

**Military “Justice” in Pakistan:**

**A Glaring Surrender of Human Rights**

Briefing Paper

May 2025

**JUSTICE**

**APPROVED**

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## I. Introduction

On 5 May 2025, a seven-member bench of the Supreme Court of Pakistan reserved its judgment in an intra-court appeal against the judgment of another bench of the Court, which in October 2023 had declared the trial of civilians by military courts was a violation of the right to a fair trial by an independent judiciary.

The case before the Supreme Court is of critical importance for the rule of law in Pakistan, and provides the Court with an important opportunity to reverse the militarization of justice in the country and to reinforce independence of the judiciary and respect for human rights.

In this Briefing Paper, the ICJ examines the military trials of 105 civilians convicted for offences in relation to violence at demonstrations in connection with the detention of former Prime Minister Imran Khan on 9 and 10 May 2023.

The ICJ finds the trials of these civilians violate Pakistan's legal obligations under international human rights law to ensure that people charged with criminal offences are tried by competent, independent and impartial courts in proceedings that comply with international fair trial standards. The ICJ recalls that use of military courts to try civilians usurps the functions of the ordinary courts and is inconsistent with the principle of independence of the judiciary.

Pakistan has a legal duty to protect its people against acts of violence, and where violence occurs, a duty to investigate, prosecute and bring perpetrators to justice. However, for such measures to be effective in the long term, they must be lawful and also be seen to be legitimate.

The ICJ stresses that ample experience from around the world has shown that departure from ordinary legal procedures and safeguards in the name of "security" is also counterproductive, as it feeds and fuels the very violence it is meant to curtail.<sup>1</sup>

The ICJ urges Pakistan to undertake a comprehensive review of its laws, policies and practices to ensure that military courts only have competency to try military personnel for exclusively military offences and in no manner have jurisdiction over civilians, including for security-related offences; and to ensure procedures of military courts, in law and practice, meet all fair trial standards in accordance with Article 14 of the International Covenant on Civil and Political Rights.

## II. Context

In May 2023, Pakistani military and government authorities announced their decision to hold trials of civilians allegedly involved in violence and arson<sup>2</sup> on 9 and 10 May 2023 in military courts, including under the Official Secrets Act, 1923 (OSA) and Pakistan Army Act, 1952 (PAA). To justify their decision, they cited the nature of offences, which included alleged attacks on military installations and military personnel, as well as lack of trust in the ordinary civilian justice system to hold perpetrators to account.<sup>3</sup>

In May and June 2023, administrative judges of anti-terrorism courts started handing over the custody of civilians to military authorities on the request of commanding officers of the military for their trial by military courts.<sup>4</sup> According to material reviewed by the ICJ, in a number of cases, the military's request to transfer custody of such civilians accused was based on an initial investigation that found that *prima facie* they bore responsibility for various offences under the OSA, including section 3 (spying), section 7 (interfering with officers of the Police or members of the armed forces of Pakistan), and section 9 (attempting to commit or abetting offences under the Act).

A number of people, including Justice Jawwad S. Khawaja, a former Chief Justice of Pakistan, petitioned the Supreme Court (SC), challenging the trial of those accused for violence on 9 and 10 May in military courts.<sup>5</sup> Some of the petitioners also requested the SC 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 delivered a landmark ruling. A five-member bench of the Court held provisions of the Army Act, 1952, which brought civilians under its ambit and provided for their trial by courts martial, were in violation of the Constitution and of no legal effect. In addition, the SC held instead of

<sup>1</sup> See International Commission of Jurists, "Report of the eminent jurists panel on terrorism, counter-terrorism and human rights", July 2009, accessed at: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/04/Report-on-Terrorism-Counter-terrorism-and-Human-Rights-Eminent-Jurists-Panel-on-Terrorism-series-2009.pdf>

<sup>2</sup> <https://www.dawn.com/news/1752003>

<sup>3</sup> <https://www.dawn.com/news/1753764>

<sup>4</sup> <https://www.dawn.com/news/1761297>

<sup>5</sup> Constitution Petition Nos.24, 25, 26, 27 & 28 and 30 of 2023.

military courts, ordinary criminal courts of competent jurisdiction must conduct trials of those accused of committing crimes on 9 and 10 May 2023.<sup>6</sup>

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. The Court held that "since the appellants have raised various questions of law which require consideration," the operation of the judgment is suspended subject to the condition that no final judgment shall be passed against the 103 accused persons by the military courts.<sup>7</sup>

The Supreme Court bench hearing the appeal was reconstituted by the Judges' Committee, which establishes the composition of benches and fixes cases before them, a number of times due to reasons such as the recusal of judges and objections by the petitioners.

In March 2024, on the Attorney General's request, the SC allowed military courts to announce reserved verdicts, where those convicted could get their remaining sentence remitted and be released.<sup>8</sup> In April 2024, 20 convicts who had been sentenced to one-year imprisonment were released after their remaining sentences were remitted.<sup>9</sup>

On 13 December 2024, a seven-member constitutional bench hearing the case 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.<sup>10</sup> Finally, on 5 May 2025, the Supreme Court after nearly 18 months concluded the proceedings in the intra-court appeal and reserved its judgment.

### III. Applicable domestic law

#### A. Pakistan Army Act, 1952, and the Official Secrets Act, 1923

The 105 civilians were tried and convicted under the Pakistan Army Act, 1952, and the Official Secrets Act, 1923.

The Pakistan Army Act is primarily applicable to military officers and those who are in active service of the army. However, Section 2 of Pakistan Army Act allows trials of civilians before military courts when they are accused of: 1) "Seducing or attempting to seduce any person subject to this Act from his duty or allegiance to Government"; or 2) having committed "in relation to any work of defense...in relation to the military of Pakistan" an offence under the Official Secrets Act (OSA). Section 59(4) of Army Act<sup>11</sup> provides for the trial of such civilians under the PAA by military courts.

The Official Secrets Act covers offences such as spying, taking photographs of certain notified "prohibited" places, "harboring spies", and attempting or abetting such offences.

The jurisdiction of military courts to try civilians accused of certain offences provided under the PAA is distinct from the temporary expanded jurisdiction of military courts to try civilians accused of terrorism-related offences for four years between January 2015 and March 2019. This expanded jurisdiction was enabled through the 21<sup>st</sup> and 23<sup>rd</sup> constitutional amendments and amendments to the PAA, which lapsed in March 2019.<sup>12</sup>

A number of civilians have been tried and convicted by military courts in recent years under the PAA and OSA.<sup>13</sup> Notably, Idrees Khattak – a prominent human rights defender – was forcibly disappeared in November 2019. His whereabouts remained unknown until June 2020, when military authorities informed the Commission of Inquiry on Enforced Disappearances that he was being tried by a military court under the PAA and OSA. In January 2021, the Peshawar High Court dismissed a petition challenging the military court's jurisdiction and allowed the military trial to continue.<sup>14</sup> On 2 December 2021, it was reported in the media that Idrees Khattak had been convicted and sentenced to 14 years' imprisonment under the PAA and

<sup>6</sup> [https://www.supremecourt.gov.pk/downloads\\_judgements/const.p.\\_24\\_2023\\_f.pdf](https://www.supremecourt.gov.pk/downloads_judgements/const.p._24_2023_f.pdf)

<sup>7</sup> [https://www.supremecourt.gov.pk/downloads\\_judgements/i.c.a.\\_5\\_2023.pdf](https://www.supremecourt.gov.pk/downloads_judgements/i.c.a._5_2023.pdf)

<sup>8</sup> <https://www.dawn.com/news/1824252>

<sup>9</sup> <https://www.dawn.com/news/1826642>

<sup>10</sup> <https://www.dawn.com/news/1878498>

<sup>11</sup> "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."

<sup>12</sup> <https://www.icj.org/pakistan-as-military-courts-lapse-government-must-prioritize-reform-of-the-criminal-justice-system/>

<sup>13</sup> The exact number is not known.

<sup>14</sup> <https://www.peshawarhighcourt.gov.pk/PHCCMS//judgments/W.P.No.4271-P2020-Muhammad-IdreesKhattak-VS-Govt.-of-Pakistan,-through-Secretary,-Ministry-of-Defence-&-others- Dismissed .pdf>

OSA for offences related to spying. The military court’s judgment against him has not been made public.<sup>15</sup>

### **B. Military court convictions related to 9 and 10 May**

Military courts tried a total of 105 civilians for conduct related to the violent demonstrations on 9 and 10 May 2023. Twenty civilians, who were sentenced to one-year imprisonment, were released in April 2024 after their remaining sentence was remitted. Following the Supreme Court’s order in December 2024, the military announced the convictions and sentences of the remaining 85 civilians in two phases.

On 21 December 2024, the Inter-Services Public Relations (ISPR) announced the convictions and sentences of 25 people for their involvement in violent attacks on military installations during nationwide demonstrations on 9 May 2023. The convicts were sentenced to two to ten years’ imprisonment.<sup>16</sup>

The statement claimed the convictions were an “important milestone in dispensation of justice to the nation” and the accused were convicted “after examining all evidence, affording all legal rights to the accused and completion of due process.”<sup>17</sup>

On 26 December 2024, the ISPR announced the convictions and sentences of the 60 remaining civilians after “examining all evidence, ensuring the provision of all legal rights to the convicts, completion of due process and the appropriate legal proceedings.”<sup>18</sup> As during the first phase, the convicts were sentenced to two to ten years’ imprisonment.

On 2 January 2025, ISPR announced in a statement that the “mercy” petitions of 19 convicts had been accepted on “humanitarian grounds” and their remaining sentences were remitted. The statement stated 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.”<sup>19</sup>

Strikingly, all 105 civilians tried by military courts for the 9 and 10 May events were convicted – a 100 per cent conviction rate: 16 civilians were sentenced to 10 years’ imprisonment, 11 for nine years’ imprisonment, one for eight years’ imprisonment, six for seven years’ imprisonment, ten for six years’ imprisonment, one for five years’ imprisonment, 13 for four years’ imprisonment, three for three years’ imprisonment, 24 for two years’ imprisonment, and 20 for one-year imprisonment.

#### **Cases decided by military courts related to 9 and 10 May**

Number of civilians tried	105
Convictions	105
Release following remission/mercy	39
Civilians in custody	66

### **C. Jurisdiction of military courts for 9 and 10 May offences**

It remains unclear how the requirements under the PAA and OSA for military trials of civilians were met in the cases of 105 civilians convicted by military courts for their involvement in the events of 9 and 10 May.

According to material reviewed by the ICJ, in a number of cases the military’s request to hand over custody of civilians accused was based on an initial investigation that found that *prima facie* they were involved in various offences under the OSA, including Section 3, Section 6, Section 7, and Section 9.

A submission made by the Government of Punjab to the Supreme Court<sup>20</sup> confirmed that at least 28 people tried by military courts for their involvement in the 9 May violent demonstrations were convicted for offences under Section 3, 6 and/or 7 of the OSA.

Section 3 of the OSA relates to spying; Section 6 relates to unauthorized use of uniforms, falsification of reports, and forgery; Section 7 relates to interfering with officers of the police or members of the armed forces of Pakistan; and Section 9 relates to attempting to commit or abetting offences under the Act.

It is not clear how the conduct of the people convicted by military courts falls under any of these offences. ISPR’s press statements announcing the convictions also provide no clarity or detail about the criminal

<sup>15</sup> <https://www.icj.org/idrees-khattaks-conviction-by-a-military-court-is-a-gross-miscarriage-of-justice/>

<sup>16</sup> <https://www.ispr.gov.pk/press-release-detail?id=7113>

<sup>17</sup> Ibid.

<sup>18</sup> <https://www.ispr.gov.pk/press-release-detail?id=7126>

<sup>19</sup> <https://www.ispr.gov.pk/press-release-detail?id=7132>

<sup>20</sup> The submission is available with the ICJ.

conduct of the convicts or any reasoning justifying the exercise of jurisdiction in these cases by military courts.

It is also unclear on what grounds the military courts concluded the violations of the OSA fell under the category of “work of defense in relation to the military of Pakistan” – which is a prerequisite for military courts to assume jurisdiction over people accused of committing crimes under the OSA. The SC in earlier cases has held that for civilians to be tried by military courts under these provisions, there must be a “close and direct nexus with the defense of Pakistan” or the offences must have been committed “with the intention or object of causing damage to the defense of Pakistan.”<sup>21</sup>

The requirements of the “close and direct nexus” with the defense of Pakistan and the “intention of causing damage to the defense of Pakistan” both seem to be missing in these cases based on information that is publicly available regarding the 9 and 10 May event. ISPR’s press statements do not provide any clarity as to how these requirements were met, and there is no public judgment that proves a nexus with the defense of Pakistan or the intention to cause damage to the defense of Pakistan in these 105 cases.

Finally, the procedure adopted by the authorities to transfer the accused civilians to military custody for military trial under the Pakistan Army Act remains unclear. Whether such transfer of custody can take place without prior judicial determination of the jurisdiction of military courts is also one of the issues being considered by the Supreme Court in the intra-court appeal.

#### **IV. Applicable international law and standards**

##### **A. Trial of civilians by military courts under international law**

The ICJ notes at the outset that, as a general matter under international standards, “military courts should, in principle, have no jurisdiction to try civilians. In all circumstances, the State shall ensure that civilians accused of a criminal offence of any nature are tried by civilian courts. [...] The jurisdiction of military courts should be limited to offences of a strictly military nature committed by military personnel. Military courts may try persons treated as military personnel for infractions strictly related to their military status.”<sup>22</sup>

The former Special Rapporteur on the Independence of Judges and Lawyers reinforced this position in her 2013 report to the UN General Assembly on the question of military tribunals (A/68/285). There she concluded that: “Because they have the distinct objective of dealing with matters related to military service, military tribunals should have jurisdiction only over military personnel who commit military offences or breaches of military discipline, and then only when those offences or breaches do not amount to serious human rights violations. Exceptions are to be made only in exceptional circumstances and be limited to civilians abroad and assimilated to military personnel.”<sup>23</sup>

The UN Human Rights Committee has stressed that military tribunals to try civilians will generally be incompatible with State obligations under ICCPR article 14, save in exceptional circumstances. According to the Committee in its General Comment 32,

“... such trials [must be] in full conformity with the requirements of article 14 and ... 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.”<sup>24</sup>

None of these exceptions that would allow for the use of military courts in respect of the charged civilians is engaged. There is no evident reason why the civilian courts of Pakistan are unable to administer in these cases, and the necessity requirement has not been shown, nor could be they be demonstrated by the government. Moreover, as outlined below, the military tribunals do not meet the article ICCPR 14

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<sup>21</sup> See, for example, PLD 1999 SC 504 and PLD 1975 SC 506.

<sup>22</sup> Principles 5 and 8 of the UN Human Rights Sub-Commission’s Principles governing the administration of justice through military tribunals, UN Doc E/CN.4/2006/58 (13 January 2006).

<sup>23</sup> UN Doc A/68/285 (7 August 2013).

<sup>24</sup> UN Doc CCPR/C/GC/32, para 22.



guarantees.

## **B. Incompatibility of Pakistani military courts' proceedings with the right to a fair trial**

International standards require that military courts, like all other courts, must be independent, impartial and competent, and in criminal cases must respect minimum guarantees of fairness, including those set out in Article 14 of the ICCPR.<sup>25</sup>

Pakistani military courts are not independent and the proceedings before them fall far short of national and international fair trial standards.<sup>26</sup>

### **a. Lack of competence, independence, and impartiality**

Military courts in Pakistan are not independent or impartial. Judges of military courts are military officers who are a part of the executive branch of the State and do not enjoy independence from the military hierarchy. They are not required to have judicial or legal training, or even a law degree,<sup>27</sup> and do not enjoy any security of tenure,<sup>28</sup> which are prerequisites of judicial competence and independence.

Members of the office of the Judge Advocate General (the branch of the military comprised of senior officers, lawyers and judges who provide legal services to the military), may supervise the operation of military courts, but do not sit on the bench hearing cases.<sup>29</sup>

Critical decisions with respect to the constitution of courts martial, place of hearing, and final sentences are currently left in the hands of military officers (not judges), which further violates the fundamental requirements of independence of the judiciary.<sup>30</sup>

### **b. Absence of public trial**

Fairness and transparency require that trials should be public except for in certain prescribed circumstance,<sup>31</sup> in which good cause exists for conducting parts or all of a hearing *in camera*. In identifying the conditions for a State's compliance with its obligation under article 14 of the ICCPR, the UN Human Rights Committee has affirmed that:

"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. Courts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the oral hearing."<sup>32</sup>

The reasons for any closure of the hearing must meet the requirements set out in ICCPR article 14, including the principles of legality, necessity, proportionality, and non-discrimination, and should be fully stated on the record and any such closure should be kept to the bare minimum to ensure fairness. There has been no showing that these elements have been, including that closure is strictly necessary to meet one of the legitimate grounds of restriction set out in article 14(1), such as national security.

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<sup>25</sup> For more details on international standards on the trial of civilians before military courts, see *International Commission of Jurists*, "The trial of civilians by military courts", Section 5, accessed at : <http://www.ici.org/pakistan-military-justice-system-an-affront-to-human-rights-new-analysis-brief/>

<sup>26</sup> For more information about the operation of military courts, see also Katharine Houreld, 'Worries grow as new courts hand Pakistan army more power', *Reuters*, 25 March 2015, accessed at: <http://www.reuters.com/article/us-pakistan-military-courts-insight-idUSKBN0ML2PD20150325>

<sup>27</sup> See, for example, *UN Basic Principles on 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 (UN Basic Principles on Independence of the Judiciary). Principle 10: 'Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives.'

<sup>28</sup> *Ibid.*, principle 12: 'Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.'

<sup>29</sup> Section 103, Pakistan Army Act, 1952.

<sup>30</sup> *Basic Principles on Independence of the Judiciary*, *supra* fn. 34. Principle 14: 'The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration' and Principle 3: 'The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law'.

<sup>31</sup> Under ICCPR article 14, These include: morals; public order, which relates primarily to order within the courtroom; national security in a democratic society; when the interests of the private lives of the parties so require (for example, to protect identity of victims of sexual violence); and to the extent strictly necessary, in the opinion of the court, in special circumstances where publicity would prejudice the interest of justice.

<sup>32</sup> Human Rights Committee General Comment 32, "Article 14: Right to Equality before courts and tribunals and to a fair trial," (General Comment 32) UN Doc. CCPR/C/GC/32, para 28.

Rather than assessing the question of exclusion of members of the public on a case-by-case basis with a full analysis, The Pakistani Army Act does not guarantee either public trials in courts martial, or public hearings in courts martial appeals.

In the military trials of the 105 convicts, the hearings were not public.

**c. Failure to provide a duly reasoned judgment**

A duly reasoned, written judgment, including the essential findings, evidence and legal reasoning, is an essential component of a fair trial. Even in cases in which the public may be excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public, except in the interest of juveniles, or proceedings concerning matrimonial disputes or the guardianship of children.<sup>33</sup>

Military courts in these 105 cases failed to make their judgments public. The only information about the trials, convictions, and sentences provided to the public was through press statements by the ISPR. The statements mention the names of the civilians convicted, the sentences given, and a brief description of the "incident" for which they were found guilty of being "involved in". For example, "involved in Jinnah House incident", "involved in PAF Base Mianwali incident", and "involved in Punjab Regimental Centre Mardan incident."

The press statements do not clarify the criminal conduct of the accused, the evidence considered by the military court to find them guilty, or the provisions of law under which they were tried.

The failure to give reasoned judgments also raises questions about the reasons for and the proportionality of sentences given to those convicted by military courts. People found to be "involved" in similar "incidents" have been given sentences ranging from two to ten years. It is unclear why this range of sentencing was adopted or what distinguishes the criminal conduct of those who were given longer prison sentences compared to those given shorter prison sentences.

**d. Bar on appeal to civilian courts**

The Pakistan Army Act bars civilian courts from exercising their appellate jurisdiction over decisions of courts martial.<sup>34</sup>

Civilian courts in Pakistan have held they may use their extraordinary writ jurisdiction to hear cases related to military courts where "any action or order of any authority relating to the Armed Forces of Pakistan is...either *coram non judice*,<sup>35</sup> *mala fide*,<sup>36</sup> or without jurisdiction."<sup>37</sup>

It should be noted that under Pakistani law, the scope of judicial review is highly restrictive. Courts have also interpreted their review jurisdiction narrowly and have held that "the High Court in its constitutional jurisdiction is not a Court of Appeal and hence is not empowered to analyze each and every piece of evidence in order to return a verdict"<sup>38</sup> and "controversial questions of facts...cannot be looked into in this limited extraordinary writ jurisdiction."<sup>39</sup>

According to international law and standards, where military tribunals exist, their authority should be limited to ruling in the first instance. Consequently, recourse procedures, particularly appeals, should be brought before civilian courts.<sup>40</sup>

Furthermore, the fact that military appellate courts are composed of individuals who are not judges, are not required to have any legal training, and continue to be subjected to the military chain of command violate the right of an appeal before an independent and impartial tribunal, guaranteed under international law and standards.

**e. Equality before law and non-discrimination**

According to data presented before the Supreme Court, 2892 people<sup>41</sup> accused of involvement in the events

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<sup>33</sup> Ibid, para 22.

<sup>34</sup> Section 133, Pakistan Army Act, 1952.

<sup>35</sup> If the case is referred to or decided by a court lacking the authority to hear and decide the case in question.

<sup>36</sup> If the decision is made in bad faith.

<sup>37</sup> 2014 SCMR 1530: "When any action of the army authorities regarding a serving officer of the armed forces or any other person subject to the Pakistan army act, 1952, was established to be either mala fide, quorum non judice or without jurisdiction then the same could be assailed through a constitutional petition by the aggrieved person, and the bar of jurisdiction under Art.199(3) of the Constitution would have no applicability."

<sup>38</sup> 2014 SCMR 849, Supreme Court, para 6.

<sup>39</sup> 2010 YLR 2895, Lahore High Court, para 14.

<sup>40</sup> Principle 17 of the draft Principles Governing the Administration of Justice Through Military Tribunals, UN Doc. E/CN.4/2006/58.

<sup>41</sup> [https://www.supremecourt.gov.pk/downloads\\_judgements/const.p.24.2023\\_an.pdf](https://www.supremecourt.gov.pk/downloads_judgements/const.p.24.2023_an.pdf)

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 105 civilians for trial by military courts. It is not clear on what basis the decision to try 105 accused under the PAA and OSA for military trial was made.

The difference in treatment of similarly placed individuals appears incompatible with the right to equality and equal protection of the law and non-discrimination, including under Article 26 of the ICCPR.

### **C. Concluding Observations of UN treaty-monitoring bodies**

The UN Human Rights Committee in 2024, and both the Human Rights Committee and the Committee against Torture in 2017, raised concern about the trial of civilians by military courts in their periodic reviews of Pakistan.

The UN Human Rights Committee reviewed for the second time Pakistan's human rights record under the Covenant on 17 and 18 October 2024. In its "Concluding Observations", issued in December 2024, the Committee expressed concern about the use of the Pakistan Army Act, 1952, to prosecute civilians in military courts; the lack of independence of military courts; and the difference in due process guarantees for civilians tried in military courts compared to the civilian judicial system.<sup>42</sup>

The Human Rights Committee recommended that Pakistan "abrogate the jurisdiction of military courts over civilians and bring their proceedings into full conformity with the right to a fair trial" and "release on bail all civilians detained under the jurisdiction of military courts."<sup>43</sup>

In April 2017, the Committee against Torture reviewed Pakistan's implementation of the Convention Against Torture.

In its Concluding Observations, the Committee expressed deep concern that Pakistan had authorized military courts to try civilians for terrorism-related offences, "particularly in view of the lack of independence of military court judges, which are within the military hierarchy" and the "practices of such courts, including the holding of closed trials."<sup>44</sup>

The Committee recommended that Pakistan "[p]ut an end to the use of military courts for terrorism-related prosecutions, transfer criminal cases brought against civilians from military courts to civil courts and provide the opportunity for appeal in civil courts of cases involving civilians that have already been adjudicated under military jurisdiction."<sup>45</sup>

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<sup>42</sup> UN Human Rights Committee, *Concluding observations on the second periodic report of Pakistan*, UN Doc. CCPR/C/PAK/CO/2, 2 December 2024.

<sup>43</sup> *Ibid.*

<sup>44</sup> UN Committee against Torture, *Concluding observations on the initial report of Pakistan*, 1 June 2017, U.N. Doc. CAT/C/PAK/CO/1, para 10.

<sup>45</sup> *Ibid.*, para. 13(b).

# Commission Members

January 2025

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