

Mr. Mamnoon Hussain
President, Islamic Republic of Pakistan
The President's Secretariat
Islamabad
Pakistan



7th June, 2015



URGENT: MERCY IN THE CASE OF CONDEMNED PRISONER SHAFQAT HUSSAIN, A JUVENILE.

Your Excellency,

We the undersigned organisations write urgently regarding the case of Shafqat Hussain, a condemned prisoner in Karachi Central Jail who is scheduled to be executed on 9 June 2015. This letter is in support of Mr. Hussain's mercy petition submitted to your office on 2 June 2015.

We note that Your Excellency has stayed Mr. Hussain's execution previously in the light of the various issues in Mr. Hussain's case, including serious allegations of torture and that he may have been a child at the time of his alleged offence, and urge you to stay Mr. Hussain's execution and grant mercy to him.

Background:

Shafqat Hussain was arrested and sentenced to death in 2004. According to Mr. Hussain's family, he was 14 years old at the time of the offence he was convicted of. He was arrested on suspicion of the kidnap of another local child, who lived in a building where he worked. He has described that the police subjected him to torture and forced him to make a "confession" and has always maintained his innocence. According to Mr. Hussain, the torture included brutal beatings with sticks and fists, electroshocks, and being burnt with cigarettes. Ten years later, Shafqat still bears the physical and psychological scars from the torture.¹

At the time of his initial trial in 2004, Mr. Hussain's lawyer failed to adduce any evidence or call witnesses in his defence. He also failed to draw the attention of the court to the fact that Mr.

¹ These scars have been witnessed by Shafqat Hussain's legal counsel, and analysed by Dr Frank Arnold – a leading medical expert in the field of torture.

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Hussain was under 18 years old at the time of his arrest.

Legal Obligations:

The execution of a juvenile offender is strictly prohibited under both Pakistani and international human rights law. Pakistan ratified the UN Convention on the Rights of the Child and the International Covenant on Civil and Political Rights (ICCPR) in 1990 and 2008 respectively. Both treaties prohibit the use of the death penalty for crimes committed by persons below 18 years of age ('juveniles'). Article 6(5) of the ICCPR provides explicitly that: "*Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age*".²

In recognition of these international obligations, Pakistan passed the Juvenile Justice System Ordinance (2000), which prohibits the use of the death penalty for juveniles and was in operation at the time of the sentencing of Mr. Hussain. In 2001, President Musharraf, exercising his powers under Article 45 of the Constitution of Pakistan, issued a general commutation order; which commuted the death sentences of juvenile offenders, including those whose convictions had been confirmed by the Supreme Court.

Pakistan ratified the United Nations Convention Against Torture (CAT) in 2010, which like Article 14 of the Constitution of Pakistan, strictly prohibits all forms of torture and other ill-treatment. Under international law, States are required to promptly and thoroughly investigate all credible allegations of torture in an independent and impartial way.

Statements elicited as a result of torture, ill-treatment or other forms of coercion must be excluded as evidence in criminal proceedings, except those brought against suspected perpetrators of such abuse (as evidence that the statement was made). This rule applies not only to statements made by the accused, but also to statements made by any person, whether or not called to testify as a witness.

Stay of Execution:

It was in recognition of these domestic and international legal obligations and the issues in Mr. Hussain's case that Your Excellency stayed Mr. Hussain's execution and ordered that an inquiry be conducted into his case; first in January and again in March 2015.

The Situation Today:

After the inquiry was first ordered in January 2015, no action was taken by the competent authorities and it is clear that the inquiry eventually conducted by the Federal Investigation Agency

² International Covenant on Civil and Political Rights (1976).
<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

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(FIA) in March/April 2015 – after Your Excellency issued a further stay of execution – was deficient.

We note here that the Honourable Islamabad High Court has stated that the FIA inquiry was “prima facie illegal”, and also that various deficiencies have been raised against it, including: apparent bias on the part of the investigating authorities; lack of transparency; witness intimidation; the confiscation of records and dismissal of evidence; and reliance on anecdotal and inaccurate evidence of Mr. Hussain’s age.

It is inescapable that as a consequence of these deficiencies the issues which prompted Your Excellency to order this inquiry remain entirely unresolved, in particular Mr. Hussain’s age at the time of his alleged offence and the serious allegations of torture.

Juvenility:

People who were under the age of 18 at the time the crime was committed may not be sentenced to death, let alone be executed, regardless of their age at the time of trial or sentencing.³ International law also has established that when there is any doubt about whether an individual was under 18 at the time of the crime, the individual should be presumed to be a child.

The FIA’s inquiry into Mr. Hussain’s juvenility has raised further concerns as it explicitly stated that “*The objective of the enquiry [was] not to determine the age of Shafqat Hussain.*”⁴

Not only is this in direct contravention of a statement made by the Interior Minister, Chaudhry Nisar Ali Khan, that “*The Inquiry... was to verify [the] claim of age*”⁵, but as a consequence of the inadequate inquiry, there remains considerable doubt as to Mr. Hussain’s age at the time of his offence.

The United Nations Committee on the Rights of the Child (CRC) has made clear in its General Comment No. 10, on children’s rights in juvenile justice, that:

*“If there is no proof of age, the child is entitled to a reliable medical or social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, **the child shall have the right to the rule of the benefit of the doubt.**”*⁶ (Emphasis added).

³ Article 6(5) of the ICCPR, Article 37(a) of the Convention on the Rights of the Child; Rule 17.2 of the Beijing Rules

⁴ FIA Inquiry Report, as sent to The President of Pakistan.

⁵ See *Dawn*, 18 March 2015: “Interior minister Chaudhry Nisar Ali Khan on Tuesday said the Sindh government had turned down his proposal to conduct a DNA test of condemned prisoner Shafqat Hussain to determine his age.”

<http://www.dawn.com/news/1170238>

⁶ <http://www.hrw.org/news/2013/03/04/yemen-juvenile-offenders-face-execution>

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In the instant case, the *only* documentary evidence available shows that Mr. Hussain was a juvenile – under 18 years old⁷ – at the time of his alleged offence. This includes affidavits from his family and a government-issued birth certificate which puts his age at 14 at the time of the offence for which he was convicted. His juvenility is further supported by a contemporary school record from his native village which suggest that he was 17 at the time of his alleged offence.

Concern regarding Mr. Hussain’s exact age at the time of his alleged offence is unsurprising given that Pakistan has one of the lowest rates of birth registration in the World and 73% of births in the country are not registered, according to UNICEF.⁸ This figure is even lower in Azad Kashmir, where Shafqat Hussain was born.⁹

We unequivocally oppose the death penalty in all cases and under any circumstances, as it violates the right to life and is the ultimate cruel, inhuman and degrading punishment. Furthermore, whilst Mr. Hussain’s age remains unresolved, to continue with his execution would be in direct contravention of Pakistan’s national and international obligations.

In fact, it has been noted that where juveniles are tried as adults by the criminal justice system because of a lack of official government documentation, the state fails “twice in observing its obligations under international law.”¹⁰ Firstly, it has failed to uphold its obligation to ensure that every child is registered, and secondly it has failed in its duty to accurately ascertain the age of the defendant and ensure that they benefit from the protections to which they are entitled.

Torture:

Mr. Hussain has detailed how he was brutally beaten, electrocuted, suspended by means of a pole passed between ties securing his hands and his feet, subjected to *Falaka* (beating on the soles of the feet with a blunt instrument) and burnt with cigarettes by the police. These allegations are supported by contemporary television footage broadcast in 2004, which notes that the police “became very harsh” with Mr. Hussain and “increased their harshness with him”.¹¹

During trial, Mr. Hussain retracted his confession and claimed that he had been “severely tortured by the police” and “recorded [his] confessional statement under the pressure of the police”.¹²

⁷ Section 2 of the Juvenile Justice System Ordinance (2000) defines a juvenile as “a person who at the time of commission of an offence has not attained the age of eighteen years”. See

<http://sparcpk.org/pdf/Juvenile%20Justice%20System%20Ordinance%202000.pdf>

⁸ Every Child’s Birth Right, Inequalities and Trends in Birth Registration http://www.unicef.org/mena/MENA-Birth_Registration_report_low_res-01.pdf.

⁹ http://www.unicef.org/pakistan/National_Report.pdf.

¹⁰ Human Rights Watch, “Look at Us with a Merciful Eye”, March 4, 2013.

¹¹ English translation of Pakistani television programme ‘POLICE’, aired in 2004. We understand that although this footage purports to show Mr. Hussain’s immediate arrest, it actually represents Mr. Hussain after several days of mistreatment.

¹² Mr. Hussain’s Statement of the Accused u/s. 342(1) CrPC.

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However, no investigation into these serious allegations was opened and torture-tainted evidence was admitted as part of the proceedings.

An independent expert has assessed Mr. Hussain's case and concluded that the injuries reported are consistent with the allegations of torture. The expert has recommended that a full, impartial inquiry should be conducted into the torture in line with the Istanbul Protocol (1999), which sets down the procedure by which allegations of torture should be properly investigated.¹³

Under international human rights law, including CAT, States have an obligation to investigate any allegation or information relating to torture. It is the State's responsibility to investigate information relating to any form of ill-treatment, whether this takes the form of a complaint by the victim or other information, such as physical or psychological signs, or complaints by relatives or lawyers.

The failure to exclude evidence obtained under torture, as well as the lack of an effective, independent and impartial investigations into the allegations of torture brought by Mr. Hussain, raise serious issues as to the fairness of his trial and resulting conviction – which the Sindh High Court has recognised "*hinges upon Mr. Hussain's confession only*".¹⁴

Request for Mercy:

In light of the above, we respectfully request that Your Excellency use your power under Article 45 of the Constitution of Pakistan to immediately stay Mr. Hussain's execution and grant him clemency as requested in his mercy petition.

You alone have the power to see justice done in this case, Your Excellency, and we urge you to use that power in the name of justice, grace and humanity.

Yours sincerely,

Amnesty International
Child Rights International Network
Defence for Children International
Human Rights Watch
REDRESS
Reprieve

¹³ Dr Frank Arnold is a medical professional and expert in torture and the forensic analysis thereof. Dr Arnold has several decades of experience and acts, amongst other roles, as the British Foreign & Commonwealth Office's advisor on the forensic medical analysis of torture.

¹⁴ Judgement of the Sindh High Court dated 05.05.2006, p. 8, paragraph 13.

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