

PAKISTAN

The death penalty

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1. Introduction

During a visit to Pakistan in May 1996, an Amnesty International delegation was dismayed to find widespread support for the death penalty among government officials, lawyers and political parties. The argument most frequently cited in support of retaining or even expanding the death penalty is the assumed deterrence of this punishment. Figures available worldwide, including in Pakistan itself, prove this argument to be untenable. The offence for which the death penalty has been most frequently imposed in Pakistan is murder yet according to official figures available for instance from Punjab province, the reported incidence of murder has increased there faster than the population increase (1,200 in 1951 to over 4,500 in 1995, while the population grew from 20.5 to 71 million) - despite the death penalty for murder being in force throughout this period and practised during most of it. Communities without the death penalty can have lower murder rates than those with it - a fact that is consistent with the lack of scientific proof that the death penalty deters crime more effectively than other punishments. In 1995, some 459 murders were reported in Lahore (population 7 million), 1,995 in New York (population 10 million), 121 in Tokyo (population 12 million) and 174 in London (population 12 million). Murder is punishable with death in the former three cities, but not in the latter.

Two legal changes recently announced in Pakistan, however, give Amnesty International reason to hope that the application of the death penalty may be restricted in the near future.

In June 1996, the federal cabinet approved the abolition of the death penalty for women. Following protests by Islamic groups, the government later clarified that the intended abolition does not extend to death sentences imposed as hadd punishment or as qisas (for explanation of the terms see below). To Amnesty International's knowledge, the bill has not been placed before parliament yet.

The Child Offenders Bill, first proposed in 1995, is presently pending before the Senate; it envisages that no person below the age of 16 may be sentenced to death. This proposed amendment of Pakistan law still falls short of the requirements contained in the UN Convention on the Rights of the Child to which Pakistan became a party in 1990; the Convention prohibits altogether the death penalty for any person below 18 years of age. Amnesty International hopes that this bill is but a first step towards the eventual total abolition of the death penalty for juveniles and for all people.

Amnesty International urges all Pakistani parliamentarians to lend their support to these two bills which restrict the scope of the death penalty when they are placed before the National Assembly.

Amnesty International unconditionally opposes the death penalty

- * because the death penalty is a violation of the most fundamental right - the right to life;
- * because the possibility of error of judgement can never be excluded;
- * because the death penalty is a cruel, inhuman and degrading punishment and such punishments are prohibited under international human rights law.

2. The death penalty in Pakistan: an overview

The death penalty can be imposed for a number of offences in Pakistan. These include murder (section 302 Pakistan Penal Code, PPC), murder in the course of a robbery (section 17(4), Offences against Property (Enforcement of Hudood) Ordinance, 1979), waging war, or abetting the waging of war against the state (section 121 PPC), abetting mutiny (section 13 PPC), kidnapping for ransom (section 364 PPC), kidnapping a person under the age of 10 with intent of murder or causing grievous bodily harm (section 364-A PPC), dacoity [robbery] (section 396 PPC), hijacking (section 402-B PPC) and harbouring a hijacker (section 402-C PPC), zina and rape (Offence of Zina (Enforcement of Hudood) Ordinance, 1979) and blasphemy (section 295-C). Under the present government, the death penalty was in July 1994 extended to drug trafficking; in July 1995, the Railways (Amendment) Bill 1994 which provides the death penalty of anyone found guilty of planning or sabotaging the railway system, was passed by the Senate; in September 1995, the federal cabinet approved a bill amending the Pakistan Arms Ordinance to provide the death penalty for the offence of arms trading.

The death penalty is the mandatory punishment for zina (sexual intercourse between partners not married to each other), zina-bil-jabr (rape) and murder, provided specific evidential requirements and other conditions are fulfilled, and for blasphemy.

The death penalty is most frequently imposed for murder. Death sentences for blasphemy and under the Zina Ordinance involving stoning to death have been imposed but not so far been carried out. In 1995, some 127 people were sentenced to death for murder, 13 for kidnapping and four for blasphemy. At least three people were executed, a fourth due to be executed died hours before the hanging. So far at least 25 people have been sentenced to death in 1996.

The real number of death sentences and executions may be much higher than that reported in the media. A prisoner who had been detained for eight months in 1995 in Peshawar Central Jail told Amnesty International that during that period, five executions were carried out in that jail alone; all the five men had been sentenced to death for murder. He reported that there were 42 prisoners under sentence of death in Peshawar Central Jail;

one among them had been there for nine years. According to reports, 32 prisoners were awaiting execution in Hyderabad Central Jail in July 1995; the appeals of 25 of these were pending in the Sindh High Court, of three in the Supreme Court; four mercy petitions were with the president. The total number of persons sentenced to death in Pakistan is not at present known to Amnesty International.

3. The death penalty under the Qisas and Diyat Ordinance

As most death sentences are imposed for murder, the law defining this offence and laying down its punishment will be described in greater detail. The Qisas and Diyat Ordinance, first promulgated in September 1990, and since then regularly re-promulgated by the president¹, redefines the offences of murder and the infliction of bodily "hurt" and the punishments for these offences in terms of Islamic law (see: [Pakistan: Legal changes affecting application of the death penalty](#), AI Index: ASA 33/03/91). Under Islamic law, the punishment for murder, homicide or infliction of injury can either be in the form of qisas (equal punishment for the crime committed) or diyat (compensation payable to the victim or heirs of the victim). These concepts are applied differently in different Islamic systems.

The Qisas and Diyat Ordinance which substitutes sections 299 to 338 of the Pakistan Penal Code, lays down that the death penalty may be given as qisas for intentionally causing death, or for causing the death of someone other than the person intended. The death penalty can only be given as qisas if specific evidential requirements are fulfilled, i.e. if the accused confesses before a competent court or if the rules of evidence under Article 17 of the Qanun-e-Shahadat, 1984, are fulfilled. A minor (defined as a person below 18) or insane person cannot be sentenced to death as qisas; nor can a person who has killed his child or grandchild; nor can a person whose direct descendants are the heirs of the victim. If the standards of evidence required for qisas punishment are not fulfilled, the court can still pass ta'zir or discretionary punishment. The death penalty can also be imposed as ta'zir punishment for murder.

The concept of qisas is defined in the ordinance as "punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed qatl-i-amd (intentional killing), in exercise of the right of the victim or a wali (heir of the victim, or the provincial government if there is no heir)". In a murder case this means that, if the relevant rules of evidence are fulfilled, the heirs of the victim have a right to have qisas inflicted on the offender. The heirs may waive this right, however, in which case the death penalty cannot be enforced as qisas punishment.

¹Ordinances in Pakistan lapse after 120 days unless placed before parliament and approved by it. The practice of re-promulgating ordinances has been criticised by many observers who point out that it effectively by-passes parliament.

In qisas cases, the ordinance alters the role of the state in the prosecution of criminal cases: the state's role is merely to ensure fair passage of the case through the courts, but the victim or the victim's heirs have the right to decide whether or not the punishment will be inflicted after a qisas sentence has been passed. However, should they forgive the offender and waive the qisas punishment, the state does still retain the right to intervene and punish the offender with a ta'zir punishment. In cases of intentional killings where the heirs have waived the qisas punishment, the ordinance provides up to two years' imprisonment as ta'zir, or up to 14 years' imprisonment in the case of a habitual offender.

In most cases where the death penalty cannot be imposed as qisas punishment for murder, the convict becomes liable to pay diyat, compensation to the heirs of the victim, and may also be sentenced to imprisonment. The ordinance specifies a minimum value of diyat, but the actual amount of compensation to be paid is to be determined by the court, "keeping in view the financial position of the convict and the heirs of the victim".

Death sentences under the Qisas and Diyat Ordinance can only be carried out if confirmed by the appropriate high court. Even once the death sentence has been confirmed, it cannot be carried out if the heirs of the victim pardon the convict or reach a compromise with the convict. Indeed, an execution can be halted by the heirs "even at the last moment before the execution of the sentence".

The Qisas and Diyat Ordinance specifies that if the death sentence has been imposed as a qisas punishment it must be carried out "by the functionaries of the Government by causing [the] death of the convict as the court may direct". Before an execution is carried out as qisas punishment, the heirs of the victim must be informed of the date, time and place of the execution, and the execution must not be carried out until they, or their authorized representatives, are present. However, if the heirs fail to attend the execution after receiving notification of it, the court can give permission for the execution to take place without them.

If a pregnant woman is sentenced to death as qisas punishment, the court can consult an authorized medical officer and postpone the execution for up to two years after the child is born. During this period, the woman may be released on bail. If she is not released on bail, she should be treated as if sentenced to simple imprisonment.

4. The death penalty under the Zina Ordinance

The Hudood laws, promulgated in 1979 and in force since 1980, cover the offence of zina, unlawful sexual relations, the offence of qazf, false accusation of zina, theft and robbery and intoxicant-related offences. One of the Hudood laws, the Zina Ordinance, encompasses the offences of zina, sexual intercourse between partners not married to each other, rape and

abduction for the purpose of committing a sexual offence. Zina and rape attract different punishments according to the evidence on which the conviction is based. Punishments can be either hadd (plural hudood, literally 'the limit'), punishments laid down in the Qur'an or Sunnah, which a judge has to impose irrespective of mitigating circumstances if certain evidential requirements and other specified conditions are fulfilled. If a hadd punishment cannot be imposed, but the court is convinced of the guilt of the offender, it may impose the lesser ta'zir (literally: 'to punish') punishment. In such cases, the court has some discretion in determining the punishment within certain defined limits.

The hadd punishment for zina and rape is stoning to death in a public place if the convict is muhsan (an adult Muslim who is not insane and has had lawful sexual intercourse) or 100 lashes in public if the convict is not muhsan. For the hadd punishment to be imposed for zina or rape, specific evidential requirements have to be fulfilled: The accused must either have confessed to the crime or four adult Muslim men of good repute must testify to actually having seen the act of penetration. The testimony of women, even in case of rape by the victim herself, is not relevant for a hadd conviction. If these evidential requirements are not fulfilled, and the accused is convicted on other evidence, the court may impose the ta'zir punishment. The ta'zir punishment for zina is imprisonment for up to 10 years, 30 lashes and a fine; for rape the ta'zir punishment is imprisonment for between four and 25 years, 30 lashes and a fine.

The Zina Ordinance, in section 17, provides for the death sentence to be carried out "in the following manner, namely: such of the witnesses who deposed against the convict as may be available shall start stoning him and, while stoning is being carried on, he may be shot dead, whereupon stoning and shooting shall be stopped."

5. The death penalty under the blasphemy law

During former president Zia-ul Haq's Islamization drive, several new sections relating to religious offences were added to the Pakistan Penal Code; in 1980, section 298-A was inserted which made the use of derogatory remarks in respect of persons revered in Islam an offence, punishable with up to three years' imprisonment. In 1986, this was further narrowed down, by inserting an offence specifically directed at the person of the prophet: Defiling the name of the Prophet Mohammed was declared a criminal offence which under section 295-C was to be punished with death or life imprisonment. It says:

"295-C: Use of derogatory remarks, etc., in respect of the Holy Prophet: whoever by words, either spoken or written, or by visible representations, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet (peace be upon him), shall be punished with death, or imprisonment for life, and shall also be liable to fine."

In October 1990, the Federal Shariat Court (FSC) ruled that “the penalty for contempt of the Holy Prophet ... is death and nothing else” and directed the Government of Pakistan to effect the necessary legal changes.² The government of Prime Minister Nawaz Sharif did not file an appeal against the FSC decision; the death penalty is thus the mandatory punishment available for blasphemy. The law does not prescribe a particular manner or place in which the death penalty for blasphemy is to be carried out.

Ever since the new sections of the Pakistan Penal Code relating to religious offences against Islam, including section 295-C, were introduced in the 1980's, they have been extensively abused to harass members of the religious minorities such as Christians and Ahmadis, as well as member of the Sunni majority. Hundreds of people have been charged under these sections: In all the cases known to Amnesty International, these charges have been arbitrarily brought, founded solely on the individual's minority religious beliefs or on malicious accusations against individuals of the Muslim majority who advocate novel ideas. The available evidence indicates that charges were brought as a measure to intimidate and punish members of minority religious communities or non-conforming members of the majority community and that the hostility towards minority groups appeared in many cases compounded by personal enmity, professional envy or economic rivalry or a desire to gain political advantage.

In mid-1996, Amnesty International was aware of over 140 people charged with blasphemy under section 295-C PPC and of six people in detention on such charges. The six death sentences for blasphemy imposed so far have all been overturned on appeal and the defendants acquitted and released. In none of the cases that have come to Amnesty International's attention over the years, have the defendants been responsible for acts that could be construed as constituting blasphemy. Amnesty International has concluded that the individuals now facing charges of blasphemy, are or could become prisoners of conscience, detained solely for their real or imputed religious beliefs in violation of their right to freedom of thought, conscience or religion (see: Pakistan: Violations of human rights of Ahmadis, AI Index: ASA 33/15/91; Pakistan: Use and abuse of the blasphemy laws, AI Index: ASA 33/08/94; and Pakistan: Five Ahmadi journalists charged with blasphemy, AI Index: ASA 33/03/94).

A common feature of accusations of blasphemy in Pakistan is the manner in which they are uncritically accepted by the prosecuting authorities who themselves may face intimidation and threats should they fail to accept them. Following protests by national and international human rights organizations against abuses of the blasphemy law, the Government of Pakistan in early 1994 announced that it intended to introduce two

²Decisions of the FSC are under article 203-D of the constitution binding on the government which may, however, appeal against such decisions to the Shariat Appellate Bench of the Supreme Court whose decision is final.

procedural changes which would lessen the possibility of abuse of section 295-C; under these a formal authorization by a judicial magistrate would be required before a complaint of blasphemy could be registered and any arrests be affected. Besides, the false allegation of blasphemy would itself be made a criminal offence to be punished with up to seven years' imprisonment.

The Pakistan Law Commission, presided over by the Chief Justice of Pakistan and attended by the minister for law, the chairman of the Council of Islamic Ideology and the chief justices of the four provincial high courts, decided in February 1994 to send a draft of the blasphemy amendment bill to the Council of Islamic Ideology for further scrutiny. According to reports, the Pakistan Law Commission expressed concern at the abuse of authority by the police when dealing with blasphemy cases and the misuse of the law for ulterior purposes by various political and sectarian organizations. It also noted with concern the negative international reaction to the reported abuse of the blasphemy law in Pakistan. Maulana Kausur Niazi, Chairman of the Council of Islamic Ideology, said in a press conference that "the law needs modification to ensure that it is not abused by unscrupulous elements for their selfish ends ... The procedure for police registration of a case, the judicial level at which it should be considered and the suitable criteria for admission of witnesses have to be looked at thoroughly" (*Agence France Presse*, 18 February 1994).

Amidst widespread strikes and protests in late May 1995 against any changes to the blasphemy law, Prime Minister Benazir Bhutto on 28 May 1995 declared that her government only envisaged procedural changes and added: "we will not amend the law". The then federal law minister, Iqbal Haider, declared in May 1994 that the blasphemy law would not be repealed as the government believed that there should be a deterrent to defiling the name of the prophet; he also justified its retention by pointing to legal provisions in the United Kingdom, the United States and other countries which he described as "similar". The bill to bring about the envisaged procedural changes has not so far been placed before either house of parliament.

Amnesty International has been told by government officials that administrative measures have been taken to prevent abuse of the blasphemy law contained in section 295-C; indeed during 1995, no new complaints of blasphemy were reported to have been registered against Christians. Amnesty International has been informed of several instances in which administrative officers have effectively mediated when complainants intended to lay charges against Christians alleged to have committed blasphemy. However, similar protective measures do not appear to have been extended to members of the Ahmadiyya community. Amnesty International remains concerned that administrative directives are not legally binding and do not alter the legal position - a vague law which permits, even invites, abuse and the harassment and intimidation of minorities in Pakistan.

Ahmadis charged with blasphemy often find it very difficult to obtain bail. Riaz Ahmed Chowdhury, his son and two nephews from Piplan, Mianwali district in Punjab province, are alleged to have claimed that the founder of their religion had worked miracles. This was deemed to be an offence under section 295-C PPC and the four men were arrested in November 1993. Observers believe that Riaz' position as village headman in Piplan is at issue and that people contesting the post are behind the charge. The four men's bail application was rejected by a sessions court in Mianwali, then in June 1994 by the Lahore High Court and has since then been pending in the Supreme Court. The four men are still in prison in Mianwali, the trial has not begun yet.

In January 1996, Senator Iqbal Haider told Amnesty International in London that no new charges of blasphemy had been filed in the previous year; Amnesty International is aware of at least three new cases in which eight people were charged with blasphemy under section 295-C in Sindh alone during 1995.

On 16 November 1995, Zahoor Hussain Abro and Noor Hussain Abro, two Ahmadis in Warrah, district Larkana, Sindh province, were charged under section 259-C besides other sections of the PPC for being found in possession of a motorbike with a sticker bearing a Qur'anic verse. Police did not immediately register the complaint but when the complainant, the imam of the local mosque filed a petition in the High Court to have his complaint registered, police complied. The two men, arrested on 18 November 1995, were denied bail by the sessions court and were granted bail by the Sindh High Court in early 1996... (check date). The men are the brother and uncle of Anwar Hussain Abro, an Ahmadi who was murdered in Anwarabad, Larkana district, in December 1994 by religious militants who abducted him from his house, tried to force him to abuse the head of the Ahmadiyya community and finally shot him dead.

On October 1995, five Ahmadis were charged inter alia under section 295-C for having printed Islamic terms of greeting on a banner in Faiz Ganj, district Khairpur, inviting people to a gathering; two accused were arrested and remained in detention for two months until bail was granted by the high court; the three other accused obtained pre-arrest bail.

Two elderly Ahmadi women were in March 1996 injured by a religious fanatic and subsequently charged with blasphemy to cover up the attack upon them. Bushra Siddiqua Tasir and Samia Bokhari, both in their sixties, on 26 March 1996 were attacked by a tailor in his shop in Karachi where they were collecting some clothes; both women were injured with a knife and were hospitalised. The attacker who is a member of a Sunni religious organization later stated that the cloth which the women had Islamic words printed on it and that this outraged him. Later he declared that he had received orders in a dream to attack the women. Still later he claimed that the women had tried to teach him Ahmadiyyat. The tailor has not been arrested; instead Bushra Siddiqua Tasir was charged with blasphemy under section 295-C PPC. It appears that police did not register a complaint against the tailor

as he was locally seen to defend Islam. Bushra Siddiqua Tasir was given bail but the charges against her are pending.

So far, six men, including a boy who was only 12 at the time of the alleged offence, have been sentenced to death for blasphemy. All were acquitted on appeal. Though nobody has so far been judicially executed after having been found guilty of blasphemy, at least four Christians charged with blasphemy, Tahir Iqbal, Naimat Ahmer, Bantu Masih and Manzoor Masih, have so far died, one in suspicious circumstances in jail and three at the hands of armed attackers. At least 16 Ahmadis have reportedly been killed by religious fanatics between February 1994 and May 1996. The changes in legislation relating to religious offences appear to have contributed to an atmosphere of religious intolerance in which fanatics sometimes consider themselves entitled to take the law into their own hands and to carry out the death penalty without judicial process.

6. The death penalty under the Hudood Ordinance relating to property offences

The Offences against Property (Enforcement of Hudood) Ordinance, 1979 defines the offence of theft and robbery in Islamic terms and assigns specific punishments for these offences. Robbery, haraabah, which involves “show of force for the purpose of taking away the property of another and [to] attack him or cause wrongful restraint or [to] put him in fear of death or hurt” is subject to the hadd punishment if the accused either confessed to the offence or if two adult Muslim men of good repute have witnessed the act. The hadd punishment for haraabah is death; if these requirements are not fulfilled, but the court holds him guilty on other evidence, he may be sentenced to the ta'zir punishment which consists of the corresponding punishments for robbery contained in the PPC. The Ordinance does not contain any provisions as to the appeal against or manner of execution of the death penalty.

7. Trials leading to death sentences and appeals

Civilian prisoners charged with capital offences such as murder, zina, rape or blasphemy are tried by a sessions judge or additional sessions judge, but specific offences like waging war against the state or kidnapping for ransom are tried by Special Courts for the Suppression of Terrorist Activities. Certain offences committed by civilians against the security of Pakistan can also be tried by court martial.

Some death sentences may have been imposed in trials which do not meet minimum standards of fairness laid down in international standards. This is a particular concern in capital cases as highlighted by the United Nations safeguard guaranteeing protection of the rights of those facing the death penalty. When Special Courts for Speedy Trial were in existence, Amnesty International repeatedly voiced its concern that the procedures of these courts did not ensure a fair trial and that in some cases death sentences were imposed after trials lasting only three days, denying prisoners the right to a full defence

(see Pakistan: Special Courts for Speedy Trial, AI Index: ASA 33/23/91). These courts do not function any more. However, the Special Courts for the Suppression of Terrorist Activities which are authorized to exclusively try certain offences laid down in a schedule appended to the act establishing such courts, fall short of international standards for fair trial as well in so far as they do not proceed from the presumption of innocence. Among the about 140 death sentences known to Amnesty International to have been imposed in 1995, at least 28 were imposed by Special Courts for the Suppression of Terrorist Activities; at least five people were sentenced to death by such courts after trials in absentia, i.e. without the defendants having any right to present their defence.

Some of the trials leading to the death penalty for blasphemy were manifestly unfair as judges betrayed religious bias against the defendants and showed a lack of concern for the fairness of the trial. Some of the convictions were not based on any evidence. Gul Masih, a Christian sentenced to death in November 1992, was on death row for two years, till his acquittal in November 1994. A neighbour had accused him of uttering blasphemous words during a quarrel over a broken community water tap but competition in local council elections appears to have played a decisive role in laying charges. The conviction was based solely on the statement of the complainant which the judge did not doubt as he "is a young man ... with a beard and outlook of a true Muslim, I have no reason to disbelieve him". Arshad Javed, a middle aged Muslim man was arrested in February 1989 in Bahawalpur after having claimed to be Jesus Christ in front of demonstrating Islamist students. Having been certified mentally imbalanced by independent medical experts, Arshad Javed should not have been tried at all; he was sentenced to death in February 1993 but acquitted in January 1995 on grounds of insanity. On 9 February 1995, two Christians, Salamat Masih and Rehmat Masih, were sentenced to death by a sessions court in Lahore; later in the month the Lahore High Court acquitted both as there were neither witnesses nor material evidence for the offence. At the time of the alleged offence of scribbling blasphemous words on the walls of a mosque, Salamat Masih was only twelve years old and illiterate. Two Afghan Shia men were sentenced to death for blasphemy in January 1995; they had been arrested in August 1993 after they had reportedly tried to have pictures of the prophet Mohammed printed in Peshawar. The portrayal of the prophet is a practice reportedly permitted in Shia communities but not among Sunni Muslims. Their acquittal in May 1996 revolved around discrepancies in witness accounts about the possession and recovery of the picture but did not take a position as to whether the possession of such pictures constituted blasphemy.

The indicated lack of impartiality and of neutrality of judges is a matter of serious concern in view of the severity of the mandatory punishment for the offence of blasphemy, the death penalty. Moreover the presence of Islamists in court during hearings who have frequently interrupted proceedings by shouting slogans, by loudly intimidating lawyers, witnesses and defendants and threatening judges appears to seriously impair the chances of defendants charged with blasphemy to have a fair trial.

The law itself sometimes makes for inherently unfair trials. Women charged with zina may be sentenced to the hadd punishment of stoning to death without their testimony being taken into account. Of relevance for a hadd sentence is only the confession of the accused or the eye-witness account of four Muslim men of good repute (see: Women in Pakistan: Disadvantaged and denied their rights; AI Index: ASA 33/23/95).

Appeals of some death sentences (beside the blasphemy cases cited above) in the recent past show that some death sentences have been imposed on the innocent. A death sentence passed by a Special Court for Speedy Trial, and confirmed by the Supreme Appellate bench of the Supreme Court, was set aside in August 1994 by the Supreme Court of Pakistan in exercise of its powers to take up matters of public interest, under article 184(3) of the Constitution. It said that the sentence had been seriously flawed, suffered from lack of jurisdiction, gross carelessness and illegality. It added, "The error committed by the court ... is so serious that had the accused eventually been hanged, we are afraid it would have amounted to murder through judicial process".

In mid-1995, a case came before the Lahore High Court which showed that an innocent man had been sentenced to death. Maqsud Ahmad, arrested in May 1989 for allegedly shooting a merchant during a robbery, was sentenced to death, his appeal was rejected and he was awaiting execution when two criminal suspects arrested in some other context confessed to the murder for which Maqsud had been convicted. In June 1995, a petition was filed before the Lahore High Court to seek the release of Maqsud Ahmad; the High Court reportedly sought information from police as to how the miscarriage of justice had occurred. Media reports at the time suggested that police may have presented false evidence to achieve a good record of solution of crimes by the police station concerned. In late February 1996, the Human Rights Commission of the Pakistan Bar Council appealed to the acting Chief Justice of the Lahore High Court to intervene in the case of Maqsud Ahmad and to order police to re-investigate the case. Amnesty International is not aware of any further development in the case; Maqsud Ahmad, arrested in May 1989, appears to be still held in a death cell.

Commenting on the death penalty, director of the Human Rights Commission of Pakistan, I.A. Rahman, said: "Even in countries where the system of justice is unexceptionally sound, the death penalty is considered a miscarriage of justice. Considering the state our system of justice has fallen into and the known penchant of police for prosecuting the innocent even when the guilty ones can be apprehended, in Pakistan, the death penalty can only be described as unmitigated bestiality."

Possibilities and channels of appeal against death sentences vary according to the offence for which the death sentence is imposed. Following a death sentence for offences not tried under the Hudood laws, an appeal to the appropriate provincial High Court is automatic, although the backlog of cases pending appeal can mean that prisoners wait for

several years before their appeal is heard. If the sentence is confirmed by the high court, the prisoner can appeal to the Supreme Court. This further appeal possibility is discretionary, however, as the Supreme Court may not accept a case for appeal. Prisoners who have been sentenced to death under the Hudood Ordinances must appeal to the Federal Shariat Court, and not to the provincial high court. The final venue of appeal in such cases is to the Shariat Appellate Bench of the Supreme Court.

Until recently, prisoners sentenced to death by court martial under the Army Act did not have a right of appeal; their sentences were merely subject to confirmation by military authorities. The Federal Shariat Court (FSC) in 1988 declared that a bar against appeal as provided in section 133 of the Army Act was repugnant to Islamic injunctions and therefore void. It directed the government to amend the Army Act by 1 January 1989; the government by ordinance inserted a new section, 133-B in the Army Act in December 1992, providing the right to appeal to anyone convicted under the Act. It is not known if enabling legislation has been passed which stipulates where appeals from such sentences may lie and what the relevant procedures are. Former Major Arshad Jamil, sentenced to death by field general court martial in October 1992 for the extra-judicial execution of nine villagers in Tando Bahawal earlier in the year (see: Pakistan: Torture, deaths in custody and extrajudicial executions, AI Index: ASA 33/05/93), appealed to the Supreme Court on the ground that the FSC directive had not been promptly implemented; consequently at the time of his sentence to death, just prior to the promulgation of the ordinance, the possibility of appeal was not available to him which deprived him of his fundamental right to appeal a death sentence. Major Jamil's death sentence was confirmed by the Chief of Army Staff and a mercy petition to the President was rejected; the execution was stayed in October 1995 by the Supreme Court after it had received Major Jamil's constitutional petition, although families of the victims persistently demonstrated in Hyderabad for his execution. In September 1996, two female relatives of the victims set themselves on fire to publicly protest against the delay in carrying out the death sentence.

The time prisoners spend in death cells, awaiting appeal and execution may be very long. The death sentence of Eid Wali, arrested in 1969 for involvement in a murder and sentenced to death in the same year by the sessions judge Rawalkot, Azad Kashmir, was commuted to life imprisonment in March 1995 by the Azad Jammu and Kashmir president. During his detention in Muzaffarabad District Jail, he had reportedly been told intermittently that his execution was imminent. A former prisoner in Peshawar Central Jail reported that a prisoner under sentence of death, had been on death row there for nine years.

8. Commutation of death sentences

The introduction of elements of Islamic law into the PPC has severely limited the possibility of prisoners sentenced to death having their sentences commuted to life imprisonment, as

relevant provisions in the PPC and in the Code of Criminal Procedure were declared void; the constitutionally guaranteed powers of the president to commute death sentences appear to remain intact, although the higher judiciary has interpreted these powers to be restricted to specific kinds of sentences.

Before the promulgation of the Qisas and Diyat Ordinance, death sentences for murder could be commuted under the PPC and the Code of Criminal Procedure by the provincial and the federal government and by the president. As amended by the Qisas and Diyat Ordinance, the PPC now states that commutations of death sentences given as qisas may continue to be made by the provincial or federal government and the president, provided the death sentence “shall not be commuted without the consent of the heirs of the victim” (section 54-A and 55-A PPC). The ordinance similarly inserts 402-C in the Code of Criminal Procedure to specify that the death sentence may not be commuted without the consent of the heirs of the victim.

Death sentences imposed as hadd punishments cannot be commuted by the federal or provincial government or the President as originally provided for in the Code of Criminal Procedure. The Offences against Property (Enforcement of Hudood) Ordinance, 1979 which provides for the death penalty as the hadd punishment for murder in the course of haraabah, in section 24(4) explicitly invalidated provisions in Chapter XXIX of the Code of Criminal Procedure which allow for commutation of sentences. Similarly, section 20(5) of the Zina Ordinance declares provisions of Chapter XXIX of the Code of Criminal Procedure to be inapplicable to death sentences imposed as hadd sentences under the Ordinance.

The president is empowered under article 45 of the constitution “to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority”. This provision was not changed by the promulgation of the Qisas and Diyat Ordinance as the Federal Shariat Court which directed the government to introduce the qisas and diyat conception of murder and physical injury, is barred under Article 203-D of the constitution from examining the constitution as to its conformity with Islam. Although the ordinance specifies that qisas punishment can be waived by the victim or his heirs alone, the president formally remains empowered under the constitution to commute all sentences. Similarly the Hudood Ordinances contain no reference to the president’s power under the constitution to commute death sentences.

However, in a 1992 judgment, the Supreme Court held that the president had no power to commute death sentences passed as hadd or qisas (Hakim Khan v. Government of Pakistan, PLD 1992 SC 595). The president’s power to commute the death sentence given as ta’zir punishment remains unaffected but the Federal Shariat Court made recommendations even in this area: “we may respectfully advise the President to keep in view the Injunctions of Islam ... while exercising the power under Article 45 of the Constitution

even in matters of Ta'zir, keeping in view ...[Islamic injunctions]" (Habib-ul-Wahab Alkhairi v. Federation of Pakistan, PLD 1991 FSC 236).

The judgment of the Federal Shariat Court which made the death sentence the only punishment for blasphemy says, "We have also noted that no one after the Holy Prophet (pbuh) exercised or was authorized [to exercise] the right of reprieve or pardon" (Muhammad Ismail Qureshi v. Pakistan, PLD 1991 FSC 26). That is to say, the mandatory punishment of death for committing blasphemy cannot be commuted by anyone. It would however, appear that the power of the President under article 45 of the constitution to commute and pardon is not affected by the Federal Shariat Court judgement.

9. Provision of diyat

The Qisas and Diyat Ordinance, by introducing changes in the commutation procedures, may render the execution of the death penalty arbitrary. The requirement that the death sentence cannot be commuted except with the consent of the heirs of the victim, who may grant mercy to the convict and accept diyat, compensation, in place of execution, makes it likely that a compromise settlement may be less frequently found with a poor convict than a rich one. This would result in the death penalty being applied arbitrarily: poor people sentenced to death would be more likely to be executed than those who are rich. Moreover, to bargain in monetary terms about human lives appears to violate the inherent dignity of the person and to betray a lack of respect for the value of human life.

In May 1995, Kamal Khan Barozai, a man convicted of murder five years earlier whose appeals had been rejected at every level, was saved from execution while already standing on the platform under the gallows in Mach jail, Balochistan, while the magistrate, the jail doctor and other jail staff were completing the last formalities before execution. At the very last minute, the family of the victim pardoned him and accepted diyat. In some cases, however, the convict waited in vain for a last minute pardon: In October 1994, Rehan was hanged in Peshawar Central Jail following his conviction for murder in 1991. He had to wait for over 30 minutes with the noose around his neck while his family and the heirs of the victim bargained over diyat. In Faisalabad, in mid-1995, a convicted man reportedly begged the family of the murder victim to pardon him. They reportedly refused and witnessed his hanging.

10. Executions

People who are sentenced to death are immediately after sentencing separated from other prisoners in a row of cells, with reduced contact to other prisoners. Under the Pakistan Prison Rules, prisoners under sentence of death, "shall be confined in a cell apart from all other prisoners and shall be placed by day and night under the charge of a special guard" (Rule 332) and "electric light shall be provided from sunset to sunrise in condemned

prisoner's cell, so that he may at all time remain under observation" (Rule 334). Condemned prisoners are not to be fettered except as punishment or during transfer. The Prison Rules provide that the execution takes place in jail, unless otherwise directed. Rule 360 lays down that at the time of the execution "the prisoners shall be locked up in their barracks and cells until the execution is over and the body removed"; executions are to take place early in the morning (Rule 361). Former prisoners have told Amnesty International that on the days before the execution, prisoners under sentence of death may receive their families and on the day before their execution they visit other prisoners to bid farewell. The atmosphere immediately prior to and after the executions is reportedly tense and depressed.

The method of execution of the death sentence for most offences is hanging. However, under the Qisas and Diyat Ordinance, the execution may be in the form of qisas, punishment equal to the offence committed; it is to be carried out in front of the family of the victim and may be carried out in public. The Zina Ordinance prescribes public stoning to death.

The public execution of the death penalty became an issue of debate in 1992, when Special Courts for Speedy Trial were set up and sentenced several people to death after trials which in some instances only lasted two to three days. The Act under which the courts were set up provided that the court could decide the manner and place of execution, "having regard to the deterrent effect which such execution is likely to have" (section 10). The then Prime Minister Nawaz Sharif announced in late 1992 that those sentenced to death by Special Courts for Speedy Trial would be hanged in public as a deterrent to other criminals. The Supreme Court under its suo moto powers took up the question whether public executions were compatible with human dignity which Article 14 of the Constitution of Pakistan guarantees unconditionally. The Supreme Court at the same time issued a stay order on public executions pending a decision on this issue.

Before any decision could be reached, the newly elected government of Prime Minister Benazir Bhutto announced, in February 1994, that as a matter of policy it would ban public executions. It reportedly issued a press note declaring that hangings in public constituted a violation of the fundamental right enshrined in Article 14. In the light of the government's decision the Supreme Court on 6 February 1994 disposed of the petition pending before it as "no further action by this Court now appears to be necessary".

Policy statements and administrative orders, however, have no legally binding force. In 1995, three executions were carried out before hundreds of prisoners who were made to watch the spectacle. On 13 July 1995, Mushtaq Arain and on 26 July 1995, Mohammed Juman Keerio were hanged in Karachi Central Jail and Hyderabad Central Jail respectively, both before large groups of prisoners, which included prisoners awaiting trial and convicted prisoners, among them other prisoners sentenced to death and jail staff. For the execution in Hyderabad, journalists were invited to attend as well. Both men had been convicted of

murder and their appeals had been rejected by the Sindh High Court, the Supreme Court and their mercy petitions had been rejected. There was considerable protest against the public hangings in the media, eg in the Sindhi newspapers Ibrat and Kawish and the English language dailies, Dawn and The News. Minister of State for Law, Raza Rabbani, told Amnesty International in December 1995: "I would categorically deny these reports [of public hangings]". Amnesty International was in May 1996 informed that prison authorities in Karachi and Hyderabad had been reprimanded by Prime Minister Benazir Bhutto for carrying out the executions contrary to government policy.

Another convict, Zulfikar, was hanged in front of other prisoners in Faisalabad Central Jail; it appears that he was in an advanced stage of tuberculosis and was not informed well in advance of the imminent execution.

As commentators have pointed out, people had not been forced to watch public hangings even under Zia-ul Haq's military regime; to enforce the attendance of 200 prisoners to a public hanging indicates a particular brutality in the treatment of prisoners and appears to be in breach of the relevant sections of the Prison Rules quoted above. As I.A. Rahman, director of the Human Rights Commission of Pakistan has pointed out, "the philosophy underlying this rule is based on the need to save the condemned person from torture and degradation in the last moments of his life and on the need to protect other prisoners from the brutalising effects of what is now universally recognized as killing by the state."

In May 1995, a public execution was to take place which would re-enact the crime as qisas. An additional sessions judge in Swabi, North West Frontier Province, issued a "black warrant" (order of execution) directing that Jahangir, convicted of murder, should be executed by the heirs of the victim at the place of murder: The father of the murdered woman teacher was to shoot Jahangir in the school playground where the crime had been committed. The execution was stayed pending a decision of the Peshawar High Court on the question of whether or not public executions are compatible with human dignity (see: Pakistan: Executions under the Qisas and Diyat Ordinance, AI Index: ASA 33/13/95). In June 1996, the Peshawar High Court declared the black warrant unlawful as the death penalty was imposed as ta'zir rather than as qisas; moreover even in qisas cases, the court said, the punishment is to be carried out in the presence of, but not by the wali or legal heir of the victim. The court moreover declared public executions unconstitutional and directed that the execution be carried out as a normal hanging. Jahangir was to be executed in Central Prison Peshawar on 24 June 1996; there were reports of Jahangir's father making hectic efforts to enter into a financial compromise with the victim's family. It is not known at present if the execution took place.

11. The death penalty for juveniles

Among those sentenced to death in 1995 was Salamat Masih, a Christian boy convicted of blasphemy who was later acquitted as there was no evidence to connect him to the alleged offence. He was 12 years old at the time of the alleged offence. It raised awareness once again that Pakistan is one of the few countries around the world where juveniles may be sentenced to death.

The imposition of the death penalty on children and juveniles is a clear violation of Pakistan's international legal obligation as a state party to the United Nations Convention on the Rights of the Child to bring its domestic law 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 (see: [Pakistan: The death penalty for juveniles](#), AI Index: ASA 33/07/95).

The federal government on 5 June 1995 approved a draft bill, the Child Offenders Bill 1995, which raises the age of prisoners on whom the death penalty can be imposed and who may be subjected to the punishment of whipping, to 16. Senator Iqbal Haider in February 1996 told Amnesty International that his government advocated raising the age of prisoners who may be sentenced to death to 18 or even 21. The Attorney General of Pakistan in July 1995 said that Amnesty International's concern over the use of the death penalty for juveniles was based on "ignorance of the factual and legal position in Pakistan" and that capital punishment had been abolished for children below the age of 16 ([Dawn](#), 25 July 1995), but to Amnesty International's knowledge, the Child Offenders Bill has not been approved by parliament yet. The death penalty can still be imposed on children in Pakistan. Moreover, raising the age below which the death penalty may not be imposed to 16 under the Child Offenders Bill, while welcome, would still violate the requirement of the Convention on the Rights of the Child.

12. International standards relating to the death penalty

International human rights standards concerned with the application of the death penalty are contained in the International Covenant on Civil and Political Rights (ICCPR) and its Second Optional Protocol, aiming at the abolition of the death penalty; UN Economic and Social Council Safeguards guaranteeing protection of the rights of those facing the death penalty (annex to ECOSOC resolution 1984/50), endorsed by the UN General Assembly in resolution 39/118 of December 1984 which calls for implementation of its recommendations "in law and practice"; and the Convention on the Rights of the Child. These instruments contain numerous safeguards against the arbitrary application of the death penalty, such as the requirement that, "anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment" (Safeguard 7 of the UN ECOSOC Safeguards guaranteeing protection of the rights of those facing the death penalty).

Safeguard 5 of the same instrument requires that those facing the death penalty should have trials which conform at least to the standards of fairness contained in Article 14 of the ICCPR. The provisions of the ICCPR include the right of all persons charged with a criminal offence to be presumed innocent until proven guilty according to the law. The ambiguity introduced into the presumption of innocence under section 8 of the Suppression of Terrorist Activities (Special Courts) Act does not accord with the observation of the Human Rights Committee in General Comment 13(7) on ICCPR article 14 that the presumption of innocence is “fundamental to the protection of human rights” and that “the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt.” The exclusion of women’s testimony in case of the hadd capital punishments for zina and rape violates this Safeguard as also Article 7 of the Universal Declaration of Human Rights which says: “All are equal before the law and are entitled without any discrimination to equal protection of the law”. Similarly the UN Declaration on the Elimination of Discrimination against Women in Article 7 says that all provisions of penal codes which constitute discrimination against women should be repealed (G.A. Resolution 2263(XXII) of 7 November 1967).

The extension of the death penalty in Pakistan in recent years goes against the spirit of UN General Assembly resolution 32/61 of 8 December 1977 which says that “the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment”.

13. Amnesty International’s concerns and recommendations relating to the death penalty

Amnesty International recognizes the government’s right to bring those guilty of criminal offences to justice, but it unconditionally opposes the death penalty in all cases, no matter how scrupulous the procedures are by which it is enforced. The death penalty violates the right to life and the prohibition of cruel, inhuman and degrading punishment, as proclaimed by Articles 3 and 5 of the Universal Declaration of Human Rights which say: “Everyone has the right to life, liberty and security of person” and “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

Amnesty International is concerned at the continuing extension of the number of offences for which the death penalty can be imposed in Pakistan. It calls on the government to reverse this trend and instead to join the worldwide movement towards the abolition of the death penalty. At present 58 countries have abolished the death penalty for all offences, while 15 have done so for all but the most exceptional crimes. 27 countries can be considered abolitionist de facto; they retain the death penalty in law but have not carried out any executions in the past ten years or more, or have made an international commitment not to carry out executions. The 100 countries that are now abolitionist in law or practice make up

over 50 per cent of the total number of states. Among Asian countries, Cambodia abolished the death penalty in 1989, Hong Kong in 1993 and Nepal abolished the death penalty for ordinary crimes in 1990. Bhutan, the Maldives and Sri Lanka are abolitionist de facto as no one has been executed in these countries in the last ten years or more.

In Pakistan, most death sentences are imposed for the crime of murder. The risk of error is inescapable, yet the penalty is irrevocable. Studies on the topic show that there is no reliable evidence to demonstrate that the death penalty helps avoid other serious harm, for example by deterring the crimes for which it is available. Indeed, there is some evidence, albeit inconclusive, that the death penalty can actually contribute to such crimes. It may certainly distract governments from seeking more effective means to combat crime.

Amnesty International's concerns about the use of the death penalty in Pakistan are heightened by the absence of strict procedural and substantive guarantees of fair trial. Trial procedures, appeal provisions and possibilities of commutation for those facing the death penalty fall considerably short of international standards. Amnesty International urgently calls on the Government of Pakistan to fully implement the UN Safeguards guaranteeing protection of the rights of those facing the death penalty, pending abolition of the practice.

Prolonged bargaining between the relatives of a convict and the family of the victim over the payment of *diyat* have reinforced Amnesty International's concerns that executions under the Qisas and Diyat Ordinance constitute particularly inhuman and degrading forms of punishment. They contravene human rights standards, including those contained in the United Nations Safeguards guaranteeing protection of right of those facing the death penalty which lays down in Safeguard 9: "Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering". Amnesty International urges that relevant provisions of Pakistan law be speedily brought into consonance with these safeguards.

All executions are cruel, inhuman and degrading by their very nature. However, public executions add a further degrading element by exposing the prisoner's suffering to the public in the form of a sensational spectacle. Public executions have a brutalizing and de-humanizing effect on the spectator and society at large which is incompatible with respect for life and human dignity. Executions in front of prisoners under sentence of death appear to be intended to increase their suffering, in violation of Safeguard 9 cited above. Amnesty International urges the government to prohibit public executions.

Amnesty International calls on the Government of Pakistan to :

- stop all executions and to prohibit public execution

On humanitarian and human rights grounds, Amnesty International appeals to the authorities to cease executing prisoners and to prohibit public executions. It urges the president to use his powers under Article 45 of the constitution to commute all death sentences.

- abolish the death penalty

In keeping with its unconditional opposition to the death penalty, Amnesty International urges the government to abolish the death penalty in law. In this regard, Amnesty International would like to draw the attention of the government to the statement by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions made in his report of 14 December 1994: "... the Special Rapporteur would like to express his view that, although the death penalty is not prohibited under international law, there is no such thing as a right to capital punishment, restricted only by some limitations contained in pertinent international instruments. In view of the irreparability of loss of life, the impossibility of remedying judicial errors and, indeed, the well-founded doubts expressed by a wide range of experts in criminology, sociology, psychology, etc. as to the deterrent effect of capital punishment, the Special Rapporteur once again calls on the Governments of all countries where the death penalty still exists to review this situation and make every effort towards abolition."

- ratify relevant international human right instruments

Amnesty International appeals to the Government of Pakistan to become a party to relevant international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), its two Optional Protocols and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.