

Urgent Action In Focus

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Juvenile injustice in Pakistan: Child offenders facing execution in violation of national and international law



Alleged child offenders awaiting trial, Pakistan ©AI

Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age (Article 37(a), UN Convention on the Rights of the Child)

Following the March 2005 ruling by the US Supreme Court outlawing the execution of child offenders (those who were under the age of 18 at the time their alleged crime was committed), Amnesty International noted that no country now openly claims the right under international law to execute child offenders. However, even though the USA and Somalia are the only countries yet to ratify the UN Convention on the

Rights of the Child (CRC), which prohibits the execution of child offenders, 20 juveniles are known to have been executed in seven other countries since 1990. One of these countries is Pakistan, where hundreds of children are believed to be under sentence of death, despite national and international legislation which is designed to protect them.

Important commitments for child

rights

Pakistan had initially made significant steps in recognizing the importance of the rights of the child. In 1990, it ratified the CRC, which sets global standards for the treatment of children (officially defined as those under the age of 18), and is built on the belief that "childhood is entitled to special care and assistance" (preamble to the CRC). Pakistan's commitment to child rights was underscored by the introduction of the Juvenile Justice System Ordinance (JJSO), introduced in 2000. The JJSO brought many of the key concepts of the CRC into Pakistani national law, with a particular focus on the protection of children during their involvement with the criminal justice system. Among its provisions were measures to ensure those under the age of 18 are detained and tried separately from adults, in a manner which promotes their welfare and recognizes their immaturity as well as their capacity for growth and change. Most importantly, Article 12 of the JJSO states unequivocally that "no child shall be awarded punishment of death."

At the time that the JJSO was introduced, there were between 125 and 350 child offenders already awaiting execution. During a meeting with Pakistan's President, Pervez Musharraf, Amnesty International Secretary General Irene Khan urged that these death sentences be commuted. The President agreed to this request, and on 13 December 2001 he signed the Presidential Commutation Order, commuting all death sentences passed before the JJSO came into force in July 2000.

However, the cases outlined below demonstrate that despite these legal provisions, an unknown number of child offenders still face the death penalty, and the future of the JJSO is in doubt.

Juveniles failed by the law

In 2005, the UA network has been called into action on behalf of four child offenders facing execution, in a country

where they should be protected from the death penalty. In many cases, this is due to the slow and partial implementation of the JJSO, which the Pakistani authorities have acknowledged without offering further explanation. Many of the child offenders sentenced to death were tried alongside adults, in violation of the JJSO's provision that juveniles should be tried separately in special juvenile courts. This was either because the authorities ignored parts of the JJSO, or because there were no juvenile courts operating in their area, or even because the JJSO was initially not applied in their area; indeed, the application of this law in the more remote areas of the country apparently remains incomplete.

One apparent child offender, Mohammad Ameen, who is now aged about 24, was sentenced to death in 2001 (see UA 150/05, ASA 33/012/2005, 2 June 2005). He was tried before an anti-terrorism court in the city of Rawalpindi in Punjab province, thus contravening the provisions of the JJSO. However, he remains under sentence of death, because of doubts over his age.

Mohammad Ameen was sentenced to death after being found guilty of involvement in a robbery and killing in 1998, when he was reportedly aged 16. While the court recorded his age at the time of his trial as being 17 or 18, during his appeal his age was confused with that of the victim of the killing, and the Lahore High Court rejected his appeal, believing him to be aged 30. A further appeal to Pakistan's Supreme Court was overruled on the grounds that his lawyer had not raised the issue of his age at the original trial. A subsequent appeal questioning this decision was rejected by the Supreme Court in June 2003. Mohammad Ameen's birth certificate and high school certificate both state that he was born on 5 June 1981. They were presented as evidence in both the High Court and the Supreme Court, but they were not believed. He filed a mercy petition in August 2003 to President

Musharraf, but no response has been received. Amnesty International has been informed that the family of the victim have indicated that they will forgive Mohammad Ameen – and thus spare his life – if they receive substantial compensation. Mohammad Ameen's family are reportedly unable to raise the money required.

It has often happened in Pakistan that neither alleged child offenders, their families, legal representatives nor the courts have taken note of the age of the accused at the time of the crime or subsequent legal proceedings, as it was not important. Even after age became a factor in criminal proceedings with the introduction of the JJSO and the Presidential Commutation Order, many judges failed to question the age of defendants as arbitrarily recorded by police. The obligatory registration of births is often neglected and there is a flourishing trade in fake documentation. Therefore, documentation presented before the court is often viewed with distrust.

Jawed Khan is another child offender who has been failed by the JJSO because of doubts over his age. His case is being highlighted as part of AI's campaigning on the juvenile justice system in Pakistan. AI UK has made Jawed Khan the subject of the section's current Junior UA (designed for young people aged 8-12), and youth groups (11-18 –year-olds) are also taking action on his case. In addition, Jawed Khan will be one of those featured in AI UK's 2005 greetings card campaign between 1 November and 31 January, from which he can expect to receive thousands of messages of solidarity and hope from AI UK supporters.

Jawed Khan was sentenced to death by an anti-terrorism court in the city of Faisalabad in Punjab province in February 1998 after being charged with murder. He was 14 years old at the time his alleged offence was committed in 1996. His age was reportedly not raised in his

original trial nor his first appeal. When his father produced his birth certificate and school certificate stating that he was born on 3 April 1982, and was thus a juvenile when the crime was committed, these were rejected by the court as fakes. Jawed Khan's father told the media that the village where the family live is remote, and there was no practice of obtaining birth certificates for children. He had not obtained the birth certificate submitted to the court until after his son's conviction, and thus the court had believed it to be a fake. Jawed Khan's lawyers have called for medical tests on his bones – believed by the courts in Pakistan to be the most reliable method of determining the age of juveniles. However, this method becomes less reliable after a detainee reaches maturity, at around the age of 20. The authorities have not responded to this request, nor has a petition for mercy to President Musharraf been answered. He continues to be held in poor conditions in a death cell in Faisalabad.



Jawed Khan © Private

Jawed Khan's brother, Baacha Rahim, spoke to Pakistani child rights group, the Society for the Protection of the Rights of the Child (SPARC) about the case, and its effect on their family: "Jawed was a child... My father suffered a heart attack at the gate of Faisalabad Jail when he went to visit him and later on died in hospital. My mother weeps and prays for

the return of her youngest kid. This is a glimpse of the trauma that we suffered due to this mishap."

Baacha Rahim added: **"We lost all our hope but we are extremely thankful to SPARC for their continuous efforts and AI for their campaign in support of saving our brother's life."**

To take action on behalf of Jawed Khan, visit
<http://www.amnesty.org.uk/ua/jua/appeals/jawed.shtml>

Juveniles failed by Commutation Order

The inadequate recording of juveniles' ages has also meant that many have not benefited from the Presidential Commutation Order, which should have overturned all the existing death sentences of child offenders. Attempts to determine a detainee's age at the time of an offence can delay the outcome to a case, often by many years. When the age of a defendant cannot easily be proved, the courts have failed to err on the side of leniency.

Mutabar Khan, sentenced to death in 1998 for a murder allegedly committed when he was 16, should have had his sentence commuted as a result of the Presidential Commutation Order. However, he is not able 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. After Mutabar Khan's mother's appeal to overturn his death sentence was dismissed by the Peshawar High Court, she called for his age to be determined through medical tests on his bones. However, Mutabar Khan is now about 25 years old, and such tests are unlikely to prove his age conclusively, and his mother's request was dismissed by the Peshawar High Court. The strongest evidence supporting his claim to have been a juvenile at the time of the crime is that he claims that he was first held in the juvenile section of Peshawar

Central Jail following his arrest as he was only 16 at the time. Amnesty International has called for his sentence to be commuted in view of the doubts over his age. However, no decision has yet been made about his fate, and he is held in a death cell at Haripur prison in North West Frontier Province (see UA 149/05, ASA 33/011/2005, 2 June 2005).

Juveniles failed in detention

Amnesty International reports that conditions of detention are generally "appalling", with most detainees living in cramped, overcrowded and unhygienic conditions. The JJSO states that juvenile detainees should be held separately from adults, in borstal institutions, and every effort should be made to rehabilitate them so they can assume a constructive role in society. However, this is routinely ignored: the national director of the organization SPARC said in September 2004 that "one would be hard pressed to identify any noticeable change in the conditions of juvenile offenders" since the JJSO was introduced in 2000.

Ziauddin and Abdul Qadir, both teenage Afghan refugees, have been failed by the Pakistani authorities' inadequate implementation of the JJSO. The two boys were sentenced to death for murder by an anti-terrorism court in Balochistan province in 2003, despite court documents clearly recording that the boys were aged 13 and 16 respectively at the time of their arrest. Having contravened the terms of the JJSO in their trial and sentencing, the authorities continued to fail in their duty of care to Ziauddin and Abdul Qadir. A child rights activist visited the two boys in 2004 at Much prison near Quetta and reported that they shared a cell measuring 6x8 feet with six adult men who had been convicted and sentenced to death. They were reportedly at risk of torture, ill-treatment or sexual abuse at the hands of fellow prisoners and officials. The appeal of the boys was then pending in the Quetta High Court. The Much Prison is heavily overcrowded with some 68

men under sentence of death. A UA was issued on behalf of Ziauddin and Abdul Qadir earlier this year (UA 152/05, ASA 33/013/2005, 3 June 2005). AI's campaigner on Pakistan, Saskia Chilcott, reports that "The government of Pakistan has responded to appeals sent by members of the UA network, and has provided assurances that these two juvenile prisoners will be retried by a juvenile court. We have recently learned that they are being held separately from the adult prisoners."

Child rights on hold – the Lahore High Court judgement

While those named above are in danger as a result of the poor implementation of the JJSO, the law itself is under threat as a result of a judgement made by the Lahore High Court in December 2004. The court was responding to a petition filed by Farooq Naqvi, whose son was sexually assaulted and burned alive by a group of young men. The group included a juvenile, who was sentenced to life imprisonment for his part in the crime. Farooq Naqvi believed that the juvenile should have faced the death penalty along with his fellow defendants, and felt that he had been unduly protected by the JJSO.

On 6 December 2004, the Lahore High Court revoked the JJSO with effect for the whole country, subject to appeal. The court reportedly found the JJSO to be "unreasonable, unconstitutional and impracticable." They ruled that the legislation unduly privileges juveniles; that juveniles are adequately protected under other laws, and that courts take a lenient attitude to juveniles, thus making the JJSO redundant. The Lahore High Court also pointed to problems of implementation of the JJSO and the fact that in practice, many of its provisions were ignored and that people made false statements to gain the benefits of protection under the JJSO. It concluded that it was not worthwhile retaining a law that presents a "nightmare of impracticality". Most horrifying of all, the

court argued that the death penalty needed to be retained for juveniles in order to deter crime.

Not only does the Lahore High Court judgement fly in the face of the CRC, it fails to take account of the Constitution of Pakistan, which explicitly allows special provisions for the protection of women and children without diminishing the rights of others. The cases of child offenders Mohammad Ameen, Jawed Khan, Mutabar Khan, Ziauddin and Abdul Qadir are among many recorded by Amnesty International which refute the contention that judicial leniency and the provisions of other laws are enough to protect the interests of juveniles. Moreover, it is wrong to claim that the death penalty acts as a deterrent when scientific studies have consistently failed to find convincing evidence that it deters crime more effectively than other punishments.

While there are evidently many failings in the implementation of the JJSO, the necessity of honouring Pakistan's commitments as a state party to the CRC means that these failings need to be addressed urgently, rather than being used as a pretext to revoke a valuable piece of legislation protecting children.

In February 2005, the Supreme Court of Pakistan stayed the Lahore High Court judgement until it hears appeals filed by the federal government and by SPARC. Therefore the JJSO has been temporarily restored until the Supreme Court makes its final decision. Amnesty International is among many organizations hoping that the Supreme Court judgement will take into account the intention of the JJSO to pay special attention to the needs of children caught up in the criminal justice system, and the commitments Pakistan made when it ratified the CRC to give children "special care and assistance".

