

PAKISTAN

@The death penalty for juveniles

The case of Salamat Masih, a Christian juvenile sentenced to death on 9 February 1995, made people around the world aware that Pakistan is one of the few countries that still use the death penalty against juveniles. Had the death sentence been carried out, Salamat Masih would have been the second juvenile executed in Pakistan since 1990. The only other countries known to have executed juveniles since 1990 are the United States, Yemen and Saudi Arabia.

The imposition of the death penalty on children and juveniles runs counter to Pakistan's obligations as a state party to the United Nations Convention on the Rights of the Child to bring its laws into conformity with the Convention's provision that the death penalty may not be imposed on anyone below the age of 18 at the time of the offence. It is inconsistent with an emerging international consensus that the execution of juveniles is contrary to international law. Amnesty International urgently calls on the Government of Pakistan to amend its laws so as to abolish the death penalty for children and juveniles.

The Convention on the Rights of the Child was adopted by the UN General Assembly on 20 November 1989; it embodies basic rights of the child encompassing social, legal and political rights. Pakistan ratified the Convention on the Rights of the Child in November 1990 with the general reservation that its provisions shall be interpreted in the light of the principles of Islamic laws and values. As a state party to the Convention on the Rights of the Child, Pakistan is obliged to bring its domestic law into conformity with the requirements of the Convention. Articles 37 and 40 of the Convention establish conditions under which child offenders may be detained, tried, sentenced and punished. Article 37 (a) of the Convention on the Rights of the Child states: "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age."

With respect to Pakistan's general reservation to the Convention, the Committee on the Rights of the Child, a body of experts which reviews the observance and implementation of the provisions of the Convention, noted in May 1993 that "practically no provision of the Convention comes into direct conflict with any of the major precepts of Islam" but stated in April 1994, that the "broad and imprecise nature of the reservation made to the Convention raises deep concern as to its compatibility with the object and purpose of the Convention". While noting the statement of the Government of Pakistan that much of its national legislation is not in contradiction with the rights of the child as contained in the Convention, the Committee pointed out that Pakistan's "legislation does not seem to ensure that all children ... are protected by the rights guaranteed under the Convention" and noted "the

non-compatibility of certain areas of national legislation with the principles and provisions of the Convention, including the punishment of flogging and the death penalty and life imprisonment for children below the age of 18". It recommended that the reservation be reviewed and eventually withdrawn and that the death penalty and life imprisonment for children under the age of 18 be abolished.

However, no steps appear to have yet been taken by the Government to ensure that its domestic legislation is brought into conformity with these requirements. In February 1995, Kamran Rizvi, the Prime Minister's Consultant on Human Rights said the government would extend full support to the adoption of a juvenile justice act that a group of human rights lawyers and UNICEF had drafted; the draft included a recommendation to raise the age for the imposition of the death penalty to 18 years in accordance with the requirements of the Convention on the Rights of the Child. The draft act is reportedly currently under review by legal experts in the law ministry before its presentation to parliament.

The legal position of children in Pakistan is confusing as there are several laws at the federal and provincial level which partly contradict or supersede each other and which are interpreted differently in the legal practice of different courts. The Pakistan Penal Code of 1860, the Code of Criminal Procedure of 1898, and other statutes awarding punishment for criminal offences apply generally to all children in the four provinces of Pakistan, except the tribal areas. Under the Pakistan Penal code, "nothing is an offence which is done by a child under seven years of age" (section 82); further, under section 83, "nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion". The qualification of attainment of maturity implies that a child judged sufficiently mature at the time of committing the offence will be dealt with by the law as an adult. Under the Pakistan Penal Code offenders above the age of 12, or between the ages of seven and twelve if they have attained "sufficient maturity of understanding" can be convicted and sentenced to all the relevant punishments provided under the law, including the death penalty. The Pakistan Penal Code prescribes a maximum sentence for offences. The Penal Code and the Code of Criminal Procedure do not establish an age limit below which the death penalty may not be imposed; however, under the Qisas and Diyat Ordinance which redefines the offences of infliction of injury, murder and homicide and replaces relevant sections of the Pakistan Penal Code, the death sentence for murder may not be imposed on anyone below the age of 18 at the time of the offence.

The Hudood laws of 1979 which relate to the offences of armed robbery, theft, rape, fornication, false accusation of fornication, drinking and drug-taking and which replace

relevant sections of the Pakistan Penal Code, apply, without exception, to all parts of Pakistan and override all other legislation, including legislation relating to children. The Hudood Laws provide hadd or fixed punishment for the offences listed provided certain strict evidential requirements are fulfilled. The punishments awarded as hadd punishments include stoning to death for fornication, judicial amputation for theft and armed robbery, and flogging for consumption of intoxicants. The Hudood Laws are applicable to defendants irrespective of age but the hadd punishments may not be imposed on children. However, the definition of a child under the Hudood laws differs from that of other laws in Pakistan: A child is a person who has not attained puberty; the Hudood law relating to fornication differentiates further between the genders of the offenders: A male is adult at the age of 18 while a female is considered adult for the purposes of the law at the age of 16 or at attainment of puberty. Thus a girl of twelve who has attained puberty is legally adult and could be sentenced to the hadd punishments enumerated above. In practice no child has so far been sentenced to stoning to death, to judicial amputation or to public flogging, but the laws remain on the statute book and can be imposed.

Provincial laws contain different provisions in relations to children and the age of culpability. The relevant law in force in Sindh, the Sindh Children Act of 1955, states in section 68(1) that a youthful offender, a person below 16 years of age, shall not be sentenced to death or life imprisonment. The Punjab Youthful Offenders Ordinance of 1983 in section 45(1) states that no offender below the age of 15 at the time of the offence may be sentenced to death or life imprisonment. The special laws regarding children in Sindh and Punjab override the provisions of the Pakistan Penal Code. There are no special laws regulating penalties for children in Baluchistan and the North-West Frontier Province.

Establishing the age of children in Pakistan is sometimes problematic as registration of births and issuing of birth certificates is not compulsory. Courts use school certificates where available or rely on x-rays or the visual appearance of the accused as proofs of age; courts generally accept the lower age in case of discrepancy of estimates.

The Pakistan Penal Code prescribes a maximum punishment for offences but courts have the discretion to impose lower sentences. The case law indicates that courts usually take into account the age of the accused in imposing a reduced punishment. However, as legal experts in Pakistan point out, the imposition of a lower sentence is not a matter of the right of the child but a question of the leniency of the individual judge.

The case of *Salamat Masih* (see: Pakistan: Use and abuse of the blasphemy laws, AI Index: ASA 33/08/94 and Urgent Actions ASA 33/02/94, ASA 33/06/94, ASA 33/02/95, ASA 33/04/95 and ASA 33/05/95) indicates that although Pakistan is a state party to the

Convention on the Rights of the Child, a child can be sentenced to death. Salamat Masih was arrested on charges of having written blasphemous words on the walls of a mosque in Kot Ladha, Punjab province when he was only 11 or 12 years old. The illiterate boy was sentenced to death in a trial during which Islamists continued to shout death threats at the defendants, their families and lawyers. After the verdict he was detained and held in a death cell in Kot Lakhpat Jail in Lahore until the appeal against conviction and sentence was decided by the Lahore High Court. He was acquitted on 23 February 1995 and released after two weeks in a death cell. Similar cases have occurred in the past. Mohammad Iqbal, 12 years old at the time of the alleged murder, was sentenced to death but his sentence was reduced to life imprisonment by the High Court in 1983 on account of his age. One person sentenced to death for murder in 1991 was reportedly only 16 at the time of the offence. In March 1993 five teenagers between the ages of 16 and 19 at the time of committing the offence were given two death sentences each for murder and kidnapping for ransom by a Special Court for the Suppression of Terrorist Activities, whose procedures do not meet international standards for fair trial. The judge announcing the conviction reportedly said "one can only guess what havoc they will play when they are grown up. They deserve deterrent punishment for the gruesome abduction and subsequent murder of the child". The defence counsel had argued that a juvenile could not be tried by such courts. The court, however, held that the act establishing these special courts overrode all other acts and that such special protective legislation in respect of children and juveniles was inapplicable to the case at hand. The appeals to the Sindh High Court have to Amnesty International's knowledge not been decided yet.

Some executions of children or juveniles have been reported from Pakistan. The most recent case reported in the press in Pakistan was that of a teenager who had been only 17 at the time of the crime and who was executed in 1992.

Only 13 states of the 185 member states of the United Nations are known to have legislation permitting the execution of juveniles for crimes committed when under the age of 18; only three states other than Pakistan are known to have executed people for crimes committed when under the age of 18: Saudi Arabia, Yemen and the United States of America.

Internationally recognized legal standards prohibit execution of juveniles. As of October 1994, the overwhelming majority of states had ratified or acceded to treaties prohibiting the execution of juveniles who were below the age of 18 at the time of the crime: the Convention on the Rights of the Child (160 states), the Fourth Geneva Convention of 1949, concerned with the protection of civilians in time of war (185 states), and the

International Covenant on Civil and Political Rights (127 states). Moreover the United Nations has repeatedly declared that juveniles should not be executed. The Economic and Social Council (ECOSOC) Safeguards guaranteeing protection of the rights of those facing the death penalty, ECOSOC Resolution 1984/50, adopted on 25 May 1984 and endorsed by the UN General Assembly in Resolution 44/159, adopted on 15 December 1989 without a vote, and the UN Standard Minimum Rules for the Administration of Justice (the Beijing Rules) both prohibit execution of juveniles.

The fact that the provision of restricting the death penalty to offenders above 18 years of age is so widespread, the fact that leading international instruments set a minimum of 18 years for the imposition of the death penalty and the fact that the death penalty is so rarely used against offenders under 18, even in countries where the law sets a minimum age lower than 18 or none at all, indicate that there is an emerging consensus that execution of juveniles for crimes committed under the age of 18 is contrary to international law.

Amnesty International urgently calls on the Government of Pakistan to live up to its obligations under the Convention on the Rights of the Child to raise the age to 18 below which a person committing an offence at that age cannot be sentenced to death.

Amnesty International unconditionally opposes the death penalty in all cases. The organization believes that the death penalty violates the right to life and the prohibition of cruel, inhuman and degrading treatment or punishment, as recognized in Articles 3 and 5 of the Universal Declaration of Human Rights. In Amnesty International's view, the death penalty is inherently unjust and arbitrary, however heinous the crime for which it is awarded and however scrupulous the procedures by which it is enforced. The risk of error is inescapable, yet the penalty is irrevocable.

In countries which have not abolished the death penalty, international standards require that the strictest possible procedural and substantive safeguards are followed. These minimum safeguards are set forth in a number of international instruments, including the United Nations Economic and Social Council (ECOSOC) safeguards guaranteeing protection of the rights of those facing the death penalty, which was endorsed by the UN General Assembly resolution 39/118, adopted without a vote on 14 December 1984.