

PUBLIC

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UA 149/05 **Death penalty**

PAKISTAN **Mutabar Khan (m), aged about 25**

Mutabar Khan is being held in a death cell in Haripur prison, North West Frontier Province, Pakistan, after being sentenced to death for murder in 1998. He was reportedly 16 years old at the time of the crime, but is not able to prove his age. Pakistan is bound by national and international law forbidding the execution of those who were under the age of 18 at the time of the crime.

Mutabar Khan was arrested in 1996 and detained in Peshawar Central Jail. He claims that he was held in the juvenile section of the jail as he was 16 at that time. Though his age was not recorded by the authorities, this suggests that he was indeed a juvenile when he was arrested. However, he is unable to prove his age, and successive appeals against his death sentence on the grounds that he was a juvenile at the time of the crime have failed. His appeals in the Peshawar High Court and the Supreme Court were dismissed in 2000 and 2001 respectively. In 2003, Mutabar Khan's mother petitioned the Peshawar High Court to overturn the sentence because of his age, but the petition was dismissed. She then filed a further petition with Pakistan's Supreme Court, asking for his age to be determined through medical tests on his bones. This appeal was dismissed in August 2003. Shortly afterwards, Mutabar Khan's lawyer petitioned the President to show mercy to Mutabar Khan and commute his sentence. The President has not yet made a decision on Mutabar Khan's case.

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 Mutabar Khan because of the dispute over his age.

BACKGROUND INFORMATION

Amnesty International opposes the death penalty in all cases. The death penalty is a symptom of a culture of violence, and not a solution to it. It has not been shown to have any more deterrent effect than other punishments and carries the risk of irrevocable error. The death penalty is seen as the ultimate form of cruel, inhuman and degrading treatment and a violation of the right to life, as proclaimed in the Universal Declaration of Human Rights and other international human rights instruments.

Pakistan is a state party to the UN Convention of the Rights of the Child (CRC), and has created the Juvenile Justice System Ordinance (JJSO). Both the CRC and the JJSO forbid the death penalty for anyone below 18 years of age at the time of the alleged offence.

Many juveniles under sentence of death have faced great difficulty and long delays when seeking to commute their sentence under the terms of the Presidential Commutation Order. In many cases, the authorities have no record of the age of the accused as prior to the implementation of the JJSO in 2000, age was not taken into account when deciding leniency. It is not easy for the accused children themselves, their relatives or their legal representatives to prove their age, as documents such as school leaving certificates and birth certificates have often been dismissed as evidence due to the ease with which they can be forged. Even since the introduction of the JJSO, many judges have failed to address the issue of age of the accused before them and generally accept the age recorded by police, even if the child appears to be younger than the recorded age.

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

- expressing concern that Mutabar Khan is under sentence of death, despite reportedly being 16 years old at the time of his arrest in 1996;
- noting that he was apparently initially held in the juvenile section of Peshawar Central Jail, which supports his claim that he was a juvenile when he was first detained;
- in view of the doubts over his age, calling for the death sentence passed on Mutabar Khan to be commuted immediately;
- urging the President to promptly and completely implement the Presidential Commutation Order of December 2001, commuting the death sentence of all those who were under 18 at the time their alleged crime was committed, in accordance with Pakistan's commitments under the UN Convention of the Rights of the Child and the Juvenile Justice System Ordinance;
- urging the President to show leniency in those cases where juveniles have been unable to adequately prove that they were juveniles at the time of the alleged offence on account of an absence of official documentation or of delays in the criminal justice system to ascertain their age.

APPEALS TO:

President Pervez Musharraf
Pakistan Secretariat,
Islamabad,
Pakistan

Fax: + 92 51 9221422

E-mail: CE@pak.gov.pk

Salutation: Dear President

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

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 14 July 2005.