

Pakistan: Supreme Court decision upholding 21st Amendment a blow to human rights and judicial independence



AUGUST 7, 2015

The SC's decision to uphold the possibility of trial before military courts of individuals accused of committing terrorism related offences and belonging to "any terrorist group or organization using the name of religion or a sect" is a blow to human rights and the rule of law, said the ICJ.

In a split decision on the validity of the 21st amendment to the country's Constitution, delivered on Wednesday, nine judges of the Supreme Court held that the trial of suspected terrorists, including civilians, by military courts was within the constitutional framework of the country and met principles of criminal justice.

The judges also ruled that individuals who claim to, or are known to belong to "any terrorist group or organization using the name of religion or a sect" constituted a valid classification allowing for differential treatment under the constitution.

Six dissenting judges expressed the view that the 21st constitutional amendment was incompatible with the right to a fair trial and independence of the judiciary. Two judges did not give an opinion on the merits, but suggested that the Supreme Court did not have the jurisdiction to review constitutional amendments.

The 902-page judgment also responds to challenges to the 18th amendment to the Constitution, including the procedure for judicial appointments.

"This judgment squarely puts Pakistan at odds with its international obligations and weakens the Supreme Court's hard won reputation as the last resort for protecting the rights of Pakistani people," said Sam Zarifi, ICJ's Asia Director. "The Court has missed an important opportunity to reverse the militarization of justice in progress under the guise of combatting terrorism and to reinforce independence of the judiciary in the country."

The trial of civilians in military courts for terrorism-related offences is incompatible with international standards, which require that those accused of any criminal offence are guaranteed a fair trial by an independent, impartial and competent tribunal.

[ICJ's briefing paper](#), published in April, provides a detailed assessment of the incompatibility of military trials in Pakistan with its international law obligations.

The Supreme Court, however, did not engage with international standards of fair trial and independence of the judiciary.

At least eight judges of the Supreme Court were of the opinion that it is for the Federal Government alone to ensure that their conduct “does not offend against the Public International Law or any International Commitment made by the State”.

“It is very disappointing that the Supreme Court has abdicated its primary role in acting with the other branches of the State to implement its obligations under international law,” added Zarifi. “International law is clear -all organs of the State, including the judiciary, must respect international human rights commitments, which include the right to a fair trial. Indeed, it is a core judicial responsibility to state what the law provides, whether the source of the law is international or domestic.”

The majority judgment also goes against previous Supreme Court rulings on military courts. In the past, the Court had reasoned that military courts do not meet the requirements of independence and impartiality; the establishment of military courts for trial of civilians amounts to creating a “parallel judicial system”; and that impeding the right to a fair trial cannot be justified on the basis of the public emergency or the “doctrine of necessity.”

Military courts in Pakistan also have the power to award death sentences. On 2 April 2015, military courts convicted seven people of undisclosed offences in secret trials.

Of them, six were sentenced to death and one was sentenced to life in prison. The Supreme Court’s judgment has cleared the way for their execution.

Contact

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

Reema Omer, ICJ International Legal Advisor for South Asia (Lahore), t: +923214968434; email: reema.omer@icj.org

Read also:

[ICJ denounces law permitting military trials of civilians](#)

[Trials of civilians before military tribunals a subversion of justice](#)

[HRCP, ICJ demand clarification on juveniles' trial by military courts](#)

Additional information

In a significant development, by a 13-4 majority the Supreme Court held it has jurisdiction to review constitutional amendments passed by Parliament on the touchstone of the “salient features” and the preamble of the Constitution. What those salient features are, however, was left unaddressed.

On 6 January 2015, less than a month after a terrorist attack on an army public school in Peshawar that killed nearly 150 people, most of them children, the Pakistani Parliament unanimously voted to amend the Constitution of Pakistan, 1973, and the Army Act, 1952, to allow military courts to try civilians for offences related to terrorism.

Military courts in Pakistan are not independent or impartial. Trials before military courts in Pakistan fall far short of national and international fair trial standards.

Pakistan has resumed executions since December 2014, in response to a spate of terrorist attacks in the country. At least 196 people on death row have already been executed. According to available data, only a small fraction – less than 10 percent – of those executed were convicted of terrorist offences.

ICJ opposes capital punishment in all cases without exception. The death penalty constitutes a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading punishment.

Search...



[Advanced Search](#)

ADDRESS – DIRECCIÓN – ADRESSE – АДРЕС

ICJ – International Commission of Jurists
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

BROWSE BY REGION

[Africa](#)
[Americas](#)
[Asia & Pacific](#)
[Europe & Central Asia](#)
[Middle East & North Africa](#)
[ICJ-European Institutions](#)

BROWSE BY THEME

[Independence of Judges and Lawyers](#)
[Economic, Social & Cultural Rights](#)
[Business & Human Rights](#)
[United Nations](#)

Sexual Orientation & Gender Identity

Women's Human Rights

Global Security & Rule of Law

© 2018 ICJ. All Rights Reserved

Developed by Jan Beck