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

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(Please use this reference in your reply)

28 November 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 write to you in relation to the enactment of the 27th Amendment to the Constitution of Pakistan on 13 November 2025, and its implications for the independence of the judiciary and the protection of human rights in Pakistan, in particular the right to a fair trial and access to appeals and judicial review before independent and impartial courts.

I remain very concerned about the context in which this reform is taking place. I note that I previously expressed concern about the Pakistan parliament's proposed passage of sweeping judicial reforms through the 26th Amendment to the Constitution of Pakistan (OL PAK 5/2024). This amendment was subsequently passed on 21 October 2024, and petitions challenging its validity and constitutionality were pending before the Supreme Court at the time of enactment of the 27th Amendment, which makes even more extensive judicial reforms. I observe that both amendments were enacted in a matter of several days, and without formal consultation with the judiciary as an affected branch of government.

Recalling that one of the main purposes of an independent judiciary is to protect human rights and check power that would violate such rights, I offer the following comments. In this communication, I do not aim at providing a comprehensive analysis of the entire set of constitutional amendments passed. Instead, I focus on the amendments related to judicial independence and their compatibility with international human rights law and standards.

Right to a Fair Trial and the Requirement of Independent and Impartial Courts

At the outset, I would like to recall that in June 2010, Pakistan ratified the International Covenant on Civil and Political Rights (ICCPR), which includes clear guarantees on the right to a fair trial and the independence of the judiciary. In addition, I would also like to recall that much of the content of the Universal Declaration of Human Rights (UDHR), including its provisions concerning the right to a fair trial, is binding customary international law.

The right to a fair trial is protected in both the ICCPR and the UDHR. Article 10 of the Universal Declaration of Human Rights guarantees everyone the "right to a fair and public hearing by an independent and impartial tribunal", while article 14 of the ICCPR stipulates that: "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

The right to an effective remedy is also protected in both the ICCPR and the UDHR. Article 2.3(a) of the ICCPR guarantees that "any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity." Article 8 of the UDHR declares that "[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

Furthermore, in its general comment No. 32 (2007) on article 14 of the ICCPR, the Human Rights Committee emphasized that the right to equality before courts and tribunals and to a fair trial is key to the protection of human rights and serves as a procedural means to safeguard the rule of law.[1] Article 14 provides in particular for the principle of equality before competent, independent and impartial courts and tribunals. Fair trial guarantees can never be subject to measures of derogation that would circumvent the protection of non-derogable rights, and derogation from "the fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times."[2]

Context

On 8 November 2025, the Government of Pakistan tabled a series of constitutional amendments in a bill under the title "Constitution (Twenty-seventh Amendment) Act, 2025" ("the Act"). The draft bill consisted of almost fifty amendments. Its provisions set out wide-ranging and consequential reforms of the judiciary, including creating a new apex court and stripping the Supreme Court of its constitutional jurisdiction.

Only two days later, on 10 November 2025, the bill was passed in the Senate; and only 2 days after that, on 12 November 2025, the bill was passed by the National Assembly, with some amendments. The next day, on 13 November 2025, the amended bill was approved by the Senate and signed into law by the President.

According to reports, this fundamental reform was enacted in the absence of widespread consultation with the judiciary. In particular, all judges of the Supreme Court were not asked for their views regarding changes impacting that court.

Creation of the new Federal Constitutional Court

The Act fundamentally restructures the judiciary by inserting a new Chapter 1A into the Constitution, establishing the Federal Constitutional Court (FCC). Article 175A establishes that the FCC shall consist of a Chief Justice and as many judges as determined by the Parliament or, until so determined, as may be fixed by the President. Each Province will have an equal number of judges in the FCC and at least one judge from the Islamabad High Court, as long as the judges from the Islamabad High Court shall not exceed the number of judges from any Province. The President may make necessary provisions for the matters consequential or ancillary to the establishment and functioning of the FCC.

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1 CCPR/C/GC/32, paragraph 2.
2 CCPR/C/GC/32, paragraph 6.

The amended Article 175A of the Constitution provides that the President shall, on advice of the Prime Minister, appoint the first Chief Justice of the Federal Constitutional Court from amongst the Judges of the Supreme Court. Additionally, the appointment of the first batch of Judges of the Federal Constitutional Court shall be made by the President, on advice of the Prime Minister in consultation with the Chief Justice of the Federal Constitutional Court. Following these initial appointments, the Chief Justice of the FCC would be selected from the three most senior judges of the Court upon recommendation by a Special Parliamentary Committee constituted for that purpose, who would meet in private. Subsequent judges of the FCC would be appointed by the President following recommendations of the Judicial Commission.

Additionally, the Act amends Article 180 of the Constitution to permit the President to select the Chief Justice of the Supreme Court rather than have the title automatically pass to the Justice of greatest seniority.

The Act vests unusual power in the President for the initial appointment of judges of what has become the highest court in Pakistan, as well as for the leadership of the Supreme Court. I would like to recall that the Human Rights Committee has noted that situations in which the Executive is "able to control or direct" the judiciary are "incompatible with the notion of an independent tribunal".[3] International standards provide that States must take specific measures to protect judges from any form of political influence in their decision-making, including by adopting clear procedures and objective criteria for appointment, suspension and dismissal.[4]

Furthermore, the Act does not establish any public criteria or transparent procedures for these pivotal first appointments. I recall that international standards provide that any appointment procedure must guarantee judicial independence, both institutional and individual, and impartiality, both objective and subjective.[5] Judges should be selected based on their training or qualifications in law, as well as their integrity and ability.[6] The method of judicial selection must include safeguards against judicial appointments for improper motives.[7] This mandate has repeatedly emphasized that a candidate's integrity, legal training and qualifications are crucial elements in the appointment of judges,[8] and has underlined the importance of "prioritizing non-political appointment procedures, strictly linked to professional quality and merit, and commitment to the values of the rule of law and the standards outlined in the Basic Principles on the Independence of the Judiciary."[9]

Further changes to judicial appointments

The Act alters the composition of the Judicial Commission, which is responsible for nominating judges to the High Courts, Supreme Court, and the new FCC. Amendments to Article 175A of the Constitution provide that the Commission shall

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3 CCPR/C/GC/32, paragraph 19.
4 CCPR/C/GC/32, paragraph 19.
5 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, principle 1 (hereinafter "Basic Principles on the Independence of the Judiciary").
6 Basic Principles on the Independence of the Judiciary, principle 10.
7 Basic Principles on the Independence of the Judiciary, principle 10.
8 A/HRC/44/47/ADD.2 (2 June 2020), para. 104, A/HRC/11/41 (24 March 2009), para. 27.
9 A/HRC/50/36/ADD.1 (11 May 2022), para. 112.

now include the Chief Justice of the FCC and the next most senior judge of the FCC, in addition to the Chief Justice of the Supreme Court and the next most senior judge of the Supreme Court. The Commission will also include a further judge of either the FCC or the Supreme Court, who will be jointly nominated by the Chief Justices of both courts. The senior amongst the Chief Justice of the FCC and the Chief Justice of the Supreme Court will be the Chairperson of the Commission, with seniority determined with reference to their dates of appointment as Chief Justice or, if the dates of appointment are the same, with reference to their dates of appointment as Judges of the High Courts.

As a result of these amendments, at least two of the new judicial members of the Commission will be appointed by the executive, while a third (the Chief Justice of the Supreme Court) will be selected by the executive. Selection processes should ideally be carried out by an independent authority[10] and should guarantee the effective participation of civil society and citizens to ensure that the selection is based on merit, integrity, and abilities.

Jurisdiction of the FCC

Article 175E grants the FCC exclusive jurisdiction over constitutional disputes between the federal and provincial governments and in any case in which the FCC considers that a question of public importance is involved concerning the enforcement of Fundamental Rights. Articles 175E, 175G, and 175H remove the Supreme Court as the arbiter of constitutional law and displace the constitutional jurisprudence the Supreme Court has built up since the creation of Pakistan. Article 189 provides that decisions of the FCC on questions of law are binding on all other courts, including the Supreme Court.

The FCC will hear appeals as provided by any act of Parliament, as well as appeals from the High Courts involving a substantial question of law as to the interpretation of the Constitution. Articles 175E and 175F mandate the transfer of all existing petitions, appeals and review applications falling under the FCC's new constitutional jurisdiction from the Supreme Court to the FCC. This mandatory and retroactive transfer of all pending constitutional cases from the Supreme Court to the newly established FCC is a legislative disruption that bypasses the established judicial forum and the judges already overseeing certain cases.

Under Article 175E, the FCC is also granted sweeping hierarchical oversight, with the power to call for the record of any pending case before any court and make such order as the FCC sees fit if the case involves a substantial question of law as to the interpretation of the Constitution. This amendment permits the FCC to engage in a highly unusual kind of "forum shopping", by granting the discretion to designate a case to itself. In such cases, parties may also be deprived of the right of appeal, as the FCC's decisions are binding on all other courts.

International standards are clear on the right of appeal and judicial review.[11] The right to have a conviction and sentence reviewed by a higher tribunal imposes on the State party a duty to ensure the substantive review of any conviction and sentence by

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[10] HRC/44/47/ADD.2 (2 June 2020), para. 104; A/HRC/11/41 (24 March2009), para. 27; A/HRC/23/43/ADD.1 (24 May 2013), para. 112.

[11] CCPR/C/GC/32, paragraphs 48-50.

an impartial tribunal. The amendments will allow the FCC to selectively transfer certain cases to itself, and thus risk of setting up a procedure that would deny the right of review by an independent and impartial tribunal or the right of appeal.

Furthermore, the FCC is granted extensive new powers, including review jurisdiction under Article 175G to review its own judgments, and advisory jurisdiction under Article 175H to give legal opinions on matters of public importance referred to it by the President.

Two other provisions of the 27th Amendment shift jurisdiction relating to elections, previously granted to the Supreme Court, to the FCC. Article 4 modifies Article 17 of the Constitution to allow the FCC, rather than the Supreme Court, to determine the validity of the government's exclusion of a political party for being "formed or [] operating in a manner prejudicial to the sovereignty or integrity of Pakistan". Article 6 modifies Article 63A of the Constitution to allow for the final appeal of decisions by the Election Commission to rest with the Federal Constitutional Court, rather than the Supreme Court.

The creation of a new court that will be led by a Chief Justice chosen by the Executive, supplants the existing Supreme Court, divests its jurisprudence of finality, and is endowed with novel powers poses a significant threat to judicial independence within Pakistan.

Transfer of judges

The Act amends Article 200 of the Constitution of Pakistan to enable the President to transfer a judge of a High Court from one High Court to another High Court *"on the recommendation of and on such terms and conditions as may be determined by the Judicial Commission of Pakistan … (1) provided that the CJs of both High Courts will both be members of the Judicial Commission of Pakistan for purposes of this clause (2) Provided further that the Judicial Commission of Pakistan before making recommendation under this clause may hear the Judge."* This removes the language previously in Article 200 that "[N]o Judge shall be so transferred except with his consent and after consultation by the President with the Chief Justice of Pakistan and the Chief Justices of both High Courts."

The Act provides that High Court judges who do not accept transfer will be subject to disciplinary proceedings before the Supreme Judicial Council within a period of 30 days, and shall not perform their functions until the Council renders a decision. If, after inquiry, the Council reports to the President that the Judge's refusal to accept transfer is wrongful, the President may remove the Judge from office. The automatic suspension and commencement of disciplinary proceedings against judges who refuse transfer violates international standards that provide that judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties.[12] Furthermore, the transfer of judges without their consent is a violation of the United Nations Convention against Corruption, ratified by Pakistan in 2003, which has been interpreted by the United Nations Office on Drugs and Crime to hold that "A judge should not be transferred from one jurisdiction or function to

[12] CCPR/C/GC/32, paragraph 20 (interpreting ICCPR art. 14); Basic Principles on the Independence of the Judiciary, principle 18.

another without his or her freely given consent, except pursuant to a system of regular rotation or promotion formulated after due consideration by the judiciary."[13]

The Act further amends Article 209 of the Constitution to alter the composition of the Supreme Judicial Council. Membership of the Council, which is responsible for inquiring into allegations of judicial misconduct, will now include the Chief Justice of the FCC, the next most senior judge of the FCC, and a judge of the FCC or the Supreme Court jointly nominated by the Chief Justices of both courts.

Given the role of the executive in making initial appointments to the FCC, at least two members of the Council will be appointed by the executive. This risks politicized use of the Council's disciplinary functions, including the functions it will exercise in relation to judicial transfers. As stated by a previous holder of this mandate, "One of the most recurrent forms of disguised measures affecting a judge's conditions of service is the transfer to a different court or tribunal as a measure to punish an independent and courageous judge and to deter others from following her or his example".[14]

Extension of Lifetime Immunity to Executive Officers and Field Marshals

The Act amends Articles 248(2) and 248(3) in the Constitution to provide criminal immunity for the President for the duration of his life. Prior to the passage of the 27th Amendment, Articles 248(2) and 248(3) only provided immunity from criminal suit and arrest for the duration of a president's term. Article 248(1) stipulates that the President, and other specified executive officers, will not be answerable to any court for the exercise of powers and performance of functions of their respective officers or for any act done *or purported to be done* in the exercise of those powers. An amendment to Article 243(9) extends this, including guarantees of lifetime criminal immunity, to the Field Marshal, Marshal of the Air Force, and Admiral of the Fleet.

Denial of judicial jurisdiction over any act done or purported to be done in the exercise of certain executive powers and functions, and extension of lifetime criminal immunity to the President and to senior military officers named above gives victims of human, civil, or other rights violations no recourse to a remedy against these officials. While the Mandate is aware of the need for the executive or military branch to be able to respond to the exigencies of their country, these Articles would afford certain executive officials and military officials effective impunity, merely by the assertion that such disputed acts were taken in the exercise of their powers or functions.

The Amendments run counter to international standards providing that State parties must provide effective remedies for any person whose rights are violated, regardless of the official capacity of the person alleged to have committed the violation. ICCPR article 2(3)(a) states that each State party undertakes to "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity," and per article 2(3)(b), that State parties will "develop the possibilities of judicial remedy." International standards further provide that the obligation to respect and implement human rights law includes the provision of those

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[13] See also A/75/172, paragraph 69.
[14] A/75/172, paragraph 69.

who claim to be victims of a human rights or humanitarian law violation with effective access to a judicial remedy, irrespective of who may ultimately be the bearer of responsibility for the violation.[15] Under the 27th Amendment, putative victims would have no recourse to an effective remedy in the courts of Pakistan.

Debate over the proposed amendments

I would like to highlight that the Act's amendments to the Constitution have caused significant alarm amongst the legal community in Pakistan. Over 150 lawyers, academics and civil society organizations signed an open letter condemning the 27th Amendment.[16] Following the passage of the Act, two Justices of the Supreme Court resigned from the court due to their concerns about the changes wrought on the Constitution.[17]

Conclusion

In conclusion, I strongly urge careful review of these amendments, since they pose a real risk of harm to judicial independence and to individuals' rights to a fair and public hearing by a competent, independent and impartial tribunal, as guaranteed by article 14 of the ICCPR. I stand ready to engage in dialogue with Your Excellency's government on this very important matter and to provide any technical advice to ensure compliance with international human rights law.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

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[15] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted on 16 December 2005 by General Assembly resolution 60/147, principles 3 and 12.

[16] https://x.com/noorzraja/status/1988227926018359449?utm_source=chatgpt.com

[17] https://www.dawn.com/news/amp/1954958