of the judicial officers narrating their harrowing experiences in the quest to uphold the divinity of their office. The names of the contributors are being withheld.
“...[J]udiciary is facing tough times again, Martial Law has been imposed, very able judges have been laid off, Judges of apex court are in house arrest, their telephone have been disconnected. Less said better it is for my security as well. I have refused to accede to all pressures. My driver was called very next day, now I am sitting home and serving my family and they are happy over my decision. But I do not know what to do next, since I had already put in 8 years of service and was a confirmed judge. I cannot practice as well. I have great faith and trust in Allah, it is man who proposes and God disposes. I have left it to Allah almighty and hope for the good... CJEI should be proud of another of its fellow Mr. Justice Ghulam Rabbani, whose confirmation in Supreme Court was due in December 2007, took bold decision to abide by the Constitution and resisted the worldly temptation of confirmation. He was one of the seven member bench, that suspended the imposition of Martial law few minutes after it was imposed, but unfortunately, all the seven members were swiftly put in detention and few picked up judges few days later set aside the order of suspension. Just Pray that all goes well and Pakistan is saved. Amin.”

“Through a Presidential Order all the affected Judges have been extended pension and other benefits normally given to a Judge on his retirement and in normal course it should take months before the affected Judges receive any amount on that score. There is, however, a catch and that is that if the affected Judges accept the retirement benefits then they accept their retirement as valid which they are not ready to concede at this stage.

The net result is that no money is available for them on that count for the moment. There is another difficulty and that is that the lawyers consider the affected Judges as serving Judges and if the Judges accept retirement benefits or start their legal practice then that may amount to betrayal of the lawyers’ struggle for the affected Judges. There is, thus, no reprieve for the affected Judges and they are at the brink of starvation, all in the name of and for the sake of independence of the Judiciary! We in Pakistan are writing a new chapter in the struggle for independence of the judiciary.

Let the whole world know that an independent judiciary can also end up being a starving judiciary. However, you will be happy to know that despite all odds we are still steadfast and our commitment remains unshaken.”

“Let the whole world know that an independent judiciary can also end up being a starving judiciary.”... CJEI Salutes the Judicial Heroes of Pakistan

The battle to uphold Rule of Law is far from over...