The following information was provided in correspondence dated 11 December 1999 from a lawyer with 26 years standing, who is a Karachi-based Advocate of the Supreme Court and a former Additional Judge of the High Court of Sindh and Advocate General of Sindh.

1) In the present regime neither Martial Law has been declared nor Military Courts have been established. Trial in absentia is regulated under the Code of Criminal Procedure 1898 which is a century old law. Trial in absentia is regulated under that law. This practice is firmly rooted in the laws relating to the trial of offences under the Penal Code and other laws.

2) Section 87 and 88 of the Criminal Procedure Code 1898 regulate the proceedings for issuance of Proclamation. Essentials to observed/procedural requirements to be followed by a court before issuance of proclamation are:

a) That the respondent/accused be wilfully not attending the court or is fugitive from justice trying to avoid proceedings.

b) That all efforts to serve him with notice to attend the court have been ineffective and some one should despose in court (usually process server). That all efforts to secure attendance of accused have failed and even warrants could not be executed.

c) That the court is to be satisfied that it is not possible to secure attendance of accused to answer the charge or face the trial.

Thereafter the proclamation is issued which is published in press, pasted at conspicuous place of town where the accused resides and the court notice board, pasted in the house where accused lastly resided or any place as the court may order.

Subsequently under section 88 of the Code of Criminal Procedure the court can also issue proclamation for attachment of immovable property of accused so that he may attend the court.

The following information on trials *in* *absentia* and "Proclamation" was provided in correspondence dated 25 January 2000 from an Advocate of the Supreme Court in Rawalpindi:

**Trials *in absentia:***

Ordinarily an accused cannot be tried and convicted in absentia. However, the Cr.P.C. contains Section 512 which deals with absentia Proceedings. Some people refer to this as absentia trial. In fact Section 512 is not a provision for trial *in absentia.* It is a provision intended to preserve the evidence which may be used against the absconder when he is apprehended and brought before the court.  It is compulsory to make proclamation and declare the accused as an absconder or proclaimed offender before this section is resorted to.

This is the general law of Pakistan. However, the following special statutes relating to anti terrorism do provide for trial in absentia:

i. Section 4 of Suppression Of Terrorist Activities(Special Courts) Act 1975.

ii. The absentia trial was also provided for during the Zia-ul-Haq's Martial Law in 1977,

iii. Section 10 of the Anti Terrorism Act 1997,

iv. Section 9 of the Terrorist affected areas (Special Courts) Act 1992,

Section 295A of the Pakistan Penal Code()has been included in the schedule of offences exclusively triable under the Anti Terrorism Act 1997.

All these provisions have provided strict safeguard to ensure that these provisions are not resorted before making sure that:

i. The accused is deliberately concealing himself to impede justice,

ii. A counsel is provided at state expense to defend the accused.

iii. A proper proclamation has been issued in terms of Section 87 Cr.P.C.

iv. The law also provides that if the accused subsequently appears and satisfies the court that his absence was not willful, and was for the reasons beyond his control, the conviction recorded in absentia may be set aside and the accused be put to trial afresh.

**Proclamation:**

*Proclamation* is regulated by Section 87 of the Cr.P.C which provides that if the court is satisfied that a person whose warrants have been issued is concealing himself or has absconded to avoid execution of warrants the court proceed under this section. Law requires that the proclamation issued must be:

i. Published,

ii. Pasted at a conspicuous place at his ordinary place of residence and

iii. Pasted at a conspicuous place out side the court house.

iv. After proclamation the law allows a minimum of 30 days time for the accused person to put in appearance.

The following information on trials *in* *absentia* and "Proclamation" was provided in correspondence dated 10 February 2000 from a lawyer working in a Karachi-based firm:

(A) Yes, trials in *absentia*do take place. These were taking place prior to the Military regime take over on 12th October 1999 and continue taking place.

(B) Proclamation is made under Section 87 of the Criminal Procedure Code 1898 which reads :

87. **Proclamation for person absconding:** If any Court is satisfied after taking evidence that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows :

(a) it shall be publicly read in some conspicuous place of the town. or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house.

(3) A statement in writing by the Court issuing the proclamation to effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day."

**IV -Proclamation requiring the appearance of a person accused**

*(See section 87)*

Whereas complaint has been made before me that (name, description and address)has committed (or is suspected to have committed) the offence of \_\_\_\_\_\_, punishable under section \_\_\_\_\_ of the Pakistan Penal Code and it has been returned to a warrant of arrest thereupon issued that the said (name) cannot be found, and whereas it has been shown to my satisfaction that he said (name) has absconded (or is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said \_\_\_\_\_ of \_\_\_\_\_ is required to appear at (place) before this Court (or before me) to answer the said complaint on the \_\_\_\_\_ day of \_\_\_\_\_ 2000.

*(Seal) (Signature)*

**V. - Proclamation requiring the attendance of a witness**

*(See section 87)*

"Whereas complaint has been made before me that (name, description and address) has committed (or is suspected to have committed) the offence of (mention the offenceconcisely) and a warrant has been issued to compel the attendance of (name, description andaddress of the witness) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said (name of witness) cannot be served and it has been shown to my satisfaction he has absconded (or is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said\_\_\_\_\_ of \_\_\_\_\_ is required to appear at (place) before this Court (or before me) to answer the said complaint on the \_\_\_\_\_ day of \_\_\_\_\_ 2000.

*(seal) (Signature)*

Section 512 of the Code providing the recording of evidence reads as follows :

"**512.** **Record of evidence in absence of accused:** (1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court [is] competent to try or send for trial to the Court of Session or High Court such person for the offence complained of may, in his absence, examine the witness (if any) produced on behalf [of] the prosecution, and [may] record their depositions. Any such deposition may, onthe arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) **Record of evidence when offender unknown**: If it appears that an offence punishable with death or imprisonment for life., has been committed by some person or persons unknown, the HighCourt may direct thatany Magistrate of the First Class shall hold an inquiry and examine any witness who can give evidence concerning theoffence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable ofgiving evidence or beyond the limits of Pakistan."

The normal and general procedure is prescribed by the aforementioned Act of 1898. However, sometimes special provisions are enacted in a special Act. This has been done as will be seen below.

The Suppression of Terrorist Activities (SpecialCourts) Act XV of 1975 was amended in 1990 (by Act V of 1990) and Section 5A introduced sub-section (4) of which reads as follows :

"5A (4) An accused person may be tried in his absence, if the Special Court, after such inquiry as it deem fit, is satisfied that

(a) Such absence is deliberate and brought about with a view to impending the course of justice**;**or

(b) the behaviour of the accused in Court has been such as to impede the course of justice and the Special Court has on that account ordered his removal from the Court :

Provided that, in a case referred to in clause (a), the accused person shall not be tried unless a proclamation in accordance with the. Provisions of section 87 of the Code has been published in respect of him**,**which proceedings shall be completed by the Special Court within seven days, and until the proclamation has been published in at least three national newspapers out of which two shall be in the Urdu language :

Provided further that the Special Court shall proceed with the trial after taking necessary steps to appoint an advocate to defend the accused person who is not before the Court."

The Anti Terrorism Act XXVII of 1997 was enacted in 19971 Section 19(10) of which reads as follows :

"19(10). Any accused person may be tried in his absence if the Special Court, after such inquiry as it deems fit, is satisfied that

(a) such absence is deliberate and brought about with a view to impending the course of justice; or

(b) the behaviour o ft the accused in Court has been such as to impede the course of justice and the Special Court has on the account ordered his removal from the Court :

Provided that, in a case referred to in clause (a), the accused person shall not be tried unless a proclamation has been published in respect of him in at least three national daily newspapers out of which one shall be in the Urdu language requiring him to appear at a specified place within seven days failing which action may also be taken against him under section 88 of the Code :

Provided further that the Special Court shall proceed with the trial after taking the necessary steps to appoint an Advocate to defend accused person who is not before the Court.

*Explanation.‑*An accused who is tried in his absence under sub-section (10) shall be deemed not to have admitted the commission of any offence for which he has been charged."

This Section was later amended in 1999 by Ordinance XIII of 1999 (of 27th August 1999) Section 13 of which reads :

13. **Amendment of section 19, Act XXVII of 1997---**In the said Act, in section 19, --

(a) for sub-section (10), the following shall be substituted namely : --

"(10) Any accused person may be tried in his absence if the Anti-Terrorism Court, after such inquiry as it deems fit, is satisfied that such absence is deliberate and brought about with a view to impeding the course of justice :

Provided that the accused person shall not be tried under this sub-section unless a proclamation has been published in respect of him in at least three national daily newspapers out of which one shall be in the Urdu language requiring him to appear at a specified place within seven days failing which action may also be taken against him under section 88 of the Code :

Provided further that the Court shall proceed with the trial after taking the necessary steps to appoint an advocate at the expense of the State. to defend the accused person who is not before the Court.

*ExplanationAn accused who is tried in his absence under this sub-section shall be deemed not to have admitted the commission of any offence for which he has been charged."; and*

*(b) After sub-section (11), the following new sub-section shall be inserted, namely :*

*"(11A) Nothing contained in sub-section (10) or sub-section (11) 1 shall be construed to deny the accused the right, to consult or be defended by a legal practitioner of his own choice."*

*This Response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum. Please find below the list of additional sources consulted in researching this Information Request.*