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February 17, 1999 7:00PM EST

## Shut-Down of Military Courts in Pakistan Hailed

But Transfer of Cases to Anti-Terrorism Courts Sharply Condemned



Human Rights Watch today welcomed the decision by Pakistan's Supreme Court to declare military courts illegal, but cautioned against the transfer of cases from the military courts to special anti-terrorism courts. The organization called on Pakistan's parliament to repeal the earlier Anti-Terrorism Act and the courts established under that act. "The anti-terrorism courts sacrifice due process in the interest of speedy trials," said Vikram Parekh, a researcher tracking Pakistan at Human Rights Watch, an international monitoring group based in New York. "In this respect, they differ little from the military courts." The Supreme Court yesterday ordered that cases tried by or pending before military courts be transferred to anti-terrorism courts.

Parekh also noted that children under the age of 18 faced capital punishment under the military courts, in violation of the Convention on the Rights of the Child, which Pakistan has ratified.

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The ordinance recommended the Pakistan Armed Forces (Acting in Aid of the Civil Power) Ordinance, 1979, which provided for the establishment of military courts throughout Pakistan. The ordinance amended Section One of the Ordinance, under which military courts were established. The ordinance provided that where government forces have been engaged in an effort to maintain law and order, the ordinance could be expanded to the whole of Pakistan. The ordinance was expanded to the Punjab province. In its decision yesterday, the Supreme Court declared only that the courts were illegally constituted but did not strike down the ordinance itself.

The ordinance grants military courts jurisdiction over a range of crimes defined by the Pakistan Penal Code, as well as cases involving "civil commotion," an offense that includes creating "internal disturbances in violation of law or intended to violate law"; engaging in illegal strikes; and "distributing, publishing, or pasting of a handbill or making graffiti or wall-chalking intended to create unrest or fear or create a threat to the security of law and order or to incite the commission of an offense." Human Rights Watch believes that this law violates fundamental rights of free expression and assembly.

The Anti-Terrorism Act of 1997, which provides for the establishment of anti-terrorism courts, closely resembles the ordinance. Both laws provide for expedited court proceedings -- seven days under the Anti-Terrorism Act and three days under the Ordinance. Both laws also create special appeals courts with exclusive appellate jurisdiction. The Anti-Terrorism Act allows defendants only seven days in which to file appeals, while the Ordinance narrows that period even further to just three days. These provisions violate Article 14(b) of the International Covenant on Civil and Political Rights, which entitles any person charged with committing criminal offenses "to have adequate time and facilities for the preparation of his defense."

Both the Anti-Terrorism Act and the Ordinance include provisions stating that they override other laws. Military courts have relied on this provision in exercising jurisdiction over children under the age of 16, in violation of the Sindh Children Act, a law operative in Sindh province. The Sindh Children Act specifies the courts that may hear juvenile cases, prohibits the joint trials of adults and minors, and bars the imposition of the death penalty on children. The Convention on the Rights of the Child, which is binding on Pakistan, also prohibits the use of capital punishment on children under the age of 18.

There have been at least two cases to date in which military courts have tried children under the age of sixteen.

On January 12, 1999, Military Trial Court No. 6 ordered the medical examination of a teenage boy -- charged with firing on a paramilitary rangers patrol, killing one ranger and injuring another -- in order to determine his age. The medical board established by the court determined that Taha, son of Naeem Ahmad Khan, was between fifteen and sixteen years of age when the crime in question was committed, and was therefore a child for the purposes of the Sindh Children Act. Despite this finding, the court proceeded to try him, along with four young adults charged in the same case. The court indicated that it was proceeding toward a conviction of Taha and three other defendants at the trial's conclusion on January 28, 1999, but has not yet ruled on the case. Taha could face the death penalty if convicted.

In an earlier case, fourteen-year old Mohammed Saleem was sentenced to death by Military Trial Court No. 2 on December 19, 1998, after being convicted along with three adult men of murdering three police officers from Karachi's Ibrahim Hyderi police station. A military appellate court acquitted him on January 6, 1999, but in doing so, effectively rejected the defense counsel's argument that military courts could not lawfully exercise jurisdiction over minors.

Human Rights Watch urged the government of Pakistan to repeal the Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance, 1988, and immediately dismantle the military courts currently operating in Karachi. It further called for the transfer of cases presently before the military courts to ordinary courts of law, and where children were involved as defendants, to courts authorized by the Sindh Children Act to try juveniles. The organization also recommended the legislative repeal of the Anti-Terrorism Act, 1997, and the abolition of the anti-terrorism courts established under the act.

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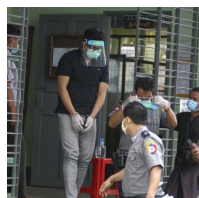
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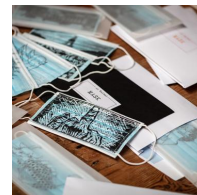
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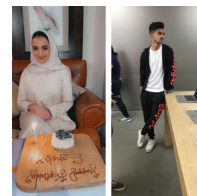
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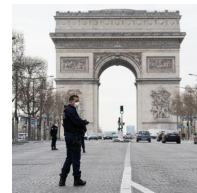
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