

Pakistan: Alternative Report to the Committee Against Torture

**VIOLATIONS OF THE CONVENTION AGAINST TORTURE ARISING
FROM THE APPLICATION OF THE DEATH PENALTY IN
PAKISTAN**

**60th Session of the Committee Against Torture
18 April - 12 May 2017**

Submitted by:

Justice Project Pakistan (JPP)

Reprieve

World Organisation Against Torture (OMCT)

Table of Contents

I. EXECUTIVE SUMMARY	3
II. PAKISTAN’S IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE (CAT)	5
A. Relevant National Legal Framework	5
1. Introduction	5
2. Justice Project Pakistan (2015) Pre-Shadow Report	5
III. VIOLATIONS OF CAT ARISING FROM DEATH PENALTY PRACTICES IN PAKISTAN	7
A. Due Process, the Death Penalty and Torture in Pakistan	7
1. Specific Analytical Framework	8
2. General Practice	11
3. Anti-Terrorism Act	12
4. Juvenile Offenders	14
5. Mentally-ill Persons	17
B. Conditions, Procedures and Methods Relating to the Death Penalty	18
1. Specific Analytical Framework	18
2. Conditions of Death Row Detention.....	20
3. Vulnerable Populations.....	25
4. Procedures and Methods of Execution.....	27
IV. RECOMMENDATIONS	29

I. EXECUTIVE SUMMARY

Torture is not only endemic in Pakistan, it is accepted as an inevitable part of law enforcement. Perpetrators of torture are granted impunity through a combination of socio-cultural acceptance, lack of independent oversight, widespread powers of arrest and detention, procedural loopholes and ineffective safeguards. In fact, it has been established that many if not most police stations in Pakistan will have a “torture cell” off the premises where police officers or agents torture accused persons free from scrutiny. Police are known to employ horrific tactics, sometimes for several days in row, to coerce accused persons to confess. Some of these tactics include sleep deprivation, rolling heavy objects over the limbs of the accused, beatings with leather rackets, exposure to heat, and running an electric current through the genitals of the accused. Since such practices are an inherent part of investigation by the police, Pakistan has repeatedly breached its binding obligations by executing victims of torture whose death sentences were issued nearly exclusively by torture tainted evidence in flagrant disregard for the right to life. This situation continues to be exacerbated by failure on part of Pakistan to fulfil its legal obligations under the UN Convention Against Torture (CAT).

There is no mention of torture under Pakistan’s two primary criminal codes: the Pakistan Penal Code 1860 (PPC) and the Code of Criminal Procedure 1898 (CrPC). The offences and related penalties cited by Pakistan in its earlier state report are inherently inadequate as they fail to provide for all the components of torture as outlined under article 1 of the CAT. In the National Action Plan for Human Rights issued by the Office of the Prime Minister in February 2016, the Government of Pakistan had set July 2016 as the deadline for passing the Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Bill. A deadline which has long passed.

One of the primary obstacles for realisation of the norms enshrined in the CAT is changing an institutional culture that legitimises torture and perpetuates it, with little or no awareness of the human rights violations inherent in them. Currently, victims have to approach police itself to register complaints of torture. Most cases do not get registered and instead the complainants are harassed. Even if a complaint is registered, the courts will order the police to conduct an investigation against its own members, which results in no convictions.

Despite the constitutional inadmissibility of statements given in custody or extracted through torture, Pakistan has failed to adequately address this issue. Police, in practice, are able to circumvent this restriction through various methods including torturing a suspect into confessing in front of a magistrate under threat of more extreme forms of torture if he fails to provide such confession.

As mentioned above, the clearest connection between the death penalty practices in Pakistan and violations of the CAT is the use of torture/CIDT by Pakistani police to obtain coerced confessions that lead to capital convictions and the death penalty. But abuse of other procedural safeguards like failing to provide access to counsel or a fair trial in capital cases will lead to similar violations of the treaty. When Pakistani courts sentence people to death as the result of due process violations like these, the State is in violation of the CAT, irrespective of whether it carries out the death penalty. If it does so under such circumstances, the violation is then compounded. An illustrative case is that of Aftab Bahadur who

languished on death row for more than twenty years, a form of mental torture/CIDT in and of itself and was executed on 10th June 2015.

The foregoing is of particular concern given the fact that Pakistani law authorises the charging and application of the death penalty for **31** crimes, many of which are not the “most serious” in character as required under international law. There are even fewer protections against torture/CIDT in Pakistan’s anti-terrorism law regime than in ordinary judicial proceedings. For one thing, the definition of “terrorism” used to pursue capital cases is entirely too broad and easily abused.

One of the most oppressive conditions affecting death row imprisonment is overcrowding that results in prisoners living in environments that do not adequately provide for health, comfort, privacy, sanitation, nutrition and safety needs. Especially impacted are prisoners belonging to socio-economically disadvantaged populations and religious minorities, who are more likely to be detained in overcrowded cells. Such unhygienic and restricted conditions in prisons can cause inmates, who are detained for a prolonged period of time, to develop illness, which, when left untreated, can display more severe symptoms. The care of Abdul Basit is particularly relevant, Basit was confined to the infamous ‘punishment wing’ for months, where he was held in fetters in filthy and unhygienic conditions. As a result of this treatment, he is now paralysed and continues to be on death row to date.

In certain categories of cases, international law expressly considers the death penalty to be a breach of the prohibition of torture/CIDT. Such categories include juveniles and persons with mental disabilities and it is considered to be particularly cruel and inhuman to subject such individuals to the death penalty. In this report we consider cases from both categories, which clearly establish that Pakistan has failed to uphold its commitments under CAT and international law generally.

Pakistan has special protections in place for juvenile offenders through various laws including the Juvenile Justice System Ordinance of 2000 (JJSO), which prohibits sentencing juveniles to death and requires a medical examination to determine a defendant’s age, when in question. Despite such prohibitions, Pakistan has executed at least six juvenile offenders since December 2014. At the root of the problem is age determination. At trial, an accused has the burden of proving his/her juvenility, this can be difficult to prove because only 27 percent of births are registered in Pakistan. Cases of Ansar Iqbal, Shafqat Hussain and Muhammad Anwar discussed in detail in this report are indicative of the discrimination inherent in the system against juvenile offenders.

Although there is no explicit prohibition on sentencing to death and executing mentally ill persons under Pakistani law, there is an implied prohibition that can be interpreted from the law. The difficulty is judges employ their own means of determining whether a defendant needs a psychological assessment. Therefore, in practice, it is often difficult for defense counsel to convince the Court a client needs a medical assessment to determine mental illness.

II. PAKISTAN'S IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE (CAT)

A. Relevant National Legal Framework

1. Introduction

Pakistan ratified the CAT on 23 June 2010. Since the ratification, concerned parties have repeatedly expressed concerns about the lack of effective measures taken by Pakistan to comply with its obligations under the CAT. Nearly 7 years after the ratification, Pakistan still does not have a law that defines, criminalises and penalises torture.

Under Article 19 of the CAT, Pakistan was obliged to submit its Initial State Report, which would summarise the existing laws, policies and measures taken by the Government of Pakistan regarding its compliance with the Convention, to the Committee by 23 July 2011. However, the Initial State Report was submitted only in January 2016.

The Initial State Report, meanwhile, is in essence a perfunctory collection of de jure statements about different legislations and articles in various procedural codes with only a tangential relationship with torture. Moreover, the State Report fails to address the de facto status and implementation level of the highlighted articles.

2. Justice Project Pakistan (2015) Pre-Shadow Report

In its pre-shadow report submission, Justice Project Pakistan (JPP) noted that torture is not only endemic in Pakistan, but that is accepted as an inevitable part of law enforcement, and that perpetrators of torture are granted impunity through a combination of socio-cultural acceptance, lack of independent oversight, widespread powers of arrest and detention, procedural loopholes and ineffective safeguards, including Pakistan's failure to criminalise torture.

JPP's primary source of information about torture in Pakistan was '*Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan*', a study conducted by Yale University and JPP on a sample of 1,867 Medico-Legal certificates from the District of Faisalabad from 2006-2012.¹ The report noted:

a) Lack of Definition and Criminalisation of Torture under Domestic Law

The only mention of torture under Pakistan's legal framework is in the Pakistani constitution under Article 14(2). However, the relevant provision fails to comply with the requirements of the CAT as it fails to define its scope, and fails to list any adequate penalty. There is no mention of torture under Pakistan's two primary criminal codes: the Pakistan

¹ Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan' Justice Project Pakistan and Allard K. Lowenstein International Human Rights Clinic. March 2014

Penal Code 1860 (PPC) and the Code of Criminal Procedure 1898 (CrPC). The offences and related penalties mentioned in the state report do not encompass all the components of torture as outlined under Article 1 of the UNCAT, e.g. the offence of Hurt under Section 337 of the PPC only deals with the severest of bodily injuries that result in permanent infirmities and neglects to include any details of mental torture or torture that does not leave lasting physical marks. Moreover, Police Order 2002 only penalises acts by police officers, not other public officials, and does not define “torture”. Most egregiously, The Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Bill 2014, despite being extensive and inclusive with intensive inputs from the major stakeholders has still not been passed by parliament. This bill has been pending before the National Assembly since 2013. In the National Action Plan for Human Rights, the Government of Pakistan had set July 2016 as the deadline for passing the Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Bill. However, the Torture Bill is stuck in a political quagmire and efforts to introduce it to the parliamentary floor for debate are continually blocked, despite the Prime Minister’s office’s own commitment to pass the bill.

b) Pakistan has Failed to Implement Effective Measures to Prevent and Investigate Police Torture

The various diffused provisions supposed to prevent torture mentioned in the state report are unwieldy, unworkable and difficult and time-consuming to litigate, which means that Pakistan has failed to take any *effective* measures to prevent and punish torture.

Police in Pakistan operate with little or no external oversight, which allows them to torture with impunity. Police easily violate the requirement to present a suspect before a magistrate within 24 hours of arrest by holding suspects in off-station secret sites, without any official record. Magistrates are also known to mechanically grant police additional remand, as per JPP interviews. Furthermore, in cases of preventive detention there is no requirement to produce a suspect before a magistrate.

The punishment for even proven cases of torture is incredibly rare - as evidenced in the Faisalabad report where hundreds of cases conclusively proved torture by the police, no police officer had been punished to date.

c) Pakistan has Failed in its Duty to Train the Police

One of the primary obstacles changing an institutional culture that legitimises torture is the hierarchical structure of the police that demarcates the senior police officers from the provincial cadres that are responsible for dealing directly with criminal suspects. The senior officers are restricted to managerial roles. The men on the ground conducting investigations and arresting suspects on the other hand are inadequately trained, often by way of apprenticeships. Thus old practices, chiefly torture, continue to be recycled with little or no awareness of the human rights violations inherent in them.

d) Pakistan has Failed to Ensure an Independent and Impartial Investigation

There are no independent state sponsored mechanisms to document, investigate and punish allegations of torture. Police Order in 2002 was amended in 2004, which greatly weakened its potential for police reform and removed the provision for an independent police complaints authority. Currently, victims have to approach police itself (i.e. the same people who committed the act) to register complaints of torture. Most cases don’t get registered and

instead the complainants are harassed. Even if a complaint is registered, the courts will order the police to conduct an investigation against its own members, which results in no convictions.

e) Pakistan has Failed to Adequately Address the Issue of Statements Extracted Through Torture

Despite the constitutional inadmissibility of statements given in custody, in practice, police find loopholes: a) They torture a suspect into confessing in front of a magistrate, at the threat of more extreme torture in case he fails to comply and b) They torture a prisoner into making a statement about “physical evidence” that the police intends to submit as evidence in a trial. ATA, on the other hand, already makes confessions made in custody admissible in courts.

f) Pakistan has Failed to Carry Out Its Legal Obligation to Provide Reparation for Acts of Torture

In theory, victims can seek compensation through a petition alleging violation of a fundamental right to either the High Court or to the Supreme Court. This is an essentially impossible burden, since an indigent victim of torture must pay lawyers and legal fees even to contemplate such a course.

III. VIOLATIONS OF CAT ARISING FROM DEATH PENALTY PRACTICES IN PAKISTAN

This Part seeks to highlight the primary violations of the CAT arising from the application of the death penalty in Pakistan. It examines how the CAT norms are being respected or not in two general areas. The first, addressed in Section A below covers a range of serious due process issues in Pakistan that implicate the CAT in the context of criminal proceedings involving the death penalty. The second, Section B, centres on post-conviction conditions, procedures, and methods of execution that will implicate the CAT as well. We shall see that, like Pakistan’s failure to adequately implement the CAT *de jure*, the government’s conduct with respect to *de facto* compliance similarly falls short of the treaty’s requirements.

A. Due Process, the Death Penalty and Torture in Pakistan

The clearest connection between the death penalty practices in Pakistan and violations of the CAT is the use of torture/CIDT by Pakistani police to obtain coerced confessions that lead to capital convictions and the death penalty. But abuse of other procedural safeguards like failing to provide access to counsel or a fair trial in capital cases will lead to similar violations of the treaty. When Pakistani courts sentence people to death as the result of due process violations like these, the State is in violation of the CAT, irrespective of whether it carries out the death penalty. If it does so under such circumstances, the violation is then compounded.

In this Part, we examine Pakistan’s widespread practice of using torture/CIDT to obtain coerced confessions that lead to death sentences, particularly in relation to the Anti-terrorism Act of 1997 (ATA). We also describe various due process concerns raised by civil

society and members of vulnerable populations on death row in Pakistan, especially juveniles. The upshot is that Pakistani legal proceedings leading up to and including capital convictions frequently lead to serious violations of the CAT due to their deficiencies of process. This is especially true with respect to proceedings under the ATA, and those in relation to juveniles and other vulnerable sectors.

This Part begins with a brief overview of specific norms governing interrogations judicial procedure in Pakistan. It then delves into a description of the general practice of torture/CIDT by the police. Next, this Part will discuss the heightened risk of torture and corresponding abuse of process within Pakistan’s Anti-terrorism court regime. Finally, we highlight the vulnerability of juveniles subjected to torture/CIDT before concluding observations.

1. *Specific Analytical Framework*

The Pakistani Constitution guarantees all people the right to “a fair trial and due process.”² These include basic provisions such as the right to prepare a defense and be represented³ and the right to be presumed innocent until proven guilty.⁴

Using torture/CIDT to obtain confessions, particularly confessions that result in a conviction and death sentence, violates international and Pakistani law.⁵ Articles 1 and 2 of the CAT prohibits State actors from using torture “for such purposes as obtaining from [the victim] or a third person information or a confession.”⁶ The Pakistani Constitution enshrines a similar principle in Article 14(2), which provides “No person shall be subjected to torture for the purpose of extracting evidence.”⁷ However, the CAT goes further in its prohibitive dictates on obtaining evidence through torture and using it in criminal proceedings. Article 15 of the treaty requires each State Party to ensure that any confession obtained through unlawful coercion “not be invoked as evidence in any proceedings.”⁸ The Constitution is silent on this point.

Nevertheless, under a Pakistani statute on the Law of Evidence, if a Pakistani court suspects someone threatened or otherwise induced an accused into confessing, the confession

² The Constitution of the Islamic Republic of Pakistan, Apr. 10, 1973, art. 10A [hereinafter Constitution], available at http://na.gov.pk/uploads/documents/1333523681_951.pdf.

³ *Mirani Case*, [1998] SCMR 1886, § 13 (Pak.), excerpt available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule100.

⁴ Second Periodic Report of States Parties Due in 1997: Pakistan, U.N. Committee on the Rights of the Child, ¶ 367, U.N. Doc. CRC/C/65/Add.21 (2003), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f65%2fAdd.21&Lang=en; Article 10 of the Pakistani Constitution, along with Sections 177 to 365 Cr.PC, lay out the procedure due process Pakistani law purports to require. For a full discussion of Pakistan’s normative framework, see Part A of this report: Relevant National Analytical Framework.

⁵ See generally Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 1, 16, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT], available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

⁶ *Ibid*

⁷ See Constitution, *supra* note 2, art. 14(2).

⁸ CAT, *supra* note 5, at art. 15.

is supposed to be deemed “irrelevant” at trial.⁹ Similarly, the police may not detain a person for more than 24 hours without a magistrate’s permission,¹⁰ and if an accused confesses while in police custody and a magistrate is not present, the prosecution may not use that confession as evidence against the accused.¹¹ In Pakistan, those who use torture/CIDT for the purpose of extracting a confession in theory are subject to penalties, including imprisonment.¹² The practice, as we shall see, is quite different.

The foregoing is of particular concern given the fact that Pakistani law authorises the charging and application of the death penalty for 31 crimes, many of which are not as “serious” in character as required under international law.¹³

There are even fewer protections against torture/CIDT in Pakistan’s Anti-terrorism law regime than in ordinary judicial proceedings.¹⁴ For one thing, the definition of “terrorism” used to pursue capital cases is entirely too broad and easily abused.¹⁵ Article 6(2) of the ATA lists the crimes considered “terrorism” under the anti-terror regime.¹⁶ Many of those offenses, such as arson or sharing ideas on the radio without permission, do not resemble terrorism as it is commonly understood; often they are indistinguishable from common crimes listed under the regular Pakistan Penal Code.¹⁷

Furthermore, the degrading of due process in the ATA procedure leads to greater abuses of this type. For example, under the ATA, police must complete their investigations in just seven days, which drives them to seek results – confessions – as quickly and conclusively as possible.¹⁸ The increased incentive to torture is compounded by the fact that other minimal safeguards afforded persons in police custody do not exist within the Anti-Terrorism Act and

⁹ Qanun-e-Shahadat Order 1984, art. 37 [hereinafter Rules of Evidence], available at <http://punjabpolice.gov.pk/system/files/qanun-e-shahadat-order-1984.pdf>.

¹⁰ See Constitution, *supra* note 2, art. 10(2).

¹¹ See Rules of Evidence, *supra* note 9, art. 39.

¹² Pakistan Penal Code of Pakistan, § 337-K [available at <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>].

¹³ International Federation for Human Rights, Human Rights Commission of Pakistan, “Slow March to the Gallows,” 21-26 No. 464/2 (January 2012), available at <https://www.fidh.org/IMG/pdf/Pakistan464angconjointpdm.pdf>.

¹⁴ See generally, Anti-Terrorism Act, PLD Fed St 225 (1997) (Pak.) [hereinafter ATA], available at <http://www.ppra.org.pk/doc/anti-t-act.pdf>.

¹⁵ ATA, *supra* note 14, at art. 6. “In this Act “terrorism” means the use or threat of action where: ... (b) The use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society ; or (c) The use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause, or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies, provided that nothing herein contained shall apply to the democratic and religious rally or a peaceful demonstration in accordance with law.”

¹⁶ See ATA, *supra* note 14, § 6(2).

¹⁷ Pakistan: Alternative Report to the Human Rights Committee, Justice Project Pakistan, et al., 7 (2016) [hereinafter Alternative Report], available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PAK/INT_CCPR_ICO_PAK_24479_E.pdf.

¹⁸ See ATA, *supra* note 14, at § 19(1).

the courts that apply it.¹⁹ Section 21-H of the ATA downgrades the Pakistani Law of Evidence requirement that a magistrate be present for a confession to be admissible.²⁰ Instead, under the ATA, the prosecution can use a confession as evidence against the accused so long as the District Superintendent of Police was present when the accused confessed.²¹ Finally, there are significant restrictions on a defendant's ability to be granted bail and the Sharia law right to seek pardon from the victim's family through mercy petitions is suspended.²²

Regarding juveniles, international law recognises their special status and employs additional protections to ensure their "harmonious development."²³ The Pakistani Constitution prioritises the interests of juveniles and provides flexibility for the government to implement additional safeguards, such as the prohibition on child labor, to meet their evolving needs.²⁴ Pakistan's stated regard for juveniles manifests in various laws, including the Juvenile Justice System Ordinance of 2000 ("JJSO"), which prohibits sentencing juveniles to death and requires a medical examination to determine a defendant's age, when in question.²⁵ In 2001, The Presidential Commutation Order commuted death sentences of juvenile offenders issued before to December 17, 2001."²⁶

Similarly, Article 38 of the Constitution obliges the State to care for the "mentally infirm."²⁷ According to Section 84 the Pakistan Penal Code, nothing a person does "by reason of unsoundness of mind" is a crime.²⁸ Further, Section 465 of the Criminal Procedure Code provides that, if the accused is of "unsound mind," s/he must be acquitted.²⁹ The law also prohibits trying persons who are mentally ill.³⁰ By extension, executing people who were mentally-ill when they committed their crime or at the time of trial, is unlawful. Although there is no explicit prohibition on sentencing to death and executing mentally ill persons

¹⁹ Justice Project Pakistan & Reprieve, *Terror on Death Row*, 12 (Dec. 2014) [hereinafter *Terror on Death Row*], available at http://www.reprieve.org.uk/wp-content/uploads/2014/12/2014_12_18_PUB-Pakistan-Terror-Courts-Report-JPP-and-Reprieve.pdf.

²⁰ See ATA, *supra* note 14, at § 21-H.

²¹ See ATA, *supra* note 14, at § 21-H.

²² See ATA, *supra* note 14, at §§ 21-D, 21-F.

²³ See U.N. Convention on the Rights of the Child, Preamble, *opened for signature* Jan. 26, 1990, G.A. Res. 44/25, U.N. GAOR 61st plen. mtg. at 166, U.N. Doc. A/44/736 (1989) (adopted by Pakistan 12 Nov 1990), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>; see also *supra* notes 1-46 and accompanying Section III.A.

²⁴ See e.g., Constitution, *supra* note 2, at 11(3) ("No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment."); see also, Constitution, *supra* note 48, 25(3) ("Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.").

²⁵ Juvenile Justice Ordinance, XXII (2000), ¶ 12, available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81784/88955/F1964251258/PAK81784.pdf>.

²⁶ *Enforcing the International Prohibition on the Juvenile Death Penalty*, Human Rights Watch, 17 (May 30, 2008) [hereinafter HRW Report], available at <http://pantheon.hrw.org/legacy/pub/2008/children/HRW.Juv.Death.Penalty.053008.pdf>.

²⁷ See Constitution, *supra* note 2, art. 38.

²⁸ See PPC, *supra* note 12, § 84.

²⁹ See Code of Criminal Procedure as amended by Act II of 1997, § 465 (1898) [hereinafter CCP], available at, <https://www.oecd.org/site/adboecdanti-corruptioninitiative/39849781.pdf>.

³⁰ See Criminal Procedure Code, *supra* note 29, § 465.

under Pakistani law, an “unsound mind” is grounds for a mercy petition under the Pakistan Prison Rules.³¹

2. General Practice

Despite the international and domestic legal frameworks outlined above, Pakistani police regularly use torture/CIDT to obtain confessions from witnesses,³² suspects, and accused persons in custody. In fact, it has been established that many if not most police stations in Pakistan will have a “torture cell” off premises where agents torture accused persons free from public or media scrutiny.³³ To get around the “presence of a magistrate” requirement in Article 39 of the Pakistan Rules of Evidence,³⁴ police simply tell the accused that if s/he does not repeat the confession when brought before the magistrate, the torture/CIDT will continue.³⁵

Police are known to employ horrific tactics, sometimes for several days in row, to coerce accused persons to confess.³⁶ Some of these tactics include sleep deprivation, rolling heavy objects over the limbs of the accused, beatings with leather rackets, exposure to heat, and running an electric current through the genitals of the accused.³⁷ Further, police use torture techniques known as *kursi* and *manji*. *Kursi* involves hanging the victim upside-down on a metal bar.³⁸ This position causes extreme pain in the forearms and legs.³⁹ *Manji*, is the practice of stretching the victim while s/he is tied to a bed.⁴⁰

Even when police do not use torture to extract confessions, over-application of the death penalty results in individuals on death row who should not be on death row, which is itself a form of torture.⁴¹ The Pakistani courts over-apply the death penalty because of defendants often do not have access to competent counsel⁴² or their counsel has inadequate time to prepare a defense.⁴³ Other shortcomings in Pakistani process, such as tolerance of

³¹ Pakistan Prison Rules 1978, U/S 69 of Prison Act, Rule 107(iv) [hereinafter Pakistan Prison Rules].

³² See Alternative Report, *supra* note 17, at 14 (discussing the case of Aftab Bahadur, who was convicted based on the testimonies of two witnesses, both of which later recanted and said they had given the statements under torture).

³³ See Alternative Report, *supra* note 17, at 7.

³⁴ See Rules of Evidence, *supra* note 9, art. 39.

³⁵ See Alternative Report, *supra* note 17, ¶ 95.

³⁶ See e.g., Terror on Death Row, *supra* note 19 at 11; see also Alternative Report, *supra* note 67, ¶ 128.

³⁷ Isabel Buchanan. *Trials on Death Row in Pakistan*. Penguin Random House: UK (2016), at 38.

³⁸ See Alternative Report, *supra* note 17, at 15.

³⁹ See Alternative Report, *supra* note 17, at 15.

⁴⁰ See Terror on Death Row, *supra* note 19, at 15; see also Alternative Report, *supra* note 67, at 15.

⁴¹ *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 42, U.N. Doc. A/67/279 (August 9, 2012), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/458/12/PDF/N1245812.pdf?OpenElement> [hereinafter Interim Report A/67/279].

⁴² See Alternative Report, *supra* note 17 at 15 (discussing the case of Zafar Iqbal, whose attorney barely even spoke to him); see also “A Most Serious Crime,” Justice Project Pakistan, 17 (Sept. 2016), available at https://law.yale.edu/system/files/area/center/schell/2016_09_23_pub_dp_report.pdf. (describing defendant Zulfiqar Al Khan’s attorney as “clueless” and “a mere formality,” and stating Al Khan lost his final appeal because of his attorney’s failure to appear in court).

⁴³ See Alternative Report, *supra* note 17, at 7.

major errors, prioritisation of efficiency over accuracy,⁴⁴ disorganised filing systems, and disregard for mercy petitions,⁴⁵ result in the courts wrongfully sending people to death row.

Case Study: Aftab Bahadur (Executed on 10th June 2015)⁴⁶

In 1992, Aftab Bahadur, a 15-year-old plumber's apprentice, and his co-worker Ghulam Mustafa were arrested and charged with the murder of a woman and her two sons. The deceased were the wife and children of a local businessman, who hailed from an influential family.

The case was tried under the now defunct and much maligned Speedy Trials Act of 1991, under which the police was required to submit the results of their investigation within 14 days to the Special Court, which in turn, had a maximum of a month to conclude the trial. This gave the defendants little time to prepare their case while simultaneously encouraging the police to falsify evidence and pin the blame on a vulnerable defendant. Aftab, a poor teenager from a minority Christian community, proved to be that easy target. Aftab was arrested on the basis of the eye-witness testimony of Fateh Muhammad, an elderly servant at the household who was allegedly found unconscious in a park near the house on the night of the murders. The Speedy Court relied extensively on Fateh's testimony to convict and sentence Aftab to death. However, later on Fateh came clean and retracted his statement to Aftab's lawyers. He professed that he was tortured by the police and coerced by his employer to place Aftab and Ghulam at the scene, while in truth Fateh had not witnessed the crime.

Aftab's co-accused Ghulam was also tortured into implicating Aftab, but he too later on retracted his statement. Furthermore, Aftab's fingerprints were claimed to have been found at the scene of the crime but, during the trial, Aftab recounted how the police took him to the scene of the crime and brutalized him until he put his oil-doused hand on a cupboard. According to Aftab's government issued documents, his date of birth was in 1977. But despite being 15 years old at the time, the police recorded his age as 21. Aftab and his counsel did not realize age to be a mitigating factor and failed to raise this issue during the proceedings.

3. *Anti-Terrorism Act*

The Anti-terrorism court system set up by the ATA is characterised by curtailed due processes, which results in high numbers of death sentences.⁴⁷ The unjust effect is exacerbated by gross over-use of the system. As of 2014, 31 percent of all death row inmates convicted in Anti-terrorism courts were charged exclusively under the regular Pakistan Penal Code – not the ATA.⁴⁸ Of the 69 percent convicted under the ATA, only 20 percent had done

⁴⁴ See Alternative Report, *supra* note 17, at 14 (discussing the case of Aftab Bahadur who was tried in the Special Courts for Speedy Trials Act of 1991 and was sentenced to death due to judicial error).

⁴⁵ See *infra* Section III.B(4)(b) for a full discussion of disregard of mercy petitions.

⁴⁶ Justice Project Pakistan. *Death Row's Children: Pakistan's Unlawful Executions of Juvenile Offenders*, 18 (Feb 2017)[hereinafter *Death Row's Children*] available at <http://www.jpp.org.pk/wp-content/uploads/2017/02/JPP-Final-Edited.pdf>

⁴⁷ See *Terror on Death Row*, *supra* note 19, at 5.

⁴⁸ See *Terror on Death Row*, *supra* note 19, at 10.

anything related to “terrorism” as it is commonly understood.⁴⁹ In light of these statistics, an estimated 86 percent of individuals on death row pursuant to the ATA are not terrorists.⁵⁰

For a variety of reasons, there is an even greater risk that State actors will use torture/CIDT to extract confession that leads to the death penalty in the anti-terrorism court regime.⁵¹ First among these is the overly broad interpretation of terrorism, and frequency with which prosecutors charge capital punishment in such cases. The ATA’s definition of terrorism includes vague wording, such as the use of action “designed to...create a sense of fear and insecurity,” which encompasses virtually any crime.⁵²

Second are the severe due process deficits that characterise the anti-terrorism court proceedings. Several of these flow from the ATA’s goal of expediting terrorism cases.⁵³ The short time frame in which the ATA requires police to complete investigations – seven days – incentivises police to employ tactics to extract a confession quickly, whether or not it is true.⁵⁴ Then, because of relaxed standards on the admission of evidence in that regime, the prosecution can then use what should be an inadmissible confession to convict the accused.⁵⁵ A person convicted under the ATA has a higher chance of receiving a death sentence than a person convicted in the regular justice system.⁵⁶

Following are the case studies of two men who were executed or remain on death row wrongfully because they were tried under the ATA for non-terrorism related crimes, thereby suffering the effects of curtailed due process and procedural shortcomings that facilitate torture/CIDT.

Case Study: Muhammad Amin (Executed 31 March 2015)⁵⁷

In 1998, Muhammad Amin accompanied a classmate to the classmate’s stepmother’s house. The classmate went inside and Amin waited outside. While he was waiting, Amin heard gunshots. The classmate ran out of the house and fled the scene, leaving Amin behind. The police arrived and arrested Amin for allegedly killing a man in the course of his classmate’s botched burglary attempt. Amin claims he was only 17 years old at the time.

The police brutally assaulted Amin. According to Amin, the police tortured him to make him confess. The police hung him by his hands, beat him with batons, and slapped, kicked, and punched him. The police also put a gun to Amin’s head and threatened to kill him. His injuries from the beating were so severe that he still had scars. This is the only reported case of police officers being prosecuted for torture/CIDT. However, there is no indication the police were ever convicted.

⁴⁹ See Terror on Death Row, *supra* note 19, at 10.

⁵⁰ See Terror on Death Row, *supra* note 19, at 10.

⁵¹ See Terror on Death Row, *supra* note 19, at 5.

⁵² ATA, *supra* note 14, at art. 6(1)(b).

⁵³ See Terror on Death Row, *supra* note 19, at 5, 12; *see also* ATA, *supra* note 64, at § 13(1).

⁵⁴ See Terror on Death Row, *supra* note 19, at 12.

⁵⁵ See *e.g.*, Terror on Death Row, *supra* note 19, at 11.

⁵⁶ See Terror on Death Row, *supra* note 19, at 11 (discussing the “sheer number of death penalty cases tried in the anti-terrorism courts”); *see also* Terror on Death Row, *supra* note 69, Pre-Table of Contents (estimating so-called ‘terrorism’ cases represent up to 30 percent of Pakistan’s death row population).

⁵⁷ See Terror on Death Row, *supra* note 19, at 18; *see* Alternative Report, *supra* note 17, at 17, 22, 31.

On 19 March 2002, the court convicted Amin of murder and terrorism because the crime supposedly caused “terror, a sense of fear and insecurity in the people of [the] locality.” Although there were indications of police misconduct and the court itself determined Amin was only 16 or 17 years old at the time of crime, the defense attorney did not raise Amin’s juvenility until the appeal, at which point the court said it was too late. Instead, the court relied on a medical assessment that took place after Amin turned 18 years of age. He received two death sentences: one for murder and one under the ATA.

In 2004, the family members of the victim pardoned Amin for the murder but he remained on death row for years because of his ATA conviction, which suspends the mercy provision. During his lengthy stay in prison, he developed mental problems. On 31 March 2015, Amin was executed. The exact cause of the development of mental problems and whether he received any treatment for his mental illness before he was executed is unknown.

Case Study: Zulfikar Ali Khan (Executed 6 May 2015)⁵⁸

In 1998, Zulfikar⁵⁹ Ali Khan shot two thieves in defense of himself and his younger brother. The police detained Ali Khan at the station for 11 days, far exceeding the constitutionally permissible 24 hours. In detention, he did not have access to an attorney and no independent officer supervised their treatment.

The alleged crime was not connected to terrorism but Ali Khan was, nonetheless, tried by an Anti-terrorism Court in 1999. Because his family was poor, Ali Khan could not afford a lawyer. His state-appointed attorney was incompetent. For example, when the prosecutor offered false witness testimonies, his attorney did not challenge their incorrect statements. Ali Khan described his attorney as “clueless,” and his younger brother called him “a mere formality.” Ali Khan was convicted and sentenced to death by firing squad. Ultimately, the Supreme Court dismissed Ali Khan’s final petition in 2002 because his attorney did not show up for court. He spent 18 years on death row during which time his execution was postponed 22 times. He spent more than 10 years in the same square cell.⁶⁰ On 6 May 2015, Ali Khan was hanged.

4. Juvenile Offenders

Pakistan’s practice of extracting confessions with torture/CIDT is equally troubling in relation to juvenile defendants. Despite both international and domestic recognition of juveniles’ special protected status, Pakistani police regularly torture juveniles to extract confessions, just like adults.⁶¹ This practice is particularly egregious because juveniles are more susceptible to the abusive tactics police employ; therefore, they are more likely to confess, true or false, as the result of torture.⁶²

⁵⁸ “A Most Serious Crime,” Justice Project Pakistan, 17 (Sept. 2016), available at https://law.yale.edu/system/files/area/center/schell/2016_09_23_pub_dp_report.pdf at 17; see also Buchanan, *supra* note 37, at 36-37, 44; Constitution, *supra* note 5, art. 10(2); Noon, S. “Death penalty—the human tragedy behind the numbers.” Tribune (August 1, 2015), available at: <https://tribune.com.pk/story/929979/death-penalty-the-human-tragedy-behind-the-numbers/>.

⁵⁹ Also spelled “Zulfikar.” See e.g., Buchanan, *supra* note 37, at 30.

⁶⁰ See Buchanan, *supra* note 37, at 44.

⁶¹ See e.g., Terror on Death Row, *supra* note 19, at 11.

⁶² See Justice Project Pakistan, Death Row’s Children: Pakistan’s Unlawful Executions of Juvenile Offenders, (Feb 2017) available at <<http://www.jpp.org.pk/wp-content/uploads/2017/02/JPP-Final-Edited.pdf>>

Pakistan also continues to execute juvenile offenders, despite international and domestic prohibitions. Since December 2014, Pakistan has executed at least six juvenile offenders.⁶³ In addition, as of 2015, an estimated 10 percent of the death row population might have been juveniles when they committed their crime.”⁶⁴ At trial, the accused has the burden of proving his/her juvenility.⁶⁵ This can be difficult to prove because only 27 percent of births are registered in Pakistan.⁶⁶ This number drops to 23 percent in rural areas.⁶⁷ Whenever there is uncertainty about the age of the accused, the benefit of the doubt almost always goes to the prosecution.⁶⁸

Following are the cases of three juvenile offenders who were executed or remain on death row because the Court failed to consider or erroneously determined their age.

Case Study: Ansar Iqbal (Executed on 29 September 2015)⁶⁹

On 9 June 1994, police arrested Ansar Iqbal for allegedly shooting and killing a man who had assaulted him at a cricket match a few days before. He claimed he was 15 years old at the time. In September of 1994, he was sentenced to death. The court did not hear his appeal until February 2002 and the Supreme Court did not issue its final judgement until 2007. The court admitted the prosecution’s case had “serious inconsistencies and failures” and that the prosecution had not legitimately proved motive. For example, two of the witnesses were closely related to the victim and their testimonies were inconsistent. Iqbal submitted a mercy petition, which was dismissed on 27 July 2009.

Iqbal raised his juvenility at every stage of the proceedings but the court chose to rely solely on the police’s assessment that Iqbal was 22 or 23 years of age. In 2015, Iqbal filed his birth certificate and school record, both of which showed he was, in fact, a juvenile at the time of the crime. However, the court excluded the school record from evidence because it was not an original document, and on 15 September 2015 the court decided it was too late to consider the birth certificate. A week later, Iqbal received notification that his execution would take place in one week. On 28 September 2015, one day before Iqbal’s sentence was to be carried out, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment urged Pakistan to halt the execution. Pakistan ignored these recommendations and went ahead with the execution.

Case Study: Muhammad Anwar (Execution pending)⁷⁰

⁶³ Alternative Report, *supra* note 17, at 18-19 (discussing the case of 17-year-old Faisal Mahmood, who was executed despite his birth certificate and school records confirming his juvenility at the time of the offense, because the Mahmood failed to raise his age at trial, despite the fact that the JJSO came into effect after his trial).

⁶⁴ Alternative Report, *supra* note 17, at 18.

⁶⁵ Alternative Report, *supra* note 17, at 18.

⁶⁶ See Alternative Report, *supra* note 17, at 36.

⁶⁷ See Alternative Report, *supra* note 17, at 36.

⁶⁸ See Alternative Report, *supra* note 17, at 18.

⁶⁹ See Alternative Report, *supra* note 17, at 14, 18, 32; see also Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UA PAK 10/2015 (28 September 2015), available at [https://spdb.ohchr.org/hrdb/31st/public - UA_Pakistan_28.09.15_\(10.2015\).pdf](https://spdb.ohchr.org/hrdb/31st/public - UA_Pakistan_28.09.15_(10.2015).pdf).

⁷⁰ See Alternative Report, *supra* note 17, at 20.

In 1993, police arrest 17-year-old Muhammad Anwar after an argument at an assembly in his village. His trial lasted five years. In 1998, the Court sentenced him to death. After the JJSO was introduced in 2000, Anwar's family made many efforts to bring his juvenility to the attention of authorities, including submitting petitions to the lower and higher courts. As a result, the Court requested and received copies of Anwar's birth certification and registration in 2002. The Court also ordered a medical exam, which found Anwar was a juvenile. Despite this finding, the higher court declined to make an official determination of age. Anwar's family has exhausted every procedure for having his status as a juvenile at the time of arrest recognized. As of July 2016, nearly 23 years after his arrest, Anwar is still languishing on death row.

In the Anti-Terrorism court system, where judges sentence defendants to death with greater frequency than the traditional courts, juveniles' vulnerability in the interrogation phase puts them at even greater risk of receiving the death penalty. Below is the case of Shafqat Hussain, a juvenile who was sentenced to death as the result of curtailed due process under the ATA, which facilitated his torture-induced confession.

Case Study: Shafqat Hussain (Executed 4 August 2015)⁷¹

Shafqat Hussain was a 14-year-old boy from a small, impoverished village in Azad Jammu and Kashmir. He moved to Karachi to find work and became a caretaker for children in a block of flats. On 10 April, 2004, the seven-year-old son of one of the residents disappeared while in Hussain's care. Hussain helped the family search for the boy and accompanied his father to see the police and report the boy missing. Forty-two days later, the police arrested Hussain and eventually charged him with the kidnap and murder of the child. Up until that point, Hussain had a completely clean record.

Despite his status as a juvenile, Hussain endured brutal torture/CIDT at the hands of police as they tried to make him confess. Shafqat was blindfolded, kept in solitary confinement, beaten, electrocuted and burned with cigarette butts until he gave a false confession of guilt. Finally, after nine days of suffering, Hussain gave in and falsely confessed to the crimes. Shafqat later described the police's tactics, stating "They could make you say that a deer was an elephant."

The prosecutor brought the case against Hussain under the ATA on the grounds that the crime "created a sense of terror in the wider community." The forced confession was admissible under the relaxed due process rules of the Anti-Terrorism regime and it was the only evidence against him. Eventually, the court convicted Hussain of kidnapping, which is punishable by death under the ATA. On November 2004, Hussain was sentenced to death.

The Sindh Human Rights' Commission called the handling of Hussain's case "careless" and on 16 July 2015, the Commission recommended a stay of execution. The same year, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the

⁷¹ See Alternative Report, *supra* note 17, at 14; see also *Terror on Death Row*, *supra* note 19, at 11; "Submission for the United Nations Committee Against Torture," The Justice Project Pakistan (2015), at 13 ("Overcrowded 'death cell'"); see generally Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UA PAK 2/2015 (19 March 2015); see also, ATA, *supra* note 65, § 2(n).

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment called for the government to halt the execution.⁷²

Hussain awaited execution in an overcrowded cell for over a decade. He submitted a mercy petition on the grounds of his juvenility, his innocence, torture, and incompetent counsel. Hussain was subjected to seven execution dates in the first seven months of 2015. He was executed on 4 August 2015, despite the pending mercy petition.

5. *Mentally-ill Persons*

Pakistani law prohibits the trial of mentally-ill persons and the conviction of persons who were mentally-ill when they committed their crime. The difficulty is judges employ their own means of determining whether a defendant needs a psychological assessment.⁷³ For example, a judge may ask the defendant basic questions, such as “Who is the president of Pakistan?”⁷⁴ If the defendant answers correctly, the judge may decide an assessment is not necessary.⁷⁵ Therefore, in practice, it is often difficult for defense counsel to convince the Court a client needs a medical assessment to determine mental illness.⁷⁶

Even once a judge sanctions the assessment, it is conducted by a government-employed board of psychiatrists.⁷⁷ Experts wishing to secure their position may be inclined to give opinions that benefit the prosecution.⁷⁸ In sensitive situations, like blasphemy cases, experts may fear violent retribution from the public should they find a defendant insane.⁷⁹ Further, determining a defendant’s mental capacity at the time s/he committed the crime is problematic because trials in Pakistan often take place years later.⁸⁰

Following are the cases of three men who were executed or suffered on death row as the result of the Court’s disregard of their mental condition.

Case Study: Muneer Hussain (Executed 28 April 2015)⁸¹

In 2001, the Court convicted Muneer Hussain of murdering two people and sentenced him to death by hanging. At the time, Hussain suffered from a serious mental health condition that was made worse by a 1990 car accident in which he sustained head trauma. Hussain was incapable of defending himself at trial. He could not even answer questions. No one involved sought or provided evidence of his mental condition.

The Supreme Court upheld the death sentence in 2007. Hussain received his first psychiatric evaluation in September 2014 by a psychiatrist retained by his counsel and he was diagnosed with “symptoms of intense neurological and psychological illness.” However, despite the psychologist’s recommendation to additional testing and medical and psychiatric

⁷² Pakistan must immediately halt execution of child offender – UN rights expert urge (5th June 2015) available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16046&LangID=E>

⁷³ See Buchanan, *supra* note 37, at 156-57.

⁷⁴ See Buchanan, *supra* note 37, at 157.

⁷⁵ See Buchanan, *supra* note 37, at 157.

⁷⁶ See Buchanan, *supra* note 37, at 157.

⁷⁷ See Buchanan, *supra* note 37, at 157.

⁷⁸ See Buchanan, *supra* note 37, at 157.

⁷⁹ See Buchanan, *supra* note 37, at 158.

⁸⁰ See Buchanan, *supra* note 37, at 157.

⁸¹ See Alternative Report, *supra* note 17, at 26; see also “A Most Serious Crime,” *supra* note 58, at 32.

treatment, Hussain was provided with no care by the Pakistani government. Hussain spent 14 years on death row. Although litigation regarding Hussain's mental health was ongoing, he was executed on 28 April 2015.

B. Conditions, Procedures and Methods Relating to the Death Penalty

This Part begins with an overview of the specific analytical framework to be applied to the topics examined. It will then address and analyse each of those topics: death row conditions, the situation of vulnerable populations on death row, and the procedures and methods of execution. Our analysis will show that in many instances, the conditions on death row, the procedures leading up to imposition of the death penalty, and the method of execution itself, are in violation of a Pakistan's obligations under the CAT.

1. Specific Analytical Framework

This Section sets out the specific analytical framework governing death row conditions, as well as the procedures and methods of conducting the death penalty. Due to its relevance, special regard is given to discussing the death row phenomenon.

Under Pakistani law, when "only one prisoner exists in any class" and separation amounts to solitary confinement, Pakistani law allows the prisoner in solitary confinement "to associate with prisoners of another class" in a way that does not infringe upon the provisions of section 27 of the Prisons Act, 1894. Pakistani law permits to hold prisoners in separate cells (or in solitary confinement) if they are under-trial prisoners.⁸² With regards to black warrants, when a sentence of death has been confirmed or passed by the High Court, a warrant of execution will be transmitted by the Session Judge, or the High Court depending on the case, to the Superintendent of the prison in which the prisoner sentenced to death is confined.⁸³ The Deputy Superintendent and the Assistant Superintendent who are in charge of admissions of prisoners into the prison must examine each prisoner's warrant, making sure it contains the accurate date on which the sentence was passed, personal information of the convict, the nature of imprisonment or sentence, etc.⁸⁴ If any error or omission is found, the Superintendent must return the warrant for correction to the officer in charge.⁸⁵ Any doubts over the legality of a warrant for execution requires an officer in charge of a prison to refer the matter to the Provincial Government for a guidance as to the further disposal of prisoner.⁸⁶

Under Pakistan's prison rules, when a prisoner receives the final orders of the Government to be sentenced to death, the Superintendent of Jail must request the Trial Court concerned to set a date for the execution of death sentence in accordance with the High Court Rules and Orders, Vol. III.⁸⁷ Once the date is fixed, it must be promptly communicated to the Provincial or the Federal Government and the Superintendent of Jail must make "arrangements for summoning of relatives and friends of the condemned prisoner for the last

⁸² Pakistan Prison Rules, *supra* note 31, Rule 235.

⁸³ Pakistan Prison Rules, *supra* note 31, Rule 329.

⁸⁴ Pakistan Prison Rules, *supra* note 31, Rule 27.

⁸⁵ Pakistan Prison Rules, *supra* note 31, Rule 28.

⁸⁶ Pakistan Prison Rules, *supra* note 31, Rule 29.

⁸⁷ Pakistan Prison Rules, *supra* note 31, Rule 105(i).

interview, making of will, if any.”⁸⁸ The Superintendent of Jail is the authority with responsibility to ensure the necessities, including food and clothing, and treatment in accordance with the law are provided to detainees.⁸⁹ The Deputy Superintendent is responsible for taking measures to make sure the detainees are in safe custody and maintaining discipline and sanitary conditions of residence.⁹⁰

Moreover, Pakistan must ensure that juveniles are detained separately from adults in all circumstances.⁹¹ Prison rules in Pakistan entitle all prisoners to a medical examination by the Senior Medical Officer or the Medical Officer within 24 hours of their admissions into the prison.⁹² The Mental Health Ordinance, 2001 provides for the establishment of special security forensic facilities for mentally ill prisoners.⁹³

In line with Article 12 of the CAT, Pakistani authorities at the federal and provincial levels must conduct a prompt and impartial investigation when allegations of torture are made within their jurisdiction.⁹⁴ Prisoners may make a written complaint to the Chief Justice of Pakistan (CJP) for prompt redressal of any violation of their rights including torture or maltreatment by the prison authorities.⁹⁵ The Criminal Procedure Code, in line with the Constitution, further mandates that “any person with knowledge of an offence or of an intention to commit an offence is required to inform the Magistrate and police without unreasonable delay.”⁹⁶

All persons on death row have the right to seek pardon or commutation of the sentence under Article 6 of the ICCPR; accordingly, Pakistani law must afford effective measures to restrict the application of the death penalty in this way.⁹⁷ Article 45 of Pakistan’s Constitution grants the President the “power to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.”⁹⁸ Under Pakistan Rule 101, the second or subsequent mercy petitions on new grounds are forwarded to the Provincial Government for consideration.⁹⁹ Pakistan Rule 104(viii) explains that mercy petitions submitted on behalf of a prisoner on death row is considered a petition from the prisoner himself.¹⁰⁰ Not only the petitioner (on behalf of the prisoner) but also the

⁸⁸ Pakistan Prison Rules, *supra* note 31, Rule 105(ii)-(iii); *See also* Rule 352.

⁸⁹ Pakistan’s Initial reports of States parties due in 2011, ¶ 54, U.N. Doc. CAT/C/PAK/1 (Feb. 11, 2015), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FPAK%2F1&Lang=en [hereinafter Pakistan’s Initial Report].

⁹⁰ Pakistan’s Initial Report, *supra* note 89, ¶ 54.

⁹¹ Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding observations of the Committee against Torture (Zambia), para. 20, CAT/C/ZMB/CO/2 (May 15, 2008), available at <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT-C-ZMB-CO2.pdf>. [hereinafter Zambia docs.]

⁹² Pakistan Prison Rules, *supra* note 31, Rule 18.

⁹³ Mental Health Ordinance of 2001 (VIII of 2001), § 55.

⁹⁴ Pakistan’s Initial Report, *supra* note 89, ¶ 115.

⁹⁵ Pakistan’s Initial Report, *supra* note 89, ¶ 58.

⁹⁶ Pakistan’s Initial Report, *supra* note 89, ¶ 122.

⁹⁷ Zambia docs., *supra* note 91, para. 21.

⁹⁸ Constitution, *supra* note 5, art. 45. *See* “A Most Serious Crime,” *supra* note 58.

⁹⁹ “Confidential Annex to JPP/Reprieve Submission to the Committee on the Rights of the Child.” P. 27; *See also* Procedure for Submission & Process of Clemency Petitions in Pakistan, p. 25.

¹⁰⁰ Procedure for Submission & Process of Clemency Petitions in Pakistan, p. 25.

prisoner must be informed of the fact of the petition and of the orders passed in the case.¹⁰¹ When a victim's next-of-kin forgives a perpetrator, thereby commuting the perpetrator's sentence under Sharia law, it is contrary to Pakistan's own legal tradition for that person to remain on death row.

2. *Conditions of Death Row Detention*

This section addresses the actual death row conditions in Pakistan which lead to violations of the CAT. Case studies are provided to illustrate the most egregious abuses. Pakistan is infamous for its inhumane prison conditions generally; these are even worse with respect to persons on death row. Prisoners condemned to die will be held for prolonged periods of time on death row not knowing when they are to be executed; they endure grossly overcrowded detention conditions and extremely poor sanitation; they are routinely denied essential medical care, and held in solitary confinement for extended periods of time.¹⁰²

a. Prolonged death row detention

Persons condemned to die are held for extended periods of time, often decades, never knowing exactly when they are to be executed. There are numerous case examples that exhibit such prolonged death row detention. Abdul Basit¹⁰³ has had his execution rescheduled three times since July 2015 coming within hours of execution on each occasion.¹⁰⁴ Shafqat Hussain, a juvenile offender, was told seven times—the first time was in 2013—that he will be executed and his death warrant was issued for the fifth time in almost eight months in 2015.¹⁰⁵ Kanizan Bibi has been on death row for more than 26 years and, even after she was diagnosed with schizophrenia and her mental health deteriorated significantly due to the prolonged period of time spent in prison, her mercy plea was denied by the President of Pakistan in 2015.¹⁰⁶ Munir Hussain spent 14 years on death row without receiving adequate medical treatment and was executed in 2015.¹⁰⁷ Muhammad Anwar, who was a juvenile at the time of conviction, has been on death row since 1993, over 23 years now.¹⁰⁸ Prisoners in

¹⁰¹ Procedure for Submission & Process of Clemency Petitions in Pakistan, p. 25.

¹⁰² See Human Rights Commission of Pakistan, State of Human Rights in 2014 at 88 (identifying “[c]hronic issues such as overcrowding, lack of proper healthcare system, inferior quality food, corruption and rampant torture”).

¹⁰³ “Abdul Basit Case Briefing.” JPP, at 1,3 (citing the Human Rights Committee) (UN Human Rights Committee (HRC), CCPR General Comment No. 20, Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment) at para. 6, 10 March 1992, available at <http://www.refworld.org/docid/453883fb0.html>).

¹⁰⁴ *Ibid*

¹⁰⁵ See Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. PAK 7/2015 (August 3, 2015), at 1 [hereinafter PAK 7/2015]; Hussain, Shafqat. “Death row prisoner: ‘I have been told I am going to be executed seven times.’” CNN (August 4, 2015), available at <http://edition.cnn.com/2015/08/03/opinions/pakistan-shafqat-hussain-opinion/>; “The noose tightens: Shafqat’s death warrant issued for the fifth time.” Tribune (July 28, 2015), available at <https://tribune.com.pk/story/927604/the-noose-tightens-shafqats-death-warrant-issued-for-the-fifth-time/>.

¹⁰⁶ “A Most Serious Crime,” *supra* note 58, at 22.

¹⁰⁷ See Alternative Report, *supra* note 17, at 26.

¹⁰⁸ See *supra* Section III.A.4 for details.

Pakistan spend an average 11.41 years on death row and are virtually certain to suffer from death row syndrome.¹⁰⁹

But prolonged detention represents only one of multiple sources of suffering for inmates on death row in Pakistan. The following sub-sections address the desperate prison conditions to which persons on death row are subjected, including overcrowded cells and poor sanitation, mistreatment by guards or lack of medical treatment when needed, and widespread solitary confinement.

b. Overcrowding and Sanitation

One of the most oppressive conditions affecting death row imprisonment is overcrowding that results in “prisoners living in environments that do not adequately provide for health, comfort, privacy, sanitation, nutrition and safety needs.”¹¹⁰ While mental health problems can be both the cause and the result of imprisonment, overcrowding, in addition to inadequate health-care services and a lack of safety from abuse, can exacerbate these problems.¹¹¹ Overcrowding is deemed to have the “contaminating effect” with regards to criminality and disease.¹¹²

Problems with sanitation are manifest in Pakistan’s prisons. Food quality is poor.¹¹³ Because of the poor food quality, prisoners sometimes ask their families to bring food. However, family visits are restricted and poor families can only make a visit once every few months, if at all.¹¹⁴ Such unhygienic and restricted conditions in prisons can cause inmates, who are detained for a prolonged period of time, to develop illness, which, when left untreated, can display more severe symptoms. For example, Abdul Basit¹¹⁵ was confined to “the infamous ‘punishment wing’ for months, where he was held in fetters in filthy and unhygienic conditions.”¹¹⁶

c. Denial of Medical Attention

Denial of proper and prompt medical attention or treatment is a common feature of prison conditions in Pakistan, including on death row.¹¹⁷ The lack of mental health treatment and training in the criminal justice system of Pakistan leaves many individuals without proper diagnosis, which in turn poses a significant obstacle to ensuring that Pakistan does not execute persons with mental disabilities or results in the deterioration of prisoners’ mental and physical health. As noted, the CAT and the Special Rapporteur on Torture have both

¹⁰⁹ “A Most Serious Crime,” *supra* note 58, at 37.

¹¹⁰ Report of the Special Rapporteur on violence against women, its causes and consequences: Pathways to, conditions and consequences of incarceration for women, ¶ 51, U.N. Doc. A/68/340 (August 21, 2013), available at <http://www.ohchr.org/Documents/Issues/Women/A-68-340.pdf>. [hereinafter Special Rapporteur A/68/340].

¹¹¹ Special Rapporteur A/68/340, *supra* note 110, ¶ 48.

¹¹² Buchanan, *supra* note 37, at 107.

¹¹³ Buchanan, *supra* note 37, at 103.

¹¹⁴ Buchanan, *supra* note 37, at 103.

¹¹⁵ See *infra* subsection (c) “Denial of Medical Attention” for details of the case.

¹¹⁶ “Abdul Basit Case Briefing.” *supra* note 105, at 2.

¹¹⁷ “A Most Serious Crime,” *supra* note 58, at 35.

qualified denial of medical treatment as torture/CIDT.¹¹⁸ As noted above, one example is that of Muneer Hussain,¹¹⁹ executed in March 2015, who was provided no care by the Pakistani government despite a psychologist's recommendations for additional testing and medical treatment due to his symptoms of intense neurological and psychological illness.¹²⁰ The cases of Abdul Basit and Khizar Hayat, below, further illustrate how the lack of medical attention and treatment can have a devastating effect on death row inmates.

Case Study: Abdul Basit (Execution pending)¹²¹

Abdul Basit, a former administrator at a medical college, was convicted of murder and was sentenced to death in 2009. He spent the first 18 months of his detention in Sahiwal Jail and later was transferred to Central Jail, Faisalabad in 2010. Pakistan Prisoners in Central Jail in Faisalabad started protesting in 2010 against the use of torture and abuse by the Superintendent of Jail. Many prisoners, including Basit, were consequently confined to "the infamous 'punishment wing' for months, where they were held in fetters in filthy and unhygienic conditions." After 18 months in solitary confinement, Basit caught a fever for which he received no treatment for several weeks until his illness became so severe that he fell into a coma for approximately three weeks. At the time, prison guards were engaged in putting down riots and did not notice Basit's deteriorating condition. Due to the lack of necessary medical attention, Basit was left paralyzed from the waist down.

When he finally went to the hospital, Basit was diagnosed with tubercular meningitis, from which Basit lost "all movement in his lower limbs, confining him to a wheelchair." He has paraplegia and suffered from fecal and urinary incontinence because of lack of attention or assistance by prison guards. Several requests that Basit be transferred to a hospital were denied by a Court. The guards were aware of his physical disability and the fact that Basit was reliant on jail staff to assist him with even the most basic personal hygiene. However, he was provided with no access to a wheelchair after his wheelchair was seriously broken. He was not regularly moved and, thereafter, suffered from bedsores and faecal and urinary incontinence. Only the bullying and mockery continued by prison guards, who refuse to take his medical condition seriously.

In 2011, medical officials concluded that it would be very difficult to treat Basit in prison, but in 2012, a new medical report concluded that Basit was capable of administering his own physiotherapy in prison because it did not require special equipment, even though Basit needed to use a wheelchair. An April 2012 medical assessment by a Medical Board concluded that Basit was suffering from paraplegia and long term complications of spinal atrophy, rendering him permanently disabled. Basit's family filed a mercy petition in 2013 on account of his poor physical condition, which is grounds for commutation of sentence under Pakistani law. The petition was rejected but the family received no written reason as to why. There is indication it was rejected solely on administrative grounds.

¹¹⁸ Interim Report A/67/279, *supra* note 41, ¶ 42.

¹¹⁹ See *Supra* Section III.B.

¹²⁰ See *supra* section III.B; "A Most Serious Crime," *supra* note 58, at 32.

¹²¹ See "Abdul Basit Case Briefing," *supra* note 105, at 1-2; see also *Terror on Death Row*, *supra* note 19, at 16, 25-26; *Alternative Report*, *supra* note 17, ¶¶ 58, 102.

Since July 2015, Basit has received at least three execution warrants. Each has been stayed at a moment's notice because of Basit's paralysis, which makes it impossible for Pakistan to execute him in compliance with international and domestic law. On November 24, 2015, Basit's execution scheduled for dawn on 25 November was stayed with just hours to go by the President of Pakistan. A statement issued by the Presidency on 24 November 2015 read: "The president has ordered an inquiry into the health condition of the convict" and added that "The President said that the basic human rights must be upheld at all costs". Although new medical tests commissioned following this stay of execution confirmed that Basit is paralyzed, no action has yet been taken to permanently commute his sentence. He remains in legal limbo with the possibility that he could receive a further execution warrant at any time hanging over him."¹²² As of July 2016, Basit remained on death row indefinitely.

Case Study: Khizar Hayat (Execution pending)¹²³

Police arrested Khizar Hayat on 21 October 2001. He was charged with murder. At trial, Hayat maintained his innocence but his attorney did not introduce a single piece of evidence or call one witness in Hayat's defence. On 2 April 2003, the Court convicted Hayat and sentenced him to death.

After seven years in prison, Hayat began to show signs of mental illness in February 2008 and was diagnosed as a paranoid schizophrenic. Hayat suffered from delusions and had to be heavily medicated.¹²⁴ Seven months later, he stayed in the jail hospital for more than a month because his condition had become so severe that he could not take care of his physical condition, dressing in filthy clothes, disrobing completely, or throwing food and faeces out of his cell. He has been on strong medication ever since.

Hayat is unable to care for himself. Despite eight years of treatment with strong anti-psychotic medications, Hayat's symptoms did not improve but remained as serious. His condition has deteriorated significantly that has made him the target of abuse and attacks by fellow inmates. Medical experts diagnosed his illness as "treatment resistant." In 2013, Hayat was diagnosed as being schizophrenic, psychotic, and delusional. While the courts stayed Hayat's execution in 2013, the request to house Hayat in a psychiatric facility was denied.

Hayat received a death warrant on 9 June 2015 to inform him he would be executed in one week. Four days later, Hayat's mother filed a mercy petition and Hayat's attorneys asked the Lahore High Court to suspend the warrant due to Hayat's mental illness. These requests for commutation were ignored but the Court decided to stay the execution.

¹²² "Abdul Basit Case Briefing." *supra* note 105, at 1; see also Mandates of the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, at 1, U.N. Doc. PAK 6/2015 (July 28, 2015), available at www.ohchr.org [hereinafter PAK 6/2015]; "Pakistan sets execution date for mentally ill man." Al Jazeera, January 11, 2017, available at <http://www.aljazeera.com/news/2017/10/pakistan-execution-mentally-ill-man-170111082646979.html>. See also PAK 6/2015, *supra* note 344, at 1.

¹²³ See Alternative Report, *supra* note 17, at 17;

¹²⁴ Khizar Hayat's death sentence was confirmed in 2009. PAK 6/2015, *infra* note 122.

On June 18, 2015, the final hearing on the case took place but the Court dismissed Hayat's submissions based on the detention authorities' statements¹²⁵ that Hayat was "partially stable on anti-psychotic medication with somewhat orientation in time, place and person." A new warrant for execution was subsequently issued by the Court and Hayat's execution was scheduled for July 28, 2015. Hayat's lawyer filed an application challenging the legality of the warrant on the basis of Hayat's psychosocial disability and, following the application, on July 25, 2015, the Court temporarily stayed Hayat's execution. Despite confirmation from a newly appointed medical board that Hayat still suffered from delusions and psychotic symptoms, this application was dismissed on 24 October 2016. Subsequently, Hayat's counsel filed a fresh writ petition at the Lahore High Court, challenging his execution in light of his debilitating mental illness. Despite the ongoing proceedings, authorities at Central Jail, Lahore forwarded a request for a new warrant, and Hayat was set to hang on 17th January 2017. On 12 January, the Lahore High Court issued a temporary stay of Hayat's execution. Litigation on the case is on-going.

d. Solitary confinement

Under the CAT solitary confinement is tantamount to torture/CIDT given its severely adverse effects on the mental health of prisoners.¹²⁶

Despite the prohibition, solitary confinement is a regular practice to which prisoners on death row are subjected in Pakistan.¹²⁷ Such confinement can take different forms.¹²⁸ A prisoner in solitary confinement is closely monitored by prison guards.¹²⁹ Food is bad and the temperature is high inside the cell.¹³⁰ As a result, the prisoner's mental health is easily degraded, but a mentally ill is not exempt from solitary confinement as the examples to follow illustrate.

Khizar Hayat,¹³¹ who was diagnosed as a paranoid schizophrenic in 2008 by jail authorities, was denied a transfer to a psychiatric facility. Instead, he is detained in effective

¹²⁵ There have been extensive records testifying to Mr. Hayat's psychosocial disability, as well as observations of his family and lawyers, in contradiction to the submissions of the detention authorities. PAK 6/2015, *infra* note 122, at 2.

¹²⁶ Interim Report A/67/279, *supra* note 41, ¶ 48.

¹²⁷ Interim Report A/67/279, *supra* note 41, ¶ 48.

¹²⁸ Solitary confinement is also known as segregation, isolation, separation, cellular, lockdown, "Supermax", "the hole" or Secure Housing Unit (SHU), each involving different factors. Prolonged solitary confinement is defined as any period of solitary confinement in excess of 15 days, because at that point some of the harmful psychological effects of isolation can become irreversible. *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 26, U.N. Doc. A/66/268 (August 5, 2011), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement> [hereinafter Interim Report A/66/268], available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement>. See also Craig Haney, "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement, Crime and Delinquency", vol. 49, No. 1, pp. 124-156.

¹²⁹ See Pakistan Prison Rules, *supra* note 31, Rule 342, §§ 222, 223 and 225 of the P.P.C.

¹³⁰ *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 42, U.N. Doc. A/67/150 (August 9, 2012), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/458/12/PDF/N1245812.pdf?OpenElement>.

¹³¹ See *supra* section III.B. for details.

solitary confinement in the jail hospital.¹³² Similarly, Abdul Basit was held in solitary confinement from August 2010 for 18 months, from which he became ill with a fever. Even after he was diagnosed with tubercular meningitis, which left him paralysed from the waist down, Abdul Basit was confined to lying on the floor of his cell almost 24 hours a day.”¹³³ Imdad Ali, who has been diagnosed of paranoid schizophrenia, has been in solitary confinement since 2013.¹³⁴

3. *Vulnerable Populations*

Execution of juveniles is a violation of the ICCPR, as well as the *jus cogens* prohibition that exists with respect to that practice.¹³⁵ Juveniles and individuals with mental illness convicted to death penalty are more vulnerable to severe mental trauma that may result from confinement on death row.¹³⁶ In Pakistan, the abuses suffered by juveniles and the mentally-ill on death row at the hands of prison officials tend to constitute torture/CIDT. This subsection focuses on these vulnerable populations. The relevant analytical framework is, likewise, established by international law, CAT, and domestic laws of Pakistan.

a. Juveniles on Death Row

Despite the existence of domestic laws, Pakistan has sentenced numerous juveniles to death and subjected them to torture in both pre-conviction and post-conviction stages.¹³⁷ There is an absence of a clear obligation to investigate a juvenility claim whenever it has been raised and the “medical” tests used are unreliable.¹³⁸ In addition to the torture or CIDT in violation of CAT obligations,¹³⁹ the conditions of death row or post-conviction procedures for juveniles continue to amount to torture or CIDT.

Shafqat Hussain,¹⁴⁰ who was sentenced to death under the ATA at the age of 14 for alleged kidnapping and murder and was convicted solely on the basis of a tortured confession, awaited execution in an overcrowded cell for over a decade.¹⁴¹ Not only any evidence of juvenility was submitted post-conviction, Hussain was then subjected to seven execution dates in the first seven months of 2015 before he was executed on August 4, 2015. This was torture enough in and of itself.¹⁴² In the case of Faisal Mahmood,¹⁴³ the courts refused to hear juvenility evidence on the basis that no mention of juvenility was made in the

¹³² “A Most Serious Crime,” *supra* note 58, at 33.

¹³³ See Alternative Report, *supra* note 17, ¶ 103.

¹³⁴ Alia Chughtai, Shiraz Hasnat. “Pakistan court stays execution of mentally ill prisoner.” Al Jazeera, September 29 2016, available at <http://www.aljazeera.com/news/2016/09/pakistan-court-stays-execution-mentally-ill-prisoner-160919191621229.html>.

¹³⁵ *Domingues v. United States*, Rep. Inter-Am. Ct. H.R., No. 62/02, para. 84 (2002).

¹³⁶ “A Most Serious Crime,” *supra* note 58, at 35.

¹³⁷ See Death Row’s Children, *supra* note 46, at 17.

¹³⁸ “Confidential Annex to JPP/Reprieve Submission to the Committee on the Rights of the Child.” P. 1.

¹³⁹ See *supra* section III.B. for details.

¹⁴⁰ See *supra* section III.B for details; PAK 7/2015, *supra* note 105, at 3.

¹⁴¹ See Terror on Death Row, *supra* note 19, at 11.

¹⁴² “Submission for the United Nations Committee Against Torture.” The Justice Project Pakistan (2015), p. 13 (“Overcrowded ‘death cell’”).

¹⁴³ See *supra* section III.B. for details.

trial judgment. This case highlights the problem of refusal to re-open cases, as in some cases the relevant evidence will not have been admitted for consideration the first-time round.¹⁴⁴

Ansar Iqbal,¹⁴⁵ a juvenile offender who was convicted to death at the age of 15, raised his status as a juvenile at every stage of the proceedings but the court chose to rely solely on the police's assessment that Iqbal was 22 or 23 years of age.¹⁴⁶ When Iqbal filed his birth certificate and school record in 2015, both of which showed he was, in fact, a juvenile at the time of the crime,¹⁴⁷ the court excluded the school record from evidence because it was not an original document.¹⁴⁸ On 15 September 2015 the court decided it was too late to consider the birth certificate.¹⁴⁹ A week later, Iqbal received notification that his execution would take place in one week.¹⁵⁰ Despite the recommendations were made by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment urged Pakistan to halt the execution on 28 September 2015, which was one day before the date of Iqbal's execution, Pakistan ignored these recommendations and carried out the execution.¹⁵¹

b. Mentally-Ill Persons on Death Row

Mentally ill persons or persons who receive a mental illness diagnosis post-conviction on death row receive no commutation on the grounds of their mental condition. For example, Muneer Hussein¹⁵² was executed on April 28, 2015 and was the 100th person to be executed since the end of the moratorium.¹⁵³ Although there were numerous indicators of Hussein's degraded mental condition, he was left unexamined for over 13 years after he was convicted in 2001, and was only able to get examined by a psychiatrist in 2014. Upon a formal diagnosis of Hussein's mental condition the psychologist recommended having additional testing and treatment. However, the Pakistani government provided no treatment and refused to carry out additional tests. On April 28, 2015, Pakistan executed Hussein."¹⁵⁴

Below are additional case studies of two mentally ill prisoners who remain on death row despite their condition in violation of both domestic and international standards. Although the cases began prior to Pakistan's ratification date for the CAT, both of them demonstrated abuses that continued well after July 2010, which is why they are included here.

Case Study: Kanizan Bibi (Execution pending)¹⁵⁵

¹⁴⁴ See Alternative Report, *supra* note 17, ¶ 144.

¹⁴⁵ See *supra* section III.B for details; Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, at 1, PAK 10/2015 (28 September 2015) [hereinafter PAK 10/2015].

¹⁴⁶ See Alternative Report, *supra* note 17, at 14.

¹⁴⁷ See Alternative Report, *supra* note 17, at 14, 18.

¹⁴⁸ See Alternative Report, *supra* note 17, at 18.

¹⁴⁹ See Alternative Report, *supra* note 17, at 14.

¹⁵⁰ See Alternative Report, *supra* note 17, at 14.

¹⁵¹ See PAK 10/2015, *supra* note 145.

¹⁵² See *supra* section III.B for details.

¹⁵³ "A Most Serious Crime," *supra* note 58, at 34.

¹⁵⁴ "A Most Serious Crime," *supra* note 58, at 34.

¹⁵⁵ "A Most Serious Crime," *supra* note 58, at 26, 33.

Kanizan Bibi's case is that of a mentally ill person whose condition deteriorates due to the prolonged periods of time spent on death row, as well as that of a death row inmate for whom there can be no commutation or pardon. Kanizan Bibi spent over 26 years on death row in incarceration throughout which her mental health deteriorated significantly. She was diagnosed with schizophrenia and was transferred to the Punjab Institute of Mental Health in 2006. She is mute but, at times, she was unable to feed or clothe herself. She did not even recognize her family members when they visit her. Kanizan was diagnosed by two medical boards as schizophrenic, but her subsequent mercy plea to the President was rejected. She could receive a death warrant and be executed at any time."¹⁵⁶

Case Study: Imdad Ali (Execution pending)¹⁵⁷

Imdad Ali, is a mentally ill, was sentenced to death in 2001 for murder. Since 2013, Ali has been confined in a small, solitary cell. He has suffered from mental illness since his marriage in 1993 and has been diagnosed with a severe case of schizophrenia. Ali's mental illness has been repeatedly confirmed by the medical community, his family, and the jail authorities. Dr. Usman Amin Hotiana, from Department of Psychiatry and Behavioural Sciences, King Edward Medical University and Mayo Hospital in Lahore, confirmed that Ali suffers from "paranoid schizophrenia" and is mentally ill. The doctor testified that a prison medical officer also said Ali is "not mentally fit."¹⁵⁸ While Pakistan's prison rules require the state to provide treatment for Ali's schizophrenia and to transfer him to a mental health facility, the state has been turning a blind eye to his mental condition for at least eight years.¹⁵⁹

Ali was scheduled to be hanged in September 20, 2016. Safia Bano, Ali's wife, received a notice about Ali's imminent hanging on September 16, 2016, four days before the date of execution. The day before his execution, Ali was granted a one-week reprieve from the Supreme Court, which found it "inappropriate" to hang someone in his condition, after appeals from rights groups, including Justice Project Pakistan. While such facts of evidence was finally being presented to the top court, a final decision on Ali's fate remains pending.

4. Procedures and Methods of Execution

a. Inadequate notice of death sentence and multiple death warrants

Despite its revision of guidelines for the issuance of black warrants in 2014, Pakistan's practice of giving notification to prisoners on death row and their families "remains arbitrary and at odds with international law."¹⁶⁰ Despite the issuance of a warrant, prisoners on death row or their counsel receive are misinformed. For example, a black warrant was issued for Mohammad Sarfraz on March 16, 2016 by the Rawalpindi District and Sessions Court but his counsel was informed the next day that none had been issued.¹⁶¹ Although the counsel

¹⁵⁶ "Prisoners experience mental distress when Pakistan responds in ad hoc fashion to international condemnation of its execution practices, with many prisoners receiving a large number of black warrants before the stay of their executions." "A Most Serious Crime," *supra* note 58, at 35.

¹⁵⁷ Alia, *supra* note 134.

¹⁵⁸ Alia, *supra* note 134.

¹⁵⁹ Alia, *supra* note 134.

¹⁶⁰ "A Most Serious Crime," *supra* note 58, at 38.

¹⁶¹ "A Most Serious Crime," *supra* note 58, at 38.

obtained a stay of execution from the Supreme Court, such misrepresentation “hindered Mohammad’s ability to avail himself of the legal and judicial remedies to which he has a right.”¹⁶² A hearing was scheduled by the Supreme Court for April 22, 2016, but a black warrant was issued scheduling his execution for April 19, 2016.¹⁶³ Mohammad Sarfraz was executed on May 10, 2016.

Sometimes, prisoners on death row receive no notice at all about the status of death sentence. For example, Aftab Bahadur¹⁶⁴ who was a juvenile at the time of his conviction in 1993 spent for more than 16 years in jail without any notice of the date of his death sentence or whether he is to be released. Prisoners on death row can at times receive more than one execution warrants in a row. For example, Abdul Basit received three execution warrants in five months.¹⁶⁵ Shafqat Hussain received four black warrants which stayed over the course of six months, largely due to the advocacy work of human rights groups and the international community.¹⁶⁶

b. No commutation or mercy from executions

As noted above, judicial disregard for mercy petition is a violation of Art. 6(4) of the ICCPR¹⁶⁷ and the Pakistani Prison Rules. However, as the cases below illustrate, such rules are inconsistent with actual practice in Pakistan. When the moratorium on death penalty was lifted in December 2014, the Prime Minister and the President allegedly agreed that no mercy petitions would be granted to the prisoners on death row.¹⁶⁸ A big number of mercy petitions have been dismissed in a single sitting.¹⁶⁹ There was one statement by government officials that as many as seventeen petitions had been dismissed in a single day, and a report that 55 petitions had been summarily rejected.¹⁷⁰

In Abdul Basit’s case, as noted above, there were repeated requests for mercy made by Basit’s family, lawyers, civil society and the international community since 2013, asking for his sentence to be commuted on the basis of his ill-health and the suffering he had been subjected to in prison. However, the petition was eventually refused in 2015.¹⁷¹ Despite the fact that ill-health is a ground for commutation under Pakistani law, no action has yet been taken by the government to permanently commute his sentence. The concern that “any attempt to hang Basit could see him either facing decapitation or prolonged strangulation” still remains.¹⁷² Likewise, with regard to Khizar Hayat’s execution, which was given a stay

¹⁶² “A Most Serious Crime,” *supra* note 58, at 38.

¹⁶³ “A Most Serious Crime,” *supra* note 58, at 39.

¹⁶⁴ *See supra* section III.B.

¹⁶⁵ “Abdul Basit Case Briefing.” *supra* note 105, at 3.

¹⁶⁶ “A Most Serious Crime,” *supra* note 58, at 39.

¹⁶⁷ *Art 6(4) of ICCPR*: “Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.”

¹⁶⁸ Alternative Report, *supra* note 17, at 16.

¹⁶⁹ Alternative Report, *supra* note 17, at 16.

¹⁷⁰ Alternative Report, *supra* note 17, at 16.

¹⁷¹ Alternative Report, *supra* note 17, at 16.

¹⁷² “Pakistan court gives go-ahead for hanging of paraplegic, despite fears of botched execution.” Reprieve. September 21, 2015, available at <http://www.reprieve.org.uk/press/pakistan-court-gives-go-ahead-for-hanging-of-paraplegic-despite-fears-of-botched-execution/>. *See also* “Abdul Basit Case Briefing.” *supra* note 105, at 1.

because of his diagnosis with several mental illnesses as noted above, a mercy petition is pending at the president's office.

IV. RECOMMENDATIONS

In light of the foregoing, we urge the Committee to recommend the Government of the Islamic Republic of Pakistan to:

- Ensure, without delay, that the absolute prohibition of torture, as defined under Article 1 of the CAT is incorporated in domestic legislation and ensure its strict application. Legislation prohibiting torture should explicitly provide for no justification for torture under any exceptional circumstances, including an order from a superior officer.
- Ensure, without delay, that torture, within the meaning under Article 1 CAT, is named and defined as a distinct criminal offence within domestic legislation. Penalties for torture should be commensurate to the gravity and severity of the offence.
- Ensure that domestic legislation provides a specific right of reparation to the victims of torture against the state for acts committed by the agents. Right to reparation should be independent of whether the perpetrators are convicted and should include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
- Establish independent district and provincial monitoring bodies that have the power to entertain torture allegations and initiate investigation into such allegations. Such bodies should not be constituted by members of the police and other law enforcement agencies. Ensure that alleged perpetrators and accomplices to torture, including persons in position of command are duly prosecuted and if found guilty given punishment that is commensurate to the severity of the offence.
- Institute legal safeguards for the protection of witnesses and victims of torture from any form of intimidation, reparation or repetition.
- Investigate and eliminate the private torture cells operated by law enforcement agencies and prosecute and punish perpetrators involved in their operation.
- Repeal provisions pertaining to police remand under the CPC or decrease the permitted time period from 15 days to 48 hours.
- Reinstate the moratorium on the death penalty without delay and launch an investigation into all cases where there is an indication of evidence being collected through the basis of torture/CIDT, juvenility at the time of the commission of the offence and mental illness/physical disability of the accused person either at the time of the commission of the offence or during detention.

- Admit post-conviction reviews, particularly for persons sentenced to death, on the basis of evidence of the use of torture/CIDT to extract evidence or during detention
- Amend the existing Anti-Terrorism Act, 1997 (ATA) in order to ensure that all provisions conform to international requirements of due process, including the revocation of Section 21-H that allows the admissibility of evidence in police custody and introduce a specific bar on the trying and sentencing of juvenile offenders under the ATA.
- Introduce an explicit legislative bar on the execution of mentally ill prisoners.
- Institute and enforce protocols for the determination of age at the time of arrest and during the periods of trial, appeal and post-conviction review. The protocols should provide the benefit of doubt to the accused person at all stages of the legal proceedings.