

Pakistan: Supreme Court validation of military court trials a blow to the rule of law



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Pakistan's Supreme Court's rejection of petitions by families of 16 people sentenced to death who complained of unfair trials in the country's military

courts seriously set back respect for human rights and the rule of law, the ICJ said today.

“The Supreme Court failed to use an important opportunity to show that human rights protect all people, including those who are accused of terrorist acts or other heinous crimes,” said Sam Zarifi, ICJ’s Asia Director. “Pakistan’s very serious problem with terrorism can only be addressed with more respect for human rights and the rule of law, not less, and certainly not through deeply flawed military tribunals that provide neither justice nor truth.”

Families of sixteen civilians sentenced to death by military courts in secret proceedings challenged their convictions and sentences in the Supreme Court on fair trial grounds. In its 182-page judgment, a five-member bench Supreme Court headed by Chief Justice Anwar Zaheer Jamali held the petitioners had failed to prove the military violated their constitutional right to a fair trial. At convicts are now at imminent risk of execution.

The ICJ is calling on the government of Pakistan to desist from executing these or other convicts, and to reinstate a moratorium on the death penalty it held from 2008 to 2014.

“Trial of civilian suspects in military courts is anathema to human rights and international standards are clear that military courts should only have jurisdiction over military officers for military offences,” said Zarifi. “Pakistan’s military tribunals in particular offer nothing like a fair trial and should be immediately dismantled.”

As highlighted by the ICJ in a [briefing paper](#) released in June, proceedings before Pakistani military courts fall well short of national and international standards requiring fair trials before independent and impartial courts: judges are part of the executive branch of the State and continue to be subjected to military command; the right to appeal to civilian courts is not available; the right to a public hearing is not guaranteed; and a duly reasoned, written judgment, including the essential findings, evidence and legal reasoning, is denied. In addition, the procedures of military courts, the selection of cases to be referred to them, the location and timing of trial, and details about the alleged offences are kept secret.

“The ICJ supports the pursuit of justice for all victims of terrorism in Pakistan,” added Zarifi. “However, justice will not be done by subverting the foundational pillar of justice: the right to a fair trial for all suspects –regardless of how serious the offence.”

Since January 2015, when Pakistan empowered military courts to try civilians for terrorism-related offences, 11 military courts have been constituted to hear cases related to terrorism.

These 11 military courts have thus far concluded the trials of 128 people, finding the defendants guilty in 104 cases. A hundred people have been sentenced to death and four have been given life sentences. At least 12 people have been hanged after trials that are grossly unfair.

The ICJ has called on the Pakistan government to roll back the system of “military injustice”, and ensure that all terrorism suspects are guaranteed basic fair trial protections.

The ICJ has also urged that Pakistan reinstate a moratorium on executions with a view to abolishing the death penalty in law and practice, reflecting the call of an overwhelming majority of States in repeated UN General Assembly resolutions. The ICJ considers the death penalty to constitute a denial of the right to life and a form of cruel, inhuman and degrading punishment.

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Additional information

In January 2015, Pakistan empowered military courts to try civilians for terrorism-related offences as part of its 20-point “National Action Plan”, adopted by the Government following the horrific attack on the Army Public School in Peshawar.

The expansion of military jurisdiction over civilians was accomplished through the 21st Amendment to Pakistan’s Constitution and amendments to the Army Act, 1952. These amendments allow military courts to try offences related to “terrorism” committed by those who claim to, or are known to, belong to a terrorist organization “using the name of religion or a sect”.

Both amendments are set to expire on 6 January 2017 pursuant to a “sunset clause”, after which they will cease to be in effect, although there is a risk that they could be renewed.

In August 2015, the Pakistani Supreme Court upheld the constitutionality of the 21st amendment and the trial of civilians by military courts for terrorism-related offences.

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