

For: Melanne

from: HRC

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note is from  
Benazir Bhutto

Ak: Benazir  
Blutto

Dear Esther,

7 Feb. 2000

It was lovely  
meeting with you at Ray's.

I am sending a  
paper and it would be a great  
favour if you could have someone  
at the First Lady's office read the  
first few pages and brief her. She's  
a lawyer and a friend. I just  
want her to be sure that  
the charges against me are  
politically motivated.

Thankyou. Take care and  
look forward to meeting you again. Benazir

**A**

**GRAVE**

**INJUSTICE**

**LEGAL OPINIONS OF  
INDEPENDENT FOREIGN JURISTS ON  
THE BHUTTO-ZARDARI TRIAL  
1999-2000**



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## CHAPTER I

### INTRODUCTION

For over three years Ms. Benazir Bhutto, Leader of the Opposition in Pakistan, has been targeted by her political opponents for alleged corruption. The press has widely covered a guilty verdict. What has not been reported is that the courts that tried her were established by the now discredited Nawaz Sharif regime, and that the trials were predetermined, biased and unfair from the outset. In short, justice was not done, and the charges and conviction were handed down by a regime which itself was overthrown for manipulation of the judiciary.

Three eminent legal experts from the United Kingdom and the United States have reviewed the cases, trials and proceedings of the Bhutto trials, with each concluding, independently, that the trials were unfair, biased and predetermined:

#### **MAJOR CONCLUSIONS OF INDEPENDENT LEGAL ANALYSIS**

- Trial was unfair and Court was biased.
- Defence was hindered and Defence witnesses not allowed to testify.
- Copies of evidence invalid.
- Justice was obstructed.
- Law under which she was tried didn't have jurisdiction.

The Justices reached the conclusion that both Ms. Bhutto and her husband's trial would have been regarded as unfair when judged against the principles which govern fair trials in the U.S and that no U.S. Court would accept the judgement as valid for any purpose.

The Justices, amongst other things, opined that:

- 1) That Ms. Bhutto was denied any opportunity to present a meaningful defence to the charges.
- 2) An American Court would not recognise the conviction as valid in the United States.
- 3) Ms. Bhutto was denied the most rudimentary of due process of protections: a trial before an impartial tribunal, the effective assistance of counsel and the right to present a defence.
- 4) With regard to the senior presiding judge, the appearance of partiality is conclusively established and the evidence (on record) indeed may well be sufficient to establish the existence of actual bias.
- 5) The conferral upon Judge Quayum of diplomatic passports for himself and his wife, an act, which appears to be unprecedented, following shortly after his issuance of a ruling against Ms. Bhutto, is tantamount to a reward for a judicial ruling.

- 6) Ms. Bhutto's trial appears to epitomise the judiciary's abandonment of its independence - without which the impartial meting out of Justice is impossibility.
- 7) In a case in which the prosecution presented 14 witnesses and in excess of 2000 pages of documentary evidence no trial lawyer could possibly have been prepared properly to try a case of such magnitude on one days notice.
- 8) Because the constraints placed on Ms. Bhutto and her counsel by the Pakistani authorities were such that no lawyer could have provided timely effective assistance Ms. Bhutto was denied her right to counsel.
- 9) The Court denied Ms. Bhutto any opportunity to present witnesses in her own behalf including even her own testimony.
- 10) The Court declined to hear the testimony of Mr. Salvatore Arosano, a Swiss lawyer who would have testified to his expert opinion on the admissibility of critical foreign documentary evidence despite his presence in court and an application to call him as a witness.
- 11) The circumstances (on record) establish a complete denial of the fundamental right to present a defence, a denial that seems to have been particularly pernicious because so much of the prosecutions case was based upon non-original documents the authenticity of which was never established.
- 12). No United States Court would countenance a criminal conviction following a trial in which only the prosecution was permitted to call witnesses despite the accused's proper and timely requests to present the testimony of witness in his defence. Such a trial is anathema to the most fundamental commands of due process.
- 13) Ms. Bhutto's conviction was not obtained following a fair trial before an impartial tribunal and her conviction is thus utterly inconsistent with the most minimal of due process guarantees.
- 14) When measured against only the most basic and rudimentary due process guarantees the proceedings are found to be seriously deficient.
- 15). In our opinion no United States Court would accept the judgement against Ms. Bhutto for any purpose.
- 16) (As in this case) no verdict obtained following trial before a tribunal so redolent of bias against the accused and in which the accused was so blatantly denied the opportunity for meaningful assistance of counsel and the right to present a defence should be accorded respect in any jurisdiction that adheres to the rule of law.

The opinions, which support Ms. Bhutto's contention, that justice has been denied to her are from:

1. DAVID W. HARWELL, Chief Justice, ret, South Carolina Supreme Court "Ms. Bhutto was denied the most rudimentary of due process protections: a trial before an impartial judge, the effective assistance of counsel, and the right to present a defence."
2. BURLEY B. MITCHELL, JR., Immediate Past Chief Justice, North Carolina "Ms. Bhutto's conviction was not obtained following a fair trial before an impartial tribunal, and her conviction is thus utterly inconsistent with the most minimal of due process guarantees."

3. THE RIGHT HONOURABLE JOHN C. MORRIS QC, Former Attorney General, United Kingdom "looking at the case as a whole there are grounds for grave misgivings as to the fairness of the trial. . . . it is plain that she [Bhutto] was not given the opportunity to put her case properly."

Additionally, an independent Swiss investigation team that visited Pakistan prepared a report, which is also included.



## CHAPTER II

**AMERICAN JURISTS OPINION ON BHUTTO CASE**

(Opinion by Chief Justice: David Harwell and Chief Justice Burley B. Mitchell of America)

**INTRODUCTION**

We have been requested to undertake a review of the proceedings before the Ehtesab Bench Lahore High Court, State vs. Mohtrama Benazir Bhutto, et al., in Ehtesab Reference No. 30/1998. To facilitate our review, we have been provided with copies of the Submissions on Behalf of Mohtrama Benazir Bhutto, prepared by Farooq H. Naek for the Supreme Court of Pakistan, the opinion of Sir John Morris QC (dated September 9, 1999), excerpts of the trial record, and the court's judgements.

Out of deference to the sovereignty of the Pakistani legal system, we will not opine on the ultimate validity of the charges brought against Ms. Bhutto. Indeed, the preparation of such an opinion by any disinterested jurist would be impossible, if only because Ms. Bhutto was denied any opportunity to present a meaningful defence to the charges. Without all of the pertinent evidence having been made part of the trial record, the ultimate merit of the prosecution's case must await a fair determination before an impartial tribunal.

The framework for our opinion derives from an established body of United States precedent governing the admissibility of foreign convictions in the United States federal courts. This body of precedent strikes a balance between respect for the sovereignty of foreign judgements and fundamental due process guarantees by permitting the introduction into evidence in United States trials of convictions obtained in a foreign country "provided that the procedural protections necessary for fundamental fairness are observed by the foreign jurisdiction." *United States v. Rodarte*, 596 F.2d 141, 146 (5th Cir. 1979) (citation omitted); accord, e.g., *United States v. Kole*, 164 F.3d 164, 174 (3d Cir. 1998), cert. denied, --- U.S. ---, 119 S. Ct. 1484 (1999); *United States v. Manafzadeh*, 592 F.2d 81, 90-91 (2d Cir. 1979); *United States v. Wilson*, 556 F.2d 1177, 1178 (4th Cir.), cert. denied, 434 U.S. 986 (1977). A conviction obtained in another country that fails to accord fundamental due process in criminal proceedings will not be accepted as valid by a United States court. E.g., *United States v. Rovetuso*, 768 F.2d 809, 816-17 (7th Cir. 1985), cert. denied, 474 U.S. 1076 (1986).

Sensitive to the prerogative of a sovereign state to select the modes of procedure for its criminal tribunals, the United States courts evaluate a foreign conviction "not by its conformity with every ingredient of what in American terms is fundamental criminal procedure, but ... by its conformity with those particular norms of American criminal procedures, jurisprudence constitutionalized, that are the particular



domain of absolute rock bottom fundamental fairness.” *United States v. Moskovits*, 784 F. Supp. 183, 190 (E.D.Pa. 1991). Those “rock bottom” guarantees are historically ingrained in American constitutional jurisprudence as fair notice and a fair opportunity to be heard before judgement is pronounced. *Frank v. Mangum*, 237 U.S. 309, 326 (1915). “A person’s right to reasonable notice of a charge against him, and an opportunity to be heard in his defence — a right to his day in court — are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel.” *In re Oliver*, 333 U.S. 257, 273 (1948) (emphasis supplied). The failure to accord a fair hearing to the accused “violates even the minimal standards of due process.” *Groppi v. Wisconsin*, 400 U.S. 505, 509 (1971).

When Ms. Bhutto’s conviction is tested against these most fundamental precepts of American due process, it will be seen that the conviction cannot pass muster, i.e., an American court would not recognise the conviction as valid in the United States. Ms. Bhutto was denied the most rudimentary of due process protections: a trial before an impartial tribunal, the effective assistance of counsel, and the right to present a defence.

#### I. THE GUARANTEE OF A FAIR AND IMPARTIAL TRIBUNAL.

“A fair trial in a fair tribunal is a basic requirement of due process.” *In re Murchison*, 349 U.S. 133, 136 (1955). The United States Supreme Court repeatedly and stringently has enforced this fundamental aspect of due process. E.g., *Weiss v. United States*, 510 U.S. 163, 178 (1994) (“[a] necessary component of a fair trial is an impartial judge”) (citations omitted). This due process right “is quite separate from the right to any particular form of proceeding,” *Peters v. Kiff*, 407 U.S. 493, 501 (1972), ensuring “an absence of actual bias in the trial cases.” *In re Murchison*, 349 U.S. at 136.

The protection against a biased tribunal lies at the very core of American constitutional law, having first been voiced in *The Federalist Papers* by James Madison:

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgement, and, not improbably, corrupt his integrity ....

*The FEDERALIST* No. 10, at 79 (James Madison) (Clinton Rossiter ed., 1961). As noted by Sir John Morris QC, the immediate past Attorney General of England and Wales, in his analysis of Ms. Bhutto’s conviction, the right to an unbiased tribunal is as deeply ingrained in Anglo-American common law. 1 William Blackstone, *Commentaries* \*91 (“it is unreasonable that any man should determine his own quarrel”).

Moreover, due process protects against the appearance of bias: “[O]ur system of law has always endeavored to prevent even the probability of unfairness ....” *In re Murchison*, 349 U.S. at 136. Where the “situation is one ‘which would offer possible temptation to the average ... judge to ... lead him not

to hold the balance nice, clear and true,” the judge may not sit even if there is no actual bias against a party. *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813, 822 (1986) (citation omitted). “[T]he appearance of even-handed justice ... is at the core of due process.” *Mayberry v. Pennsylvania*, 400 U.S. 455, 469 (1971) (Harlan, J. concurring).

“To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.” *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 428 (1995) (citation omitted). Whether the tribunal before which Ms. Bhutto was tried is seen as actually biased or exhibiting the mere appearance thereof, the conviction could never withstand scrutiny under the most rudimentary of American constitutional principles. The available record reflects the following pertinent facts:

- (1) One of the two judges who heard Ms. Bhutto’s trial, Justice Malik Muhammad Quayum, was dismissed as a judge when Ms. Bhutto was Prime Minister of Pakistan.
- (2) Judge Quayum’s father, when sitting as a judge of the Supreme Court of Pakistan, imposed a death sentence on Ms. Bhutto’s father.
- (3) Judge Quayum was issued diplomatic passports for himself and his wife by Prime Minister Sharif in April 1998, following Judge Quayum’s order freezing the assets of Ms. Bhutto and her husband. Judge Quayum is the only judge in Pakistan to have a diplomatic passport, and the Prime Minister overruled the Acting Foreign Secretary’s decision to deny Judge Quayum’s request because judges are not entitled to diplomatic passports.
- (4) In response to a statement by Ms. Bhutto expressing dissatisfaction that a judge with close links to the Sharif regime should be sitting on the tribunal hearing her case, Judge Quayum responded that, had he seen Ms. Bhutto’s statement earlier, he would have denied bail to a member of Ms. Bhutto’s party who had appeared before him.
- (4) Perhaps most disturbing is the fact that, following the transfer of Ms. Bhutto’s case from Lahore to Rawalpindi, Judge Quayum traveled to Rawalpindi personally to hear Ms. Bhutto’s case, although he is not a member of the Rawalpindi Bench of the Lahore High Court.
- (5) The second judge on the tribunal, Sayed Najam Kazmi, was unconfirmed at the time of the proceedings against Ms. Bhutto and was confirmed following the rendition of judgement against Ms. Bhutto.

The appearance of partiality is conclusively established by these facts, and the evidence indeed may well be sufficient to establish the existence of actual bias.

The conferral upon Judge Quayum of diplomatic passports for himself and his wife, an act that appears to have been unprecedented, following shortly after his issuance of a ruling against Ms. Bhutto, is tantamount to a reward for a judicial ruling. The United States Supreme Court long has condemned any practice that would give rise to a personal temptation on the part of a judge to issue a particular ruling. E.g., *Ward v. Village of Monroe*, 409 U.S. 57, 60 (1972); *Tumey v. Ohio*, 273 U.S. 510, 523-27 (1927). Certainly, it was reasonable for Ms. Bhutto to conclude that Judge Quayum received a reward from the Sharif government for his adverse ruling in her case and that Judge Quayum might well expect further



rewards for returning a final judgement of conviction. This reasonable belief could only be reinforced by the fact of Judge Quayum's dismissal as a judge during Ms. Bhutto's term in office and by Judge Quayum's father having served on the tribunal that sentenced Ms. Bhutto's father to death.

**The United States Department of State's Pakistan Country Report on Human Rights Practices for 1998 finds that the Pakistani judiciary "is subject to executive influence, and suffers from inadequate resources, inefficiency, and corruption." Ms. Bhutto's trial appears to epitomize the judiciary's abandonment of its independence — without which the impartial meting out of justice is an impossibility.**

To conclude with the words of the United States Supreme Court in the landmark Murchison decision:

A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that "Every procedure which would offer a possible temptation to the average man as a judge \* \* \* not to hold the balance nice, clear and true between the State and the accused denies the latter due process of law." Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weight the scales of justice equally between contending parties. But to perform its high function in the best way "justice must satisfy the appearance of justice.

349 U.S. at 136 (citations omitted).

## **II. THE RIGHT TO COUNSEL.**

It was in 1932, in *Powell v. Alabama*, 287 U.S. 45 (1932), that the United States Supreme Court declared that the Sixth Amendment to the Constitution of the United States, which amendment provides that in all criminal prosecutions the accused shall enjoy the right "to have the Assistance of Counsel for his defence," is an essential component of the right to be heard in criminal cases. *Id.* at 68-69 ("[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel"). The Court also recognized that providing access to counsel "at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case" would "ignore the fundamental postulate ... 'that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard.'" *Id.* at 71-72 (citation omitted).

In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Supreme Court held that counsel must be appointed in felony cases for all defendants who are unable to afford retained counsel because "lawyers in criminal courts are necessities, not luxuries." *Id.* at 344. As the Court explicated:



The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law ....

Id. The Court subsequently expanded the right to appointed counsel to individuals charged with lesser offenses, holding that, “absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.” *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972) (footnote omitted).

The Supreme Court recognized, as early as the *Powell v. Alabama* decision, that the right to counsel contemplates representation by an attorney who is able properly to prepare to represent the accused at trial. 287 U.S. at 56-57. A “necessary corollary” of the right to counsel “is that a defendant must be given a reasonable opportunity to employ and consult with counsel; otherwise, the right to be heard by counsel would be of little worth.” *Chandler v. Fretag*, 348 U.S. 3, 10 (1954). The denial of such an opportunity is a denial of the right to counsel itself. *Avery v. Alabama*, 308 U.S. 444, 446 (1940). It is a denial of the basic right to a fair trial to force an accused to trial “with such expedition as to deprive him of the effective aid and assistance of counsel.” *White v. Reagan*, 324 U.S. 760, 763-64 (1945).

These venerable principles have been affirmed time and again by the United States Supreme Court. Noting that the passage of time “has not eroded the force” of the Court’s pronouncements in *Powell v. Alabama*, the Supreme Court reaffirmed the primacy of the Sixth Amendment right to counsel in *United States v. Cronin*, 466 U.S. 648 (1984):

An accused’s right to be represented by counsel is a fundamental component of our criminal justice system. Lawyers in criminal cases “are necessities, not luxuries.” Their presence is essential because they are the means through which the other rights of the person on trial are secured. Without counsel, the right to a trial itself would be “of little avail” as this Court has recognized repeatedly. “Of all the rights that an accused person has, the right to be represented by counsel is by far the pervasive for it affects his ability to assert any other rights he may have.”

Id. at 653 & n.8 (footnotes omitted; emphasis supplied).

The Court also reaffirmed in *Cronin* that the right to counsel contemplates the effective assistance of counsel:

The special value of the right to the assistance of counsel explains why “[i]t has long been recognized that the right to counsel is the right to the effective assistance of counsel.” The text of the Sixth Amendment itself suggests as much. The Amendment requires not merely the provision of counsel to the accused, but “Assistance” which is to be “for his defence.” Thus, “the core purpose of the counsel guarantee was to assure ‘Assistance’ at trial, when the accused was confronted with both the intricacies of the law and the advocacy of the

public prosecutor.” If no actual “Assistance” “for” the accused’s “defence” is provided, then the constitutional guarantee has been violated ....

Id. at 654 (citations omitted; emphasis supplied). “Unless the accused receives the effective assistance of counsel, ‘a serious risk of injustice infects the trial itself.’” Id. at 655 (citation omitted).

The documents with which we have been provided reflect that, following the transfer of the case against Ms. Bhutto from Lahore to Rawalpindi, Ms. Bhutto was provided a mere 24 hours within which to engage counsel before the proceedings against her commenced. In a case in which the prosecution presented 14 witnesses and in excess of 2000 pages of documentary evidence, no trial lawyer could possibly have been prepared properly to try a case of such magnitude on one day’s notice. Moreover, the appeal papers before the Supreme Court of Pakistan reflect that Ms. Bhutto, her husband, and their lawyers were subjected to harassment and intimidation during the course of the trial, e.g., armed police in riot gear were deployed outside of the courtroom, Ms. Bhutto was repeatedly stopped and searched as she approached the courtroom, Ms. Bhutto was at times denied access to the trial, and entry to the courtroom was unreasonably restricted throughout the proceedings. Not even the most courageous and dedicated advocate could have provided competent representation under these grotesque circumstances. Because the constraints placed on Ms. Bhutto and her counsel by the Pakistani authorities were such that no lawyer could have provided truly effective assistance, Ms. Bhutto was denied her right to counsel. *United States v. Cronin*, 466 U.S. at 660-61.

### III. DENIAL OF AN OPPORTUNITY TO PRESENT WITNESSES.

The Sixth Amendment to the United States Constitution includes the guarantee of “compulsory process for obtaining witnesses” for the accused, by which guarantee the Framers intended to ensure that “defendants in criminal cases should be provided the means of obtaining witnesses so that their own evidence, as well as the prosecution’s might be evaluated” by the court. *Washington v. Texas*, 388 U.S. 14, 19-20 (1967). As the Supreme Court long has held, “the truth is more likely to be arrived at by hearing the testimony of all persons of competent understanding who may seem to have knowledge of the facts involved in a case.” *Rosen v. United States*, 245 U.S. 467, 471 (1918). The exclusion of relevant testimony on behalf of an accused thus violates the Sixth Amendment right to compulsory process. *Washington v. Texas*, 388 U.S. at 23.

The Supreme Court more recently has affirmed the fundamental nature of the right to present defence witnesses:

Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants “a meaningful opportunity to present a complete defence.” We break no new ground in observing that an essential component of procedural fairness is an opportunity to be heard. That opportunity would be an empty one if the State were

permitted to exclude competent, reliable evidence bearing on the [defence] .... In the absence of any valid state justification, exclusion of this kind of exculpatory evidence deprives a defendant of the basic right to have the prosecutor's case encounter and "survive the crucible of meaningful adversarial testing."

*Crane v. Kentucky*, 476 U.S. 683, 690-91 (1986) (citations omitted); accord, e.g., *United States v. Scheffer*, - U.S. ---, 118 S. Ct. 1261, 1264 (1998) (arbitrary exclusion of defence evidence violates right to present a defence).

"Few rights are more fundamental than that of an accused to present witnesses in his own defence," and "this right is an essential attribute of the adversary system itself." *Taylor v. Illinois*, 484 U.S. 400, 408 (1988) (citation omitted; emphasis supplied). As the Court elucidated in *United States v. Nixon*, 418 U.S. 683 (1974):

We have elected to employ an adversary system of criminal justice in which the parties contest all issues before a court of law. The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or the defence.

*Id.* at 709.

Because "[t]he right to compel a witness' presence in the courtroom could not protect the integrity of the adversary process if it did not embrace the right to have the witness' testimony heard by the trier of fact," *Taylor v. Illinois*, 484 U.S. at 409, the right to offer testimony is guaranteed by the Sixth Amendment:

The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defence, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defence. This right is a fundamental element of due process of law.

*Washington v. Texas*, 388 U.S. at 19 (emphasis supplied).

Ms. Bhutto's appeal papers affirmatively reflect that the court denied her any opportunity to present witnesses in her own behalf — **including even her own testimony**. The court appears to have "closed" Ms. Bhutto's defence and that of her husband after the conclusion of the prosecution's case, despite Ms. Bhutto's having listed a total of 39 witnesses to be called in her defence. Moreover, it appears that the court further declined to hear the testimony of Mr. Salvatore Aversano, a Swiss lawyer who would have testified to his expert opinion on the admissibility of critical foreign documentary evidence, despite Mr. Aversano's presence before the court and an application to call him as a witness. The court further declined



to accept Mr. Aversano's affidavit into evidence as an admissible written statement. After denying that request, the court recessed, returning later the same day to announce the conviction and sentence.

The circumstances establish a complete denial of the fundamental right to present a defence, a denial that appears to have been particularly pernicious because so much of the prosecution's case was based upon non-original documents, the authenticity of which documents was never established. No United States court would countenance a criminal conviction following a trial in which only the prosecution was permitted to call witnesses despite the accused's proper and timely request to present the testimony of witnesses in his or her defence. Such a trial is anathema to the most fundamental commands of due process.

## CONCLUSION

To return to first principles, Ms. Bhutto's conviction was not obtained following a fair trial before an impartial tribunal, and her conviction is thus utterly inconsistent with the most minimal of due process guarantees. It bears reiteration that the proceedings against Ms. Bhutto have not been evaluated or tested against the full panoply of rights guaranteed to an accused under the United States Constitution, statutory provisions, or common-law protections. Rather, consistent with the established framework for testing foreign convictions in the United States courts, the proceedings have been measured against only the most basic and rudimentary of due process guarantees. As so measured, however, the proceedings must be found seriously deficient. In our opinion, no United States court would accept the judgement against Ms. Bhutto for any purpose. No verdict obtained following a trial before a tribunal so redolent of bias against the accused and in which the accused was so blatantly denied the opportunity for meaningful assistance of counsel and the right to present a defence should be accorded respect in any jurisdiction that adheres to the rule of law.

## CHAPTER III

**LEGAL OPINION BY RIGHT HONOURABLE  
JOHN MORRIS, QC, FORMER ATTORNEY GENERAL**

1. I am instructed to advise as to whether Ms Benazir Bhutto had a fair trial in ER 30/98 "State versus Ms Benazir Bhutto and others".

I am not asked to advise, as my instructing solicitor made clear in our initial consultation, on the merits of the case itself. This is subject to appeal and would involve consideration of the law of Pakistan and its law of evidence, which would be outside my knowledge, and also a detailed analysis of the evidence which is substantially documentary.

2. By what standards is a fair trial to be judged?

The fundamental basis from my point of view must be the common law which applied both to England and also to Pakistan; both countries pre-partition had a common legal fount, and any statutory or other development since.

The need for a fair trial can be said to have been internationally codified by the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political rights, 1966, and the European Convention on Human Rights 1950.

There is a common thread between each of these international enactments although the details may have been developed in different terms, the common thread is natural justice.

The parts of each with the greatest applicability to the issues I have to consider appear to be the following -

The Universal Declaration, Article 10.

"everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal  
....."

Article 11 “no one shall be guilty of any penal offence.... which did not constitute a penal offence, under national or international law, at the time when it was committed.”

The International Covenant on Civil and Political rights 1966.

Article 14

1. “in the determination of any criminal charge against him... everyone shall be entitled to a fair and public hearing by a competent independent and impartial tribunal established by law”.

3 (b) “to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing”

d) “to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”

Article 15 repeats the substance of Article 11 of the Universal Declaration.

The European convention of Human Rights 1950.

Article 6.

1. “in the determination of any criminal charge everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.

3 .b. “to have adequate time and facilities for the preparation of his defence.

Again similar provisions as to his defence, mean and rights to examination of witnesses as in the previous enactments.

The position at common law is expressed by the learned authors of Hood Philips “Constitutional and Administrative Law” at page 670 7th Edition. (Sweet & Maxwell).

“natural justice refers principally to two fundamental principles of procedure: that whoever takes a decision should be impartial, having no personal interest in the outcome of the case (*nemo iudex in re sua*) and that a decision should not be taken until the person affected by it has had an opportunity to state his case (*audi alteram partem*).



Under the title “man may not be a judge in his own cause” a judge is only disqualified if there is a likelihood of bias or a reasonable suspicion of bias. It is not necessary to establish that a judge making a decision was in fact biased”.

Lord Hewart LCJ’s famous words in 1924 are prayed in aid, to the effect that “justice should not only be done, but should manifestly and undoubtedly be seen to be done” (The King v Sussex Justices ex p McCarthy 1KB256, 259)

On 15 Jan 1999 Lord Browne-Wilkinson delivered his opinion in the House of Lords in re Pinochet.

The fundamental principle is that a man may not be a judge in his own cause. This principle, as developed by the courts, has two very similar but not identical implications. First it may be applied literally: if a judge is in fact a party to the litigation or has a financial or proprietary interest in its outcome then he is indeed sitting as a judge in his own cause. In that case, the mere fact that he is a party to the action or has a financial or proprietary interest in its outcome is sufficient to cause his automatic disqualification. The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some other way his conduct or behaviour may give rise to a suspicion that he is not impartial, for example because of his friendship with a party. This second type of case is not strictly speaking an application of the principle that a man must not be judge in his own cause, since the judge will not normally be himself benefiting, but providing a benefit for another by failing to be impartial.

Acquaintance with one of the parties to litigation, preconceived notions on the merits of a dispute or strongly held beliefs may all constitute disqualifying bias. (R v Board of Visitors of Frankland Prison ex p Lewis (1986) 1 WLR130).

I reached the conclusion without any difficulty that in assessing whether Ms Bhutto has had a fair trial, the same principles would apply whether one looks at it from the viewpoint of various international enactments or the common law itself.

It is however interesting to note the interpretation in The European Court of Human Rights of article 6, where the court may not have found a specific right in its determination of whether there is a fair hearing, the court would look at it on a "trial as a whole" basis. In Barbera, Messegue and Jabardo v Spain (1988) A146 paras 68, 89, the court referred to the fact that the accused had been driven over 300 miles the night before the trial, the "unexpected changes" in the courts membership, the "brevity" of the trial, and "above all" the failure to adduce and discuss important evidence orally in the accused's presence as considerations that taken "as a whole" rendered the hearing unfair contrary to article 6 (i).

If there is a legitimate doubt as to a judge's impartiality, he must withdraw from the case. Huscholdt v Denmark (1989).A 154 para 50.

As the European Court has stated in "Fey v Austria (1993) A255B (1993) what is at stake is the confidence which the courts in a democratic society must inspire in the public and, above all as far as criminal proceedings are concerned the accused.

I will now seek to answer the questions put to me.

1. Ms Bhutto questions the impartiality of the Judges at her trial. One was a duly appointed Judge, the other was confirmed in his appointment following her conviction.

The following, amongst others, are the grounds for Ms Bhutto believing the Court not to be impartial.

- a) When Ms Bhutto was Prime Minister of Pakistan between September 1993 and November 5~ 1996, her Government dismissed one of the Judges, namely Mr. Justice Malik Muhammad Quayum. I am told that the father of the learned Judge was one of the Judges who ruled against Ms Bhutto's father in the Supreme Court of Pakistan, and imposed the sentence of death upon him. (Annexure II Bias Trial attached to the Grounds of Appeal on behalf of Ms Bhutto in the Supreme Court of Pakistan).
- b)
- c) The Supreme Court had transferred Ms Bhutto's case from the Lahore High Court to Rawalpindi Bench of the Lahore High Court. The same Judge Quayum J. who was the Senior Judge then, having been appointed by the Chief Justice of the Punjab High Court, came to Rawalpindi Bench personally to hear the Bhutto case. He was not a normal member of the Rawalpindi Bench of the Lahore High Court but he came, as I understand it, to try the Bhutto case only.

Against the above background I would have thought there would need to be strong arguments of the necessity for the same Judge to have continued to hear the case against Ms Bhutto apparently outside his normal jurisdiction. The perception of prejudice is strong and the fact of continuing to be involved after the case had been moved creates a perception of an unhealthy and undue interest in pursuing the Bhutto case.

From what I have been told and from an examination of the documents, the only safe way of proceeding would have been by way of a different Bench in Rawalpindi. In that case there would be no such perception of bias.

I am not in position to advise whether what transpired violated the constitution of the Islamic Republic of Pakistan 1973.

2. Whether the conduct of the case was itself unfair.

I take the points mainly in the order of the Petition of Appeal so far as applicable.

- a) "the dropping" of the trial of the co-accused. It would seem to me from the only system I am familiar with that in the general sense it is properly in the province of the prosecution to decide not to proceed against any particular co-defendant either on evidential or public interest grounds. I understand some were outside the jurisdiction at the time.

The inference that Ms Bhutto seeks to draw is that she and her husband were, and they only are the Defendants at this stage, specially targeted. This issue can be reconsidered when looking at "the case as a whole". It could be a factor, but no more.

- b) A denial of a proper opportunity to defend herself,

- i) the length of time the prosecution case took compared with the decision of the Court to close the Defence within days.
- ii) The appointment of the Commission to examine evidence in Switzerland.



- iii) The failure to allow the expert evidence on Swiss Law to be called.

I think I would be going beyond my functions if I were to opine on any length on the above given my lack of expertise on the Pakistan law of evidence. Suffice it to say that had the Swiss expert been called he would have explained the status of the inquisitorial functions of the Swiss "Judge". The expert states in para 14 "investigative proceedings are of an investigative and not trial nature. Any evidence of whatsoever nature including statements and documents collected during the course of investigation and placed in the criminal file are of an investigative nature. As such they are not and may not be regarded other than hints or elements of evidence and in no way as legal public or proven evidence.... Thus none of the documents or statements in such a file.... are of proven evidentiary value".

The documentary evidence in this case was crucial. The law of evidence in Pakistan I believe sets out the importance of original evidence. In any event under any jurisdiction non-original copies of evidence have to be properly proven in accordance with its own rules. It appears to me that an examination of documents in French by a non French speaking commissioner is of minimal value. For reasons set out in the petition Ms Bhutto was not represented in Switzerland.

I am not aware of the reasons why the Swiss legal expert, although he had arrived in Pakistan a little late it seems, was not allowed to be called to explain the above. On his Affidavit he would have wholly undermined the evidence of the Commissioner.

- e) The personal pressures on the accused given the fact that there were a number of trials occurring contemporaneously.

It appears that the Defence were under considerable strain because of the timing of hearings and the freezing of all the accounts of Ms Bhutto and her husband.

Ms Bhutto complains that her evidence was read in her absence which was contrary to her instructions, and of the failure to allow defence witnesses to be called. I understand that she was only allowed to be questioned. She did not give evidence in chief. She wished to do so after her new list of defence witnesses were called. This was refused. Making all allowances for my lack of knowledge of legal procedures in the case, it is plain that she was not given the opportunity to put her case properly.

The various matters set out in the Petition will undoubtedly be examined by the Supreme Court.

I reach the view that, -

- i) in the perception of Ms Bhutto there was an undue haste for the proceedings to be brought to an end. There is substance in this.
- ii) I cannot quite understand the necessity for limitations on her evidence nor the disallowance of her defence witnesses neither do I understand the various matters set out in paragraph 24 of her petition, (annexe 1 hereof) to the Supreme Court and particularly the justification for them.

Various acts of harassment are alleged of herself, her counsel and witnesses. They deserve close examination.

The general principle is that the trial should be in public, there is not a necessity for it to be televised, indeed we do not allow it in English courts, and for her to be denied access to a court trying her would be grossly improper. What numbers of the public should be allowed in, and under what if any restrictions is necessarily a matter for the national state and/or the judge in all the circumstances, subject to the usual consideration that justice should be seen to be done.

The general principle developed is that there should be equality of arms between the prosecution and the Defence and I find it difficult to countenance a situation where there is an allegation in paragraph 27 of the Petition that the Defence was either not allowed to be put or unduly curtailed.

This is a matter to be judged against the normal principles of the law of evidence of Pakistan. Likewise any ruling appertaining to the non availability of Counsel has to be judged against the usual practice of the court.

What would be improper would be a denial to Ms Bhutto of being able to put her defence properly for any of the above reasons, particularly if it was perceived as a plan to expedite the case against her under the

direction of a court which continued to try her, contrary to the custom and practice of the judicial hearing system of Pakistan.

I find that the circumstances set out in paragraph 24 of the petition add to the picture of unfairness. After a long trial it seems unreasonable to fetter the Defence in this way.

The court had indicated its wish for oral arguments of the Defence to be curtailed, and requested written argument from the Defence in lieu, which in the event were not entertained and the court proceeded to judgement.

Looking at the case "as a whole" there are grounds for grave misgivings as to the fairness of the trial, namely,

- i) the fact that the senior Judge did not excuse himself from initially trying Ms Bhutto in Lahore against the background that there would undoubtedly be a belief by her that he was not an appropriate person to try her.
- ii) The fact that unusually the Chief Justice of Punjab nominated the same Judge to hear the case at Rawalpindi, and he accepted the nomination.
- iii) The procedures in the case whereby after hearings of the prosecution case over a long period of time, the Defence was not allowed to be properly put. She was not allowed to lead her own evidence or to call the witnesses she desired.
- iv) The apparent irregularities initiated by the court of obtaining evidence from Switzerland to fill a lacuna in the prosecution case, and a refusal by the court to hear the Swiss legal expert for the defence.



In a case where there was very great reliance by the prosecution on documentary evidence, it was imperative that such evidence including its provenance was properly proved and where disputed an opportunity to challenge it.

1. The Ehtesab Act 1997.

I am not qualified to interpret the law of Pakistan with regard to the Ehtesab Act.

However I note the following

- i) The act shall come into force at once (Section 1 (3))
- ii) It shall apply to the holders of public office since the *6th* day of November 1990 (Section 1 (2))  
1990 was substituted for 1985, thereby excluding applicability to similar persons between 1985 and 1990.
- iii) The “holder of a public office” includes a person who “is, or has been” Prime Minister (Section 2 (1)(2))
- iv) The holder of a public office is said to commit the offence of corruption....  
a) if he accepts or obtains from any person any gratification, other than legal remuneration (Section 3 (i) (a))
- v) “nothing contained herein shall authorise the punishment of a person for an offence by a penalty greater than, or of a kind different from the penalty prescribed by law for that offence at the time the offence was committed, and the court while imposing a penalty may, if necessary, modify it to such extent as may be necessary” Section 29.

The charge against Ms Bhutto is framed to deal with alleged irregularities from 16.11.93 to 5.11.96. The particular contract complained of is dated 29.9.94.

The offences alleged occur at a period before the Act’s commencement which was “at once” in 1997. In this case, if there was no offence under the Act at the time in question, there could not be a proper prosecution.

If I am wrong in this, and the Act applies to certain office holders, who held office since the 6.11.1990, whose actions although alleged to have been committed before 1997 were nevertheless encompassed by the Act, it is nevertheless contrary to all the usual canons of interpretation of the common law as being retrospective.

Further the international enactments I have referred to earlier, refer to the necessity for the alleged misconduct to be a criminal offence

“at the time” when it was committed.

It is a well understood principle that a criminal statute is not retrospective in its effect

I summarise the views of Lord Reid in DPP v Ottewell (1970) AC 642 at 649

- Penal statutes includes criminal and civil statutes imposing penalties
- If “after full inquiry and consideration, one is left in real doubt, the accused or person from whom the penalty is claimed must be given the benefit of that doubt”

Lord Esher in Tuck & Sons v Priestner (1887) 19 QBD 629 at 638

- “If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for construction of penal sections.”

McCullough J. R v Hallstrom, ex p W (No.2) (1986) 2 All ER 859

- “There is a canon of construction that Parliament is presumed not to enact legislation which interferes with the liberty of the subject without making it clear that this was its intention.

On page 48 of the Judgement of Malik Mohammed Quayum J. he said that the Ehtesab Act applied because "if the act was an offence at that time though under a different law, the trial under the new law does not in any manner violate the constitutional protection. In the present case, the action of the Respondents in awarding contracts for illegal gratification and receiving kick-backs was an offence under Presidential orders numbers 16 and 17 of 1997. As such there was no violation of a constitutional guarantee".

Maxwell "Interpretation of Statutes" 12 ed Sweet and Maxwell says

- "It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication: West v Gwynne (1911) 2 Ch 1 per Kennedy LJ.
- However "The presumption is rebuttable even in the case of a penal enactment. So in DPP v Lamb (1941) 2 KB 89, a provision increasing penalties for the contravention of the Defence (Finance) Regulations 1939 was held applicable to all convictions after the new provision came into force, even though they were for offences completed before".

It seems to me that there is at least an ambiguity in the Ehtesab Act, had it been an English Statute it would not be construed to bite **retrospectively**. It can be distinguished from Lamb and our War Crimes Legislation which are unequivocal. On the other hand it could be asked why would the Act contemplate the non-retroactivity of its penalties if it did not seek to cover past acts?

Nevertheless adopting the words of Lord Reid, there must be real doubt as to whether the act is retrospective as regards an offence committed before. If that was the intention it should have said so.

There is nothing particularly unusual in the freezing of a Defendant's assets. It is frequently done in English courts particularly in drug related cases. What is important is to ensure either by the ring fencing of some assets or the provision of Legal Aid that a person is adequately defended. The usual principles of allowing a defendant to be heard before an order is made should be adhered to. This principle was contravened as the



order was obtained on the ex pane application. The wrong in this case is that by freezing Ms Bhutto's assets, legal advice could not be properly prepared in time.

I am not in a position to opine on Article 248 (i) and 173 (iv) of the constitution of the Islamic Republic of Pakistan 1973.

It is alleged in Annexure 2 para (vii) relating to the Appeal that insufficient time was given to the Appellant to engage Counsel and for the preparation of the case in Rawalpindi. "When the appellant engaged counsel who happened to be in the court room on that date the said advocate was only given 24 hours to prepare the brief containing voluminous record and prepare cross examination of the prosecution witnesses".

There is considerable jurisprudence under Article 6 (iii) (b) of the European Convention that "there should be adequate time and facilities for the preparation of the Defence". It has been ruled that in the absence of one's own lawyer a Legal Aid lawyer must be appointed in good time, and if replaced for good reason, additional time must be allowed for the new lawyer to prepare the case. Goddi v Italy (1984). A.76.

In cases at the trial stage before the ordinary courts, the Human Rights Commission has accepted that a period of 17 days notice of the hearing in a fairly complicated case of misappropriation of funds was sufficient on the facts. X and Y v Austria (1978). 7909/77 ISDR106.

Ms Bhutto, given the voluminous nature of the evidence, would certainly come in a class of case which deserved substantial time for preparation.

It would be seen on the above yardsticks for representation, the court was very unsympathetic if not biased against Ms Bhutto.

At my initial consultation it was noted "that Ms Bhutto was not present at the sentencing. The hearing was brought forward. She was due back a week later".

In fact she had the court's permission to be absent at this time. In the normal course of events a person should be present at his sentencing. An opportunity is normally afforded to mitigate. However the judges here knew all the facts. It has also been noted "that Ms Bhutto had been exempted from attending overlapping trials in different cities". I am not sure without further elucidation how far it could be said that the sentencing was expedited so as to avoid her being present.

I reach the view on the questions asked that,

- (i) The constitution of the court could give rise to a suspicion that it was not impartial, or a likelihood of bias or a reasonable suspicion of bias to Ms Bhutto or any objective person. That is all that is required so far as the principles enunciated in re Pinochet, and by the authors of Hood and Phillips are concerned.
- (ii) There are a number of specific instances where there are strong grounds for believing the trial to be unfair.
- (iii) The absence of original documents before the court has to be judged against the law of evidence of Pakistan. The evidence of the commission to Switzerland was unsatisfactory and the failure to allow the defence Swiss law expert to be called was of fundamental importance, particularly given the importance of documentary evidence in the case. I repeat these matters have to be considered in the context of law of evidence in Pakistan.
- (iv) There is doubt as to whether the Ehtesab Act was retrospective in which case the defendant must be given the benefit of that doubt.

Sd/-  
Sir John Morris QC

3 Hare Court  
At 1 Little Essex Street  
London



## SWITZERLAND

### CHAPTER IV

#### **REPORT BY I.I.S. INTO DRUG TRAFFICKING ALLEGATIONS AGAINST SENATOR ASIF ALI ZARDARI**

We belong to Switzerland's Inter Investigation Services specialising in investigating the narcotics related matters. We were asked to probe into Senator Asif Zardari's alleged involvement in drug smuggling by the Swiss authorities.

As part of our probe we have contacted the Drug Enforcement Agency of the United States and the concerned departments in UK, France and Germany. We arrived in Pakistan on 15.02.1999 and held meetings with various parties and people.

Earlier the Inter Investigation Services of Switzerland had received investigation reports from its Agents worldwide who were asked to probe into the matter. These agents are Mr. Asam Bin Muhammad (United States), Mr. Fizzo Francisco (Italy), Mr. Al.A. Komel (France), Mr. Piad Jaggi (Germany) and Mr. Peter Gerhard (Colombia). According to their initial reports Senator Asif Ali Zardari, was not involved in any international drug trafficking activity. On the basis of the reports of our agents we felt it was necessary to visit Pakistan and make further probe in the matter.

Our findings are as under:

*We have found that the case of drug trafficking against Senator Asif Ali Zardari has been filed on the basis of a statement of one Mr. Arif Baloch. Mr. Arif Baloch (said to be a resident of Garden East Karachi, Sindh, had been arrested and confined in the Police station of Mughalpura, Lahore – Punjab (Lahore is about 800 miles away from Karachi and is situated in a different province), on physical remand in a theft case registered as FIR No. 32/97 (the theft case). Baloch had been brought to the Punjab, and during the course of torturous police interrogations, was made to implicate Senator Asif Ali Zardari in the narcotics trade. Two days after his so called statement obtained under torture implicating Senator Zardari he was discharged in the Theft Case. The authorities could not, however, persuade Baloch to sign "voluntary confession". In writ petition No. 4386 of 1998 filed by him in the Lahore High Court, Baloch also denied ever having made any statement to the Police. Despite absence of signatures and despite his retraction, this "statement" was treated as a separate FIR No. 525/97. His son Khalid Baloch filed an affidavit in the said petition swearing that his father never gave any statement implicating Mr. Zardari and that his father has been kept in solitary confinement in Jail and all medical facilities are denied to him to coerce him to withdraw the petition and make statement against Senator Zardari.*



Investigation also revealed that the Ehtesab (Anti-Corruption or Accountability) Cell having their office at Prime Minister's Secretariat and headed by Senator Saifur Rehman, who belongs to the political party of the Prime Minister Nawaz Sharif, desired from Anti Narcotics Force (ANF) to register a case against Senator Zardari but ANF refused to do so on the ground that it will not only dent its reputation but also equate it with other agencies which have fallen from grace. The reason why the Ehtesab Cell wished ANF to register the case is that under the Anti Narcotics Force Act, 1997, the ANF is the agency statutorily empowered to investigate or prosecute drug trafficking allegations and it appears very strange that they are not involved in the case. ANF is headed by a serving General of the Pakistan Army.

We also met the investigation officer Police Inspector Mr. Ehsan Ilahi and made an unsuccessful attempt to meet Mr. Arif Baloch. However we met the son of Mr. Arif Baloch.

During our investigations, we found that the illegally obtained and false statements by imprisoned drug dealers and thieves are the only "evidence" presented by the Pakistan government to the Swiss authorities, to agree to provide legal assistance in investigations against Senator Zardari in Switzerland. We also received reports from the United States Drug Enforcement agency (DEA), the British Customs, and German Anti Narcotics Agency representatives posted in Pakistan which repeatedly stressed that there is no evidence to offer for the registration of drug case against Mr. Asif Ali Zardari or his associates in Pakistan or abroad.

In Pakistan we also discovered that the Police Inspector Mr. Ehsan Ellahi, former SHO of Qilla Gujar Singh, Police Station, Lahore who was investigation officer in the case had filed a writ petition before the Lahore High Court. In this petition filed on October 7, 1998 he has prayed that the illegal orders of his demotion and suspension be set aside as he is being victimised for refusing to act illegally in the false, fictitious narcotics case against Senator Asif Ali Zardari. According to the petitioner an FIR No.525/97 was registered on October 19 last year at Police Station (CIA), Qilla Gujar Singh, Lahore involving the PPP Senator Asif Ali Zardari in a drug case. Giving the background the petitioner took a stance that the Deputy Inspector General of Police, Lahore had ordered him to register an FIR and co-operate with CIA staff Police who had already been briefed to get an FIR registered, under instructions by him and his high-ups. There upon the FIR was registered. The petitioner was further ordered to investigate the case. Since the petitioner was asked to do illegal acts, the petitioner requested the DIG that he be excused from investigating the case in that manner and refused to conduct the investigations. Where upon the DIG told the petitioner that the Government was interested to implicate an important person in the case for certain specific reasons and it was to be used internationally.

It is also pertinent to quote from the Annual Report "The World Geopolitics of Drugs" 1997/1998 published by Observatoire Geopolitique Des Drogues (OGD) which says:-

*"The government of Prime Minister Nawaz Sharif, the high federal administration, and the provincial administrations are known to be deeply involved in the production, transformation, and trafficking of narcotics. In the Punjab, a centre for arms and drug trafficking to India, many key administrative posts are obtained only by the recommendation of the Prime Minister's brother-in-law, Zia Bakhat Butt, who is on the United States DEA's black list. One of Zia's partners is Seth Ibrahim Dawood, an Indian Muslim Mafia leader and mastermind behind the 1993 bombing in Bombay, India. In an effort to divert attention away from the involvement of its supporters in drug trafficking, the Nawaz Sharif government allegedly tried to implicate Senator Asif Ali Zardari the husband of former Prime Minister Benazir Bhutto, in a case involving several tons of hashish in Baluchistan province. While Zardari may be accused of many other crimes, Western anti-drug officials themselves informed Pakistani authorities that Zardari was not involved in the Balochistan case."*

It may be interesting to note that D.E.A. (Drug Enforcement Administration) of the United States of America, and B.K.A. (Federal Crime department) of Germany have absolved Senator Asif Ali Zardari of any involvement in the so-called drug –trafficking in Pakistan.

As a result of our investigations both within and outside Pakistan we have reached the conclusion that the drug-trafficking case filed against the Senator is false, fabricated and based on malafide.

We have concluded the report and are sending it to Pakistani Press as well as to the Foreign Press for publication in the Newspapers and the Journals all the world over.

A copy each of the report is being dispatched to :-

- I. Justice Department, Government of Switzerland.
- II. All Swiss Banks.
- III. Ministry of Interior Government of Pakistan.
- IV. Mr. Nawaz Sharif, Prime Minister of Pakistan.
- V. Senator Saifur Rehman, Chairman of Ehtesab Bureau.
- VI. Chairman, Narcotics Control Board, Government of Pakistan.

We regret to say that the officials of the Government of Pakistan did not co-operate with us. They tried to obstruct this investigation and refused to give us access to the relevant official record. This also raises a suspicion that the cases that they have made are false and fabricated.

The report is also being sent to Senator Asif Ali Zardari, Ms Benazir Bhutto, Chairperson, Pakistan Peoples Party and Syed Sajjad Bokhari, Incharge, International Affairs Pakistan Peoples Party for record.

## **HRCP Criticizes Bhutto Conviction**

### **"The NEWS"**

**Dated April 16, 1999**

Islamabad: The Human Rights Commission of Pakistan (HRCP) Thursday criticized former premier Benazir Bhutto conviction on corruption charges, saying it could hurt the democratic process.

The conviction was "question-able exploitation of the accountability process for political ends," the private HRCP said in a statement. "The unfortunate development may have an adverse effect on the country progress towards democratic and transparent governance," it said.

The organization feared that the opposition role in national affairs and its watchdog functions would be greatly eroded. It called for a "concerted effort by all democratic-minded people" to ensure that no one was made to suffer as a result of measures that "do not meet the public criterion of equity and justice".

Bhutto and her jailed husband Asif Ali Zardari were found guilty of corruption Thursday by an accountability court and sentenced to five years in jail each and fined \$ 8.6 million.

Bhutto said in London she would return home next week to appeal her "politically motivated" conviction. AFP



## CHAPTER V

**FACTUAL POSITION OF THE AWARD OF SWISS CONTRACT**

The circumstances relating to the grant of the PSI contract to SGS on 29 September 1994 were considered at Judgement, paras 74 - 82 and 105 - 109. In summary, the Trial Court held that the manner in which the PSI contract was awarded was indicative of corruption by Mohtrama Benazir Bhutto and Asif Ali Zardari. The Trial Court came to the view that the decision to award the contract was taken by Mohtrama Benazir Bhutto alone, that the 1994 presentation to the Cabinet Committee was an "eye-wash" as the decision to award the contract to SGS had already been made, that the contract was granted despite opposition from the President of Pakistan and others, and that the award of the contract was irregular because there was no tendering process and certain of the terms of the contract were more favourable to SGS than previous such similar contracts.

The conclusions of the Trial Court on these issues are factually erroneous, and do not fairly or accurately reflect the voluminous documentary and other evidence before it. In order to make good this contention, it is necessary to consider in some detail the evidence before the Trial Court as to the full circumstances and intense negotiations by innumerable Government officials which led up to the award of the PSI contract to SGS.

**(1) Factual Background to the signing of the PSI contract****The Tender Notice.**

Award of the PSI contract was the result of a process that commenced when the previous Nawaz Sharif administration published, through the international press. The Tender Notice set out a large number of stringent criteria which the successful bidder was required to meet:

- "(1) It is a long established agency and ... it has inspection capability for the entire range of imports to Pakistan from various countries.
- "(2) It is independent and not member of any trading or manufacturing group.
- "(3) It can perform pre-shipment inspection service through companies owned by it and has sufficient permanent and qualified staff of its own to inspect, value, classify and produce reports for the great majority of countries exporting to Pakistan.
- "(4) It has its own laboratories to conduct effective analysis where required and that it has, in its own operations, all computer capability to create and operate electronic data transfer to its office in Pakistan, for a rapid and effective service.

- “(5) It has a long and successful experience in carrying out pre-shipment inspection services for other governments, as a sole agency, for countries comparable or large volumes of imports than Pakistan.
- “(6) It has a proven record, through its service, of plugging revenue leakage and substantially increasing revenue.
- “(7) It has adequate security procedures to support its services.
- “(8) It has the necessary skills and experience to effect transfer of technology.
- “(9) It is recognised pre-shipment inspection agency by the International Federation of Inspection Agencies.”

It has **never been suggested**, either by the prosecution or by the Trial Court in its Judgement, **that SGS did not satisfy any of these rigorous and stringent criteria**. In view of the matters set out below, any such contention would, in any event, be unsustainable.

#### Selection of SGS following responses to Tender Notice:

Six responses to the Tender Notice were received, from Bureau Veritas, SGS, Cotecna Inspection SA, Larex Romania, Inspectorate and Specialist Services International. These six bidders were then **evaluated by the Technical Sub-Committee** of the Ministry of Finance and Economic Affairs, Revenue Division, The Sub-Committee was headed by Ataullah Khan (Collector of Customs, Lahore) and included Yasin Tahir (Collector of Customs, Rawalpindi), Ramzan Bhatti (Deputy Collector of Appraisalment), and Wali Khan (Secretary, Customs Division of Central Board of Revenue):

The Sub-Committee assessed the six tenderers by reference to the criteria set out in the Tender Notice, and “the guiding principles [of] the size and the presence of the respective firm in the countries exporting their goods to Pakistan, their exposure to customs work and the date of services provided by them”: **The Sub Committee concluded**, after “adequate deliberations”, that the **best qualified of the six tenderers was SGS**. This conclusion is also reflected in the **Report of Javed Talat** (quoted at Judgement, para 81), which recorded that, **upon consideration of the six tenderers, SGS “were considered most suitable for Pakistan in view of their vast experience and resources”**. Accordingly, a Letter of Intent was sent by the Nawaz Sharif Government informing SGS that it “has decided in principle to award pre-shipment inspection contract” to SGS:

#### Delay in signing of PSI contract:

However, despite extensive discussions and negotiations resulting in agreement as to the terms of the contract, and despite the fact that SGS “has invested significant human resources and over US\$ 2 millions in an effort to meet the wishes of the Government with regard to a speedy implementation date”, **no contract was finalised by the Nawaz Sharif Government at that time because of budgetary concerns**: Subsequently, on 5 September 1993, at a “meeting held under the chairmanship of the care-



taker Prime Minister, Moeen Qureshi, it was decided that the interim Government should move towards the signing of the PSI contract.. Notwithstanding this decision, though, further delay was caused because SGS had at that time refused to give "guarantees to increase the revenue" from pre-shipment inspections they carried out.

**Events leading to the actual signing of the PSI contract on 29 September 1994:**

Thereafter, on 31 May 1994, a meeting was held between representatives of Mohtrama Benazir Bhutto's Government and of SGS to discuss the ongoing negotiations initiated by the Nawaz Sharif Government regarding the PSI programme. There was a continuous process of negotiations and arrangements for the award of the contract that had started with the tenders issued by the Nawaz Sharif Government and, accordingly, there was no need for fresh tenders to be issued. Further discussions were held between representatives of SGS and, inter alia. Javed Talat (Chairman, Central Board of Revenue) on 1 June 1994:. These meetings were followed by a 2 June 1994 letter from SGS to Makhdoom Shahabuddin (Minister of State for Finance) which, in material part, stated:

*"The open and constructive discussions were very much appreciated and we would be honoured to assist the Government of Pakistan in its firm ambition to increase revenues from import duties and taxes.*

*"Your desire to be assured that the net contribution from the PSI programme would exceed your payments to us, is fully appreciated and SGS can confidently and firmly assure the Government that the recognised, unchallenged benefits of the programme will at the very least, be equivalent to the flail cost of our fees plus a significant additional revenue enhancement.*

*"Our assurance is, of course, assuming that a mutually acceptable contract would be agreed upon that would include an economic model to measure the performance of SGS' services....."*

*"We trust that the above provides you wit the clear assurance from us that you seek, regarding the net benefits from a PSI programme for Pakistan.*

*"We remain at your disposal and look forward to be of service to the Government. "*

In providing the absolute assurance and guarantee set out above, SGS's 2 June 1994 letter overcame the basis upon which the decision had been taken by the interim Government of Moeen Qureshi to put on hold the signing of a PSI contract with SGS.

Further negotiations of an exceptionally detailed nature then took place between representatives of SGS and senior Customs Department officials, which, by mid-August 1994, had resulted in at least 4 face-to-face meetings. The Government officials who participated in these discussions were: Mohammed Wali Khan (Collector of Customs, Appraisalment), Muhammad Ramzan Bhatti (Deputy Collector of Customs), Iftikhar Qutab (Secretary, Central Board of Revenue), and Ilyas Ahsan Khan (Examining Customs Officer). Moreover, it is clear from official record that:

*SGS was immovable on its "demand" that calculation of its fee be 0.78% of dutiable value:*



*.SGS was similarly "adamant" that the length of the contract should be five years, renewable for a further five.*

Additional evidence as to the tough negotiating stances taken by SOS is provided by Annex P to E/R 30/98, a further letter from Khalil Ahmed (Chief Collector, Customs) to A. R. Siddiqui (Chairman, Central Board of Revenue). This letter evidences that:

*SGS wanted a termination provision, which allowed for termination upon six months notice to be given if, but only if, a joint appraisal of SOS's performance concluded that "no positive benefit in the Government's favour" had resulted:.*

*SGS, once again, was absolutely "insistent" that its fee be calculated at 0.78% of dutiable value.*

**The prosecution did not seek to suggest or prove that Mohtrama Benazir Bhutto or Asif Ali Zardari were in any way involved in, or concerned with, these detailed negotiations.**

On or about 30 August 1994, there was a **presentation** by A. R. Siddiqui (Chairman, Central Board of Revenue) **to a Committee of the Cabinet**. This Committee consisted of a wide range of high-ranking members of the Government, and officials in the civil service. In addition to Mohtrama Benazir Bhutto and A. R. Siddiqui, this **Committee consisted of: Mr. V.A. Jafarey (Adviser to the Prime Minister on Finance and Economic Affairs), Syed Iqbal Haider (Minister for Law and Justice), Makhdoom Shahabuddin (Minister of State for Finance), Ahmed Sadik (Principal Secretary to the Prime Minister), Mr. Justice Sheikh Riaz Ahmed (Secretary, Law & Justice Division), Qazi Alimullah (Deputy Chairman, Planning Commission), Javed Talat (Secretary, Finance Division), Dr Waqar Masood Khan (Additional Secretary, E&F), Mumtaz Ali (Member (Customs), Central Board of Revenue), Khalil Ahmad (Chief Collector of Customs, Karachi), and Zahaaruddin Dar (Secretary (Customs), Central Board of Revenue).** Asif Ali Zardari was not a member of this Cabinet Committee; and no evidence has been led to show that he in any way influenced the award of the PSI contract by the members of the Cabinet Committee.

Mr. A. R. Siddiqui's presentation expressed the **"broad consensus"** of officials at the Central Board of Revenue, the Customs Department and the International Monetary Fund, that a PSI contract should be signed with SGS. In material part, his presentation provided as follows:

**"1. OBJECTIVE:** *To take a decision on the award of a pre-shipment inspection contract to one or more companies, its scope and terms.*

**"2. BACKGROUND:** *There is a general criticism that the Government is unable to realise its indirect taxes due to under invoicing and mis-declaration of imports, coupled with inefficiency and leakage due to collusion ... While efforts are consistently made, the services of a PSI company are likely to augment these efforts.*

*" ... .."*

"7. During discussions with the government, the [International Monetary Fund] has also advised the hiring of PSI companies to increase collection of revenue...

"8. [SGS], approved earlier, ha[s] been renewing [its] offers since then. Detailed discussions have been held recently by the Central Board of Revenue with [SGS]. As a result of these discussions a broad consensus exists on the award of the proposed contract....

"9. [SGS], in [its] original draft contract, had proposed a fee at the rate of 0.81% of the dutiable value reported by them. As a result of the negotiations with the Central Board of Revenue, [SGS] has agreed to accept 0.78% of this value...

#### **"COST EFFECTIVENESS**

"One of the **primary objectives** of hiring the services of [SGS], along with additionality of revenue, **is the cost effectiveness** of such a contract. An increasing number of countries are using PSI as a means to increase their revenue collection. Pakistan used the services of Cotecna from April 1990 - November 1991. However, the experience was contrary to our expectations and the claims made by Cotecna. They cited limitations of coverage and functions assigned as the primary causes of failure. There is some weight in their argument. As opposed to coverage on 33% of the imports under that contract, the proposed agreement allows coverage on 75% of the imports. The previous contract allowed only pre-shipment inspection and valuation, while classification and assessment of duty are also to be assigned under the proposed agreement. It is hoped that the larger coverage of imports and wider scope of duties will make them more cost effective.

The presentation was supplemented with a number of slides: One of these slides, entitled **COST EFFECTIVENESS**" concluded:

"[SGS] have assured that [it] will add to the revenue much more than will be payable on account of fee. It is argued that the performance is likely to improve on account of higher coverage and increased level of service charges."

There is **no evidence** that, during the discussions that followed A. R. Siddiqui's presentation, **any objections were raised or expressed** as to the signing of a PSI contract with SGS. Accordingly, the decision was unanimously taken by the Cabinet Committee that:

*The PSI contract should be signed with SGS.*

*Contract duration should be 5 years, renewable for 5 years, with a termination clause requiring 3 months' notice.*

3. *Fees should be paid at the rate of 0.78% of dutiable value.*

In September 1994, the **draft contract was sent to the Government's Law and Justice Division** (Drafting Section), which made a number of comments thereon: Most significant was the advice that the termination provisions should allow for an unconditional termination by the Government of Pakistan, rather than a termination conditioned on whether SGS had provided a "positive benefit": This advice was **incorporated in the final version of the PSI contract which was signed on 29 September 1994**. Again, **there is no evidence to suggest that Mohtrama Benazir Bhutto or Asif Ali Zardari played any role in the final negotiations relating to the terms of the PSI contract**. This was left exclusively to the officials of the Central Board of Revenue and of the Law and Justice Division.



### **Substantial benefits to Pakistan of the PSI contract with SGS:**

There can be no doubt whatever that the decision to award the PSI contract to SGS has proven to be of immense value to Pakistan. In a **detailed assessment** prepared by a firm of chartered accountants, **Ferguson Associates (Pvt.) Ltd.** (an affiliate of Price Waterhouse Coopers, the internationally renowned accounting firm), the following conclusion, based on an analysis of the period 1 January 1995 to 30 September 1996, was set out at paragraph 1.0 of the report:

*"Total duties and taxes increased as a result of the PSI companies' intervention: PKR 25,875 million.*

*"Cost: Benefit Ratio (fees versus increase in duties and taxes): 1: 6.9."*

In other words, **for every rupee paid to SGS in fees, SGS has ensured the collection of 6.9 rupees** which would otherwise have been lost to the Government of Pakistan. This is a considerable achievement, and plainly vindicates the judgments made by those who were part of the decision to award the PSI contract to SGS.

### **Analysis of evidence relating to the award of the PSI contract to SGS**

A fair and accurate consideration of the evidence on this issue, which has been summarised above, would have led the Trial Court to have concluded as follows:

**First** the PSI contract was awarded to SGS as a result of a transparent, regular and open process. As the chronology of events summarised above demonstrates, this process commenced when the preceding Nawaz Sharif Government published a Tender Notice. In view of its "vast experience and resources", SGS was determined by the Technical Sub-Committee of the Ministry of Finance and Economic Affairs, Revenue Division to be the most qualified of the six bidders. Thereafter, although a Letter of Intent had been sent to SGS, matters did not progress, first, because of budgetary considerations, and second, because SGS refused to give a guarantee that it would increase revenue. By letter dated 2 June 1994, however, SGS gave such a guarantee. Subsequently, **the PSI contract was signed**, but only after immensely detailed negotiations as to the terms and conditions of the contract, and the **unanimous acceptance by the Cabinet Committee of the recommendation of the Central Board of Revenue, the Customs Department and the International Monetary Fund to that effect**. In view of the intense scrutiny by so many senior Government officials to which the award of the PSI contract was subjected, the Trial Court was completely misconceived when it characterised the grant of the PSI contract as "surreptitious": **Judgement, para 79.**

**Second**, the decision definitively to award the PSI contract to SGS was not taken by **Benazir Bhutto alone**, but by a **Cabinet Committee** that comprised a large number of distinguished and high-ranking officials. The decision was taken following a full presentation from A. R. Siddiqui, and represented acceptance of a recommendation of the Central Board of Revenue, senior Customs officials and the IMF. The decision was taken in accordance with the usual governmental principles of **"collective responsibility"**. "For all that passes in Cabinet every member of it who does not resign is absolutely and irretrievably



responsible and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues ... It is only on the principle that absolute responsibility is undertaken by every member of the Cabinet, who, after a decision is arrived at, remains a member of it, that the joint responsibility of Ministers to Parliament can be upheld and one of the most essential principles of parliamentary responsibility established." In this particular case, though, the decision to award the PSI contract to SGS appears in fact to have been unanimous. Certainly the minutes of the meeting do not indicate that any dissent was expressed by other participants. This is hardly surprising. The case for awarding the PSI contract to SGS had been overwhelmingly made in A. R. Siddiqui's presentation.

The **principal reason** given by the Trial Court for concluding (Judgement, para 72) that **Mohtrama Benazir Bhutto "had already decided to award the contract to SGS" was the document , which set out a number of "points for decision"**. The Trial Court described this document as the "agenda of the meeting summoned by the Prime Minister". This is a completely mistaken conclusion. **The document in question is in fact the last page of the presentation of A. R. Siddiqui:** As such, the "points for decision" there posed were plainly premised on the acceptance by the Cabinet Committee that the contract should be awarded to SOS in the first place. Conveying the recommendation—the "broad consensus"—of the Central Board of Revenue, the Customs Department and the International Monetary Fund to that effect was, after all, the purpose of that meeting.

**Third,** there was **no evidence whatever of any corrupt or dishonest attempt by Mohtrama Benazir Bhutto or by Asif Ali Zardari to influence the judgment of any or all of the other members of the Cabinet Committee.** It is grossly insulting to the distinguished and high-ranking officials who participated in the relevant Cabinet Committee meeting to describe that meeting as an "eye-wash". Such a conclusion could only be founded on the strongest evidence—for example, testimony from members of the Cabinet Committee that Muhtrama Benazir Bhutto or Asif Ali Zardari had, prior to the meeting. Illegally sought to influence their consideration of these issues. In the present case, there was no such evidence either from the members of the Cabinet Committee who testified or from anyone else.

Similarly, there was no evidence whatever of any corrupt or dishonest attempts by Mohtrama Benazir Bhutto or by Asif Ali Zardari to influence the judgments of those—namely, the "broad consensus" of senior officials at the Central Board of Revenue, of senior Customs Department officials and the International Monetary Fund—who had all in good faith recommended that the PSI contract be signed with SGS. Nor, of course, was there --- or could there conceivably have been—evidence of any corrupt or dishonest attempts by Mohtrama Benazir Bhutto or by Asif Ali Zardari to influence the judgments of the members of the **Ministry of Finance's Technical Sub-Committee who, in 1992 (during the preceding Nawaz Sharif administration), examined the tenders and determined that SGS was the best qualified of the six bidders.**

**Fourth,** the Trial Court's **criticism** that there should have been a **further tendering exercise** before eventual signing of the PSI contract (Judgement, is completely misconceived and would have led to nothing but purposeless bureaucracy and the waste of further time (and hence of further revenue that would otherwise go uncollected). It is clear that such **re-tendering was not necessary since the negotiations for the award of the PSI contract were a continuous on-going process that straddled the Nawaz Sharif Government, the interim Government of Moeen Qureshi, and the Mohtrama Benazir Bhutto Government.** Most significant on this point, though, is the fact that **none of the innumerable Government officials who were involved in the scrutiny and finalisation of the PSI contract in 1994 -- including lawyers—ever suggested that a further tendering exercise should be undertaken. In particular:**



None of the senior officials of the Customs Department or of the Central Board of Revenue who engaged in detailed negotiations with SGS in the summer of 1994 suggested that a further tendering exercise was necessary: see paras 3.8-3.12 above.

None of the Cabinet Committee members who attended the presentation of A. R. Siddiqui raised such an objection. This group included, among other senior advisers and high-ranking officials of the Customs Department and the Central Board of Revenue, both the Minister for Law and Justice (Syed Iqbal Haider) and the Secretary of the Law and Justice Division (Mr. Justice Sheik Riaz Ahmed).

The draft contract was sent to the Law and Justice Division, which sent back detailed comments, observations and proposed amendments, but did not suggest that the contract should be re-tendered *ab initio*.

No objection was raised in the National Assembly by Nawaz Sharif's party (which was then in opposition), or by anyone else, contending that there should have been a further tendering exercise before the award of the PSI contract to SGS.

Accordingly, even if—which is not accepted—the contract should have been re-tendered, it is hardly fair to criticise Mohtrama Benazir Bhutto and Asif Ali Zardari in this regard, when all senior Government officials and legal advisers failed to spot this point.

**Fifth**, the Trial Court relied on the fact that the contract granted to Cotecna (a company related to SGS) in 1990 had been terminated for poor performance after fifteen months. In so doing, the Trial Court completely ignored the fact that this **poor performance was caused by the limited scope of the 1990 contract**, and that the “larger coverage of imports [75% as opposed to 33%] and the wider scope of duties [i.e. including classification and assessment of duty]” was anticipated to provide a basis for a much improved performance.

**Sixth**, as anticipated, **SGS's performance of the PSI contract has resulted in an extraordinarily high level of benefits to Pakistan**. The Ferguson report shows that the “cost: benefit” ratio is 1: 6.9. In other words, for every rupee paid to SGS in fees, SGS has ensured the collection of 6.9 rupees, which would otherwise have been lost to Pakistan. This plainly vindicates the judgments of all those politicians and civil servants (including, of course, Mohtrama Benazir Bhutto) who were involved in the decision to award the PSI contract to SGS. Accordingly, **the Trial Court was wrong to give weight to the prosecution's allegation that the award of the PSI contract caused loss of Rs. 150 million to Pakistan**. In fact, assuming that fees of about Rs. 150 million were paid to SGS during the contractual period, the resulting benefit to Pakistan in terms of revenue that was collected that would not otherwise have been would be in the region of Rs. 1.035 billion.

**Seventh**, the Trial Court's criticised the fact that the terms of the **PSI contract allowed for a fee calculated on dutiable values and not (as had the 1990 PSI contract) FOB values, and provided for a 5 year renewable period, rather than a 2 or 3 year period (as had the 1990 PSI contract)**. These criticisms are completely **misconceived**. Fair consideration of the manner in which these terms were negotiated for incorporation in the PSI contract reveals once again the transparent nature of the process, and the absence of any evidence whatever that Mohtrama Benazir Bhutto or Asif Ali Zardari sought to influence the award of this contract in a corrupt, dishonest or underhand manner:

It is clear from the documents referred to above that SOS was adamant that its fee was to be calculated on dutiable values. Despite intense negotiations, Government officials were not able to persuade SGS to agree that the calculation should be based on FOB values, although they were successful in persuading **SOS to reduce the relevant percentage from 0.81% to 0.78%.** Doubtless, SGS insisted on such a fee in order to compensate for the high level of



investment which would have to be made to ensure the success of a PSI operation in a foreign country.

The documents referred to above also indicate that it was SOS which was “insistent” that the length of the contract should, again no doubt in order to justify the level of investment which they would have to make to ensure the success of the PSI arrangements, be five years, renewable for a further five. In any event, though, **article 10.6 of the PSI contract gives the Government of Pakistan an unfettered right (after one year) to terminate on 3 months’ notice.** The fact that the contract is otherwise expressed to be for five years, renewable for a further five, is therefore of complete irrelevance since it could be terminated on 3 months’ notice for no reason or any reason.

**Eighth.** the Trial Court’s reliance on certain documents as expressing misgivings, by the President of Pakistan and others, at the possible award of a PSI contract to SOS is similarly misplaced, when the relevant comments are analysed in their proper context. Dealing with each in turn:

The April 1992 note of the President of Pakistan which referred to the previous poor performance of Cotecna is of no relevance. As stated above, not only was there good reason to expect that the wider scope of the 1994 PSI contract would provide a basis for a much improved performance, but this expectation has been proved correct.

2 Javed Talat’s September 1993 “Summary for the Prime Minister” proposed that, because SGS would not guarantee that additional revenue would be produced by its appointment, consideration should be given to investing a large sum (estimated at Rs. 80 million) in reforming the Customs Department. However, by the time the PSI contract was awarded, the premise of Javed Talat’s paper had been completely undermined by SGS’s 2 June 1994 letter giving the relevant assurance in unambiguous terms. Further, Javed Talat was in attendance at the 30 August 1994 Cabinet Committee meeting, and participated in its unanimous decision definitively to award the contract to SGS. Certainly there is no record of he (or anyone else) raising any objections at this time to the award of the contract to SGS. Finally, it is significant that Javed Talat, although originally listed as a prosecution witness, was not in fact called. Had he been, he would doubtless have placed his 1993 paper in the context described above.

3. Moeen Qureshi’s brief note agreed with Javed Talat’s analysis, but required the submission of “a more detailed and tightly worked budget to justify the additional amounts” needed to reform the Customs Department. Three comments can be made. First, Moeen Qureshi’s agreement with Javed Talat fell away as soon as SGS gave the assurance in its 2 June 1994 that revenues would be increased. Second, there is no evidence whatever that the “more detailed and tightly worked budget” which he had ordered was ever, or could have been, produced. Third, even if such a detailed budget had been produced, there was no evidence to suppose that such could sensibly be regarded as a workable option as opposed to awarding a PSI contract to a foreign company such as SGS.

### **Conclusion:**

For these reasons, it is contended that the Trial Court’s conclusions as to the manner and circumstances in which the PSI contract was awarded stands negated. **It was not, contrary to the conclusions expressed in the Judgement, the result of a corrupt and underhand scheme whereby Mohtrama Benazir Bhutto and Asif Ali Zardari—or anyone else—trampled over normal governmental procedures and processes.** Rather, the contract was awarded, upon a recommendation that



was based on a "broad consensus" of high-ranking officials in the Central Board of Revenue, the Customs Department and the International Monetary Fund. It was awarded in a **transparent, open and regular manner** to the best candidate, and only after appropriate discussions and negotiations conducted by governmental officials. If this is right, it necessarily follows that the Trial Court should have concluded that there was nothing corrupt or irregular or dishonest about the award of the PSI contract to SGS, with the consequence that all charges against Mohtrama Benazir Bhutto and Asif Ali Zardari for violation of the Ehtesab Act should have been dismissed.