

Pakistan: ICJ denounces law permitting military trials of civilians

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The Pakistan Parliament's legislation allowing civilians to be tried by military tribunals is a serious blow to human rights and rule of law in the country, the ICJ said today.

"The nationwide revulsion at the horrific attack in Peshawar seems to have been misdirected toward a so-called counter terrorism strategy that weakens the rule of law and the struggle for justice," said Sam Zarifi, ICJ's Asia director. "Pakistan must reject this counter productive strategy and instead strengthen its judicial process and law enforcement in line with its domestic and international obligations."

Today, the Pakistani Parliament unanimously voted to amend the 1973 Constitution and the Army Act, 1952, to allow military tribunals to try civilians accused of belonging to "a terrorist group or organization using the name of religion or a sect" carrying out acts of violence and terrorism, including waging war against the state, attacking military officers or installations, kidnapping for ransom, causing death or injury, possessing firearms designed for terrorist acts, or acting in any way to "over-awe the state" or the general public.

"Militarizing the judicial process will not lead to justice and it will not control terrorism, this is the lesson from around the world," Zarifi added. "It has not proven to do so in Pakistan in the past, and there is nothing to indicate that it will do so now."

The 21st Constitutional amendment is a response to the Pakistani Taliban's December 16 killing of 146 people, mostly children, at a school in Peshawar.

Pakistan also resumed executions after the attack, ending a six-year moratorium on the death penalty, and has since then executed six death-row convicts.

The trial of civilians in military courts is incompatible with international standards, including article 14 of the ICCPR, which requires Pakistan to ensure that those accused of any offence – no matter how heinous – are guaranteed a fair trial by an independent, impartial and competent tribunal. Military courts in Pakistan are neither independent nor do the proceedings meet internationally agreed standards of fairness.

Precedents from around the world have shown that military courts tend to see their role as enforcing “state security” rather than impartially determining the guilt of the accused, the ICJ says.

Rather than compromising on the fundamental rights of accused persons in the name of “speedy trials”, Pakistan should focus on strengthening the police’s capacity of investigation; improving prosecution; and ensuring protection of judges, prosecutors and witnesses, which are the real reasons why those accused of terrorism have been able to evade accountability in civilian courts in Pakistan, the Geneva-based organization adds.

Contact:

Sam Zarifi, ICJ Asia Pacific Regional Director (Bangkok), t: +66 807819002; email: [sam.zarifi\(a\)icj.org](mailto:sam.zarifi@icj.org)

Reema Omer, ICJ International Legal Adviser for South Asia (London), t: +44 7889565691; email: [reema.omer\(a\)icj.org](mailto:reema.omer@icj.org)

Notes:

- The UN Human Rights Committee and the Special Rapporteur on the independence of judges and lawyers have emphasized that civilians should not be subject to the jurisdiction of military tribunals, particularly where, like in Pakistan, military tribunals lack the required institutional independence from the executive. They have also reaffirmed that internationally recognized guarantees of a fair trial also apply to military tribunals.

- Proceedings in military courts Pakistan, which will now have jurisdiction over terrorism cases after today's amendments, violate international standards on the right to a fair trial, including the UN Draft Principles Governing the Administration of Justice Through Military Tribunals (Decaux principles):
 1. Judges of military courts are military officers who are a part of the executive branch, are not legally trained, and do not enjoy the institutional independence necessary to ensure that the tribunals are independent and impartial;
 1. The amendments to the law allow civilians accused of a wide range of terrorism related offences to be tried by courts martial, in contravention of international standards providing that jurisdiction of military courts should be limited exclusively to trying members of the military for breaches of military discipline; and others which provide that at most, jurisdiction may be extended to civilians only in exceptional cases, where civilian courts are unable to undertake such trials or they are permitted by international humanitarian law;
 1. Appeals against courts martial orders to civilian courts are barred and the Supreme Court may only assume jurisdiction exercising its discretionary review powers, which is incompatible with standards that require appeals from military tribunals to be brought before civilian courts;
 1. Courts martial proceedings and subsequent punishment may be carried out "in any place whatsoever", effectively reducing public scrutiny of the proceedings including by family members of the accused and victims, as well as the media and civil society, which is contrary to fair trial standards requiring public trials in all but certain exceptional and prescribed circumstances.
- Pakistan last authorized military tribunals to try civilians in 2007, when General Musharraf, after declaring a State of Emergency, amended the Army Act to empower the security forces to try civilians accused of committing crimes against the defense or security of Pakistan in military courts. The Supreme Court declared the amendment to be without legal effect in 2009, after ruling that General Musharraf's proclamation of emergency and all subsequent actions were unlawful.
- Before that, the Pakistan Muslim League promulgated the Armed Forces (Aid to Civil Power) Ordinance in 1998 to allow for trials of civilians by courts martial for various

offences, including crimes under the Pakistan Penal Code. In 1999, the Pakistani Supreme Court in *Liaquat Hussain and others vs. the Federation of Pakistan*, declared the Ordinance unconstitutional and held that the trial of civilians in military courts amounts to creating “a parallel system...which is wholly contrary to the known existing judicial system”. The Supreme Court also held that this departure could not be justified on the basis of the public emergency or the “doctrine of necessity”.

- Military courts were also established by military dictatorships, including under General Zia-ul-Haq, which were used to target political opposition and stifle dissent.

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CIJ - Comisión Internacional de Juristas
CIJ - Commission Internationale de Juristes
МКЮ - Международная Комиссия Юристов
Rue des Bains 33
P.O. Box 91
1211 Geneva 8, Switzerland

T +41 (0)22 979 38 00
F +41 (0)22 979 38 01
info@icj.org

Bangkok Office: +66 261 984 77
Guatemala Office: +502 23 60 19 19
Johannesburg Office: +27 11 024 82 68
Nepal Office: +977 01 5000730/731
Brussels Office: +32 2 734 84 46
Tunis Office: +216 71 962 287

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