

PAKISTAN (38)

Im. Fin. sek. 19 J.nr. 97/71511-54

4/6 425

1999 w.c.

Antel bilag Aktr. 15

Public

amnesty international

79

PAKISTAN Juveniles sentenced to death

May 1999

SUMMARY

AI INDEX: ASA 33/08/99
DISTR: SC/CO

Mohammad Saleem was 13 or 14 years old when arrested, tried by a summary military court in Karachi and sentenced to death for murder in December 1998. Upon appeal a month later he was acquitted as no motive or substantial evidence could be adduced to link him with the offence.

Throughout the harrowing process, the boy was deprived of his fundamental rights: He was beaten by police; neither he nor his family were informed of the grounds for his detention. He had restricted access to a lawyer and his family and was tried, convicted and sentenced by a summary military court which did not provide a fair trial. He was sentenced to death despite the fact that in Sindh province, no person below 16 may be given the death penalty.

The conditions of Saleem's arrest, detention, trial and the imposition of the death penalty on a child violate provisions of the UN Convention on the Rights of the Child which Pakistan ratified in 1990.

The present report contains Saleem's detailed testimony which indicates the fear, loneliness and bewilderment of a child in a situation totally incomprehensible to him, cut off from his family and fearing for his life, especially when other convicts were executed in the same jail. Asked what he thought about the death penalty after his harrowing experience, Saleem said, "*Punishment is necessary, but not hanging. If a person is hanged, the whole family is hanged.*"

The paper describes the special military courts which functioned in Sindh for several months before being abolished following a Supreme Court decision declaring them unconstitutional. It then looks at the use of the death penalty in Pakistan which has led to one of the largest death row populations in the world with some 3,231 persons sentenced to death at the end of 1998. Among these are 49 children. The latest execution of a child

105

was reported in September 1997 when Shammam Mashh, was executed in Hyderabad Central Jail. He was 22 years old at the time of the execution but had been in detention for 9 years.

The paper summarizes Pakistani laws relating to the imposition of the death penalty on juveniles and gives an overview of the situation of children in detention. It lists obligations under the UN Convention on the Rights of the Child and other international standards and refers to the Pakistan Juvenile Justice Bill pending since 1995. It cites the emerging international consensus that the execution of juveniles for offences committed under the age of 18 is contrary to international law.

While Amnesty International opposes the death penalty unconditionally as the ultimate cruel, inhuman and degrading punishment and a violation of the right to life, it does not argue that juvenile offenders, that is people who committed crimes under the age of 18, should not be held criminally liable or subjected to severe penalties where appropriate. However, international standards and treaties forbidding the imposition of the death penalty on juvenile offenders were developed in recognition of the fact that the death penalty -- which denies any possibility of rehabilitation or reform -- is wholly inappropriate for individuals who have not attained full physical, intellectual or emotional maturity at the time of their action.

In conclusion, Amnesty International calls on the Government of Pakistan to undertake the following measures as a first step towards the abolition of the death penalty:

- Commute all death sentences imposed on anyone under 18 at the time of the offence;
- Ensure that no more children are sentenced to death while the death penalty for juveniles remains on the statute book;
- Comply with obligations under the Convention on the Rights of the Child to raise to 18 the age below which a person committing an offence cannot be sentenced to death.

KEYWORDS: JUVENILES / DEATH SENTENCE / MILITARY TRIBUNALS / TORTURE/ILL-TREATMENT / PRISONERS' TESTIMONIES / LEGISLATION / CHILDREN / UN CONVENTION ON THE RIGHTS OF THE CHILD

This report summarizes a 14-page document, PAKISTAN: Juveniles sentenced to death (AI Index: ASA 33/08/99) issued by Amnesty International in May 1999. Anyone wishing further details or to take action on this issue should consult the full document.

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

287 NAT 211A

Public

amnesty international

PAKISTAN

Juveniles sentenced to death

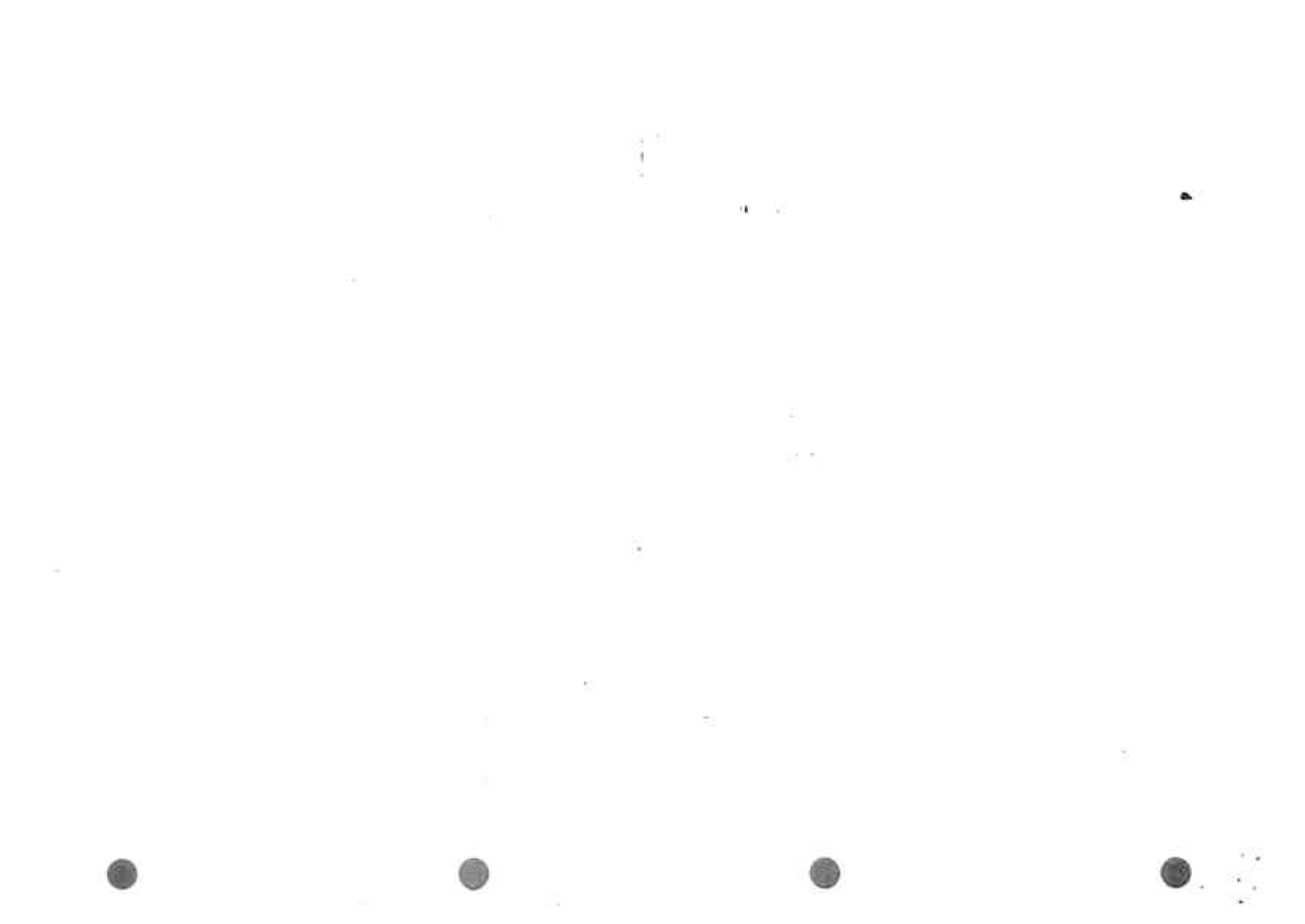


May 1999

AI Index: ASA 33/08/99

Distr: SC/CO

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM



PAKISTAN

Juveniles sentenced to death

"Punishment is necessary, but not hanging. If a person is hanged, the whole family is hanged", 14-year old Mohammad Saleem, sentenced to death in December 1998.

"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, ratified by Pakistan in 1990.

Mohammad Saleem was 13 or 14 years old when he was picked up by police from Ibrahim Hyderi police station in Karachi on 1 June 1998, for alleged involvement in the murder of three police officers in the very alley where he lives. Saleem is one of nine children of a migrant Bengali fisherman's family living on the outskirts of Karachi in Korangi. He is illiterate and has been working as a carpet weaver for some six to seven years. After 12 days in police custody, Saleem was transferred to the juvenile jail in Karachi.



Along with three adult men arrested at the same time, Saleem was tried in a regular court. Trial proceedings began at the District and Sessions Court at Mair on 1 July 1998. Ten hearings had taken place when the case was transferred to a newly established military court [MTC, military trial court] in December. On 19 December 1998 -- after a trial which only lasted 12 days -- Saleem and the three adult men were found guilty of murder and sentenced to death by the MTC. Saleem was transferred to a death cell in Central Prison Karachi. On 7 January 1999, Saleem was acquitted on appeal by an appellate military tribunal as no motive nor substantial evidence could be adduced to link him to the offence. The death sentences of his co-accused were commuted to life imprisonment. Saleem was released from jail on 10 January 1999.

Throughout this harrowing process, the boy was deprived of his fundamental rights: Saleem was beaten by police; neither he nor his family were informed of the grounds for his detention; he had restricted access to lawyers and family, was tried, convicted and sentenced by a special court which did not provide a fair trial and was sentenced to death despite the fact that in Sindh province no person below the age of 16 may be given the death penalty. The conditions of Saleem's arrest, detention, trial and the imposition of the death penalty on a child violate provisions of the UN Convention on the Rights of the Child (CRC) which Pakistan ratified in 1990.

The present paper contains Saleem's testimony, then describes the special military courts which functioned in Sindh for several months before they were abolished following a Supreme Court decision declaring them unconstitutional. It looks at the use of the death penalty in Pakistan in general before focussing on juveniles under sentence of death. It then summarizes the laws relating to the imposition of the death penalty on juveniles and gives an overview of the situation of children in detention. The paper then turns to obligations under the UN Convention on the Right of the Child and Pakistan's Juvenile Offenders Bill pending since 1995. The paper closes with a set of recommendations.

Saleem's testimony

Representatives of Amnesty International met Saleem in February 1999, some six weeks after his release and listened to his account of his ordeal:

"When I came from work -- I am a carpet weaver -- police had surrounded the whole area. Everyone was worried ... I went to my sister's house ... police came and took me with them, they did not say why, they just made me walk with them to Ibrahim police station. On the way they said they wanted to ask me some questions. Once in the police station, they started asking me if I belonged to a political party and if I had killed the policemen. I said that I don't know anything about any party, nobody in our family is involved in any political activity, but they did not believe me. They kept beating me with fists and with a leather strap and a stick all the time to make me confess. But I had nothing to confess. There were eight other men in my cell in the police station. Four amongst us were small [under age], one was only 12 years old. ... This went on for four days, on the fifth day they took us to a magistrate who ordered seven days' remand. The questioning continued all that time, and the beating. All of us were beaten. The 12-year-old was released after seven days in the police station. Twelve days after arrest I was taken to the Juvenile Jail and the others were taken to Central Jail. At that time the guards told me that I was under arrest under section 13D [Arms Ordinance]. They later said that I was charged with murder as well. When I had been in jail for about three weeks, my family visited me for the first time.

Family members meanwhile were frantically searching for the boy, but police at Ibrahim police station had told them "who is Saleem, we don't know any Saleem", when they tried to contact the boy. Through indirect contacts, not from the police, the family came to know that he had been sent to the Juvenile Jail.

Once the case was transferred to the military court, Saleem was taken to daily hearings, but was questioned only once. He was not cross-examined. "I told them [the MTC] that I was a carpet weaver and did not know anything about weapons and ammunition. I also told them how police had beaten me. They did not cross examine me. The witnesses who testified did not belong to our area. I don't know how they could identify me. Three of them were outsiders and seven were police officers."

"I did not understand what was going on. I was in court all day, every day, and very upset. They used to take me to the court early in the morning without breakfast, and made me sit there all day. They gave me nothing to eat at midday, and in the evening when I got back to jail, around 7 or 8 o'clock, my food there was cold. ... I used to tremble a lot and prayed all the time. My family met me two or three times after the hearings for a few minutes. ... I thought I would soon be released. I had done nothing and the lawyer also said, don't worry, you will soon be released."

"Then one day they told me that I would be hanged, all was finished. I did not know before that this was coming or could come. I fainted. The judge told me that I could appeal, and not to worry. I looked around and thought I was already dead. When they said that I could appeal, I thought that maybe there was a chance. My family was not in the court on that day. The family came to know of the verdict that evening after hearing rumours.

"The police were laughing that night when they took me back to jail. I thought they were going to hang me right away. The other inmates told me not to worry. Allah would take care of me. The wardens also were very nice and told me not to worry. But I worried. ..."

"I was taken to a death cell in the Central Jail after that. I shared the cell with four grown up men who had also been sentenced to death. One of them was a man who had been sentenced to death in the same case as I. In the morning and in the afternoon we were taken out, inmates of two cells [out of 14 death cells] at a time, to walk in the court. There were no other young people in the death cells. The warden one day said that no one had made an appeal on my behalf, that made me very nervous. I kept hoping and praying that I would be released. I did not understand all the things they were talking about. I only kept thinking of death. I was trembling all the time, I was so scared. ..."

On the day after the death sentence my family came to visit me in jail. There is a special room for prisoners sentenced to death to receive visits. When they took me from my cell to meet my relatives, I thought they were going to hang me. I started trembling till I saw them and thought it would be alright. We sat separated by iron bars... My lawyer did not visit me in jail. I was not taken to court and just waited. Three days after the sentence, the wardens told me that the appeal had been filed. Then I just waited. ..."

"The worst days were when Rafiuddin and Ashraf were hanged [in Karachi Central Jail - sentenced by MTCs in different cases, see below]. I was shaking when they were taken for hanging; everyone in the death cells was consoling the others, saying 'don't worry'. During those 20 days or so in the death cell, I could not sleep, I did not dream, all the time my eyes were open. Even now, six weeks later, I often think of that time."

"I came to know that everything was over [that he had been acquitted] when some other prisoners read it in the newspapers. One day later my brother came to fetch me, but was told that there was another case against me. The jailers also told me that there was another case. I was very worried and waited and waited. He came on the next day [10 January] and we went home. I was very happy. Everyone laughed and cheered when I came home ..."

Saleem told Amnesty International that after his court case the whole family is in debt to repay the fees for his lawyer and other costs, which total some 80,000 Rupees (approximately £1,000). The four brothers, two of whom are younger than Saleem, earn together some 200 Rupees (about £2.50) a day in carpet weaving. Their employer who is considered good and helpful loaned them the money and contributed 10,000 Rupees towards their costs. "Now all will have to work harder to repay the loan", Saleem said.

Asked what he thinks about the death penalty after his experience, Saleem said, "Punishment is necessary, but not hanging. If one person is hanged, the whole family is hanged."

His parents, brothers and neighbours gathered around Saleem during the interview pointed out that he was still too confused to have any views and opinions; they agreed that there should be no death penalty as a "lot of innocent people may be hanged". Saleem's father, still visibly shaken, said that when the boy was under sentence of death, "I was also finished" and that he was daily praying for those who helped Saleem. His mother said, "I felt that I was [going] mad. I ran and shouted 'Saleem, Saleem'. I did not know what to do." She reported that she was beaten and pushed away with a stick when she visited the police station during the first days after Saleem's arrest, trying to locate her son. Saleem's elder brother expressed the fear that the family might be harassed by the authorities as human

rights organizations and newspaper correspondents had come to interview Saleem and publicized his case.

Military trial courts

Saleem was tried and sentenced to death by a special military trial court. Special military courts were established in Sindh province to ensure speedy trials of civilians charged with serious criminal offences.

In response to the breakdown of law and order in Sindh (particularly in the provincial capital, Karachi) where in the first 10 months of 1998 some 800 people had lost their lives in political and religiously motivated violence, the Government of Prime Minister Nawaz Sharif dismissed the elected provincial government on 30 October 1998 and placed the province under Governor's rule. On 20 November 1998, the President promulgated the Pakistan Armed Forces (Acting in aid of the Civil Powers) Ordinance, 1998 by which Article 245 of the Constitution of Pakistan was invoked and the army called in to assist police in Karachi. The Ordinance also established summary military tribunals to try civilians suspected of specified serious offences within three days. Those convicted had the right to appeal within three days, only to an appellate military tribunal. Unlike people convicted by regular courts, those found guilty by military tribunals could not appeal to the Supreme Court of Pakistan. Following objections by the military about the time frame in which decisions were to be made, an amending ordinance was promulgated on 22 December. This increased the trial time from three to eight days. Most trials were in fact concluded within seven to ten days.

Military courts began working in December 1998. They did not function as permanent benches, but each tribunal was set up to try a specific case. The federal government repeatedly claimed that the law and order situation in Karachi had improved dramatically as a result of this initiative to deliver "*prompt and deterrent justice*". While several petitions challenging the constitutionality of the military courts were pending in the Sindh High Court and the Supreme Court of Pakistan, two men who had been sentenced to death by military courts were executed. Ashraf Chakar, sentenced to death on 16 December 1998 after a 10 day trial for killing a police constable, and Rafiuddin Babli, sentenced to death for kidnapping and raping a young girl, were executed in Karachi Central Jail on 31 December 1998 and on 3 January 1999 respectively. To allow the execution of the two men during Ramadan or Ramadan - which had started on 21 December 1998 and is considered a holy month by Muslims - the Governor of Sindh issued a notification overriding rule 361(ii) of Pakistan Prison Rules which lays down that "*executions shall not take place ... in the month of Ramadan*".

On 8 January the Supreme Court of Pakistan stayed the execution of death sentences imposed by military courts for three days. A further order issued on 11 January stayed them indefinitely until the Supreme Court had decided the petitions challenging the constitutionality of military courts. The federal government on 13 January filed a review petition requesting the Supreme Court to recall its stay order, "so that the well-considered, well-intentioned and well-thought-out process is brought to its logical conclusion.... There is a very real and genuine apprehension that an interruption of the process may lead to a resurgence of violence and a drastic fall in the morale of all those who are engaged in the process of restoration of peace".

On 10 January, Interior Minister Chaudhury Shujaat Hussain announced the government decision to also set up summary military courts in the other three provinces; particularly in Punjab, the wave of sectarian killings necessitated recourse to such deterrent measures. An ordinance was being prepared and awaited approval by the law division, he said. At the time of this announcement, the National Assembly was in session, but as the government did not intend to place the matter as a bill before parliament, the Interior Minister said the government would wait until the end of its session before promulgating it as an ordinance¹. On 30 January, two days before the Supreme Court began hearing the petitions challenging the constitutionality of the military courts, Prime Minister Nawaz Sharif in Lahore reiterated this decision as the government's final phase in its "war against terrorism and lawlessness". On the following day, President Tarar issued a presidential order to form military courts wherever they were needed.

On 17 February 1999, the Supreme Court of Pakistan declared that the military courts were "unconstitutional, without lawful authority and of no legal consequence". It ordered military tribunals to be immediately disbanded and all pending cases to be transferred to special courts set up under the Anti-Terrorism Act of 1997 (ATA). Death sentences not yet executed were to be set aside. By that time the military courts had sentenced 13 people to death, two of whom had been executed (see above). The Supreme Court judgment said that all sentences executed would be treated as "past and closed transactions". The court acknowledged that "terrorism" had taken a heavy toll and that urgent measures were needed to eliminate it. To that effect, the judgment laid down a 10-point guideline for the quick trial of cases of terrorism.²

¹ Ordinances remain in force for four months and may only be promulgated by the President if there is urgent need for legislative action while parliament is not in session: Article 89 of the Constitution.

² The ATA initially had serious legal flaws (see *Pakistan: Legalizing the Impermissible*, AI Index: ASA 33/34/97). In May 1998, the Supreme Court of Pakistan declared 12 of its provisions unconstitutional and in need of amendment. In October 1998, an amending ordinance was promulgated which removed

Human rights organizations throughout Pakistan had protested against the establishment of military courts to try civilians. Asma Jahangir, Chairperson of the non-governmental Human Rights Commission of Pakistan, said in early January that military trials lasting some seven to ten days were a distortion of due process. She also mentioned that the prime minister was reported to have recommended to the president not to admit mercy petitions by persons sentenced to death, since any pardon would defeat the purpose for which these courts had been set up, i.e. to deter criminals.

The death penalty in Pakistan¹

Salcarn was one of 3,231 people reported under sentence of death in Pakistan in 1998, one of the largest death row populations in the world, surpassed only by the United States with 3,549 people on death row at the end of 1998. The majority of those sentenced to death in Pakistan were convicted of murder, followed by kidnapping for ransom and gang rape. According to reports, in 1998 some 433 people were sentenced to death and 21 were executed. This means that the number of death sentences almost doubled in 1998 and executions increased one and a half times compared to 1997.

Some of those sentenced to death or executed in Pakistan must be assumed to be innocent. Those executed in 1998 included Maqsood Ahmad who had been arrested in May 1989 for allegedly shooting a merchant during a robbery. He was sentenced to death in 1994 and his appeal was subsequently rejected. He was awaiting execution when two criminal suspects arrested in some other context confessed to the murder for which Maqsood had been convicted. In June 1995, a petition was filed in the Lahore High Court to seek a review of his conviction. It was rejected on technical grounds. In March 1998, Maqsood Ahmad was hanged in Lahore, in all probability innocent of the offence for which he was killed.

Commenting on the death penalty, director of the Human Rights Commission of Pakistan, I.A. Rehman 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 can be apprehended, in Pakistan, the death penalty can only be described as unmitigated bestiality.*"

most of these flaws.

¹ For a more detailed analysis of the application of death penalty in Pakistan, see *Pakistan: The death penalty*, AI Index: ASA 33/10/96.

The death penalty and juveniles⁴

Saleem was not alone in having to face the death penalty as a child.

The annual report of the non-governmental Human Rights Commission of Pakistan (HRCP) states that of the 3,480 children currently in prison in Pakistan, 49 children are under sentence of death⁵. Among those known to have been sentenced to death in recent years is 17-year-old Wali Badshah who was convicted on a drugs-related charge by a court in Rawalpindi, Punjab province in July 1997. In 1998, 14-year-old Bashir Ahmed was sentenced to death for rape by a Special Court for the Suppression of Terrorist Activities, and 16-year-old Zafar Iqbal, was sentenced to death for murder, both are held in Bahawalpur Juvenile Jail.

In March 1999, the Peshawar High Court is reported to have confirmed the death sentence handed down to 17- or 18-year-old Ali Sher, convicted of the abduction and murder of a girl in 1993. At the time of the alleged offence Ali Sher would have been 12 or 13 years old. The High Court is reported to have observed that it was evident that Ali Sher was capable of differentiating right from wrong, and deserved no leniency because of the brutal manner in which the girl was killed.

The latest execution of a juvenile reported from Pakistan occurred on 30 September 1997 when Shannum Masih, sentenced to death for murder, was executed in Hyderabad Central Jail. He was reportedly 22 years old at the time of the execution but had been in detention for nine years following his arrest in August 1988. His mother reportedly pleaded that he had only been 13 or 14 years old at the time of the alleged offence but his age appears not to have been taken into consideration. He was executed in Sindh province in which children below 16 may not be sentenced to death (see below).

Laws relating to children

Saleem was sentenced to death in Sindh, a province in which a law to protect children against the death penalty is in force.

⁴See also *Pakistan: The death penalty for juveniles*, March 1995, AI Index: ASA 33/07/95, and *Children in South Asia: Securing their rights*, April 1998, AI Index: ASA 04/01/98.

⁵*State of Human Rights in 1998*, Human Rights Commission of Pakistan. This figure is only surpassed by the United States of America where at the end of 1998 some 73 juveniles were on death row.

The Sindh Children's Act of 1955, which came into force only in 1974, states in section 68 that a youthful offender, defined as a person below 16 years of age at the time of initiation of proceedings, may not be sentenced to death, transportation or imprisonment. The Act also provides that a child may not be tried together with an adult suspect (section 10). The Punjab Youthful Offenders Ordinance 1983, which was brought into operation only in the district of Sahiwal in 1993, but not in other parts of Punjab, bans the death penalty and life imprisonment for any offender below the age of 15 at the time of the offence. The special laws relating to child protection in Sindh and Punjab override federal laws; there are no special laws protecting children in Balochistan and the North West Frontier Province, not in the tribal areas.

The Pakistan Penal Code of 1860, the Code of Criminal Procedure of 1898 and other statutes awarding punishments for criminal offences apply generally to everyone, including children, in all the four provinces of Pakistan, except in the designated tribal areas. Under the Pakistan Penal Code, "nothing is an offence which is done by a child under seven years of age" (section 82); under section 83, "nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion". The qualification of attainment of maturity implies that a child considered by a judge sufficiently mature at the time of committing the offence will be dealt with by the law as an adult. However, no guidelines are provided for a judge to establish maturity; a child's right to be treated as a child depends on the subjective leniency of a judge. Any suspect above the age of 12, or between the ages of seven and 12 if they have attained "sufficient maturity of understanding" can be tried, convicted and sentenced to all the relevant punishments provided by law, including the death penalty. The Pakistan Penal Code and the Code of Criminal Procedure do not establish an age limit below which the death penalty may not be imposed. However, under the Qisas and Diyat Law (which redefines the offences of injury, murder and homicide in accordance with an interpretation of Islamic law, replacing relevant sections of the Pakistan Penal Code), the death sentence for murder may not be imposed on anyone below the age of 18 at the time of the offence.

The Hadood laws of 1979 which relate to the offences of armed robbery, theft, rape, fornication, false accusation of fornication, drinking and drug-taking, and which replace corresponding sections of the Pakistan Penal Code, apply to all parts of Pakistan and override all other legislation, including legislation relating to children. The Hadood laws provide *hadd* or fixed punishments for specific offences provided certain strict evidentiary requirements are fulfilled. The punishments given as *hadd* punishments include stoning to death for fornication, judicial amputation for theft and armed robbery and flogging for consumption of intoxicants. The Hadood laws are applicable to defendants irrespective of age, but the *hadd* punishments may not be imposed on children. However, the definition of

a child in the Haddood laws differs from that of other laws in Pakistan: a child is a person who has not attained puberty. The Haddood law relating to fornication differentiates between the genders of the offenders: a male is adult at the age of 18 while a female is considered adult for the purposes of the law at the age of 16 or at attainment of puberty. Thus a girl of 12 years who has attained puberty is legally adult and could be sentenced to the *hadd* punishment outlined above. In practice no child has been sentenced to stoning to death or judicial amputation or to public flogging – but the law remains on the statute book and can be imposed.

Children in detention

The confusing legal position of children, with different laws at the federal and provincial level, partly contradicting each other and interpreted differently in the legal practice of different courts, is just one aspect of a much broader problem relating to the administration of juvenile justice in Pakistan. As highlighted in Amnesty International's 1998 report *Children in South Asia: Securing their rights*, the weakness of legislation and the failure of existing legal safeguards and protection in Pakistan leads to children being arbitrarily detained and puts them at risk of torture and other forms of abuse in detention.

Many children are imprisoned illegally or on minor charges for long periods. Police fail to follow proper procedures by not taking steps to inform parents and welfare officials after arresting a child. Breaches of the law and failings in the juvenile justice system see children lost in the custodial system, sometimes for years on end, without judicial supervision or trial. With only 13 to 17 per cent of child prisoners being eventually convicted, for the majority of children the time they spend in prison is completely unnecessary.⁶

According to the HRCP's annual survey, 92 per cent of the known 3,480 children imprisoned in Pakistan in 1998 had not been sentenced. They were either undergoing or awaiting trial, and most had been held in prison for more than a year. These included several under 12 years of age. Although the majority were convicted or charged with serious offences relating to the human person (murder, attempted murder and the infliction of bodily "hurt"), some two hundred children were detained on lesser charges, such as 'cheating', vagrancy and pickpocketing. In one case in Multan, a 10-year-old boy had been in jail since he was 5 years old on the charge of vagrancy. Of the 265 convicted child prisoners, 86 were sentenced to life imprisonment (usually 25 years with labour) and one 17-year-old boy was found to have been sentenced to 50 years' imprisonment.

⁶See 1993 report, *Children of a Lesser God: Child Prisoners of Pakistan*, by Asma Jahangir and Mark Doucet

Other child prisoner cases highlighted by the HRCP included an eight-year-old boy detained in Faisalabad district jail accused of rape; a 12 year-old girl imprisoned in Multan charged with kidnapping; and a 10-year-old child imprisoned in Sahiwal accused of destroying an irrigation system.

Apart from two juvenile jails in Karachi and Bahawalpur, child prisoners and young people up to the age of 21 are generally detained on the same premises as adults in separate cells. Conditions of detention and imprisonment are extremely poor for all prisoners with severe overcrowding and inadequate medical, educational and recreational facilities. Physical and sexual abuse of children in state institutions is reported to be a common phenomenon. In some cases prison officials are alleged to have acted as suppliers to richer inmates.

Whether guilty of a crime or not, it is clear according to the HRCP that a child's experience in jail in Pakistan would leave them "...far more inclined and better equipped to committing crime than when they went in."

The UN Convention on the Rights of the Child and Pakistan's Juvenile Offenders Bill, 1995

The UN Convention on the Rights of the Child (CRC), which Pakistan ratified in 1990, lays down clearly that the death penalty may not be imposed on anyone below the age of 18 at the time of the offence. Article 37(a) states that "neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age".

Other internationally recognized legal standards prohibit execution of juveniles. The International Covenant on Civil and Political Rights in Article 6 (5) states that the "sentence of death may not be imposed for a crime committed by a person below 18 years of age". The United Nations have repeatedly declared that children should not be sentenced to death. The Safeguard Guaranteeing Protection of the Rights of Those Facing the Death Penalty (UN Economic and Social Council Resolution 1984/50, adopted in May 1984 and endorsed by the UN General Assembly in Resolution 39/118, adopted in December 1984 without a vote) says: "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death ...". The UN Standard Minimum Rules for the Administration of Justice [the Beijing Rules] also prohibit the death penalty for juveniles.

The fact that provisions restricting the death penalty to offenders above 18 years of age are so widespread, that leading international instruments set a minimum of 18 years for the imposition of the death penalty and the fact that the death penalty is so rarely used against offenders under 18, even in countries where the law sets a minimum age lower than 18 or

none at all, indicate that there is an emerging international consensus that execution of juveniles for crimes committed under the age of 18 is contrary to international law.⁷

As a state party to the CRC, Pakistan is obliged to bring its laws into conformity with the provisions of the Convention, but as yet has failed to do so. In April 1994, the Committee on the Rights of the Child, examining Pakistan's initial report on implementation of the Convention, noted the non-compatibility of areas of national legislation with the provisions and principles of the Convention, including the punishment of flogging and the death penalty and life imprisonment for children below the age of 18. It pointed to the lack of clarity and consistency between some of the laws and their application within and between provinces, and recommended that Pakistan scrutinize carefully legislative and other measures at both the federal and provincial levels to ensure their full conformity with the Convention. It also requested that Pakistan take into account its recommendations with regard to the abolition of flogging and capital punishment⁸.

During the examination of Pakistan's record, the state representative informed the Committee that the Government had undertaken a review of the conformity of national legislation with the CRC. The Committee was also informed by the state representative that further efforts would be made to address the problems raised by the Committee. In light of this undertaking the Committee requested Pakistan to submit a progress report by the end of 1996. To date no progress report has been submitted, and neither has Pakistan's second report which was due in December 1997⁹.

Since 1994, however, the Government of Pakistan has made some moves towards fulfilling its international obligations, and protecting the rights of children. The Juvenile Offenders Bill, 1995 was drawn up in consultation with relevant NGOs in Pakistan. If passed by parliament the law would ban the death penalty, the use of fetters, whipping and amputation for any child under the age of 16. Though this would mark a step forward in some respects, the Bill falls short of the principles and provisions of the CRC and in fact even of some few

⁷For an overview of national laws and practice worldwide with respect to the death penalty for juveniles, see: *Juveniles and the death penalty: Executions worldwide since 1990*, AI Index: ACT 5011/98.

⁸See Committee on the Rights of the Child, Concluding Observations on the Initial Report of Pakistan (CRC/C/15/Add.18), 25 April 1994.

⁹Article 44 of the CRC obliges State Parties to submit to the Committee reports on measures they have adopted to give effect to the principles and provisions of the Convention. The initial report is due within two years after ratification/accession, with subsequent reports every five years thereafter.

legal provisions protecting children in Pakistan already in force. The Bill, however, has remained pending since 1995 and there appears to be little commitment to take it forward.

More recently, in December 1998, the Government is reported to have established a committee to advise the Government on matters relating to the employment of children in hazardous occupations in the pursuance of Pakistan obligations under the CRC. Members of the National Committee on the Rights of Children are reported to have been drawn from the judiciary, the legal profession and from public and workers organizations. In March 1999, a seminar organized by the governmental National Commission for Child Welfare and Development made a series of recommendations for reforming the way in which children are treated in custody. Included in the recommendations was the setting up of separate police stations for juveniles, establishing separate courts and remand homes, and special training for police. It remains to be seen whether the present Government will act on any of these recommendations or any of those made by the Committee on the Rights of the Child.

Amnesty International's recommendations with regard to juveniles and the death penalty

While Amnesty International opposes the death penalty unconditionally as the ultimate cruel, inhuman and degrading punishment and a violation of the right to life, it does not argue that juvenile offenders [people who committed crimes under the age of 18] or others who have committed violent crimes should not be held criminally liable or subjected to severe penalties where appropriate. However, international standards and treaties forbidding the imposition of the death penalty on juvenile offenders were developed in recognition of the fact that the death penalty - which denies any possibility of rehabilitation or reform - is a wholly inappropriate penalty for individuals who have not attained full physical, intellectual or emotional maturity at the time of their actions.

In Saleem's case, Amnesty International welcomes his acquittal, but is appalled that a child came so close to being killed by the state for a crime he did not commit.

Amnesty International urgently calls on the Government of Pakistan to undertake the following measures as a first step towards the total abolition of the death penalty:

- commute all death sentences imposed on anyone under 18 at the time the offence was committed;
- ensure that no more children are sentenced to death while the death penalty for juveniles remains on the statute book;

- comply with obligation under the Convention on the Rights of the Child to raise to 18 the age below which a person committing an offence cannot be sentenced to death.

With regard to the administration of juvenile justice, Amnesty International further calls on the Government of Pakistan to:

- review the scope and application of all legislation relating to children, ensuring that it is brought into line with the principles and provisions of the CRC and other international standards; and in particular to
- ensure that any detained child is brought before a judicial authority without delay after being taken into custody and is given immediate access to relatives, legal counsel and medical assistance. Relatives or guardians should be notified immediately of the child's whereabouts;
- provide for the development of independent mechanisms to ensure periodic visits to and an effective monitoring of institutions for children and children still held in adult institutions;
- abolish in law all cruel, inhuman and degrading punishments, including flogging, chaining and the use of fetters and ensure that anyone found to have tortured or ill-treated a child in detention is held to account;
- ensure that police and judicial personnel are adequately instructed in legal safeguards for children including the prohibition of the death penalty for anyone below 16 currently in force in Sindh and provisions of the Convention on the Rights of the Child;
- promote changes in social perception and increase social awareness by informing, educating and sensitizing communities about child rights, and that in matters of discipline and criminal penalties, cruel, inhuman and degrading punishments are prohibited;
- fulfil the obligation to periodically report to the Committee on the Rights of the Child and to promptly implement the Committee's recommendations.