

PUBLIC

AI Index: ASA 33/041/2006

06 October 2006

Further Information on UA 118/06 (ASA 33/014/2006, 4 May 2006) and follow-ups (ASA 33/019/2006, 24 May 2006; ASA 33/030/2006, 21 July 2006; ASA 33/031/2006, 04 August 2006; ASA 33/034/2006, 18 September 2006) - Imminent execution

PAKISTAN

Mirza Tahir Hussain (m)

Mirza Tahir Hussain, a British national who has been in detention in Pakistan for over 18 years, was due to be hanged on 1 October. He was temporarily saved from this fate by the Pakistani tradition of not holding executions during the Muslim holy month of Ramadhan. His execution date is to be moved forward and will now be scheduled for a date after 23 October.

On the day that Mirza Tahir Hussain's stay of execution expired, President Pervez Musharraf rejected a mercy plea from Mirza Tahir Hussain's family to commute his sentence. Several stays of execution have been granted whilst Mirza Tahir Hussain's family have attempted to seek a pardon from and to offer monetary compensation to the family of the taxi driver he was found guilty of killing. However, the victim's family have refused to accept their offer. All legal avenues open to Mirza Tahir Hussain and his family now seem to have been exhausted.

Amnesty International strongly believes that due to discrepancies between different judgements handed down in this case that Mirza Tahir Hussain's conviction is unsafe. Mirza Tahir Hussain was tried and convicted of murdering a taxi driver while travelling to the village of Bhubar from Rawalpindi on 17 December 1988. The taxi driver reportedly stopped the car and produced a gun, and Mirza Tahir Hussain, who was 18 years old at the time, was reportedly physically and sexually assaulted by the taxi driver. In the scuffle that followed, the gun went off, and the taxi driver was fatally injured.

Mirza Tahir Hussain was sentenced to death in 1989 at the Sessions Court in the city of Islamabad. Following an appeal, this sentence was dismissed by the Lahore High Court, which noted discrepancies in the case. The case was returned to the Sessions Court where Mirza Tahir Hussain was sentenced to life imprisonment in 1994. Following a second appeal, the Lahore High Court then dismissed this sentence in 1996, and Mirza Tahir Hussain was acquitted of all charges against him.

A week after his acquittal, Mirza Tahir Hussain's case was referred to the Federal Shariat Court, which maintains jurisdiction over offences and punishments covered under Islamic law. The court considered charges brought against him in the original case, including robbery involving murder, which fall under Islamic offences against property law. The entire case against Mirza Tahir Hussain was reopened, and in 1998, he was sentenced to death by the Federal Shariat Court, despite their acknowledgment that no robbery had taken place as Mirza Tahir Hussain had hired the taxi. The death sentence handed down by the Federal Shariat Court was based on a split judgement, with two judges voting for the death penalty and one against. The dissenting judge strongly recommended that Mirza Tahir Hussain be acquitted. Amnesty International believes that Mirza Tahir Hussain has not received a fair trial. Also, the Islamic provision under which he was tried requires that the death penalty should only be imposed if reliable eyewitness accounts or a confession to the court are submitted. In this case, neither was obtained.

The Supreme Court upheld the judgement in 2003 and dismissed an appeal in 2004. On 1 October 2006, President Musharraf refused to use his powers under Article 45 of the Constitution of Pakistan to commute Mirza Tahir Hussain's sentence. Mirza Tahir Hussain has now been in prison for 18 years which by the standards of most legal systems is more than a life sentence.

He is currently held in 10 by 12 foot cell which he shares with 3 other inmates also sentenced to death in the vastly overcrowded Adiala Jail in Rawalpindi.

Amnesty International, along with a number of other notable organisations, believes that the trial of Mirza Tahir Hussain did not conform to international fair trial standards. These organisations are continuing to call on President Musharraf to use his powers under Article 45 of the Constitution of Pakistan to commute his death sentence. Article 45 clearly states: "The President shall have power to grant pardon, reprieve and respite and to remit, suspend or commute any sentence passed by a court, tribunal or authority".

Previous Presidents of Pakistan have used their powers under Article 45 to commute death sentences; for example, in 1998, Indian citizen Parminder Singh Saini was granted a pardon for hijacking an airliner from India to Pakistan. His death sentence was commuted to life imprisonment. He was later granted a full pardon by the then President of Pakistan.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language:

- calling on President Musharraf to use his powers under Article 45 of the Constitution to commute the death sentence of Mirza Tahir Hussain;
- expressing concern that he was sentenced to death after an unfair trial;
- noting that previous Presidents of Pakistan have used their powers under Article 45 to commute death sentences;
- noting that Amnesty International has observed a recent surge in executions in Pakistan, and urging the President to make all possible efforts to join a worldwide trend towards the abolition of the death penalty in law and practice.

APPEALS TO:

President Pervez Musharraf
Pakistan Secretariat
Islamabad, Pakistan

Fax: + 92 51 9221422

Email: via website: <http://www.presidentofpakistan.gov.pk/WTPresidentMessage.aspx>

Salutation: Dear President Musharraf

COPIES TO: diplomatic representatives of Pakistan accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.