

Mandate of the Special Rapporteur on the independence of judges and lawyers

Ref.: AL PAK 3/2025
(Please use this reference in your reply)

19 March 2025

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 53/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **conviction of over 100 civilians by military courts**.

According to the information received:

Some of the people accused of **violence and arson, during demonstrations held on 9 and 10 May 2023 for the detention of former Prime Minister Imran Khan, have been brought to and convicted by military courts**.

According to data presented before the Supreme Court, 2892 people accused of involvement in the events of 9 and 10 May 2023 are being prosecuted under the regular criminal justice system for trial by civilian courts, whereas government and military authorities selected over 100 civilians for trial by military courts.¹

In May 2023, Pakistani military and government authorities announced the decision to hold trials of civilians allegedly involved in violence on 9 and 10 May 2023 in military courts, under the Official Secrets Act and Pakistan Army Act.

In June 2023, administrative judges of anti-terrorism courts handed over the custody of over 100 civilians to military authorities on the request of commanding officers of the military for their trial by military courts.

The information suggests that, in several cases, the military's request to hand over custody of accused civilians was based only on an initial investigation which found that, *prima facie*, the individuals were involved in various offences under the Official Secrets Act, including section 3, section 6, section 7, and section 9 which allowed the military tribunals to hold the individuals under section 59(4) of the Pakistan Army Act.

The authorities stated that the offences for which the individuals were tried involved alleged attacks on military installations and personnel. These offences fell under section 2 of the Pakistani Army Act, which, in accordance with section 59(4), allows civilians to be tried by military courts.

¹ [Judgement of the Supreme Court of Pakistan U/A 184\(3\), C.P.6/2023, 15.12.2023, 2023 SCP 400](#)

Some individuals petitioned the Supreme Court challenging the trial in military courts of those accused of violence on 9 and 10 May 2023. The petitioners requested the Supreme Court to declare the trial of civilians before military courts inconsistent with the Pakistani Constitution, the principle of the independence of the judiciary, and the right to a fair trial by a competent, independent and impartial judiciary established by law.

On 23 October 2023, the Supreme Court held that the provisions of the 1952 Army Act which provides for trial of civilians by courts martial, were *ultra vires*, to the Constitution and had no legal effect. In addition, the Supreme Court held that ordinary criminal courts had the competent jurisdiction to conduct trials of those accused of committing crimes on 9 and 10 May 2023. The Government appealed the decision of the Supreme Court through an intra-court appeal to a larger bench of the Supreme Court.

On 13 December 2023, a six-member bench of the Supreme Court heard the Government's appeal and held that the judgment was suspended and subjected to the condition that no final judgment should have been passed against the more than 100 accused persons by the military courts.

In March 2024, following the Attorney General's request, the Supreme Court allowed military courts to give reserved verdicts, through which those convicted could get their remaining sentence remitted and be released.

In April 2024, 20 individuals who had been sentenced to one year of imprisonment were released after their remaining sentences were remitted.

On 13 December 2024, a seven-member constitutional bench allowed military courts to conditionally announce verdicts for the remaining 85 accused as well, subject to its final decision on the appeals before the Supreme Court.

Following the Supreme Court's order, the military courts announced the conviction and sentence of the remaining 85 civilians. The only information about the trials, convictions, and sentences provided to the public was through press statements by the Inter-Services Public Relations, the official media wing of the Pakistan Armed Forces. The information suggests that no information was provided about the convictions, and it suggests that the trials were not public, as well as raising concerns about the due process guarantees in these proceedings.

On 21 December 2024, the Inter-Services Public Relations announced the conviction and sentence of 25 people for their involvement in violent attacks on military installations during the demonstrations on 9 May 2023. Those convicted were sentenced to two to ten years' imprisonment. The statement claimed that the convictions were an "important milestone in dispensation of justice to the nation" and that the accused were convicted "after examining all evidence, affording all legal rights to the accused and completion of due process."²

² [Inter Services Public Relations Pakistan](#) – Press Release ISPR, December 21, 2024; No PR-398/2024-ISPR

On 26 December 2024, the Inter-Services Public Relations announced the convictions and sentences of the 60 remaining civilians after “examining all evidences, ensuring the provision of all legal rights to the convicts, completion of due process and the appropriate legal proceedings.”³ Those convicted were sentenced to two to ten years’ imprisonment.

On 2 January 2025, Inter-Services Public Relations announced in a statement the “mercy” petitions of 17 convicted persons were accepted on humanitarian grounds and their remaining sentences were remitted. The statement stated that the remission of sentences is a “testament to the strength of the due process and fairness, which ensures that justice is served while also taking into account the principles of compassion and mercy.”⁴

Reportedly, the Inter-Services Public Relations’ press statements announcing the convictions provide no clarity or detail about the criminal conduct of those convicted or any reasoning justifying the exercise of jurisdiction in these cases by military courts and how the facts fall under section 2(d) of the Pakistan Army Act which requires that the offences are against the “work of defense in relation to the military of Pakistan.”⁵ In addition, the hearing of the military trials of the 105 convicted persons were not public.

To date, after more than one year, the intra-court appeal is still pending before the Supreme Court.

Provisions in the related legislation

In the Official Secrets Act, section 3 addresses spying, section 6 covers the unauthorized use of uniforms, falsification of reports, and forgery, section 7 pertains to interfering with police officers or members of Pakistan's armed forces, and section 9 focuses on attempts to commit or aiding and abetting offenses under the Act.

The Pakistan Army Act is primarily applicable to military officers and those who are in active service of the army. However, section 2(d)⁶ of Pakistan Army Act states that civilians are subjected to this Act when they are accused of:

- i) “Seducing or attempting to seduce any person subject to this Act from his duty or allegiance to Government”; or
- ii) “Having committed, in relation to any work of defense [...] in relation to [...] the military [...] of Pakistan an offence under the Official Secrets Act, 1923”.

³ [Inter Services Public Relations Pakistan](#) – Press Release ISPR, December 26, 2024; No PR-411/2024-ISPR

⁴ [Inter Services Public Relations Pakistan](#) – Press Release ISPR, January 2, 2025; No PR-2/2025-ISPR

⁵ [Section 2 Pakistan Army Act sub-sections d\(ii\)](#) “having committed, in relation to any work of defence, arsenal, naval, military or air force establishment or station, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Pakistan, an offence under the Official Secrets Act, 1923.”

⁶ [Section 2 Pakistan Army Act sub-sections d\(i-ii\)](#)

Section 59(4)⁷ of the Pakistan Army Act provides for the trial of such civilians under the Pakistan Army Act by military courts. Further, section 133 bars civilian courts from exercising their appellate jurisdiction over decisions of courts martial.⁸

While I do not wish to prejudge the accuracy of these allegations, I would like to express my serious concern about the trials of more than 100 civilians before military courts following the demonstrations on 9 and 10 May 2023. The Human Rights Committee, in general comment No. 32 on article 14 of the International Covenant on Civil and Political Rights (ICCPR), has emphasized that the guarantees enshrined in this article apply to all courts. My predecessors as Special Rapporteurs have repeatedly highlighted the significant risks of violations of the right to a fair and public trial, as well as due process guarantees, when civilians are tried before military courts. I recall that the practice of holding civilians accountable before military courts raises serious problems as far as the equitable, impartial and independent administration of justice. I am concerned about the fairness of these trials, as the requirement for a public hearing under article 14 of ICCPR was not upheld, given that the Pakistan Army Act does not guarantee public trials in military courts. I am greatly concerned that, according to section 133 of the Pakistan Army Act, there is no possibility for civilians to appeal the decision of the military court before any other court.

In this regard, I express serious concern about the provisions of the Pakistan Army Act that permit civilians to be prosecuted before military courts, particularly as the Supreme Court of Pakistan has declared these provisions to be beyond the power of the Constitution. It is troubling that, more than a year after the Government's appeal, the Supreme Court has yet to issue a definitive ruling. Instead, the Supreme Court has temporarily allowed military courts to announce reserved verdicts. My concerns have deepened since the only information available about the trials have been provided by the Inter-Services Public Relations' press statements which mentioned the convictions of civilians by military courts as proof of the due process and fairness of the trials.

In light of the alleged facts and concerns outlined above, I wish to remind Your Excellency's Government of its obligation to uphold the right to a fair and public hearing, as enshrined in article 14 of the International Covenant on Civil and Political Rights, which Pakistan ratified on 23 June 2010. I recall the recommendations made by the Human Rights Committee, in the Concluding Observations to Pakistan issued in December 2024, to abrogate the jurisdiction of military courts over civilians and bring their proceedings into full conformity with the right to a fair trial, and to release on bail all civilians detained under the jurisdiction of military courts.⁹ I urge Your Excellency's Government to bring the Pakistan Army Act and its provisions permitting the trial of civilians before military courts into full alignment with international standards.

⁷ [Section 59 Pakistan Army Act sub-section 4](#) "Notwithstanding anything contained in this Act or in any other law for the time being in force a person who becomes subject to this Act by reason of his being accused of an offence mentioned in clause (d) of sub-section (1) of section 2 shall be liable to be tried or otherwise dealt with under this Act for such offence as if the offence were an offence against this Act and were committed at a time when such person was subject to this Act ; and the provisions of this section shall have effect accordingly."

⁸ [Section 133 Pakistan Army Act](#) "No remedy shall lie against any decision of a court martial save as provided in this Act, and for the removal of doubt it is hereby declared that no appeal or application shall lie in respect of any proceeding or decision of a court martial to any court exercising any jurisdiction whatever."

⁹ UN Human Rights Committee, *Concluding observations on the second periodic report of Pakistan*, [CCPR/C/PAK/CO/2](#), para. 43, 2 December 2024

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the measures taken to guarantee that the trial of civilians before military courts respected the right to a fair trial and due process guarantees in line with article 14 of ICCPR.
3. Please provide information on the process to align the Pakistan Army Act with the international standards which require that civilians are tried before civilian courts. If no measures have been taken, please explain the reason(s).
4. Please provide information in regard to the stage of the process of the intra-court appeal requested by the Government before the Supreme Court.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of my highest consideration.

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw the attention of your Excellency's Government to the norms contained in the International Covenant on Civil and Political Rights (ICCPR), acceded by Pakistan on 23 June 2010. In particular, I would like to refer your Excellency's Government to article 14 of the ICCPR, which provides for the rights to be promptly informed of the reasons for the arrest and of any charges against him or her, to be brought promptly before a judge and that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

In regard to the right to a fair trial, article 14 of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. Article 14(2) provides the right of accused persons to be presumed innocent until proved guilty according to law. In addition, article 14(3) of the ICCPR provides a set of procedural guarantees that must be made available to persons charged with a criminal offence, including to have adequate time and facilities for the preparation of his defence and to examine, or have examined, the witnesses against him.

In regards of the conviction of civilians before military courts, the Human Rights Committee has affirmed in general comment No. 32 that the provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized, civilian or military. While the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned. The Committee also notes that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14. Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.

Furthermore, principle 5 of the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, affirms that Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals. In line with this position, principle 5 of the draft principles governing the administration of justice through military tribunals states that military courts should, in principle, have no jurisdiction to try civilians and that, in all circumstances, the State shall ensure that

civilians accused of a criminal offence of any nature are tried by civilian courts. In the commentary to that principle, it is noted that the practice of trying civilians in military tribunals presents serious problems as far as the equitable, impartial and independent administration of justice is concerned, and is often justified by the need to enable exceptional procedures that do not comply with normal standards of justice (see E/CN.4/2006/58, para. 20).

The former Special Rapporteur on the independence of judges and lawyers in her thematic report presented to the General Assembly in 2013 has stated on several occasions that using military or emergency courts to try civilians in the name of national security, a state of emergency or counter-terrorism is a regrettably common practice that runs counter to all international and regional standards and established case law. (A/68/285, para. 46) She observed that the administration of justice through military tribunals raises serious concerns in terms of access to justice, impunity for past human rights abuses, the independence and impartiality of military tribunals and respect for the fair trial rights of the accused (para. 14). It is commonly understood that human rights standards and principles relating to the administration of justice – such as the principle of equality before courts and tribunals, the right to be tried by a competent and regularly constituted court using established legal procedures, the right to an effective remedy, the principle of legality and the right to a fair trial – fully apply to military courts (para. 17). In line with this position, principle 5 of the draft principles governing the administration of justice through military tribunals states that military courts should, in principle, have no jurisdiction to try civilians and that, in all circumstances, the State shall ensure that civilians accused of a criminal offence of any nature are tried by civilian courts. In the commentary to that principle, it is noted that the practice of trying civilians in military tribunals presents serious problems as far as the equitable, impartial and independent administration of justice is concerned, and is often justified by the need to enable exceptional procedures that do not comply with normal standards of justice (para. 43).

Finally, the notion of fair trial includes the guarantee of a fair and public hearing. Fairness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive. A hearing is not fair if, for instance, the defendant in criminal proceedings is faced with the expression of a hostile attitude from the public or support for one party in the courtroom that is tolerated by the court, thereby impinging on the right to defence, or is exposed to other manifestations of hostility with similar effects (general comment No. 32, para. 25). In addition, all trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large (para. 28).