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## **Pakistan: military tribunals should be immediately abolished**

Today's acquittal of thirteen-year old Mohammad Saleem, 20 days after he was sentenced to death by a military court highlights the Pakistani government's disregard for international human rights standards, Amnesty International said.

While welcoming the acquittal, the organization believes that the death sentence should never have been imposed in the first place -- on a child or anybody.

"Pakistan is flouting its obligations as a state party to the UN Convention on the Rights of the Child which clearly forbids the death penalty for anyone who was under the age of 18 at the time of committing the offence," Amnesty International said. "It is high time that domestic law is changed to make Pakistani children safe from being killed by the state."

Like Mohammad Saleem, at least 10 other people have reportedly been sentenced to death on charges of murder, rape and kidnapping after summary trials by military courts set up in early December 1998.

"International human rights standards demand that the most scrupulous care be taken in cases where the death penalty is at stake. However, Pakistan's military courts are obliged by law to convict and sentence a suspect within three days, and therefore provide a manifestly unfair trial," Amnesty International said.

"These courts do not allow defendants to present a full defence in the restricted time available for the trial and seriously limit the right to appeal. They should be abolished forthwith to prevent further miscarriages of justice," the organization concluded.

Two of the people sentenced to death by the military courts have already been executed. Amnesty International is concerned that the executions were carried out despite the fact that petitions challenging the constitutionality of the military courts are pending in the Sindh High Court and in the Supreme Court of Pakistan.

Moreover, regular procedures were altered by a notification issued by the Governor of Sindh to allow the executions to take place during the month of Ramadan or Ramazan which started on 21 December 1998 and is considered holy by Muslims. The Pakistan Prison Rules in Rule 361(ii) lay down that "executions shall not take place ... in the month of Ramazan".

### **Background**

In response to the breakdown of law and order in Sindh province, the Government of Prime Minister Nawaz Sharif on 30 October 1998 dismissed the elected provincial government and placed the province under Governor's rule. Under the Pakistan Armed Forces (Acting in Aid of the Civil Powers) Ordinance, 1998, promulgated on 20 November 1998, Article 245 of the Constitution of Pakistan was invoked and the army called in to assist police in Karachi. The ordinance also established summary military tribunals to try, within three days, civilians suspected of specified serious offences. Those convicted have the right to appeal within three days only to an

appellate military tribunal -- unlike people convicted by regular courts, who may also appeal to the Supreme Court of Pakistan and seek clemency.

Challenging the constitutionality of the summary military courts, lawyers in Pakistan have pointed out that in 1977 a full bench of the Lahore High Court held that military courts could not be set up under Article 245 of the Constitution to try ordinary civilians. Other judgments of the higher judiciary in Pakistan have laid down that criminal trials may only be conducted by properly trained judicial officers, independent of the executive and under the judicial supervision of the higher judiciary.

The setting up of summary military tribunals appears to go against the spirit of the Constitution of Pakistan which in Article 4 states that: "To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every ... person", and in Article 9: " No person shall be deprived of life and liberty save in accordance with law". Trial by special tribunals also contravenes Principle 5 of the United Nations Basic Principles on the Independence of the Judiciary, endorsed by the General Assembly in 1985. It states: "Everyone has 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."

Mohammad Saleem was sentenced to death on 19 December along with three adult men on charges of murdering three police officers. Their trial had lasted 12 days. He was acquitted for want of evidence and ordered to be released while the death sentence of the three other men was commuted to life imprisonment.

The executions of Ashraf Chakar, sentenced to death on 16 December after a 10-day trial for killing a police constable, and of Rafiuddin Babli, sentenced to death for kidnapping and raping a young girl, took place in Karachi Central Jail on 31 December 1998 and 5 January 1999 respectively.

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