

# PAKISTAN

## Appeal to ban public flogging

Amnesty International welcomes the decision of the federal cabinet on 2 October 1995 to approve a bill which seeks to abolish public flogging of prisoners in all cases in which whipping is not imposed as a hadd or mandatory punishment prescribed by Islamic law. The organization is aware that this legislation - if approved by both Houses of Parliament -will reduce the number of sentences of whipping considerably as the punishment of whipping is rarely imposed as a hadd punishment. However, Amnesty International believes that the punishment of whipping is a cruel, inhuman and degrading punishment and efforts should be made to abolish it altogether. As long as the punishment of whipping remains on the statute book as a hadd punishment for a number of offences it can be imposed and implemented.

Amnesty International now appeals to parliamentarians of all parties to approve the bill to partly abolish public flogging as a first step towards the eventual complete abolition of public flogging.

### **Recent cases of public flogging**

Before the Hudood Ordinances (see below) were passed, the punishment of whipping was not imposed by regular courts; however, it was carried out in jails for disciplinary reasons. During the martial law period (1977 to 1985), criminal and political prisoners were publicly flogged.

Since 1979, when the Hudood Ordinances were promulgated, the punishment of flogging has been frequently imposed - most often for sexual offences or the consumption of alcohol - and is often carried out, almost always in public.

In July 1995, Zameen Khan was publicly whipped in Nishtar Park in Karachi. He had been sentenced to 10 years' imprisonment and 15 lashes in 1991 for possessing heroin. Upon appeal to the Federal Shariat Court, his sentence was reduced to five years' imprisonment and 10 lashes. He was medically examined before the administration of the punishment and found physically fit to undergo the whipping. After the first five lashes he was again examined and whipped again when found fit. According to reports a crowd gathered to watch Zameen Khan being lashed.

Media in Pakistan reported that on 8 October 1995, two Irish men were flogged in Peshawar Central Jail. They had been convicted in August of having smuggled hashish and were sentenced to 10 months' imprisonment, a fine and five lashes each. Medical staff of the jail reportedly supervised the implementation of the punishment.

In the tribal areas of Pakistan which have retained their own separate legal and judicial systems, sentences of public flogging have also been imposed and carried out. In July 1995, two tribesmen were given 99 and 70 lashes respectively in Bara, in the Khyber Agency, in front of a large crowd of some 5,000 people. The two men had been found guilty by a court of local Islamic scholars, of abducting and raping a minor boy. Both men reportedly were crying in extreme pain when the punishment was carried out. One of the men fainted and had to be later carried to a first aid post.

### **Legal provisions relating to flogging**

Corporal punishment, including whipping, was widely used in the past in the subcontinent during the British colonial period. The Whipping Act of 1909 permitted the punishment of whipping for certain offences. The Code of Criminal Procedure of 1898 stipulated that the maximum number of stripes to be imposed was 30; it provided that in the case of persons below 16, the permission of the government must be obtained and not more than 15 stripes may be given. It also said that women, men sentenced to death or to imprisonment of more than five years and men over the age of 45 may not be sentenced to whipping.

Several of these restrictions of the Code of Criminal Procedure were removed when President Zia-ul-Haq replaced certain sections of the penal code by Islamic provisions. The Islamic Hudood Ordinances of 1979 provide the penalty of whipping in two different sets of punishments and for four groups of offences. It may be imposed as a hadd [also transliterated as hudd, plural hudood; literally: the limit] or a tazir [literally: to punish] punishment. An offence is liable to a hadd punishment, i.e. a specific mandatory punishment laid down in the Qur'an or Sunnah, if certain conditions and specific evidential requirements are fulfilled. If these conditions and requirements are not fulfilled and the offender is convicted on other than the specified evidence, the tazir punishment, i.e. discretionary punishment, may be imposed by the court.

The Offence of Zina (Enforcement of Hudood) Ordinance, 1979, deals with sexual offences such as zina-bil-jabr (rape) and zina (sexual intercourse between partners not married to each other). Persons convicted of rape or adultery liable to hadd are to be sentenced to death by public stoning if they are muhsan, i.e. sane Muslims adults who have had sexual intercourse within marriage before, or to 100 lashes to be administered in public if they are not muhsan. The tazir punishment for rape and adultery is imprisonment up to

ten years and 30 lashes to be inflicted in public. The Zina Ordinance also deals with related offences, including kidnapping, abduction or threatening a woman to compel her to enter marriage or commit zina, selling or buying persons for the purpose of prostitution or abducting a person for the purpose of sodomy. The punishments prescribed include, in addition to prison terms of varying lengths, up to thirty lashes. The Offence of Qazf (Enforcement of Hudd) Ordinance, 1979, deals with the offence of wrongfully imputing zina; persons convicted of having committed qazf liable to hadd are to be sentenced to 80 lashes, while the tazir punishment is up to 40 lashes and imprisonment of up to two years. The Offence against Property (Enforcement of Hudood) Ordinance, 1979, sets out penalties for theft and other offences involving property; the hadd punishment is amputation of the hand while the tazir punishment involves imprisonment and in some cases flogging. The Prohibition (Enforcement of Hudd) Order, 1979, lays down a hadd punishment of 80 lashes for the offence of consuming alcohol.

Under the Pakistan Prisons Act, 1894, the superintendent of a prison may punish a prisoner for "prison offences" including breach of prison discipline, with up to thirty lashes. Women and prisoners convicted for civil offences are exempted from such punishments. Similarly the Pakistan Prison Rules provide whipping of not less than 15 lashes "which shall be severe enough to act as a real deterrent" as a punishment for offences against the prison rules including mutiny or "conduct seriously affecting the discipline of the prison" or "serious assault on public servants or visitors or when other punishments have failed to deter ... [the] commission of offences of specially grave nature".

The Execution of the Punishment of Whipping Ordinance, 1979, which superseded relevant sections of the Criminal Procedure Code, regulates the implementation of this punishment. It specifies that the whip "preferably of leather, or a cane or a branch of a tree ... shall not be longer than 1.22m and not thicker than 1.25cm". The person carrying out the sentence of whipping "shall be impartial and of mature understanding". Further, "he shall apply the whip with moderate force without raising his hand above his head so as not to lacerate the skin of the convict". The lashes should "be spread all over the body of the convict" avoiding "the head, face, stomach or chest or the delicate parts of the body of the convict".

The Ordinance provides that a man is whipped while standing and a woman while sitting. Whipping shall not be carried out on a day when "the weather is too cold or too hot" and must otherwise be postponed. Whipping is to be carried out only in the presence of an authorized medical officer and in a public place to be specified by the provincial government. Before the punishment is implemented, a thorough medical examination of the prisoner is to be carried out by an "authorized medical officer so as to ensure that the execution of the punishment will not cause the death of the convict". If the convict is "too old or too weak", whipping must be "applied in such a manner and with such intervals that the execution of the punishment does not cause his death". If the convict is ill, the whipping is postponed until

"the convict is certified by the authorized medical officer to be physically fit to undergo the punishment". In the case of pregnant women, whipping is postponed until "two months after the birth of the child or miscarriage". Whipping may be stopped at any stage if the "medical officer is of the opinion that there is apprehension of the death of the convict"; it will be resumed when the medical officer confirms that the convict is fit to undergo the rest of the punishment. If the medical officer believes that the prisoner cannot undergo the punishment in whole or in part, the matter has to be referred back to the court.

Women can be punished with either the hadd or the tazir punishment of whipping. Amnesty International has been informed by human rights lawyers in Pakistan that an executive order in 1988 was issued which suspended the carrying out of the punishment on women. However, Amnesty International has not been able to obtain any official statement to that effect and it is not clear whether such an order has been consistently applied.

Children may be subjected to flogging under the Hudood Ordinances and in prison for disciplinary offences. The Hudood Ordinances exempt children from hadd punishments; however, the Zina Ordinance links the definition of adulthood in the case of women to the attainment of puberty. Consequently, girls as young as 12 who have attained puberty are considered adult and may, if convicted of zina or zina-bil-jabr, be sentenced to hadd punishments. Children may be given all the tazir punishments which are imposed on adults. The Execution of the Punishment of Whipping Ordinance does not make special allowance for children. Under the Pakistan Prison Rules, prisoners under sixteen years of age shall not be given more than 15 lashes for prison offences; the punishment "shall be inflicted, in the way of school discipline, with a lighter rattan" on the buttocks of the prisoner. A bill banning the death penalty and the whipping of children under the age of fifteen was reportedly approved by the federal cabinet in June 1995. It is not known if the bill has been laid before parliament yet.

### **Amnesty International's concerns and recommendations**

Flogging is mostly imposed as a tazir punishment; hadd punishments have so far almost always been overturned on appeal by the higher judiciary. Banning all those punishments of whipping which are not imposed as hadd punishments will therefore do away with most of the punishments of whipping currently imposed. The present bill which the federal cabinet approved and which will now go to the two houses of parliament for discussion, would remove all punishments of whipping for disciplinary offences committed by prisoners in prison and all sentences of whipping imposed as tazir punishment. If approved, the bill would only retain the punishment of whipping as hadd punishment for zina and zina-bil-jabr committed by non-muhsan, qazf and consumption of alcohol.

Amnesty International opposes the punishment of whipping which it considers to constitute a cruel, inhuman and degrading punishment that contravenes a number of international human rights standards. Article 5 of the Universal Declaration of Human Rights states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Cruel punishments are also prohibited under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights (Article 7). Principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states:

"No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstances whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment."

Rule 31 of the Standard Minimum Rules for the Treatment of Prisoners states: "Corporal punishment ... and all cruel, inhuman or degrading punishments shall be completely prohibited as punishment for disciplinary offences."

Amnesty International has urged successive governments in Pakistan to abolish cruel, inhuman and degrading punishments such as public flogging, the imposition of fetters, judicial amputations and the death penalty. While welcoming the cabinet's approval of the bill which seeks the limited abolition of public flogging, Amnesty International encourages the government to consider the complete abolition of flogging and other forms of cruel, inhuman and degrading punishments. The Government of Pakistan should also actively consider the ratification of the relevant human rights standards cited above.

Amnesty International calls on parliamentarians of all parties to lend their support to this bill which will limit the scope of the imposition of the punishment of flogging as a first step towards its complete abolition.

Amnesty International believes that the participation of medical staff in the infliction of the punishment of whipping conflicts with international standards of medical ethics such as the World Medical Association's Declaration of Tokyo adopted in 1975, which says that "the doctor shall not countenance, condone or participate in the practice of torture or other cruel, inhuman or degrading procedures..." and "shall not be present during any procedure" falling within the categories of torture or cruel, inhuman or degrading treatment.

Medical professionals in Pakistan have repeatedly condemned cruel, inhuman or degrading punishments and medical participation in their implementation. In 1983, during the martial law period, the Karachi branch of the Pakistan Medical Association passed a resolution condemning the use of flogging, describing it as "inhuman and against the dignity

of man". It pointed out that flogging can "cause serious physical damage and irreversible psychological trauma especially in young people". The Karachi branch urged the government "not to involve the medical profession in the process of flogging and to stop such punishment on humanitarian and medical grounds".