Statement of Condemnation and Call for Legal Action to Preserve the Independence of Judiciary

We the undersigned, all members of the legal fraternity who have devoted their lives to the legal profession, are moved to issue the following statement to express our unwavering commitment and whole hearted support to the principles of rule of law, independence of judiciary and access to justice, in view of the deeply troubling events narrated in the unprecedented letter dated March 25, 2024 ("**IHC Letter**") written by six Judges of the Islamabad High Court, whose words must be accorded the highest sanctity and respect.

We endorse the resolutions passed by the Islamabad High Court Bar Association, the Islamabad Bar Association, the Sindh High Court Bar Association, the Pakistan Bar Council, the Khyber Pakhtunkhwa Bar Council and the Balochistan Bar Council to the extent that they resolve to uphold the principle of independence of judiciary, express solidarity with the six Judges of the Islamabad High Court, commend their courageous action and demand appropriate action to uphold such principles.

We unequivocally condemn the events narrated in paragraph 6 of the IHC Letter and express our deep concern with respect thereto. Considering that this narration has been endorsed by six Judges of a Constitutional Court the same cannot be disregarded. The said narration clearly discloses criminal intimidation, torture, and illegal surveillance of the Judges and their family members by operatives of intelligence agencies who report to the executive.

It is also worth remembering that this is not the first instance allegations of such nature have been raised as it is all too fresh in our memory that Justice (r) Shaukat Aziz Siddiqui of the Islamabad High Court raised similar allegations and was consequently, unceremoniously removed from office, without following due process. The allegations leveled by the aforesaid are also yet to be proven or disproven through an impartial inquiry into the matter as requested by him.

While the principle of independence of judiciary has long been recognized as a salient and fundamental feature of our constitution, the words of a 10 member bench of the Honorable Supreme Court in the case of ***Justice Qazi Faez Isa and others vs. President of Pakistan and others*** **[PLD 2022 SC 119]** are worth reiterating wherein it was held that *"…the rule of law and the independence of judiciary are conceptually interwoven: without an independent judiciary, expecting the rule of law is a sheer farce. And the rule of law and the independence of the judiciary are the only guarantee to the maintenance and preservation of a thriving democracy…*"

Only recently, it was opined by the Supreme Court in Reference No. 1 of 2011 as follows:

> "*There have been some cases in our judicial history that created a public perception that either fear or favour deterred the performance of our duty to administer justice in accordance with the law. We must, therefore, be willing to confront our past missteps and fallibilities with humility, in the spirit of self-accountability, and as a testament to our commitment to ensure that justice shall be served with unwavering integrity and fidelity to the law. We cannot correct ourselves and progress in the right direction until we acknowledge our past mistakes.*"

The Opinion in the accountability reference is not merely a vindication of Mr. Zulfiqar Bhutto but also an indictment of the historic role played by the judiciary in Pakistan and it is commendable to the extent of the sober acknowledgement therein that public perception of judicial independence has been prejudiced. Similarly, the judgment in the case of ***Shaukat Aziz Siddiqui vs. Federation of Pakistan*** **[C.P. No. 76 of 2018]**, vindicates the former Judge to the extent of his removal. However, neither decision is able to provide justice to the victims. Indeed, acknowledgement of past mistakes is a laudable first step, however it is now high time to move from acknowledgments to concrete measures for course correction in real time. A failure to act urgently and transparently in the matter may irreparably prejudice the public confidence in the independence of judiciary which is the very fabric which holds the entire constitutional structure together.

When judges, the last guardians standing between state excesses and the fundamental rights of citizens, are systematically coerced and intimidated, the entire system of justice becomes a sham and loses its credibility. Lawyers seeking justice for litigants before the courts do so with the expectation that they will be heard by neutral, impartial and unbiased arbiters seeking to dispense justice. If Judges are not free to dispense justice without fear, then the entire legal system, including lawyers, cease to hold any value.

In view of the foregoing, we call upon the Pakistan Bar Council as well as all Bar Associations to call a convention of lawyers across Pakistan on an urgent basis to decide on a collective course of action to strengthen the independence of judiciary.

We further call upon the Supreme Court of Pakistan to take cognizance of the matter in its jurisdiction under Article 184(3) of the Constitution as this issue eminently relates to public interest and to the enforcement of fundamental rights. We emphasize that this matter should be dealt with transparently and in the public eye as it is the public confidence in the independence of judiciary which needs to be restored. In the interests of transparency and to ensure that the matter may not be politicized, we call upon the Supreme Court of Pakistan to constitute a bench comprising of all available judges to hear the matter and for the proceedings to be telecast live for public consumption. It is further imperative that such proceedings are not limited in scope and inquire into the veracity of the allegations leveled in the IHC Letter, as well as the allegations leveled by Justice (r) Shaukat Aziz Siddiqui, that such proceedings affix responsibility for any breach by the executive officials (if proven) and hold those responsible to account to secure the independence of the judiciary and to restore public confidence in the institution of judiciary.

We further note that from the press release issued by the Supreme Court of Pakistan, the majority of the Full Court has only developed consensus that the Chief Justice of Pakistan may hold a meeting with the Prime Minister of Pakistan and does not state that any such consensus has been developed on constituting an Inquiry Commission under the Pakistan Commissions of Inquiry Act, 2017 ("**Act**"). We express our deep dissatisfaction and dismay with this course of action which in itself is the very antithesis of the principle of independence of judiciary.

Firstly, there is a glaringly obvious conflict of interest considering that it is the executive arm of the state itself which has been accused through the IHC Letter while the proposed Inquiry Commission will be appointed by the Federal Government itself in terms of Section 3 of the Act. Such course evidently detracts from well-established judicial principles requiring proceedings to be held before an impartial, unbiased and independent forum.

Secondly, the Inquiry Commission is required to hold the inquiry and perform its functions in accordance with the Terms of Reference to be notified by the Federal Government itself. Moreover, the time frame within which such inquiry is to be concluded and whether or not the report of such an Inquiry Commission will be permitted to be made public is also within the control of the Federal Government. In view of such powers conferred upon the Federal Government, the Inquiry Commission, would be bereft of necessary independence and powers to conduct a transparent, impartial and meaningful inquiry to restore the public confidence in the independence of judiciary.

Accordingly, any inquiry into the matter undertaken under the purview of the Federal Government violates the very principles that the inquiry seeks to protect and uphold. We note that any such Inquiry Commission and its proceedings would be entirely wanting in credibility.

We further request that the Supreme Judicial Council in accordance with Article 209(8) of the Constitution should lay down guidelines and the Supreme Court of Pakistan in coordination with all respective High Courts should set up transparent institutional mechanisms so that any attempt at undermining the independence of judiciary may be reported and dealt with effectively and transparently, so that no one may cast any aspersions on the independence of the Judiciary in the future.

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