

OPINION No. 6/2000 (PAKISTAN)

Communication addressed to the Government on 11 June 1999

Concerning Mohammed Salim

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1977/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group regrets that the Government has not replied within the 90-day deadline.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
  - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
  - (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. According to the source, Mohammed Salim was arrested early on 1 June 1998 for alleged involvement in the murder of three police officers which took place in an alley close to his residence. He was 14 years old at the time of his arrest. He was reportedly not informed of the charges against him, was detained in police custody with adults for 12 days and was then transferred to a juvenile jail, where he was ill-treated. Subsequently, he allegedly was tried

along with other adults by a military court in Karachi, convicted and sentenced to death in December 1998. The trial allegedly violated international standards for a fair trial. Eventually, Mohammed Salim was acquitted in January 1999, due to lack of evidence.

6. According to the source, in February 1999, the Supreme Court of Pakistan declared such military courts unconstitutional, and any convictions and sentences handed down by those courts which had not yet been implemented were declared null and void.

7. The courts were subsequently abolished. Mohammed Salim was thereupon rearrested on 13 May 1999 and charged for the same offence and again placed in detention. He is currently being retried for the same offence for which he was tried before by the military court.

8. In the light of the allegations presented by the source, which have not been denied by the Government although it had the opportunity to do so, the Working Group finds that the above-named person, who is a minor, was arrested with adults for alleged involvement in the murder of three police officers, that he was detained for 12 days together with adults, and that he was tried along with adults being prosecuted in the same case. The Working Group also finds that, after being sentenced to death in December 1998 at first instance by a court later declared unconstitutional and abolished, Mohammed Salim was acquitted on appeal in January 1999 for lack of evidence. Above all, the Working Group finds that he was rearrested by the police on the same charges as those in respect of which he had been acquitted, this being contrary to the non bis in idem rule set forth in article 13 of the Constitution of Pakistan and a general principle of law.

9. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mohammed Salim is arbitrary, as it cannot be justified on any legal basis, and falls within category I of the categories applicable to the consideration of cases submitted to the Working Group. His detention is also in violation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

10. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation.

Adopted on 17 May 2000