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Pakistan: New anti-terrorist courts breach fair trial norms

Including military officers in panels of judges which try 'terrorist' offences will undermine the independence of the judiciary which is a key guarantor of the protection of human rights, Amnesty International said today. The organization urged the Government of Pakistan to withdraw this provision of the new Anti-terrorism amendment ordinance.

President Musharraf had indicated in his speech to the nation on 12 January that sectarian violence had undermined the writ of the government and needed to be brought to an end. He said that in the year 2001 alone, 400 people had been killed in Pakistan on account of "sectarianism and terrorism". Besides strengthening the law enforcement apparatus, the justice system needed to be strengthened and made more efficient to curb sectarian violence, he added.

The new ordinance issued on 31 January provides for new courts. They will include one senior military officer nominated by the government besides two civilian judicial officers constituting a three-member bench headed by a civilian judge. The courts will sit in cantonments or jail premises to ensure the security of accused, witnesses and the judiciary. A senior officer said, "these are not military courts in the true sense, but these courts will comprise civil judges and military officers to speedily dispose of cases of all those involved in terrorism".

The courts in Pakistan, including anti-terrorist courts in operation since 1997 which are to try cases speedily, have a heavy backlog of cases leading to long delays in the dispensation of justice. Cases involving sectarian murders often collapse as people are afraid to come forward and testify. Judges are known to have delayed giving judgments for fear of becoming the target of violence themselves. Violence on court premises has increased over time with judicial officers, accused persons and witnesses attacked, injured or killed. These factors taken together have led to an atmosphere of impunity in which people have committed sectarian violence in the knowledge that they would not be punished, leading to a self-perpetuating cycle of such violence.

"While urgent steps are needed to ensure that those accused of sectarian violence are brought to justice speedily and to ensure that those involved in the criminal justice process are safe, having the military participate in the judicial process is not permissible. Justice must not only be done but also be seen to be done and dispensed by those properly qualified to do so and independent of the executive," Amnesty International said.

Trial by special tribunals including military staff 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 of judicial tribunals."

Background

The anti-terrorism law was passed in August 1997; it gave police wide-ranging powers to arrest suspects and established special anti-terrorism courts. Amnesty International at the time pointed out the manifold ways in which the law violated human rights particularly the right to a fair trial. The Supreme Court of Pakistan declared that the Anti-terrorism law as a whole was not unconstitutional but that 12 key sections of the law were unconstitutional and needed to be amended. Several months later this was done by an Amendment Act. Dozens of people have meanwhile been tried and convicted by these

special courts which still fail to provide a fair trial. Most of the death sentences in Pakistan are imposed by anti-terrorist courts.

In November 1998, summary military courts were set up to try, within three days, civilians suspected of specified serious offences. Several people were tried and convicted by these special courts; several were sentenced to death and two men were executed before the Supreme Court of Pakistan declared these courts unconstitutional and ordered them disbanded.

The new anti-terrorist law, which replaced the old one of 1997, came into force on 31 January 2002. It will remain in force until 30 November 2002 but may be extended.

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