

JUVENILES ON PAKISTAN'S DEATH ROW

A report by the Justice Project Pakistan and Reprieve
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EXECUTIVE SUMMARY

Since Pakistan resumed executions on 19th December 2014, it has emerged that a significant proportion of the individuals currently facing execution were sentenced to death while still children. The execution of child offenders is prohibited by international law, and only four other countries in the world currently maintain the practice.¹ Pakistan's own law also prohibits the execution of child offenders, yet unfortunately for the child offenders who now face the gallows, this law remains largely unimplemented.

Following the PML-N government's first proposal to resume executions in 2013, the Justice Project Pakistan and Reprieve conducted a study of 30 prisoners close to execution. As set out in more detail in this report, one of the most concerning results of the study was that 10% of the prisoners included were arrested and sentenced to death whilst still children. Should this figure hold true across Pakistan's death row, there could be more than 800 child offenders among the 8,261 prisoners currently sentenced to death. Existing reports on the prevalence of child offenders on death row suggest that this may in fact be an underestimation.

The report also discusses a number of case studies, shining a spotlight on what it really means to be arrested and sentenced to death as a child. It further highlights concerns with the failure of the justice system to adequately identify and document child offenders facing capital charges, concluding that this failure is in large part attributable to inadequate legal assistance, compounded by a broader lack of accurate documentation of age in many areas of Pakistan.

In the face of a public campaign to save the life of Shafqat Hussain, the first of many child offenders to be told that he would be sent to the gallows, Pakistan stayed the execution pending a full investigation into the case. Shafqat was just 14 years old when he was arrested and tortured into confessing to a crime he didn't commit. Shockingly, the Pakistan authorities have now reneged on their promise to conduct a full inquiry and re-scheduled his execution for 19th March 2015. Whether this was by oversight or intent is unclear, but in any event it is paradigmatic of the lack of clarity and coordination in Pakistan's approach to the resumption of executions. In addition, it highlights how fundamentally unsafe many of the convictions of those on Pakistan's death row are - and the fair trial concerns seemingly endemic to Pakistan's criminal justice system.

Until the Government is able confirm the identity of each of the prisoners on its more than 8,000 strong death row, they cannot possibly continue to schedule executions.

¹ Saudi Arabia, Yemen, Sudan, and Iran.

I. THE PROBLEM

For many years, Pakistan has in theory provided procedures for children to be tried separately from adults, and, like almost every other country in the world, Pakistan claims that juveniles cannot be sentenced to death under Pakistani law. However, research by the Justice Project Pakistan and Reprieve suggests that there could be over eight hundred people on Pakistan's death row who were sentenced to death as children.

Shafqat Hussain is one such example. Arrested at just 14 years old, he was tortured for nine days and forced to sign a 'confession' before being sentenced to death. Despite the fact that the alleged offence (kidnap with manslaughter) bore no relation to terrorism, on 19th December 2014, Shafqat was told that he would be amongst those sent to the gallows in the first wave of executions following the Government's lifting of the moratorium on the death penalty for 'terrorists'. A 'black warrant' was issued, an execution date set for 14th January, and Shafqat's family invited to come and say their last goodbyes to him at the prison.

Fortunately, the Government saw the error of its ways just in time and - in response to public and civil society outcry over the injustice of the case - halted the execution and Minister of Interior Chaudhry Nisar Ali Khan announced a full inquiry into Shafqat's case and his age.

However, since then the Pakistani Government has announced an end to the moratorium on the death penalty for all cases. On 12th March 2015, the authorities shockingly reneged on their promise and issued a second black warrant for Shafqat's execution. He is due to be sent to the gallows on the 19th March 2015.

Shafqat will not be the first juvenile in Pakistan to be sent to the gallows. In 2001, Pakistan executed a young man named Ali Sher for a crime he committed at the age of 13. In the face of international outrage, President Musharraf commuted 100 of the death sentences of other juveniles on Pakistan's death row.

Recent analyses conducted by the Justice Project Pakistan (JPP) and Reprieve indicate that these cases are just the tip of the iceberg. Death row data collected and analysed for the first time by JPP and Reprieve suggests that there could be more than 800 other individuals on Pakistan's death row who, like Shafqat, were arrested and sentenced to death when they were children.

That Pakistan has tried not once, but twice, to execute a man sentenced to death as a child is not only a flagrant breach of both Pakistani and International law, but shows just how broken Pakistan's criminal justice system really is. When Pakistan ended its moratorium on the death penalty, the government assured the public that 'due process' would be followed in every case. Yet, despite the Minister of Interior's promise to conduct a full inquiry into Shafqat's case and, in particular, his age - no such inquiry has taken place. Had due process been followed and an inquiry been conducted, it would have discovered incontrovertible evidence of Shafqat's innocence and juvenility.

In such circumstances and with the possibility of over 800 other juveniles in line to be executed, the Government of Pakistan should immediately stay all executions and order a full review of the cases on its 8,000-strong death row.

II. DATA AND METHODOLOGY

The prevalence of juveniles on Pakistan's death row is a matter of the gravest concern. When the moratorium on the death penalty nearly lapsed in August of 2013, the Justice Project Pakistan (JPP) and Reprieve interviewed 30 of the prisoners who were first in line for execution. From these interviews and a review of the prisoners' case files, it was clear that of the 30, at least 3 were under the age of 18 at the time of the offence - a staggering 10 % of the sample.

And this is a conservative estimate; figures published in June 2006 - years after the execution of Ali Sher - indicated that there were at least 40 children awaiting execution in the death cells of Sargodha Jail alone - over 18% of the 222 on death row there.²

The figures from Sargodha are not unique. From the data available, it is clear that a large proportion of the 8,261 prisoners³ on Pakistan's death row may well have been juveniles at the time of the offence for which they were sentenced to death. Using the more conservative 10% statistic, there could be an estimated 826 individuals on Pakistan's death row who were sentenced to death as children. Were we to use the figures from Sargodha, then this figure rises to almost 1,500 prisoners.

The reasons for such staggering numbers of juveniles remaining on Pakistan's death row, often undocumented, are discussed further in **Section V** of this report.

² This government estimate (which may be low) of the number on death row was recently cited in "*Slow March to the Gallows: Death Penalty in Pakistan*" International Federation of Human Rights (<https://www.fidh.org/IMG/pdf/Pakistan464angconjointpdm.pdf>) - Human Rights Commission of Pakistan (Jan 2007), P.38; "132 new death cells in Punjab", Daily Times (<http://archives.dailytimes.com.pk/islamabad/05-Jun-2006/132-new-death-cells-in-punjab>); last accessed 24 December 2014).

³ This is the figure obtained from the Ministry of Interior and the Law and Justice Ministry in December 2014: see <http://tribune.com.pk/story/808727/6261-prisoners-hanging-in-the-balance/> (last accessed 18/12/2014).

III. THE RELEVANT DOMESTIC AND INTERNATIONAL LAW

Though Pakistan ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1990, none of the protections for juvenile defendants in the criminal justice system enshrined in the UNCRC have yet firmly made their way into common practice in Pakistan's criminal justice system.

Ten years after the ratification of the UNCRC, Pakistan's Government promulgated a law designed to ensure adherence to the terms of the UNCRC - the Juvenile Justice System Ordinance 2000 (JJSO). This law contained provisions aimed at ensuring that child prisoners were tried and held separately to adults, that age was considered a relevant factor in sentencing and, crucially, complying with international obligations by making it illegal to pass an order sentencing a child to either the death penalty or forced labour.⁴

Despite the promulgation of the JJSO, very few steps were undertaken by any of Pakistan's jail authorities to implement the terms of the order and in 2004 a challenge to the legality of the order was allowed by Pakistan's High Court. An appeal from this decision has been pending before Pakistan's Supreme Court since 2005. In the intervening time, confusion about the exact status of the law has prevented its proper implementation.

Meanwhile, in 2008, Pakistan ratified the International Covenant on Civil and Political Rights (ICCPR), which also prohibits the imposition of the death penalty on anyone who was under 18 at the time of the alleged offence.⁵ Again, this has been honoured more in the breach, than in compliance.

The failure to implement the terms of the JJSO is not just a failure to respect Pakistan's international obligations, but a failure to honour its obligations to its own people. The execution of juveniles like Shafqat Hussain, arrested at just 14 years old, cannot be seen to serve the interests of justice, cannot make Pakistan any safer, and cannot foster respect for the rule of law.

⁴ See Section 12 of The juvenile Justice System Ordinance, 200 (Law No. XXII of 2000).

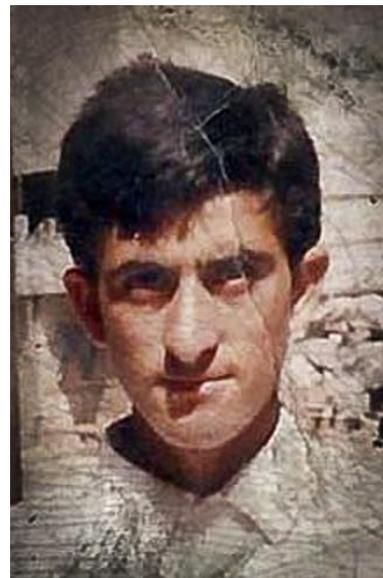
⁵ International Covenant on Civil and Political Rights (ICCPR), Article 6(5).

IV. CASE STUDIES: WHO ARE THE CHILDREN ON DEATH ROW?

SHAFQAT HUSSAIN

ARRESTED: MAY 2004, AGED JUST 14 YEARS OLD
FACING THE DEATH PENALTY: 10 YEARS, 8 MONTHS
HELD IN: CENTRAL PRISON KARACHI, SINDH

14 year old Shafqat Hussain was sentenced to death by an anti-terrorism court in November 2004 for alleged kidnap and murder. He was convicted on the basis of a 'confession' extracted after nine days of savage beating and torture, in which he was electrocuted and burnt with cigarette butts. In Shafqat's own words: *"They could make you say that a deer was an elephant."* Ten years on, the cigarette burns he suffered are still clearly visible.



The victim's father knew Shafqat well, yet did not identify him as the voice he had heard during multiple ransom calls. However, Shafqat's state-appointed defence lawyer told his client that *"no-one leaves the anti-terrorism courts without a death sentence"* and failed to raise evidence that would have prevented Shafqat being convicted, let alone sentenced to death. Shafqat, then an illiterate 14 year old, was denied a legal assistant who surely should have recognised that his trial in the adult courts was illegal.

"NO-ONE LEAVES THE ANTI-TERRORISM COURTS WITHOUT A DEATH SENTENCE." Shafqat's defence lawyer, prior to his trial

Recognising that the case against Shafqat could not stand, the High Court threw out his murder conviction on appeal. Yet the Court failed to strike down Shafqat's death sentence.

In the Summer of 2013, Shafqat was informed that he would be executed on 25 August 2013. Letters were sent to his family giving them notice that they would need to say their final goodbyes. Shafqat received notice of the stay of his execution only a few days before he was due to be hanged.

On 19th December 2014 Shafqat and his family were again told that he was due to be executed in a matter of days. Eventually, a new execution date was confirmed for 14th January 2015. Fortunately, following public outcry about the case, his execution was stayed on Monday 5th January.

Speaking in the National Assembly, Minister of Interior Chaudhry Nisar Ali Khan admitted that the case was in reality *"not connected to terrorism"* at all and had,

rightly “concerned civil society”. Accordingly, he had stayed the execution and ordered a full inquiry into the case and Shafqat’s age.⁶

However, on 12th March 2015 the authorities issued a second black warrant against Shafqat, listing him for execution on the 19th of March 2015. To date, no inquiry whatsoever has been conducted into Shafqat’s case or his juvenility. In fact, neither Shafqat, his family, his lawyers nor the jail have been contacted in regard to any inquiry at all.

⁶ Pakistan Interior Minister Chaudhry Nisar Ali Khan, speaking in the National Assembly on 5 January 2015. Video here: <https://www.youtube.com/watch?v=WNUF-0VYx2c&feature=youtu.be>

MUHAMMAD AMIN

ARRESTED: FEBRUARY 1998, AGED JUST 16 YEARS OLD
FACING THE DEATH PENALTY: 17 YEARS; MORE THAN HALF HIS LIFE
HELD IN: CENTRAL JAIL RAWALPINDI, PUNJAB

Muhammed was just 17 years old when he was arrested in 1998 for allegedly killing a man during a burglary gone wrong. In fact, Muhammad had accompanied a classmate to the house of the classmate's stepmother and was waiting outside when he heard shots. The classmate came running from the house and fled, leaving Muhammad to be apprehended and severely beaten by police.

While he was in police custody a doctor came to examine Muhammad's injuries, but incorrectly recorded his age as being over 25 years old. This error would come back to haunt Muhammad, when during an appeal from sentence his lawyer tried to submit evidence proving that Muhammad was a juvenile at the time of his arrest. This evidence was rejected, in part on the basis of the mistaken medical report and in part as being "*of no avail so belatedly*". At trial, Muhammad's defence lawyer did not even raise his client's young age, and Muhammad himself, being unfamiliar with the legal system and still reeling from the trauma of his arrest and abuse in police custody, did not realise the importance of raising it himself.

Muhammad received two death sentences at trial, one for murder and a second under the Anti-Terrorism Act because the murder caused "*terror, sense of fear and insecurity in the people of [the] locality*".

"THE TENDERING OF DOCUMENTS LIKE HIS SCHOOL LEAVING CERTIFICATE [*INDICATING THAT MUHAMMAD WAS A JUVENILE AT THE TIME OF HIS ARREST*] AT THIS STAGE SHOULD ALSO BE OF NO AVAIL SO BELATEDLY." The Supreme Court judge in Muhammad's case, who allowed an illegal death sentence because a lawyer failed to raise a basic issue.

In 2004, Muhammad was pardoned for the murder conviction by the victim's family. However, he continues to face execution under the Anti-Terrorism Act. Muhammad has now spent 17 years facing the death penalty and, during this time, has developed severe mental impairments.

QADEER AHMAD

ARRESTED: JULY 2001, AGED JUST 15 YEARS OLD
FACING THE DEATH PENALTY: 13 YEARS, 10 MONTHS
HELD IN: CENTRAL JAIL, RAWALPINDI

In 2001, aged 15, Qadeer was sentenced to death for murder after a tragic accident in his family home, in which a gun went off shooting and killing his sister's young child. Qadeer fled his home in fear following the accident, but surrendered himself to the police shortly after.

“I WAS A 15 YEAR OLD BOY AND TO HAVE KILLED A BABY WAS EXTREMELY TERRIFYING FOR ME.” - Qadeer Ahmad, in an interview with the Justice Project Pakistan (JPP) August 2013.

Qadeer could not afford a lawyer and was appointed state counsel who failed to defend him in a meaningful way or even to raise so basic an issue as his juvenility. There was no proven motive, no eye witnesses, and vast discrepancies in the evidence provided by the prosecution. Nevertheless, within just three months of the incident, the trial was closed and Qadeer was sentenced to death.

Now in his twenties, Qadeer has been on death row for nearly half of his young life.

V. THE PROBLEM OF IDENTIFICATION

It is clear from the cases studies above that there has been a systematic failure to accurately identify and document cases of children facing capital charges in Pakistan. A number of factors have contributed to this failure, but among the most common is the failure of legal counsel to raise the defence of juvenility at trial.

Many of the defendants themselves (particularly those who are young and naïve) don't know that their age may be relevant to the proceedings. If a prisoner is not asked about their age by their lawyer, then this issue will very likely never be discussed. The failure of so many lawyers to ask a client's age - one of the most basic of factual questions - can be seen as a symptom of wider systemic failures in Pakistan's justice system, in which adequate legal representation is so often lacking.

As the Society for the Protection of the Rights of the Child, Pakistan (SPARCPK) has also noted, the problem outlined above is compounded by the lack of accurate evidence proving age for many individuals, often caused by a failure to register births, and by the prevalence of inaccurate identity documents in many parts of Pakistan.⁷

Since JPP-Reprieve's original study concluded, a number of further cases of juveniles have come to light. While Shafqat Hussain's case discussed above is the most immediately concerning, it is just one example. While JPP and Reprieve will attempt to assist in verifying and raising claims of juvenility like Shafqat's wherever possible, it is clear that civil society cannot shoulder the entire burden for avoiding the serious and irreversible miscarriage of justice that the execution of a juvenile like Shafqat would constitute. The only way to adequately address this problem is for a full investigation into the issue to be conducted by the prison administrations themselves.

⁷ See "*Juvenile Justice*" Society for the Protection of the Rights of the Child, Pakistan (2012), P.146 (<http://www.sparcpk.org/sopc2012/chapter5.pdf>; last accessed 25 February 2014)

VI. CONCLUSIONS AND RECOMMENDATIONS

There are likely hundreds of cases like those of Shafqat, Muhammad, and Qadeer among Pakistan's 8,261 death row prisoners. Their executions would constitute a blatant violation of Pakistan's international obligations as well as domestic law, not to mention a huge personal tragedy for their families and loved ones. At the end of December 2014, the Federal Minister of the Interior announced that Pakistan intended to carry out 500 executions in the coming weeks. The information in this report should be enough to make him stop and ask himself how many of these prisoners may be children.

We urge the government of Pakistan to:

- Immediately produce and publish the official figures for the number of condemned prisoners who were under 18 at the time of their alleged offence (a failure to do this will illustrate that the Government is simply unable to provide data sufficient to hold people in prison, let alone execute them);
- Initiate a review into all such cases, with a view to either releasing these prisoners or commuting their sentences to prison terms that are in keeping with Pakistan's international obligations;
- Stay all further executions until every case has been reviewed to determine whether the prisoner might have been a juvenile at the time of the offence, and if so to change their sentence accordingly;
- Clarify the status of the Juvenile Justice Ordinance 2000 in Pakistani law;
- Implement procedures to ensure that the arrest and trial of juvenile defendants in future cases is conducted in a manner that complies with Pakistan's international obligations.

VII. ABOUT THE AUTHORS

Justice Project Pakistan ('JPP')

JPP is a non-profit human rights law firm established in Lahore in December 2009.

JPP provides direct *pro bono* legal and investigative services to the most vulnerable prisoners in the Pakistani justice system, particularly those facing the death penalty, victims of police torture, mentally ill prisoners and victims of the 'War on Terror'.

JPP also conducts strategic litigation to challenge unjust laws and to create progressive legal precedent. Our litigation aims, among other things, to improve the rights of the mentally ill, restrict the application of the death penalty, bring Freedom of Information to Pakistan, and enforce the fundamental rights of prisoners.

Reprieve

Reprieve is an international human rights NGO with offices in London and New York.

Reprieve promotes the rule of law around the world, and secures each person's right to a fair trial, from death row to Guantánamo Bay. We prioritise the cases of prisoners accused of the most extreme crimes, such as acts of murder or terrorism, as it is in such cases that human rights are most likely to be jettisoned or eroded.

Reprieve focuses on cases involving the world's most powerful governments, especially those that should be upholding the highest standards when it comes to fair trials.

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