

PAKISTAN

DEATH PENALTY ACTION

November 2006 - January 2007

Introduction

Amnesty International (AI) has received reports that there has recently been an increase in executions in Pakistan: 60 people have been executed this year in the province of Punjab alone. In addition, 10 executions are known to have taken place in the North-West Frontier Province (NWFP). There are continuing concerns around the application of the death penalty in Pakistan and in June this year a juvenile was executed.

However in a recent positive development Mirza Tahir Hussain, a British man, who was tried and convicted in 1989 of murdering a taxi driver had his sentence commuted on 16 November 2006 following the intervention of Pakistan's President Musharraf. Amnesty International and a number of other organizations believe that the trial of Mirza Tahir Hussain did not conform to international fair trial standards and had appealed for his sentence to be commuted.

Materials

Please visit AI's website at <http://www.amnesty.org>, Pakistan page in the Library.

1. Urgent Actions
2. The 2005 report on juvenile justice: "Pakistan: Protection of juveniles in the criminal justice system remains inadequate, ASA 33/021/2005

Recommended Actions

1. Write letters to the Pakistan authorities. Welcome the commutation of Mirza Tahir Hussain but regret the increase in the number of executions. Highlight cases that illustrate general concerns around the use of the death penalty and call for a moratorium on all executions. See Part I, Appendices A, B and C, and Government Addresses.
2. Write letters to the Pakistan authorities regretting the execution of a juvenile in June 2006, the first such execution since 2001, See Part II and Government Addresses
3. Publicise concerns around the death penalty in Pakistan.

Content

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Part One. General concerns on the use of the death penalty in Pakistan

BACKGROUND

Pakistan has the death penalty for a range of offences including murder, drug smuggling, rape, attempted murder, kidnapping and acts of terrorism. Amnesty International has recorded that in 2005 at least 241 people in Pakistan were sentenced to death and at least 31 people were executed, the majority for murder. Many more prisoners from more prosperous backgrounds were able to escape punishment under provisions of the Qisas and Diyat Ordinance. This Ordinance allows heirs of murder victims to accept compensation (“blood money”) and pardon the offender. For a list of recent cases and executions, see appendix A. The method of execution in Pakistan is hanging.

1. Increased number of executions

In recent months there has been an alarming increase of executions in Pakistan. Contacts in Pakistan have indicated that 60 people have been executed in the province of Punjab alone and another 10 in the North-West Frontier Province (NWFP), this is more than double the total executions for 2005.

Information published by the United Nations Integrated Regional Information Networks on 2 August 2006, states that more than 7,400 men and 36 women are under sentence of death in 81 Pakistani jails according to the Human Rights Commission of Pakistan (HRCP) See appendix C for full article.

2. Long periods of detention and conditions of detention

The number of death sentences handed out annually far exceeds the number of hangings. Prisoners under sentence of death can remain in terrible conditions for up to ten years, according to cases documented by the HRCP of Pakistan. Conditions of detention are very poor and AI believes these conditions amount to cruel, inhuman and degrading treatment. In the Punjab, the country's most populous province, more than 5,000 of its 53,000 prisoners are under sentence of death. Many are serving their time confined to cells measuring just 10 sq metres. Intended for one prisoner, the cells often accommodate up to ten.

2.1 Cases: Mushtaq Ahmad, Shehzad Gulzar, Muhammad Yousaf , Abdul Jabbar and Iftikhar Ali

AI has learned that these five men were hanged on 12 July 2006 in Sialkot district jail, Punjab Province. The President of Pakistan had rejected their appeals for mercy, following their conviction for gang-raping a married woman during a robbery in the city of Daska, Punjab Province, on 19 August 1997.

2.2 Case: Raja Anir

Raja Anir was scheduled for execution on 29 May. He reportedly confessed to the murder for which he has been sentenced to hang. He has been on death row in the capital, Islamabad, for eight years. AI has received no further updates on this case.

3. Compensation, forgiveness and discrimination

Under Islamic provisions of the Pakistan Penal Code relating to murder, family members of a murder victim have the right to the death sentence of the perpetrator but may also waive the punishment and accept “blood money” instead in which case the murderer is freed. This provision has in some instances benefited perpetrators from prosperous families whereas those convicted of murder from poor backgrounds are unable to pay the compensation and are hanged.

While it is important to oppose the use of the death penalty in all situations, it is important to ensure that pardons do not further entrench impunity for perpetrators. Because the ability to pardon a death sentence is held in the hands of private actors (the victim’s family) the choice often lies between possible execution and justice.

3.1 Cases: Ilyas, Ghulam Abbas and Muhammad Asif

The three men named above were scheduled for execution on 19 May 2006. The victims' families were known to be negotiating with the convicted men's families, and it is possible that they will agree to accept payment of compensation in exchange for allowing the men's sentences to be commuted. Even if the negotiations fail, President Musharraf has the power to commute the men's death sentences.

Ilyas, Ghulam Abbas and Muhammad Asif were convicted of the murder of five people near the town of Rahwali, in the province of Punjab. It is not known when they were sentenced to death, but they were originally scheduled for execution on 9 May 2006. The Lahore High Court postponed the execution until 19 May to allow time for the negotiations over “blood money”. Ilyas, Ghulam Abbas and Muhammad Asif were executed on 4 July at Gujranwala central jail, in the province of Punjab.

4. Tribal areas

There are seven Federally Administered Tribal Areas (FATA) in Pakistan. These areas are under the direct control of the federal government which is represented by a Political Agent who combines the highest administrative, political and judicial functions.

Under Pakistani law, informal councils - *shuras*, *jirgas* or *panchayats* - are not entitled to assume criminal justice functions such as the trial and conviction of criminal suspects and to order their punishment. In the absence of lawful authority under Pakistani law and procedures which meet international standards of fairness, these killings are unlawful and should be treated as a serious crime by the government. However, as yet government officials have taken no steps to hold participants of such councils in Tiarza to account (see 5.1 below).

AI considers the law governing the FATA, the Frontier Crimes Regulation, 1901 (FCR), to be deeply flawed as it does not ensure the human rights protection afforded by the Constitution of Pakistan, or Pakistan's international obligations as a state party to the UN Convention on the Rights of the Child and the UN Convention on the Elimination of All Forms of Discrimination against Women. For example, under the FCR, people suspected of having committed a criminal offence are heard, without legal representation, by a formally constituted tribal *jirga* or council which submits its recommendations regarding conviction or acquittal to the Political Agent. The Political Agent makes a decision regarding conviction or acquittal but is not bound by the *jirga's* recommendations. Punishments which the Political Agent can impose include fines, house destruction and imprisonment but not the death penalty. There is no possibility of appealing against conviction or punishment under the FCR.

The government of Pakistan is asked to amend or repeal the FCR as it violates rights guaranteed in the Constitution of Pakistan and international human rights law, including the right to equal protection of the law, the right to fair trial which includes the right to legal counsel and to appeal, and the right to be prosecuted only for offences of which one is suspected, not for offences allegedly committed by a relative.

5.1 Case Hayatullah Gul

Hayatullah Gul, 25, was executed on 26 March 2006 on the orders of a *shura*, or council of persons described in the Pakistan media as "local taleban", in Tiarza, South Waziristan. He was not afforded even the flawed protection offered by the FCR. He was not brought before a duly constituted *jirga*, his case was not decided by the Political Agent for South Waziristan and, if the FCR had been applied, the death penalty could not have been imposed on him.

This case is one example where minimal protection afforded by the FCR has been ignored. Other instances where tribal councils have arrogated criminal justice functions to themselves, "trying", "convicting" and ordering the punishment of alleged offenders include:

- On 14 March 2004, eight men were publicly executed in Orakzai Agency. Five of the men had allegedly been involved in kidnapping and looting in the Mamoonzai area; three had been caught a few days earlier for alleged robbery. The eight men were "tried" together by an informal council of elders and executed immediately after the "verdict".
- In mid-June 2005, two men were shot dead by firing squad on the orders of an informal tribal council of elders in Orakzai Agency. They had allegedly killed a taxi driver a few weeks earlier, the victim's family petitioned the tribal elders and named the alleged culprits. The "verdict" was immediately carried out without referral to the Political Agent.

The government of Pakistan, under whose federal responsibility the FATA fall, has failed to curb informal bodies unlawfully assuming criminal justice functions in the tribal areas and meting out punishments which amount to torture or are cruel, inhuman or degrading. For further information, see: "Pakistan: Unlawful executions in tribal areas" (AI Index: ASA 33/013/2006) available on AI's website.

6. Sharia Law

The Qisas and Diyat Ordinance, based on the punishments defined under Islamic laws (Sharia) was promulgated in Pakistan in 1990 and adopted by parliament in 1997. The laws allow heirs of murder victims to accept compensation ("blood money") and pardon the offender. See also point 3 – *Compensation, Forgiveness and Discrimination*.

Major world religions emphasise mercy, compassion and forgiveness in their teachings. AI's call for the cessation of all execution is consistent with these teachings.

All major religious denominations are to be found in states which continue to use the death penalty in different regions of the world. Likewise states that have abolished the death penalty either in law or in practice are also found throughout the world, cross-cutting religious lines. The death penalty is not exclusive to any particular religion. The death penalty is not clearly ordered by Islam and many predominantly Islamic countries do not have the death penalty for example Turkey and Senegal.

During some trials in *Sharia* courts international standards of fair trial and due process are not upheld.

Positive moves towards abolition of the death penalty in the Muslim Arab world first came when Senegal abolished the death penalty in December 2004. Morocco too is moving in the same direction: the last execution there was carried out 13 years ago. Algeria's last execution took place in 1993 and Tunisia's last execution took place in 1991.

Part Two: Use of the death penalty against Juveniles

Background

The use of the death penalty against child offenders - people under 18 years old at the time of the crime is prohibited under Article 37 of the UN Convention on the Rights of the Child. The Convention on the Rights of the Child has been ratified by 192 states, all except Somalia and the USA. Pakistan ratified the Convention on the Rights of the Child on 12 November 1990.

The Juvenile Justice System Ordinance 2000, abolishing the death penalty for people under 18 at the time of the offence in most parts of the country, entered into force on 1 July 2000. However, the Ordinance was not extended to the Provincially and Federally Administered Tribal Areas in the north and west (FATA and PATA). One young man, Sher Ali, was executed in the Provincially Administered Tribal Area in November 2001 for a murder committed in 1993 when he was 13 years old.

Although most of the outstanding death sentences imposed on child offenders before July 2000 have now been commuted, an unknown number of sentences are still outstanding while the courts determine the age of the convicted prisoners. Child offenders continue to be sentenced to death, mainly because their age has not been determined. The issue of age is generally not raised by the family's legal counsel until a child has been sentenced to death. Often judges do not raise the issue of age unless the child looks like a minor.

In October 2003 the UN Committee on the Rights of the Child stated that it was "deeply concerned about the reports of juvenile offenders sentenced to death and executed" in Pakistan. It recommended that Pakistan take immediate steps to ensure that the prohibition of the death penalty against offenders under 18 is guaranteed, and that death sentences imposed before the promulgation of the 2000 Ordinance are not carried out.

On 13 June 2006 who was 16 at the time of the offence was executed in Pakistan. He was sentenced to death for murder in 1998 and all his appeals to overturn the sentence were consequently dismissed by superior courts.

As Mutabar Khan was reportedly aged 16 when he was arrested in 1996, he should have benefited from the Presidential Commutation Order of 2001, which overturned the death sentences of all juveniles then on death row. However, this commutation did not apply to him because of the dispute over his age.

On 6 June 2006, a 15 day stay of execution granted by the Home Department expired. Two days earlier, the family of the man he is said to have killed agreed to pardon him in return for compensation. However, they retracted the pardon and Mutabar Khan lost his battle to stay alive.

RECOMMENDED ACTIONS - LETTER-WRITING FOR JUVENILES

Please send either your own letters using the points below or use the sample letter below.

- ❖ Express regret that Mutabar Khan was executed in June, state that the execution is contrary to Pakistan's obligations as a party to the UN Convention on the Rights of the Child and contrary to Pakistan's own Justice Juvenile System Ordinance 2000.
- ❖ Urge the Pakistan authorities to take immediate steps to ensure that no further death sentences are imposed on child offenders who were less than 18 at the time of the offence.
- ❖ Ensure that law enforcement officials inquire immediately into, and document on arrest or first contact, the age of any suspect who appears to be younger than 18.
- ❖ Ensure that the documented age of a minor is brought to the attention of all judicial and custodial officials who are responsible for child welfare and that the age at the time of the offence be clearly noted in the defendant's case file.
- ❖ Provide training for law enforcement officials and the judiciary to determine the age of youthful suspects.

Copies should be sent to the Pakistan diplomatic representatives in your country.

Sample Letter:

Your Excellency,

The use of the death penalty against child offenders – people under 18 years old at the time of the crime – is prohibited under international law. The Juvenile Justice System Ordinance 2000, abolishing the death penalty for people under 18 at the time of the offence in most parts of the country, entered into force on 1 July 2000. However, the Ordinance was not extended to the Provincially and Federally Administered Tribal Areas in the north and west. One young man, Sher Ali, was executed in the Provincially Administered Tribal Area in November 2001 for a murder committed in 1993 when he was 13 years old. Recently, on 13 June 2006 Mutabar Khan who was 16 at the time of the offence was also executed.

Such executions are contrary to the provisions of the Juvenile Justice System and contrary to Pakistan's international obligations as a party to the Convention on the Rights of the Child, Article 37 of which states that no capital punishment shall be imposed for offences committed by persons below 18 years of age.

I urge the Pakistan authorities to take immediate steps to ensure that no further death sentences are imposed on child offenders and no further executions are carried out. Such steps could include:

- Ensuring that law enforcement officials inquire immediately into, and document on arrest or first contact, the age of any suspect who appears to be younger than eighteen.

- Ensuring that the documented age of a minor is brought to the attention of all judicial and custodial officials coming into contact with the child and it is noted clearly in the defendant's case file.
- Providing proper training to the courts to determine the age of youthful suspects.

Yours sincerely

APPENDIX A

RECENT CASES

Over the last two months, some 30 people have been executed in Pakistan. Most of these executions have taken place in Punjab province. On July 26, Abdul Rashid and Mohammad Rafique were hanged in the Gujranwala jail. They had been sentenced for murdering Mohammad Ashique and Aijaz, a crime committed some 13 years back. Also on July 26, Farrukh Shahzad was hanged in the Faisalabad jail. He was convicted for shooting one Eid Hussain dead.

A day earlier, on July 25, Manzoor, Tasawar and Younis were executed in the Jhelum jail. The court had sentenced them to death for murdering Nazir Ahmed, Liaquat Ali and Arshad Ali on March 30, 1993. Muhammad Mushtaq was hanged at Mianwali jail, also on July 25. He was convicted for raping and later on murdering a girl on January 3, 1994. On July 20, Muhammad Aslam and Shafqat Hayat, convicted in two separate murder cases, were hanged in Sialkot and Bahawalpur jails respectively. Two days prior to that, on July 18, three men -- Ijaz Ahmad, Muhammad Akram and Shahid Ali -- were hanged in Lahore. They had entered Irshad Bibi's house in 2000 for dacoity and had raped her in the presence of her family members.

In another case, five men -- Mushtaq Papu, Shehzad Maseeh, Muhammad Yousaf, Abdul Jabbar and Iftikhar Ahmed -- were hanged in Sialkot jail on July 12. All of them, aged between 23 and 35, had been convicted of gang-raping a woman during a robbery in Daska on August 19, 1997. On the 4th of this month, Ilyas Patwari, his brother Ghulam Abbas and their cousin head constable Muhammad Asif, were hanged in Gujranwala. They had been convicted of murdering their rivals Liaquat, Abid and others at Sugar Mills Chowk, Rahwali, over a murder enmity. The victims were on their way home after appearing in a court of law. On June 29, four Muslim men--Muhammad Shehzad, 31, Muhammad Ashraf, 32, Umar Hayat, 35, and Mubarak Ali, 36, convicted of raping a 14-year-old Christian girl seven years ago were hanged in Faisalabad.

APPENDIX B ADDITIONAL INTERNATIONAL STANDARDS AGAINST THE DEATH PENALTY

Abolition

In 1977 the UN General Assembly recognized the “desirability of abolishing this punishment [the death penalty]”. In 2005 the UN Commission on Human Rights reiterated its call on state parties to the **International Covenant on Civil and Political Rights (ICCPR)** that are not yet party to the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (Second Optional Protocol), to consider signing or ratifying the Protocol. (UN document No E/CN.4/2005/59, 20 April 2005) In addition, the Commission called on states that retain the death penalty to “abolish the death penalty completely and, in the meantime, to establish a moratorium on executions”.

Fair trials

Article 14 of the **International Covenant on Civil and Political Rights** sets forth standards for fair trial. These include the right of anyone facing a criminal charge to a fair and public hearing by a competent, independent and impartial tribunal; the right to be presumed innocent until proved guilty; the right to have adequate time and facilities for the preparation of a defence; the right to communicate with counsel of the defendant's choosing and the right to free legal assistance for defendants unable to pay for it;

Safeguard 5 of the **Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty**, adopted by the UN Economic and Social Council in 1984, states: "Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights."

Prohibition of torture

Article 7 of the **International Covenant on Civil and Political Rights** states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

- The **International Covenant on Civil and Political Rights (ICCPR)**, one of the primary human rights treaties, states in Article 6: “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age. . .” The ICCPR had been ratified by 152 states at mid-August 2004.
- In 1984 the **UN Economic and Social Council (ECOSOC)** adopted the **Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty** (“ECOSOC Safeguards”). Safeguard 3 of this instrument states: “Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death. . .” The ECOSOC Safeguards were endorsed by the **UN General Assembly** in resolution 39/118 of 14 December 1984. This resolution was adopted without a vote, a sign of strong consensus in that no state wished to go on record as opposing it. More recently, in 2004 the **UN Commission on Human Rights** called upon states in which the death penalty has not been abolished “to abolish by law as soon as possible the death penalty for those aged under 18 at

the time of the commission of the offence””.(7)

· The **European Union** has endorsed the prohibition of use of the death penalty against child offenders and has agreed to make diplomatic approaches to countries in cases where the prohibition is violated.(8)

Transparency

In resolution 1989/64, adopted on 24 May 1989, the UN Economic and Social Council urged UN member states "to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law".

The UN Human Rights Committee has called on states parties to the International Covenant on Civil and Political Rights to provide information on the use of the death penalty including the number of death sentences imposed over the past 10 years, the types of offence for which the death penalty has been imposed, the grounds for the sentences imposed, the number of executions carried out, the manner of execution and the identity of the prisoners executed.

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights called upon all states that still maintain the death penalty "to make available to the public information with regard to the imposition of the death penalty and to any scheduled execution".

The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has stated: "Transparency is essential wherever the death penalty is applied. Secrecy as to those executed violates human rights standards. Full and accurate reporting of all executions should be published, and a consolidated version prepared on at least an annual basis".

APPENDIX C

UNITED NATIONS

Office for the Coordination of Humanitarian Affairs
Integrated Regional Information Network (IRIN)

PAKISTAN: Thousands await gallows in jails

LAHORE, 2 August (IRIN) - More than 7,400 men and 36 women are waiting in 81 Pakistani jails to be hanged, the Human Rights Commission of Pakistan (HRCP) has confirmed.

In Punjab, the country's most populous province, more than 5,000 of its 53,000 prisoners face death. Many are serving their time confined to cells measuring just 10 sq metres. Intended for one prisoner, the cells often accommodate up to 10.

Pakistan retains capital punishment by hanging for a range of offences, including murder, drug smuggling, rape, attempted murder, kidnapping and acts of terrorism.

But the number of death sentences handed out annually far exceeds the number of hangings, meaning prisoners could remain in the terrible conditions on death row for up to 10 years, according to cases documented by the HRCP.

Rao Abid Hameed, who heads HRCP's Vulnerable Prisoners Project, said those sentenced to death did not get the same rights as other prisoners.

"They are very restricted in terms of time for exercise and access to other facilities available to other jail inmates," Hameed said.

IA Rehman, HRCP's director, said capital punishment was "inhumane" and "brutalises society".

Rehman maintained that flaws in the country's judicial system meant many did not receive fair trials.

"It's really sad that there has not been more public concern about the fate of these people," Rehman said, blaming the situation on "an increased acceptance of violence".

Pakistani President Pervez Musharraf recently turned down a number of appeals for clemency, paving the way for the eight hangings that have taken place in the past week.

This year 253 people, including three women, have been sentenced to death, with 42 hanged. Last year 477 people were sentenced and 52 hanged, while in 2004, 394 were sentenced and 15 hanged.

Although 36 women face the gallows they are unlikely to be executed. Daulat Bibi, the last woman to be hanged, was executed in 1985.

A fierce international debate has so far kept Mirza Tahir Hussain Khan, a British national, from death. He received the sentence for a 1988 murder, but an international campaign and appeals from the British government for clemency mean Musharraf is still considering his case.

Jawed Khan - who activists say was 14-years-old when he was found guilty of murder in 2003 - is being held in Faisalabad Central Jail awaiting his death sentence.

The Juvenile Justice Systems Ordinance (JJSO) bans death for persons under 18. However, as Amnesty International (AI) said in its appeal over Khan's case, the law is frequently ignored. In the absence of documentation age is often hard to prove.

KH/GS/DS[ENDS]
11 August 2006

ADDRESSES - GOVERNMENT AUTHORITIES

President & Chief Executive of Pakistan

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