Pakistan: Alternative Report to the Human Rights Committee

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Submitted by

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World Organisation Against Torture (OMCT)

Reprieve

CONTENTS

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I. TABLE OF ABBREVIATIONS AND GLOSSARY

AJK	Azad Jammu and Kashmir, a self-governing administrative division of Pakistan
ATA 1997	Pakistan's Anti-Terrorism Act 1997
CIDT	Cruel, inhuman and degrading treatment
Cognizable offences	A category of offences for which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a court
Diyat	Under Sharia law, the financial compensation that can be paid to the victim or heirs of a victim following the commission of certain offences, including murder which operates as an exception to Qisas
FATA	Federally Administered Tribal Areas, a semi-autonomous tribal region in north-western Pakistan
FIR	First Information Report, a written document prepared by the police when they receive information about the commission of a 'cognizable' offence
GSP+	The European Union's Special Incentive Arrangement for Sustainable Development and Good Governance, an arrangement between the EU and third countries offering not only the tariff reductions or suspensions that characterise the Generalised Scheme of Preferences (or 'Standard GSP') but also complete duty suspensions for essentially the same goods
Habeas corpus	A challenge to a prisoner's arrest, imprisonment or detention
Hadd	A category of offences under Sharia law that carry specific penalties
HRC	Human Rights Cell, body mandated to process human rights complaints. Cases deemed worthy are then heard in court
ICCPR	International Covenant on Civil and Political Rights
JJSO	Juvenile Justice System Ordinance 2000
JPP	Justice Project Pakistan
NCHR	National Commission of Human Rights, established under the National Commission of Human Rights Act 2012, tasked with reviewing the Government of Pakistan's compliance with international treaties and making independent submissions for incorporation into state reports to UN committees
OMCT	World Organisation Against Torture
Pakistan Constitution	1973 Constitution of the Islamic Republic of Pakistan
PPC	Pakistan Penal Code 1860
Qisas	Under Sharia law, a category of offences that carries equal retaliation as the punishment, including, for murder, right of a victim's nearest relative legal

	guardian to, if the court approves, take the life of the killer
Sindh Human Rights Commission	Human rights watchdog of Sindh, one of the four provinces of Pakistan, established under the Sindh Protection of Human Rights Act 2011
UN	United Nations

II. EXECUTIVE SUMMARY

1. Pakistan relies in its Initial Report to the Human Rights Committee in relation to the International Covenant on Civil and Political Rights (**ICCPR**) on the provisions of the Pakistan Constitution and Penal Code 1860 to protect the basic human rights set out in the Covenant. Reliance on existing law may explain why, as is clear throughout its State Report, Pakistan has made little attempt to codify the provisions of the ICCPR. The result, however, is that in relation to each of the articles of the ICCPR analysed herein, there is a startling lack of effective legislative, judicial and administrative protections. The attitude of the judiciary has been to actively set aside international law in favour of domestic law and practice[1] and the landscape of institutional mechanisms is characterised by slow and insufficient progress, inconsistency, and confusion. This in turn leads to a catalogue of serious human rights abuses, in clear violation of the provisions of the ICCPR.

2. Given the focus of the organisations submitting this report, the report focuses on the fact that in December 2014, Pakistan lifted its six year moratorium on the death penalty and has since become the world's third most prolific executing state, and the state's continued use of torture. As such, we have only addressed the sections of the Pakistan State Report that cover Articles 6, 7, 9, 10, 14, 18 and 24 ICCPR.

3. **Article 6: Right to Life**

4. In its application of the death penalty, Pakistan arbitrarily deprives life contrary to Article 6(1) ICCPR in a myriad of ways.

5. Article 6(2) states that where the death penalty is retained, it can only be imposed for the "most serious crimes", understood restrictively by the HCR and ECOSOC safeguards to mean only those which are carried out intentionally and result in death or other grave consequences. As many as 27 offences carry the death penalty in Pakistan, including offences like blasphemy and narcotics offences.

6. Moreover, in violation of Article 6(4) of the ICCPR, those sentenced to death in Pakistan are effectively unable to seek pardon or commutation of this sentence; as the Government of Pakistan employs a blanket policy of refusing all mercy petitions without meaningful consideration, with petitions being summarily dismissed *en masse*.[2]

7. Since lifting the moratorium in December 2014, Pakistan has executed at least five individuals who were under 18 at the time of their alleged offence, in violation of Articles 6(5) and 24 ICCPR. Indeed, whilst the Pakistan State Report is correct to note that Pakistan's Juvenile Justice System Ordinance 2000 (**JJSO**) prohibits the death penalty for juveniles, in practice the JJSO has proven grossly inadequate, in part due to low rates of birth registration in the country.

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1 Nusrat Parveen v Home Department (Writ Petition No. 22496/2015) Lahore High Court, para 9

2 Dawn, 55 convicts to be sent to the gallows in a few days (22 December 2014) <http://www.dawn.com/news/1152432> accessed on 3 March 2016

8. **Article 7: Freedom from Torture and Cruel, Inhuman and Degrading Treatment**

9. Pakistan lacks legislation criminalising torture and CIDT; allows evidence extracted through torture to be a key part of many criminal cases; routinely fails to investigate allegations of torture; and grants perpetrators of torture virtual impunity.

10. Moreover, even for the narrow category of torture-related acts that are criminalised,[3] the penalty is too lenient and the only public officials against whom these offences are enforceable are the police; however there has not been a single reported prosecution against a police officer. Torture is frequently used to extract false confessions, and is viewed by many in law enforcement as an acceptable and effective investigative technique.

11. **Article 9: Right to Liberty and Security**

12. There are a range of legal mechanisms in the laws of Pakistan which allow prisoners to be held in preventative detention for long periods, during which they are denied access to lawyers and information as to the reasons for their detention and hearings. Further, there is no mechanism by which victims of preventative detention or otherwise lengthy detention can challenge their detention or claim compensation.

13. **Article 14: Right to Fair Trial**

14. A fair trial is a basic human right for every defendant. It is especially important for capital defendants as an unfair trial can result in the execution of an innocent individual. Trials in Pakistan are plagued with features contrary to Article 14 ICCPR and it has been estimated that over 60% of individuals on Pakistan's death row may be innocent.[4]

15. The denial of the right to a fair trial is even more apparent in the Anti-Terrorism Courts where safeguards against the use of forced confessions and evidence obtained through torture and ill-treatment do not apply. JPP and Reprieve have found that many cases tried under this legislative regime in face have no link with common definitions of terrorism.[5]

16. In further breach of Article 14(1), the judiciary is often neither independent nor impartial, capital defendants are often required to prove their own innocence yet are not given adequate legal assistance, nor sufficient time to prepare their case or are left in prison facing trial for years at a time, contrary to Article 14.

17. **Article 18: Freedom of Religion**

18. Freedom of religion is severely restricted by Pakistan's 'blasphemy laws' under which individuals can be prosecuted and even sentenced to death for committing specific offences relating to insulting the religion of Islam specifically. The UN Special Rapporteur on the Independence of Judges and Lawyers has reported, following a state visit in 2012, that these laws are frequently misused to settle personal vendettas and persecute religious

[3] These acts are discussed further in Section IV.B of this report

[4] Ansar Burney Trust, Ansar Burney again urged Pakistan's President and PM to commute death sentences into life <http://ansarburney.org/ansar-burney-again-urged-pakistans-president-and-pm-to-commute-death-sentences-into-life/> accessed on 4 March 2016

[5] JPP and Reprieve, Terror on death row: The abuse and overuse of Pakistan's anti-terrorism legislation (December 2014) (Terror on Death Row Report) <http://www.reprieve.org.uk/wp-content/uploads/2014/12/2014_12_18_PUB-Pakistan-Terror-Courts-Report-JPP-and-Reprieve.pdf> accessed on 3 March 2016

minorities.[6] The mentally ill are also persecuted since the symptoms of their conditions can exhibit as breaches of these laws. There are no specific legal provisions to protect these individuals from a death sentence.

19. There is also dangerous public stigma surrounding blasphemy to the extent that access to justice for those accused is seriously limited.[7] The by-product of this is that innocent individuals, often from religious minorities and/or suffering with mental illness, if convicted face execution following patently unfair trials and even if acquitted face continuous threats to their lives.

20. **Article 24: Protection of Children**

21. As outlined in its State Report, Pakistan has made a number of positive steps in protecting the rights of children. However, it has not gone far enough. The JJSO established a separate system of juvenile courts and rules such as the prohibition of the death penalty for juveniles and publication of details of cases. However, these protections can be set aside in 'terrorism' cases and do not apply across the whole country. The provisions have also been inconsistently applied.

22. Age determination in Pakistan is a particular challenge given that there is an average rate of birth registration across the country of 27%. Progress may be made in protecting the rights under Article 24 if the Juvenile Justice System Bill 2015 is passed into law.

23. **Conclusion**

24. Pakistan's death row contains an alarming number of innocent individuals, juveniles, the physically and mentally ill and others who have been convicted of crimes that should not attract the death penalty, many of whom have been subjected to torture and CIDT.

25. Given this reality, in order to demonstrate that it is taking the necessary steps towards effective implementation of its obligations under the ICCPR, Pakistan must

    a) pass enabling legislation bringing the provisions of the ICCPR into domestic effect;

    b) reinstate a moratorium on the death penalty;

    c) adopt the measures necessary to ensure that the National Commission on Human Rights is able to carry out its mandate fully, effectively, and independently;

    d) and adopt legislative and administrative measures to ensure that all legal proceedings are conducted in accordance with Article 14 ICCPR.

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[6] United Nations Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers (4 April 2013) (A/HRC/23/43/Add2), para 56 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/126/79/PDF/G1312679.pdf?OpenElement> accessed on 4 March 2016

[7] United Nations Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers (4 April 2013) (A/HRC/23/43/Add2), para 58 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/126/79/PDF/G1312679.pdf?OpenElement> accessed on 4 March 2016

III. INTRODUCTION

26. Pakistan ratified the International Covenant on Civil and Political Rights (**ICCPR**) on 23 June 2010. In pursuance of Article 40 ICCPR the Government of Pakistan was required to submit its initial report on the measures adopted to give effect to the rights provided under the ICCPR in 2011. The state's initial report was submitted in 19 October 2015.

27. This 'shadow report' has been prepared by the Justice Project Pakistan (**JPP**), Reprieve and the World Organisation against Torture (**OMCT**). It provides an account of the state of human rights in Pakistan since ratification of the ICCPR in relation to torture and the death penalty. It also undertakes a critical analysis of the Government of Pakistan's compliance with its obligations under a number of articles of the ICCPR.

28. In December 2014, Pakistan removed its six year moratorium on the death penalty. Initially lifted to apply only to terrorism-related offences, the removal of the moratorium was extended in March 2015 to all capital offences. Over the course of the last fifteen months, Pakistan has executed over 400 prisoners.[8] Overwhelmingly, these executions have contravened minimum human rights standards under the ICCPR.

29. Concerns about the current policy of executions have been frequently raised by the international community. On 29 June 2015, a group of UN experts called on Pakistan to halt executions noting that "most of them fall short of international norms", including the ICCPR.[9] On 19 March 2015 and 3 July 2015, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment punishment, asked the President of Pakistan to halt the execution of Shafqat Hussain, a juvenile offender, on account of its incompatibility with, inter alia, Article 6(5) ICCPR .[10] In spite of these communications, the Government of Pakistan executed him on 4 July 2015. Additionally, UN Special Rapporteurs have also sent communications to the President of Pakistan urging clemency for death row prisoners, including Khizar Hayat, a diagnosed schizophrenic, on 28 July 2015,[11] and Abdul Basit, a paraplegic, on 24 July 2015[12] on the basis that their executions would contravene the ICCPR. Clemency has been granted in neither case thus far.

A. REPORTING METHODOLOGY OF THE STATE REPORT

30. At the outset, it is crucial to mention that the Government of Pakistan has erroneously represented that the initial report was written in compliance with the Convention Reporting

8 Reprieve, 400 executions in Pakistan. Available at: <http://www.reprieve.org.uk/400_executions_in_pakistan/>

9 UN rights experts urge Pakistan to halt ongoing surge in executions and to reinstate moratorium on death penalty <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16275&LangID=E> accessed on 1 July 2016

10 Special Rapporteur on extra judicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment punishment, Letter to President of Pakistan (3 August 2015) <https://spdb.ohchr.org/hrdb/31st/public_-_UA_Pakistan_03.08.15_(7.2015).pdf> accessed on 4 March 2016

11 Special Rapporteur on the rights of persons with disabilities, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Letter to President of Pakistan (28 July 2015) <https://spdb.ohchr.org/hrdb/31st/public_-_UA_Pakistan_28.07.15_(6.2015).pdf> accessed on 4 March 2016

12 Special Rapporteur on the rights of persons with disabilities, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Letter to President of Pakistan (24 July 2015) <https://spdb.ohchr.org/hrdb/31st/public_-_UA_Pakistan_24.07.15_(5.2015)_pro.pdf> accessed on 4 March 2016

Guidelines. Members of civil society and academia were neither consulted nor provided with the opportunity to furnish information to be included in the Pakistan State Report, nor were they aware that such writing was taking place. Most civil society members only became aware of the Pakistan State Report once it was published on the website of the Human Rights Committee. This includes the National Commission on Human Rights (**NCHR**), which under the National Commission of Human Rights Act 2012, is tasked with reviewing the Government of Pakistan's compliance with international treaties.[13]

B. EXISTING CONSTITUTIONAL, LEGAL AND POLICY FRAMEWORK AND THE DOMESTIC APPLICABILITY OF THE ICCPR

31. Since Pakistan follows a dualist system with respect to domestic application of international treaties, mere ratification of the ICCPR does not ensure the implementation of the treaty within Pakistan's legal framework. Pakistan has failed to enact domestic legislation giving effect to the provisions of the ICCPR thereby denying the citizens of Pakistan its effective protections. Currently, implementation depends entirely upon the discretion of individual judges whether or not to use its provisions as a guiding principle for the interpretation of the 1973 Constitution of the Islamic Republic of Pakistan (**Pakistan Constitution**), provided that there is no inconsistency between the two.[14]

32. Whilst the Pakistan Constitution contains a list of civil and political rights in the chapter on Fundamental Rights it does not cover the entire breadth of rights covered under the ICCPR.

33. Additionally, the Pakistan Constitution fails to specify penalties for perpetrators of rights violations under the ICCPR and/or remedies available to victims. Therefore the only recourse available to victims is to invoke the extraordinary jurisdiction of either the Provincial High Courts under article 199 or the Supreme Court of Pakistan under article 184(3). These mechanisms are, however, entirely discretionary.

34. **The Human Rights Committee may consider asking the Government of Pakistan to:**

a) **Provide information on measures taken to bring legislation in compliance with the provisions of the ICCPR and provide information on the steps taken to make the ICCPR applicable in domestic law to ensure that Pakistan's citizens are able to rely upon their rights under the ICCPR.**

b) **Indicate how often the ICCPR has been invoked before and applied by the courts and administrative authorities.**

c) **Provide information on the availability and accessibility of remedies for individuals claiming a violation of the rights contained in the ICCPR.**

C. INSTITUTIONAL MECHANISMS

35. The NCHR has been severely limited in its capacity due to lack of adequate funding. Under section 9(k) of the NCHR Act, it is the responsibility of the Commission to develop "a

[13] National Commission of Human Rights Act 2012, s 9

[14] In the case of Al Jehad Trust v Federation of Pakistan (1999 SCMR 1379) the Supreme Court of Pakistan concluded (in para 16) that international human rights law may be referred to in interpreting the constitution, provided that "there is no inconsistency between the two".

national action plan of action for the promotion and protection of human rights". However, such a plan was developed by the Prime Minister's office without consultations with members of the NCHR, who were only made aware of its existence when it was announced in a press release on 13 February 2016.[15]

36. The Prime Minister's Office also announced that an amount of PKR 250 million had been approved for the next two years for a body called the National Institute of Human Rights. No details have been released regarding its mandate, powers, or independence. There are serious concerns that it will usurp the mandate and objectives of the NCHR and undermine its existence.[16]

37. **The Human Rights Committee may consider asking the Government of Pakistan to:**

a) **Provide information on the measures taken to ensure that the NCHR is able to carry out its mandate fully, effectively, and independently.**

[15] Prime Minister's Office Islamic Republic of Pakistan, PM approves Action Plan to Improve Human Rights Situation in Pakistan (13 February 2016) <http://www.pmo.gov.pk/press_release_detailes.php?pr_id=1341> accessed on 4 March 2016

[16] Bypassing NCHR: plan for parallel rights body upsets senate, Express Tribune (18 February 2016) <http://tribune.com.pk/story/1049469/bypassing-nchr-plan-for-parallel-rights-body-upsets-senate-committee/> accessed on 10 March 2016

IV. IMPLEMENTATION OF SPECIFIC PROVISIONS OF THE COVENANT

A. ARTICLE 6: RIGHT TO LIFE

38. The Pakistan Constitution states simply that "No person shall be deprived of life or liberty, save in accordance with law".[17] According to the Pakistan State Report, "the right to life is hence the foundation of constitutional safeguards in Pakistan and has crucially been accorded a wide interpretation by the judiciary".[18]

39. The UN has condemned Pakistan's lifting of the moratorium on the death penalty and called for the Government to reinstate its moratorium as soon as possible expressing "deep concern at the increasing number and pace of executions in the country since December 2014, and at the Government's recent announcement that it has now withdrawn its moratorium on the death penalty for all cases, not only those related to terrorism".[19]

a. Pakistan arbitrarily deprives life, contrary to Article 6(1) ICCPR

40. Executions carried out by Pakistan are often carried out following torture and/or cruel, inhuman or degrading treatment or punishment and/or following an unfair trial, in breach of Articles 7 and/or 14 ICCPR.[20] In these circumstances, the execution constitutes an arbitrary deprivation of life.

41. Christof Heyns, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that many of the executions carried out by Pakistan "fall short of international norms".[21]

b. The death penalty is imposed for a wide range of offences, not only for the most serious crimes, contrary to Article 6(2) ICCPR

42. The UN Human Rights Committee explained the principle in its General Comment 6 that "the expression "most serious crimes" **must be read restrictively to mean that the death penalty should be a quite exceptional measure**."[22]

43. The use of the death penalty in Pakistan is certainly not an exceptional measure; more than 400 people have been executed in Pakistan since the moratorium was lifted, for a wide range of crimes, not only those that can be considered the "most serious crimes".

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17 Pakistan Constitution, article 9

18 Shehla Zia v WAPDA PLD 1994 SC 693, 713-714, which is a case concerning the potential danger to the life and health of citizens caused by the construction of a grid station in a residential neighbourhood, in which the judges states: "The word "life" in terms of Article 9 of the Constitution is so wide that the danger and encroachment complained of would impinge fundamental right of a citizen… A wide meaning should be given to enable a man not only to sustain life but to enjoy it" – see Pakistan State Report, para 68

19 United Nations, Pakistan Statement on Death Penalty (19 March 2015) <http://www.un.org.pk/?p=958> accessed 3 March 2016

20 Further information provided in Section B and E relating to Articles 7 and Article 14 respectively.

21 United Nations, UN rights experts urge Pakistan to halt ongoing surge in executions and to reinstate moratorium on death penalty (29 July 2015) <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16275&LangID=E#sthash.eRwCuSkR> accessed on 3 March 2016

22 United Nations Human Rights Committee, General comment No 6: Article 6 (Right to Life) (emphasis added) <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6630&Lang=en> accessed on 3 March 2016

i. Death penalty is not reserved for the "most serious crimes" in Pakistan

44. The UN Human Rights Committee has held that the imposition of the death penalty for a crime not resulting in the victim's death constitutes a violation of Article 6(2) ICCPR.[23]

45. Paragraph 1 of the ECOSOC Safeguards provides that the death penalty should be reserved for "intentional crimes with lethal or other extremely grave consequences".[24]

46. The UN Special Rapporteur on extrajudicial, summary, or arbitrary executions further specified that "intentional" should be "equated to premeditation and should be understood as deliberate intention to kill"[25] and this has been adopted in human rights jurisprudence.[26]

1. Drug-related offences in Pakistan

47. The UN Office on Drugs and Crime,[27] the Human Rights Council,[28] the Human Rights Committee,[29] and the UN Special Rapporteurs on extrajudicial, summary or arbitrary executions and torture and other cruel, inhuman or degrading treatment or punishment[30] have specified that drug offences do not meet the ICCPR's threshold of "most serious crimes" and as such should not be subject to the death penalty under international law.

48. Despite this, Pakistan retains the death penalty for a range of non-violent drug-related offences under the Control of Narcotic Substances Act 1997. Pakistani courts continue to hand down death sentences for drug offences, and the country's Anti-Narcotics Force (**ANF**) data suggests that at least 112 individuals have been sentenced to death for drug offences in Pakistan since 1997.[31]

2. Other crimes that are not the "most serious"

49. Reprieve and JPP have worked on several cases of individuals sentenced to death in which there was no evidence of a "deliberate intention to kill" and/or the individual circumstances of the case were not taken into account.

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23 Chisanga v Zambia, Communication No 1132/2002, para 5.4

24 ECOSOC Safeguards, para 1

25 United Nations Human Rights Council, Report of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions (19 November 1997) (CCPR/C/79/Add85), para 13

26 United Nations Human Rights Council, Question of the Death Penalty Report of the Secretary-General (30 June 2014) (A/HRC/27/23), para 28

27 UNODC Executive Director (Commission on Narcotic Drugs), Drug control, crime prevention and criminal justice: A human rights perspective (3 March 2010) (E/CN.7/2010/CRP.6–E/CN.15/2010/CRP.1) < https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_19/E-CN15-2010-CRP1_E-CN7-2010-CRP6/E-CN15-2010-CRP1_E-CN7-2010-CRP6.pdf> accessed on 3 March 2016

28 A/HRC/27/23 para 29

29 United Nations Human Rights Committee, Concluding observations: Thailand (8 July 2005) (CCPR/CO/84/THA), para 14, United Nations Human Rights Committee, Concluding observations: Sudan (29 August 2007) CCPR/C/SDN/CO/3, para 19

30 United Nations Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (14 January 2009) (A/HRC/10/44), para 66

31 I Ghauri, Drug smuggling cases: 70% of death sentences quashed by higher courts (27 March 2014) The Tribune <http://tribune.com.pk/story/687816/drug-smuggling-cases-70-of-death-sentences-quashed-by-higher-courts/> accessed on 3 March 2016, Reprieve, European Aid for Executions: How European counternarcotics aid enables death sentences and executions in Iran and Pakistan (November 2014) <http://www.reprieve.org.uk/wp-content/uploads/2014/12/European-Aid-for-Executions-A-Report-by-Reprieve.pdf> accessed on 3 March 2016

Case studies: lack of evidence or failure to consider individual circumstances

50. In the case of Shafqat Hussain, the High Court vacated Shafqat's conviction for murder *on the basis of an absence of intention* but upheld his death sentence for kidnapping.

> Shafqat Hussain grew up in a small and deeply impoverished village in Azad Jammu and Kashmir. While still a teenager, he travelled to Karachi to seek work. He was working as a caretaker in a block of flats when, on 10th April 2004, a 7 year old boy, the son of one of the tenants in the arcade, went missing. Shafqat – who had helped the family search for their son and even went with his father to report his son missing to the Police – was arrested on 21 May 2014, 42 days after the disappearance.
>
> Shafqat was eventually charged with kidnap and murder. The sole evidence relied upon during the trial was a confession (immediately recanted) extracted from Shafqat after days of brutal torture. Shafqat's family have matintained that he was a juvenile when he was arrested, a fact corroborated by school record from his native village and a government birth certificate issued while he was in prison. At trial, Shafqat's counsel failed to introduce a single piece of evidence or call a single witness in Shafqat's defence, neglecting even to ascertain the age of his client. Shafqat was convicted and sentenced to death on 1st September 2004. On 4th August 2015, after six previous black warrants had been stayed and despite calls from the Sindh Human Rights Commission and the United Nations that the case be reopened, Shafqat was executed in Karachi Central Jail.

51. Ansar Iqbal, who was sentenced to death for the death of an acquaintance, despite no evidence save inconsistent, unreliable eyewitness accounts and medical evidence that contradicted the eye witness testimony.

> Ansar Iqbal and his co-accused, Ghulam Shabbir were convicted for allegedly having shot and killed another man on 9 June 1994. Both Ansar and Ghulam maintained their innocence at trial (and thereafter), that they had been falsely implicated in the crime by the victim's family (the only witnesses) and that they were both juveniles at the time of the alleged offence. The prosecution alleged that they had shot and killed the man after he had apparently beaten both of them up at a cricket match a few days earlier. Ansar's trial took place in September 1996, two years after the alleged occurrence. Whilst the court accepted the serious inconsistencies and failures in the prosecution's case and that the motive "had not been proved through cogent and reliable evidence" the court refused to accept evidence of their juvenility and convicted both for murder.
>
> Ansar raised his juvenility at trial and at every stage of appeal. In 2015, he filed his NADRA issued birth certificate (which gives his age as 15 at the time of his alleged crime) with the Pakistan Supreme Court, but on 15 September 2015 the Court dismissed the petition on procedural grounds as being out of time and did not review the birth certificate. A mercy petition submitted to the President of Pakistan on 27 July 2009 was also dismissed. On 22 September 2015, a "black warrant" was issued scheduling Ansar's execution for 4:30am on Tuesday 29 September 2015. Despite efforts to bring his case to the attention of the authorities in the days before the execution, Ansar was nonetheless executed.

52. Aftab Bahadur, a juvenile who was sentenced to death in a 'speedy trial' having been falsely implicated in the crime by testimony, subsequently withdrawn, that his co-accused made after being severely tortured.

> Aftab Bahadur and his co-accused, Ghulam Mustafa, were accused of the murder of the wife and sons of a prominent businessman in September 1992. The high-ranking status of the victim's family and the consequent press attention meant the investigating officers were under a great deal of pressure to 'solve' the crime and ensure there were speedy convictions in the case. The pair were tried under the Special Courts for Speedy Trials Act 1991, under which investigators had just 14 days to bring a case. Aftab's conviction rested on the fact that his co-accused had implicated him in the crime and that an eye witness testified that he had witnessed Aftab commit the offence in question. However, both subsequently recanted this testimony, which they maintain was given under torture and duress.

Aftab Bahadur was a juvenile at the time of the alleged crime– this is supported by his government-issued birth certificate, a NADRA ID card issued whilst he was detained, and by educational records. Aftab's age was incorrectly recorded as 21 years of age by the Speedy Trial Court and, unfortunately, his grossly ineffective trial counsel failed to bring the Court's attention to his true age – or indeed to offer any evidence or witnesses in Aftab's defence whatsoever. After being sentenced to death by the Special Court, Aftab was unable to take the conventional path of appeals – an appeal to the provincial High Court or subsequently to the Supreme Court of Pakistan. Instead, under the 1991 Ordinance, Aftab had just seven days to file an appeal against his sentence with the Supreme Appellate Court – which confirmed his conviction. Aftab served 23 years in prison, spending two decades of that time on death row and faced 25 warrants for his execution. On 10th June 2015, Aftab was executed.

53. Blasphemy is a further example which the UN has agreed does not meet the threshold.[32]

ii. International law is set aside for 'terrorism'-related offences

54. The Pakistani authorities continue to use the 'fight against terrorism' to defend the use of the death penalty.[33] The UN is concerned about "overly broad and vague definitions of terrorism offences",[34] which are a feature of Pakistan's Anti-Terrorism Act 1997.[35]

55. On 15 January 2016, the Minister of Interior, Chaudhry Nisar Ali Khan, told the Senate and National Assembly that "332 convicted terrorists were executed" since December 2014.[36] However, research by JPP and Reprieve conducted at the time found that out of the 351 executions that had taken place since the moratorium was lifted, only 39 appeared to have been convicted on the basis of terrorism – that is, the illegal use of violence to advance political ends.[37]

Case studies: right to life denied by Anti-Terrorism laws

56. In the case of Zafar Iqbal, "the cold blooded murder of father by his son", of which Mr Iqbal was accused, was "itself sufficient to create the sense of insecurity and terror in the people of the locality".[38] The notion that such 'fear' or 'insecurity' is in itself sufficient to classify that defendant as a 'terrorist' – and thereby dissolve various fundamental rights – means that the exceptional case becomes the rule.

Zafar Iqbal was arrested on 16 April 2003 following the death of his father. The motive relied upon by the prosecution was an ongoing land dispute between Zafar and his father, which was also not fully proved. Zafar had no links to terrorism or any terrorist organization, yet he was sentenced to death under Pakistan's Anti-Terrorism Act 1997. During trial, Zafar consistently maintained his innocence. However, because Zafar is very poor and could not afford his own attorney, his incompetent state-appointed defense counsel barely spoke to

32 A/HRC/27/23 paras 32, 35

33 Express Tribune, Several NGOs in Pakistan backed by US, Israel and India: Chaudhry Nisar (12 June 2015) <http://tribune.com.pk/story/902373/several-ngos-in-pakistan-backed-byus-israel-and-india-chaudhry-nisar/> accessed on 3 March 2016

34 A/HRC/27/23, para 37

35 JPP and Reprieve, Terror on death row: The abuse and overuse of Pakistan's anti-terrorism legislation (December 2014) (Terror on Death Row Report) <http://www.reprieve.org.uk/wp-content/uploads/2014/12/2014_12_18_PUB-Pakistan-Terror-Courts-Report-JPP-and-Reprieve.pdf> accessed on 3 March 2016

36 Daily Parliament Files, Extrajudicial killings of terrorists exceed lawful executions: Interior Ministry (15 January 2016) <http://parliamentfiles.com/houses/national-assembly/extrajudicial-killings-of-terrorists-exceed-lawful-executions-interior-ministry/> accessed on 3 March 2016

37 Reprieve, Pakistan Hangs 351 since 2014 but only 1 in 10 were terrorists (19 February 2016) <http://www.reprieve.org.uk/press/pakistan-hangs-351-since-2014-but-only-1-in-10-were-terrorists/> accessed on 3 March 2016

38 Case briefing in Terror in Death Row by JPP and Reprieve, page 9. Available at: <http://www.reprieve.org.uk/wp-content/uploads/2014/12/2014_12_18_PUB-Pakistan-Terror-Courts-Report-JPP-and-Reprieve.pdf>

Zafar leave alone raise any evidence in his defense. Zafar was found guilty for offences under sections 302(b) of the Pakistan Penal Code and under section 7(a) of the Anti Terrorism Act 1997 on 07 May 2003.

Zafar was forgiven by the victim's heirs, which, under Pakistani law, should have led to the commutation of his death sentence. However, Zafar's wrongful conviction and sentence of death under the Anti-Terrorism Act 1997 (ATA) meant that he remained in jail under the ATA. He was executed on 17 March 2015.

c. Pakistan fails to properly consider mercy petitions, contrary to Article 6(4) ICCPR

57. In December 2014 when the moratorium was lifted, it was reported that the Prime Minister and President agreed there would be no mercy petitions granted to those on death row.[39] Government officials have stated that huge numbers of mercy petitions are being dismissed in a single sitting, including one statement that suggested as many as seventeen petitions had been dismissed in a single day[40] and a subsequent report that 55 petitions had been summarily rejected.[41] In fact, according to publically available information, no one has been granted clemency, [42] and Ministry of Interior officials have informally confirmed to Reprieve that the policy of denying all clemency applications remains in force.

Case studies: failure to consider mercy petitions

58. Abdul Basit is paraplegic, as a result of a condition he contracted in prison due to the negligence of the jail authorities. A mercy petition submitted on behalf of Mr Basit by his family was refused on the purely administrative basis of a lack of certified copies. Three execution dates have been scheduled since July 2015.

Abdul Basit was sentenced to death in 2009 for murder. He is paralysed from the waist down – a direct consequence of the TB meningitis contracted in prison. Following the Courts' refusal of requests that Basit be transferred to a hospital, he spent years lying on a mattress in his cell for almost 24 hours a day. He had no access to a wheelchair and could not move around freely. He was reliant on the assistance of prison staff for the most basic needs of personal hygiene.

In 2013, Basit's family filed a mercy petition asking for his sentence to be commuted on the basis of his ill-health and the suffering he had already been subjected to while in prison. This petition was eventually refused in 2015, despite the fact that ill-health is grounds for commutation under Pakistani law. Although no written reasoning for rejecting the petition was provided, it appears to have been rejected on purely administrative grounds. In the past year, three execution warrants have been sought for Basit's execution. Each time, his execution has been stayed at the last minute on the basis that his hanging simply cannot be conducted in a manner that complies with domestic and international law. The President of Pakistan, after uproar from the international community, promised an inquiry into Basit's case. Nonetheless, no permanent resolution in the case has yet been reached and the Government now looks set to simply continue to postpone Basit's execution indefinitely, rather than granting him a full commutation of his sentence.

59. In the case of Shafqat Hussain, a mercy petition to the President was submitted, referring to his juvenility, maintained innocence, the allegations of torture and his original counsel's gross incompetence. A further mercy petition was submitted to the President requesting commutation of the sentence on the basis of the Sindh Human Rights Commission's

39 http://www.dawn.com/news/1151758/president-briefed-on-decision-to-end-moratorium

40 Dawn, President rejects mercy appeal of 17 death penalty convicts (18 December 2014) <http://www.dawn.com/news/1151600> accessed on 3 March 2016

41 Dawn, 55 convicts to be sent to the gallows in a few days (22 December 2014) <http://www.dawn.com/news/1152432> accessed on 3 March 2016

42 The Bar Human Rights Committee of England & Wales, A Death a Day: Pakistan's Return to the Death Penalty <http://barhumanrights.org.uk/sites/default/files/documents/biblio/bhrc_pakistan_death_penalty_report_2015_0.pdf> accessed on 3 March 2016

recommendation that the case be re-opened so all the relevant evidence could properly be considered, a request supported by the President of Azad Jammu and Kashmir, Shafqat's home region. Despite this petition being pending, Shafqat's execution went ahead, contravening paragraph 8 of the ECOSOC Safeguards, which states that "Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence".[43]

60. A mercy petition filed for Khizar Hayat requesting commutation of his sentence on grounds of mental illness has been ignored by the government, who have twice sought warrants for Mr Hayat's execution, although the Pakistan Prison Rules note that a petitioner may submit a petition on the grounds of "unsound mind or ill-health".[44]

> On 21 October 2001, Khizar Hayat was arrested and charged with the murder of Ghulam Ghous. At trial, Khizar denied his involvement in the death and maintained his innocence, but his lawyer failed to introduce any evidence or call a single witness in his client's defence. On 2 April 2003, Khizar was convicted of murder and sentenced to death.
>
> On 9 June 2015, a black warrant was issued for Khizar execution which was scheduled for 16 June 2015. On 13 June 2015, Khizar's mother submitted a mercy petition to the President of Pakistan and Khizar's lawyers also petitioned the High Court to suspend the death warrant on the basis of his severe mental illness. After seven years in prison, Khizar had begun to display mental health problems in February 2008. In September of that year, his illness became so severe that he was admitted to the jail hospital for over a month. Since then, he has constantly been prescribed powerful anti-psychotic medications. His mental illness is often so severe that Khizar is unable to take care of his physical condition, often dressing in filthy clothes, disrobing completely, or throwing food and faeces out of his cell. During 2013, Khizar was diagnosed as being psychotic, schizophrenic and delusional. The courts stayed Khizar's execution in 2015 and litigation regarding whether Khizar should be housed in a psychiatric facility remains ongoing. Despite this, there is no guarantee that the courts will accept arguments that Khizar's execution cannot proceed because of his mental illness, and there remains a risk that he could be executed at any time

Case studies: failure to honour grants of pardon in cases under the ATA 1997

61. Muhammad Amin was convicted of killing a person on the grounds of personal enmity in 1998. In 2004, he was pardoned for a murder conviction by the victim's family. However, he continued to face execution under the ATA 1997 and developed mental problems during his lengthy stay in prison. He was executed on 31st March 2015.

> Muhammad Amin was convicted of murder and given two death sentences by a Special Anti-Terrorism Court. Muhammad said he was severely tortured to extract a confession to the shootings and insisted that he was only 17 years old at the time of arrest. In the trial court judgment he is listed as being 18/19 years old. Given that the sentence was not passed until 31 January 2000, only a few days short of 2 years after the occurrence, this would make Muhammad under 18 years old at the time of the occurrence. Despite this, Muhammad was sentenced to death.
>
> Muhammad's age was raised on appeal, however documentary evidence of juvenility was deemed to "be of no avail so belatedly" and a medical assessment conducted after Muhammad had reached adulthood was relied upon instead. The Supreme Court also upheld his conviction and sentence on 19th March 2002 stating the same. Muhammad was executed on 31st March 2015 despite indications of mental ill-health as well as police misconduct throughout the case.

[43] ECOSOC Safeguards, para 3

[44] Pakistan Prison Rules 1978 (Jail Manual), Rule 107(iv)

62. Similarly, in 2008, Zafar Iqbal was granted a pardon for the murder of his father by his brother and other family members shortly before he was due to be executed; however, he remains under threat of execution on the basis of his sentence under the ATA 1997.

d. Failure to consider requests for commutation

63. In Pakistan, commutation can be sought in all cases but those for murder, in which it is only possible with the permission of the victim's heirs.[45] The very existence of an exception is an example of Pakistan's failure to implement the ICCPR, as Article 6(4) states that "Amnesty, pardon or commutation of the sentence of death **may be granted in all cases**".[46]

e. Pakistan executes juveniles, contrary to Article 6(5)

64. Since the moratorium was lifted, Pakistan has executed at least 5 individuals who were below the age of 18 at the time the offence with which they were charged was committed.

65. As stated in the Pakistan State Report, Pakistan has introduced the JJSO, pursuant to which a juvenile cannot be sentenced to death.[47] However, since the moratorium was lifted in December 2014, Pakistan has knowingly executed at least 5 prisoners who were under 18 at the time of committing the offence. In April 2015, JPP and Reprieve published a report entitled "Juveniles on Pakistan's Death Row" which estimated that as many as 10% of Pakistan's current 8,000 strong death row population could have been juveniles at the date of the crime.[48]

i. Pakistan ignores reliable evidence of juvenility

66. In Pakistan, domestic law in practice places the burden squarely upon the defendant to raise the plea of juvenility. This burden is difficult to dispel, and places prisoners who were unregistered at the time of their births in an impossible position.

67. Even where government documents are presented by defendants, courts often dismiss these as unreliable, without conducting further investigation. Wherever there is a disparity in the available evidence, the benefit of the doubt almost never goes to the juvenile.

Case studies: failure to review reliable evidence of juvenility

68. In the case of Ansar Iqbal, both Mr Iqbal and his co-accused, Ghulam Shabbir, made clear at trial that they were juveniles and offered evidence in support of this. Both claimed to be under-18 at the time of occurrence in 1994 and at the time of trial, almost two years later. Mr Iqbal offered a certified Form-B National Registration document issued in 2015, as well as a school leaving record (with slightly different date of births, but both of which would make him a juvenile at the time). The police had recorded, based solely on a brief visual inspection, Mr Iqbal's age as 22/23 years and Mr Shabbir's age as 16/17 years old.

69. The Court dismissed Mr Iqbal's school leaving certificate on the grounds that it was inadmissible because it was not an original document. Having dismissed these documents,

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45 Pakistan State Report, para 72

46 (emphasis added)

47 Pakistan State Report, para 73

48 JPP and Reprieve, Juveniles on Pakistan's Death Row (March 2015) <http://www.jpp.org.pk/wep/wp-content/uploads/2015/06/2015_03_17_PUB-Juveniles-on-Pakistans-Death-Row.pdf> accessed on 3 March 2016

the court relied upon the Police's assessment that Mr Iqbal was 22/23 years old and sentenced him to death.

70. The Court similarly dismissed Mr Shabbir's Form-B as a fake document. Despite dismissing documentary evidence of Mr Shabbir's juvenility, the court spared him a death sentence on the grounds that the police had recorded his age as 16/17 years. Mr Iqbal raised his juvenility on appeal to the Lahore High Court and the Supreme Court of Pakistan, both of which dismissed the claim on the same grounds as the Sessions Court.

ii. Pakistan refuses to admit juvenility evidence not raised at first instance

71. A plea of juvenility is in some jurisprudence only held to be admissible if raised at the 'correct' stage of Pakistani proceedings. However, on 20 March 2015 in response to Pakistan's near-execution of another juvenile prisoner, Christof Heyns (UN Special Rapporteur on extrajudicial, summary or arbitrary executions), Juan E. Méndez (UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) and Kirsten Sandberg (Chairperson of the UN Committee on the Rights of Child) issued a statement which confirms that the prohibition on executing juveniles should apply in all cases, *even where the issue of juvenility had not been raised at trial*.

72. There is also Pakistani jurisprudence which dictates that even after leave has been denied to appeal to the Supreme Court, a proper judicial enquiry must be established to determine the age of someone alleging to be a juvenile after leave to appeal has been denied.[49] However, this is inconsistently applied and often ignored in practice.

73. Faisal Mahmood was initially sentenced to life imprisonment for a crime committed when he was just 17 years old. His trial was conducted prior to the introduction of the JJSO and no specific mention of his age was mentioned in the trial judgment. The Supreme Court did not challenge the fact that he was seventeen at the time of his arrest but stated that since his "minority" had not been raised at the original trial he should not receive the benefit of the JJSO.

> Faisal Mahmood was sentenced to life imprisonment on 26th April 2000 for murder. The family of the victim in the case filed an appeal to the Supreme Court in 2009. They argued that the life sentence should not have been imposed, as there were no grounds for leniency presented in the trial and asked that the life sentence be vacated and a sentence of death substituted instead. This was granted despite evidence of his juvenility. At the time of the alleged offence, Faisal was only 17 years old. Faisal's age is confirmed by his high school leaving certificate and birth certificate.
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> By the time the Supreme Court heard Faisal's appeal in 2009, the JJSO had been introduced and had been in force for nine years. At the appeal, both Faisal's counsel and the Deputy Prosecutor General argued that Faisal's life sentence should be maintained in light of his age. The Supreme Court nevertheless concluded that "no plea of minority" had been raised at trial and substituted a death sentence for the life sentence awarded at trial. The Court did not challenge the fact that Faisal was, indeed, 17 years old when he was arrested. Faisal spent 16 years in prison before he was hanged on 27th May 2015.

[49] Ziaullah v Najeebullah PLD 2003 SC 656

74. Research conducted by the Society for the Protection of Children Rights in Pakistan noted that there are a number of cases where children are sentenced to death because their counsel fails to raise the issue of their age at trial, unbeknownst to their client.[50]

75. This means the defendant is tried as an adult, which is a breach of Article 14(4).

iii. Pakistan has failed to give Article 6(5) ICCPR retroactive effect

76. Article 5(2) ICCPR allows for retroactive implementation of lighter sentences where these come into force, replacing previous, harsher punishments. This applies to those under the age of eighteen at the time the offence for which they were sentenced to death was committed, who receive their sentence prior to the JJSO coming into force in 2000.

77. In 2001, a Presidential notification was issued extending the benefit of the JJSO to all criminal cases prior to 2000. An executive committee was established to review previous convictions and commute the sentences of defendants who were juveniles at the time of the offence. Despite this, JPP and Reprieve have worked on several cases in which the individual's sentence was not commuted by the Supreme Court or by the Government of Pakistan, leaving them on death row.

78. Muhammad Anwar was arrested in 1993 when he was 17 years old, and in 1998 was sentenced to death. During the years after the JJSO coming into force, Mr Anwar's family made numerous comprehensive attempts to adduce evidence as to Mr Anwar's juvenility involving both the Home Secretary and several different courts. However, the evidence was either rejected or ignored at each attempt. Mr Anwar remains on death row.

> Muhammad Anwar was arrested in 1993 when he was just 17 years old after an argument broke out during a gathering in their village. His trial took over five years to conclude and he was sentenced to death by a Sessions court in Vehari in 1998.
>
> Following the introduction of the Juvenile Justice Sysem Ordinance in 2000, Muhammad's family made numerous efforts to ensure that Muhammad's age was recognised, including filing petitions to the Home Department and the Sessions Court. In early 2002, the Home Secretary Punjab requested and obtained copies of Muhammad's birth certificate and registration and also ordered a medical determination, which concluded that Muhammad was indeed a juvenile. In 2003, however, a Notification was issued by the Presidency, confirming that a determination of age should be made by the Sessions Court. Despite the clear evidence of juvenility, this application was rejected by the Sessions Court. Over the past fifteen years, Muhammad's family have made every effort to have Muhammad's juvenility recognised. During this time, Muhammad has languished on death row – having now served almost 23 years in prison.

79. **The Human Rights Committee may consider asking the Government of Pakistan to:**

a) **Provide information on counter-terrorism laws and explain their compatibility with the ICCPR.**

b) **Provide aggregated data on (a) the number of prisoners on death row; (b) the number of executions; (c) the number of cases in which pardon or communication was granted, (d) the number of minors who are sentenced to death, (e) and the type of charges brought against persons who are on death row or have been**

[50] Society for the Protection of Children Rights, Juvenile Justice <http://www.sparcpk.org/sopc2012/chapter5.pdf> accessed on 3 March 2016

executed, bearing in mind that the death penalty can only be imposed for the most serious crimes according to Article 6(2) of the ICCPR.

c) **Clarify whether the reintroduction of a *de jure* or *de facto* moratorium on the death penalty is being considered.**

d) **Provide information on the steps taken to ensure that everyone sentenced to death has an effective opportunity to exercise their right to seek pardon or commutation of that sentence.**

e) **Provide information on the steps taken to enact and implement the proposed Juvenile Justice System Bill 2015 and further explain this Bill's compliance with Articles 6 and 24 ICCPR.**

B. ARTICLE 7: TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT

80. Torture and Cruel, Inhuman or Degrading Treatment (**CIDT**), particularly at the hands of police and other security agencies, are endemic and widespread in Pakistan. A study conducted by JPP and Yale University on a sample of 1,867 medical legal certificates from the District of Faisalabad, revealed 1,424 allegations of police torture with physical evidence that were confirmed by independent medical professionals.[51] Almost six years after ratification of the ICCPR, not only is torture still accepted as an inevitable part of law-enforcement, but perpetrators of torture are granted virtual impunity through socio-cultural acceptance, lack of independent oversight, widespread powers of arrest and detention, procedural loopholes and ineffective safeguards.

a. Lack of criminalisation of torture under domestic law

81. Pakistan has failed to enact legislation necessary to protect victims of torture and CIDT. [52] The Human Rights Committee's General Comment 20 (**GC 20**) requires specific provisions in criminal law which penalise torture and CIDT and specify penalties applicable to such acts.[53] GC 20 also requires state parties to show how their legal system "effectively guarantees the immediate termination of all prohibited acts" and "provides appropriate redress".[54]

82. The State Report of Pakistan relies upon article 14(2) of the Pakistan Constitution which states (in its entirety) that "No person shall be subjected to torture for the purpose of extracting evidence". The article goes nowhere near encompassing and criminalising all the acts that constitute torture given its scope is limited only to acts committed for the purposes of extracting evidence. Additionally, the provision fails to specify penalties for torture as required under GC 20.

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51 JPP and Allard K Lowenstein International Human Rights Clinic, Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan (March 2014) <http://jpp.org.pk/torture/wp-content/uploads/2014/07/JPP-Launch-Report_052314.pdf> accessed on 3 March 2016

52 Human Rights Committee, General Comment 31: The Nature of General Legal Obligations Imposed on State Parties to the Covenant (2004) (CCPR/C/21/Rev.1/Add13) <https://www1.umn.edu/humanrts/gencomm/hrcom31.html> accessed on 4 March 2016

53 Human Rights Committee, General Comment 20: Article 7 Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (1992) (HRI/GEN/1/Rev1), para 13 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G94/189/63/PDF/G9418963.pdf?OpenElement>accessed on 4 March 2016

54 Human Rights Committee, General Comment 20: Article 7 Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (1992) (HRI/GEN/1/Rev1), para 14 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G94/189/63/PDF/G9418963.pdf?OpenElement>accessed on 4 March 2016

83. As mentioned in Pakistan's State Report, the Penal Code stipulates penalties for a limited category of torture-related acts, such as "causing hurt to extort confession or compel restoration of property".[55] These offences, however, encapsulate only certain limited forms of torture and CIDT. Additionally, the sections regulate behaviour between civilians and not between civilians and public agents. Furthermore, the term "hurt" under section 337-K of the Penal Code 1860 is legally ambiguous and it is uncertain whether or not it encompasses both physical and mental suffering as required under Article 7 ICCPR. Additionally, GC 20 paragraph 7 imposes an obligation upon state parties to penalise those who inflict torture by "encouraging, ordering, tolerating or perpetrating prohibited acts". There are no such criminal sanctions available under Pakistan's legal framework.

84. The Pakistan State Report also refers to article 156(d) of the Police Order 2002, which provides penalties to any police officer who inflicts " violence or torture" upon any person in his custody. The scope of the statute is as it only prescribes penalties for police officers and does not extend to other public officials. The statute also stipulates a minimum penalty which may extend to imprisonment for a term of five years. The UN Committee Against Torture has stated that a penalty of five years imprisonment for an act of torture that inflicts bodily injury is too lenient to serve as a deterrent.[56] The case referenced in Pakistan's State Report – Muhammad Amin v State – is the only reported case wherein a prosecution of police torture or violence has been brought. It should, however, be noted that the report judgment only concerns the denial of bail to the accused police officers, rather than indicating that they were ever subject to criminal convictions for their involvement in acts of torture. Therefore, since the order was enacted in 2002 there have been no reported prosecutions let alone convictions for police torture.

b. Lack of prompt and impartial investigation by competent authorities

85. In GC 20, the Human Rights Committee requires that all complaints of torture "must be investigated promptly and impartially by competent authorities so as to make the remedies effective"[57] and state parties must "provide specific information" about the "procedure complaints must follow".[58]

86. Police in Pakistan operate with little or no independent oversight. The Police Order 2002 was enacted to introduce a system of independent monitoring on the operations of the police and to provide for accountability mechanisms to report police abuse. It established District Public Safety and Police Complaints Commissions[59] and the provincial Public Safety and Police Complaints Commission.[60] However, only a few commissions have been established which have done little more than hold a few meetings over the past five years.

55 Penal Code 1860, s 337-K

56 See UN General Assembly, Report of the Committee Against Torture: Forty Third Session (A/65/44), 111-112 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/447/21/PDF/G1044721.pdf?OpenElement> accessed on 4 March 2016

57 GC 20, para 14

58 ibid

59 Police Order 2002, s 37

60 Police Order 2002, s 73

87. Without monitoring bodies that can entertain complaints of torture, victims have to approach the police to register an FIR (i.e. the very people who committed the torture).[61] Complainants of police mistreatment have often been jeered at and turned away by police who refuse to file complaints against their colleagues and threaten and intimidate victims and their families to withdraw their complaints.[62] Even if an FIR is registered against a police officer, the court will inevitably rely upon the police to undertake an investigation against itself, and the accused officers may themselves be appointed to undertake the investigation.

88. If the police delay the registration of an FIR or refuse to file one, the victim may approach their Justice of Peace under section 22A of the Code of Criminal Procedure 1898. However, usually the Justice of Peace will only direct the matter to the attention of the concerned Station House Officer (**SHO**). For example, in Muhammad Umar Tartar v. Federation of Pakistan,[63] the petitioner approached the SHO to report torture by local police on behalf of a family member. In response to his complaints, the petitioner was himself brutally tortured by the SHO, who stripped him naked and whipped him so severely that he fainted. The petitioner approached the Justice of Peace seeking registration of an FIR against the SHO. However, the Justice of Peace directed the local police to submit a report on the incident and upon receiving the report simply directed the accused SHO to determine whether an offence had been made and take appropriate action. Upon admission of a writ to the High court, it noted the Justice of Peace had left "the aggrieved person at the mercy of the police which had already compelled him to make (the) application".[64]

89. The judge further noted that the Justice of Peace "should pass orders … which will curtail the discretion of the police officer and facilitate the process for the registration of case and will definitely diminish the agony of the aggrieved persons".[65] This guidance, however, has not been widely applied and most victims are unable to seek appropriate reparation.

c. Lack of reparation and remedies for victims

90. GC 20 requires that victims of torture and CIDT are provided "appropriate redress".[66] The Pakistan State Report states only that "Although there are no specific rules for payment of compensation, there have been instances of award of compensation by the courts, even against police functionaries, that have been upheld by the Supreme Court".[67] The State Report fails to elaborate upon what laws and procedures provide such remedies.

91. There is no specific right available to victims of torture to seek reparation. In theory, victims can seek compensation through a petition alleging violation of a fundamental right to the High Court or the Supreme Court. The State Report cites the monitoring of such petitions by the Human Rights Cell (**HRC**) of the Supreme Court of Pakistan. However, the HRC has limited capacity and the judges retain a wide discretion to determine what constitutes an

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61 JPP and Allard K Lowenstein International Human Rights Clinic, Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan (March 2014), 27 <http://jpp.org.pk/torture/wp-content/uploads/2014/07/JPP-Launch-Report_052314.pdf> accessed on 3 March 2016

62 ibid

63 2012 YLR 1187

64 ibid, para 6

65 ibid

66 GC 20, para 14

67 Pakistan State Report, para 84

issue of "fundamental rights". The UN Special Rapporteur on the Independence of Judges and Lawyers reported that "There is clearly no defined criteria when determining what the Supreme Court should take up ... This creates some level of uncertainty."[68] Even though in some cases the Supreme Court has acted swiftly to exercise its jurisdiction in cases of human rights violations, in others it has not responded even when directly petitioned.[69] As a result, not every victim of torture or CIDT who petitions for reparation is granted relief or even a right to be heard.[70] Additionally, petitioning the Supreme Court is a high burden, since an indigent victim of torture must pay legal fees and for lawyers qualified to appear before the Supreme Court.

92. Additionally, under the Penal Code 1860, those who cause hurt to extort a confession might be imprisoned. However, these provisions do not hold the authorities accountable to provide reparation for violations by its agents. Fear of retaliation and lack of faith in the efficacy of the system discourage most victims from seeking reparation through the courts. Of the 1,867 people who reported being tortured in Faisalabad there is no evidence that any of these people received reparations.[71] Thus, the stark reality of "reparation" for torture in Pakistan is that it just does not happen.

d. Exclusion of evidence procured through torture

93. Police torture is deemed to be an acceptable method of criminal investigation, largely due to lack of resources and training and a pervasive institutional culture that disregards human dignity. Confessions and testimonials obtained under torture are used as the primary form of evidence to "resolve" cases expeditiously. This is in clear violation of Pakistan's obligations under Article 7 ICCPR.[72]

94. Article 38 of the Qanun-e-Shahadat Order 1984 renders any confessional statement made under police custody inadmissible as proof. Articles 39 and 40 of that order make all statements, confessional or otherwise, made in police custody inadmissible in a court of law, unless they are made in the presence of a magistrate. This rule was made in recognition that so many statements are tortured out of people.

95. However, in practice the police are able to circumvent the law. First, they torture a prisoner into confessing, and then take the prisoner before the magistrate with the promise that if he does not repeat the confession before the magistrate he will be returned to the station house for more abuse. Second, they torture the prisoner into making a false statement about physical evidence, and the physical evidence that is then confected by the police becomes admissible at trial. Furthermore, under section 21-H of the Anti-Terrorism Act

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68 United Nations Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers (4 April 2013) (A/HRC/23/43/Add2), para 65 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/126/79/PDF/G1312679.pdf?OpenElement> accessed on 4 March 2016

69 International Commission of Jurists, Authority without accountability the search for justice in Pakistan (2013) <http://www.refworld.org/pdfid/530f088d4.pdf> accessed on 4 March 2016

70 In May 2010, the Supreme Court took up a petition by the families of 11 prisoners who had been acquitted by an anti-terrorism court on terrorism charges and but instead of being released were subjected to enforced disappearance by armed forces. In 2011, 4 of the 11 men died in custody in suspicious circumstances. Lawyers of the detainees claimed their deaths were as a result of torture. Since then the remaining 7 have been bought before the court several times however the Court has not ordered their release, declared their detention illegal or held anyone accountable for the death of the other 4. ibid, 16

71 JPP and Allard K Lowenstein International Human Rights Clinic, Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan (March 2014), <https://www.law.yale.edu/system/files/documents/pdf/JPP_Launch_Report_050514.pdf> accessed on 3 March 2016

72 GC 20, para 12

1997, confessions made under the custody of police and/or security forces in terrorism cases are now admissible in evidence.

e. Incommunicado detention

96. Under GC 20, incommunicado detention contravenes Article 7 ICCPR. It requires the effective protection of detained persons and for their names, as well as the names of those responsible for the detention, to be readily available for families and friends.[73]

97. Under article 10(2) of the Pakistan Constitution every person who is arrested and detained in custody "shall be produced before a Magistrate within a period of 24 hours… and no person shall be detained in custody beyond the stated period without the authority of the Magistrate." JPP's interviews with victims and lawyers have made it clear that this requirement is frequently ignored by police officials, who hold suspects for long periods without any records. Police often torture suspects and then wait for torture marks to heal before making an entry in their records and presenting them before a Magistrate.

98. Once a detainee is presented to the Magistrate, the latter is vested with the authority under section 167(2) of the Code of Criminal Procedure 1898 to remand the suspect back to the custody of the police for investigation for an additional fifteen days. The prospect of a return to police custody often discourages prisoners from raising torture before the Magistrates.

99. Ali Raza was arrested and detained by police officers on 3 January 2016. Following his arrest he was kept in custody for three days without being produced before a magistrate. Upon the filing of a *habeas corpus* petition by members of his family, a bailiff was dispatched by the court to the police station where he was detained. The bailiff discovered that the police officers were recording entries into the station diary in lead pencil to enable them to be changed at will. He also discovered that Mr Raza had been subjected to heinous torture by the police whilst in custody.[74] Despite these findings, the magistrate continued to extend the physical remand for further investigation.

f. Cruel, inhuman and degrading treatment of prisoners

100. In its State Report, Pakistan claims "that Medical facilities are available in jails throughout Pakistan … Where required, for serious medical treatment, inmates are transported to state-run hospitals which have special wards to administer them medical assistance".[75] However, JPP has discovered that Pakistan consistently fails to fulfil its obligations under Article 7 ICCPR with inhumane prison conditions.

101. Khizer Hayat was sentenced to death for the murder of a fellow police officer in 2003. Mr Hayat was diagnosed as a paranoid schizophrenic in 2008 by jail authorities. He suffers from delusions and has to be heavily medicated. Mr Hayat's mother has made repeated requests for him to be moved to an independent medical facility but these have so far been refused.

102. Abdul Basit was sentenced to death in 2009. In August 2010, while being held in solitary confinement Mr Basit became ill with a fever. His condition went untreated for several

[73] GC 20, para 11
[74] Saved in JPP's and Reprieve's files. Available if required.
[75] Pakistan State Report, para 88

weeks until it became so severe that he fell into a coma. When he was finally taken to hospital, he was diagnosed with tubercular meningitis. This has left him paralysed from the waist down.

103. Despite this diagnosis, Mr Basit's conditions of confinement were truly appalling until recently. He was confined to lying on the floor of his cell, reliant on jail staff to assist him with even the most basis personal hygiene. He was not regularly moved and suffered from bedsores and faecal and urinary incontinence.

g. Execution of mentally ill prisoners

104. The UN Human Rights Committee has observed that the issuance of a death warrant to a person known to be mentally ill violates Article 7.[76]The UN Commission on Human Rights has called on retentionist states "not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person".[77]

105. Pakistan has no legislative provision that protects the mentally ill from the death penalty. JPP and Reprieve have represented clients on death row with mental health problems.

106. Muneer Hussain suffered from severe mental illness and there is evidence that his mental state predates his arrest. Nonetheless Mr Hussain's lawyer failed to raise his mental health at all during his trial and Mr Hussain was convicted and sentenced to death for murder in 2001. Despite ongoing litigation relating to his mental illness, Mr Hussain was executed on 28 April 2015.

> Muneer was convicted in 2001 for the murder of two people and sentenced to death by hanging. Muneer's family have confirmed that he suffers from a serious mental health condition, exacerbated by head trauma sustained from an accident in 1990.
>
> At trial, Muneer was entirely unable to defend himself and he remained silent on examination and was unable to answer any questions. He was unable to explain his own predicament due to the very mental disorder that had led to his actions, yet no medical evidence to demonstrate this disorder was sought. Muneer's death sentence was upheld by the Supreme Court in 2007. After fourteen years on death row Muneer was executed in 2015 despite ongoing litigation regarding his mental health.

107. **The Human Rights Committee may consider asking the Government of Pakistan to:**

a) **Provide information on legislative measures to criminalize torture in compliance with Article 7 ICCPR.**

b) **Provide information on steps taken to prevent torture and ill-treatment, including trainings in human rights for police, military and other officials.**

c) **Respond to allegations that torture and ill-treatment of individuals by law enforcement are widespread, especially at the moment of arrest and that they are mostly used to extract confessions. To that end provide information on (a) the investigations and number of complaints of torture or ill-treatment against police, military and other officials received; (b) the type of charges brought against law**

[76] Sahadath v Trinidad and Tobago 684/1996

[77] United Nations Commission on Human Rights, Resolution on the question of the death penalty (28 April 1999) (E/CN4/1999/61), para 3(e) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/101/62/PDF/G9910162.pdf?OpenElement> accessed on 4 March 2016

enforcement officers, (c) the number of cases dismissed and the reasons for their dismissal; (d) the number of officials disciplined and sanctioned and the penalty imposed.

d) **Provide information on the penitentiary population, including the number of minors who are detained.**

C. ARTICLE 9: RIGHT TO LIBERTY AND SECURITY

108. Whilst the Pakistan State Report claims that "The Constitution prevents the exercise of state/governmental power to infringe upon the liberty of not only citizens but also anyone else present in Pakistan" and similarly that it provides for the "security of persons"[78], it is clear that in practice this is not the case.

a. Pakistan detains individuals without charge, contrary to Articles 9(1) and 9(2) ICCPR

109. Under the Pakistan legal system the executive retains sweeping powers to detain individuals without charge on a broad range of grounds. Article 10(4) of the Pakistan Constitution allows parliament to make laws on preventive detention without review for a period of three months on a number of grounds including "acting in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof".

110. Multiple laws currently in operation in Pakistan provide for preventive detention. Under section 11E of the ATA 1997, for example, security agencies and civil armed forces can detain any person suspected of committing an offence under the Act for a period of up to three months without review or the possibility of a *habeas corpus* petition. During this time investigation is meant to be completed by a joint investigative team. However, the clause under section 21E of the ATA 1997 allows the remand period to be extended a further 90 days on application to the courts if "further evidence may be available". Additionally under section 11E of the ATA 1997 any person suspected of being involved in the activities of a proscribed organization can be detained for a period of up to a year.

b. Individuals are denied the right to challenge unlawful detention or claim compensation, contrary to Articles 9(4) and 9(5) ICCPR

111. Courts in Pakistan have the discretion to review preventive detention cases on the basis of relevant domestic law and the Pakistan Constitution, although this remedy is often extremely difficult for detainees to access in practice. Where a court does order a detainee's release, in the absence of an independent monitoring mechanism, courts have to rely upon the statements of security agencies claiming that the order has been complied with. In 2012, the Peshawar High Court ordered authorities to release 1,035 named detainees. However, the releases have not been confirmed by any independent and impartial institution, and at least a further 895 remain in internment centres. [79]

[78] Pakistan State Report, para 96

[79] Amnesty International. The Hands of Cruelty: Abuses by Armed Forces and Taliban in Pakistan's Tribal Areas (2012) Available at http://www.refworld.org/pdfid/50d057cd2.pdf

112. Additionally, victims of unlawful or arbitrary detention have no lawful right to compensation under domestic law. The granting of compensation and the amount depends entirely on the judge's discretion. The discretion to grant compensation is rarely exercised.

Case study: detention in Pakistan of former Bagram and Guantanamo Bay prisoners

113. JPP is currently engaged in litigation in the Lahore High Court on behalf of several Pakistani detainees in the Detention Facility in Parwan.[80] Around forty Pakistani detainees were released from detention at Bagram airbase in Afghanistan and repatriated to Rawalpindi on 21 August 2014 and 20 September 2014. Upon arrival in Pakistan the detainees were secretly transferred to jails across the country without any charges. No reasons were provided for their continued detention. JPP contested these individuals' detention and on 28 October 2014, a Lahore High Court issued an order stating that the Ministry of Foreign Affairs would facilitate the detainees' families and lawyers in getting access to them. Despite this order, the whereabouts of some detainees remain unknown.

114. In February 2015, another JPP client, Saad Iqbal Madni, a former Guantanamo Bay detainee, who had been repatriated to Pakistan in 2008, was illegally detained without charge or trial. Mr Madni has never been charged with any offence and does not have any prior criminal record. He was detained on the basis of a notification for preventive detention issued by the District Coordination Officer. By 2013, Mr Madni's name still appeared in schedule 4 of the ATA 1997,[81] although this was subsequently successfully challenged by his lawyers.

115. **The Human Rights Committee may consider asking the Government of Pakistan to:**

a) **Provide information laws allowing for preventive detention and their compatibility with the ICCPR**

b) **Provide information on the legality of detention of former Bagram and Guantanamo Bay prisoners**

D. ARTICLE 14: RIGHT TO FAIR TRIAL

116. Denial of the right to a fair trial is widespread in Pakistan, resulting in an unacceptably high rate of false conviction. The Ansar Burney Trust, for example, has reported that over 60% of individuals on Pakistan's death row may be innocent.[82]

a. Pakistan denies fair and public hearings for offences relating to 'terrorism', contrary to Article 14(1) ICCPR

117. Many death penalty cases are heard in the anti-terrorism courts. These courts explicitly impose multiple curtailments on a defendant's right to a fair trial, many of which represent

[80] Sultana Noon v Federation of Pakistan WP No. 21073/2010

[81] Those suspected of terrorism may have their names recorded under Schedule 4, whereby they are kept under observation.

[82] Ansar Burney Trust, Ansar Burney again urged Pakistan's President and PM to commute death sentences into life <http://ansarburney.org/ansar-burney-again-urged-pakistans-president-and-pm-to-commute-death-sentences-into-life/> accessed on 4 March 2016

a major departure from standard judicial procedure and are not mentioned in Pakistan's State Report. They include, amongst others:[83]

- Police do not require a warrant in order to conduct arrests or searches;[84]
- Police risk punishment for not concluding an investigation within seven working days;[85]
- Judges likewise face pressure to conclude trials within seven working days;[86]
- Regular safeguards against the use of evidence obtained by torture are discarded;[87]
- Trials may be held without the defendant being present;[88] and
- There are severe restrictions on the possibility of a defendant being granted bail.[89]

118. These violations do not only affect those who have been charged with offences internationally recognised as related to terrorism. JPP and Reprieve's "Terror on Death Row: The abuse and overuse of Pakistan's anti-terrorism legislation" study[90] found that 256 of 818 known cases of 'terrorism' prosecutions have no pretence of a link with terrorism. In these 256 cases, the prisoners were convicted only of charges under the Penal Code 1860; despite the fact that the cases were tried in the anti-terrorism court, the link to terrorism was not proved. Of the remaining cases, we expect only 112 of the 562 death row prisoners to have a conviction that was actually related to terrorism.

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83 For a full analysis, see Amnesty International, Pakistan Legalizing the impermissible: The new antiterrorism law (September 1997) <http://www.amnesty.org/en/library/asset/ASA33/034/1997/en/d5abe31b-e99a- 11dd-b3a1-f9ff1fdfb4a5/asa330341997en.pdf> accessed on 4 March 2016

84 ATA 1997, section 5(2) states that: "In particular and without prejudice to generality of the provisions of subsection (1), an officer of the police, armed forces and civil armed forces may… ii. Arrest, without warrant, any person who has committed an act of terrorism or a scheduled offence or against whom a reasonable suspicion exist that he has committed, or is about to commit, any such act or offence; and iii. Enter and search, without warrant any premises to make any arrest or to take possession of any property, fire-arm, weapon or article used, or likely to be used, offence."

85 ATA 1997, section 19(1) states that "… The Joint Investigating Team shall complete the Investigation in respect of a case triable by an AntiTerrorism Court within seven working days and forward directly to the Anti-Terrorism Court a report under Section 173 of the Code."

86 ATA 1997, section 19(7) states that "The Court shall on taking cognizance of a case, proceed with the trial from day to day and shall decide the case within seven working days failing which an application may be made to the Administrative Judge of the High Court concerned for appropriate directions for expeditious disposal of the case to meet the ends of justice."

87 ATA 1997, section 21-H states that "21-H. Conditional admissibility of confession.- Notwithstanding any thing contained in the Qanoon-e-Shahadat, 1984 (President's Order No.10 of 1984) or any other law for the time being in force, where in any Court proceeding held under this Act the evidence (which inculde's circumstantial proceedings held under this Act the evidence) produced raises the presumption that there is a reasonable probability that the accused has committed the offence, any confession made by the accused during investigation without being compelled, before a police officer not below the rank of a District Superintendent of Police, may be admissible in evidence against him if the Court so deems fit".

88 ATA 1997, section 19(10) states that "Any accused person may be tried in his absence if the Anti-Terrorism Court, after such inquiry as in deems fit, is satisfied that such absence is deliberate and brought about with a view to impeding the course of justice."

89 ATA 1997, section 21-D(2) states that "All offences under this Act punishable with death or imprisonment exceeding three years shall be non-bailable. Provided that if there appear reasonable grounds for believing that any person accused of non-bailable offence has been guilty of an offence punishable with death or imprisonment for life or imprisonment for not less than ten years, such person shall not be released on bail." and ATA 1997, section 25(8) states that "Pending the appeal "a High Court" shall not release the accused on bail."

90 JPP and Reprieve, Terror on death row: The abuse and overuse of Pakistan's anti-terrorism legislation (December 2014) (Terror on Death Row Report) <http://www.reprieve.org.uk/wp-content/uploads/2014/12/2014_12_18_PUB-Pakistan-Terror-Courts-Report-JPP-and-Reprieve.pdf> accessed on 3 March 2016

b. Pakistan's judiciary is not independent or impartial, contrary to Article 14(1) ICCPR

119. In 2012, the UN Special Rapporteur on the Independence of Judges and Lawyers visited Pakistan. She concluded that "An independent and impartial judicial system will certainly contribute to strengthening the rule of law and effectively combating impunity for human rights violations".[91] She went on to make a number of recommendations for reforms to the structure of the judicial system and jurisdiction of the Supreme Court, to improve the independence of the judiciary.[92]

120. Contrary to paragraph 4 of the ECOSOC Safeguards, which states that "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts,"[93] JPP and Reprieve have worked on cases in which the prosecution's case has been riddled with holes that were acknowledged by the judge yet a death sentence has still been handed down.

Case studies: the judiciary hands down sentences contrary to overwhelming defence evidence

121. Ansar Iqbal maintained his innocence at trial but was sentenced to death for murder, based on biased eye witness testimony and evidence he claimed the police had falsified.[94] The court accepted that the two eye witnesses were close relatives of the victim and that there were inconsistencies in their version of events but concluded that "their evidence [could not] be discarded on this score only".[95] The court arrived at the death sentence despite having accepted that the motive "had not been proved through cogent and reliable evidence".[96]

122. In the case of Zafar Iqbal, who had been charged with the murder of his father, all of the evidence presented at trial against Mr Iqbal was, on the trial judge's own assessment, deeply flawed in some way. The judge acknowledged that the prosecution had not convincingly proved motive; he excluded the ballistics evidence, as the police had failed to have it forensically examined; and he deemed swathes of the eyewitness testimony to be "not confidence inspiring". Despite these weaknesses in the prosecution's case, Mr Iqbal received two death sentences after a trial that lasted less than three weeks.

c. Pakistan's capital defendants are presumed guilty rather than innocent, contrary to Article 14(2) ICCPR

123. In its State Report, Pakistan claims to abide by the presumption of innocence principle enshrined in Article 14(2) ICCPR.[97] However, it is clear from the cases JPP and Reprieve have worked on that the police will try to pin a crime on someone and that person will in most cases subsequently be convicted.

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91 United Nations Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers (4 April 2013) (A/HRC/23/43/Add2), para 100 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/126/79/PDF/G1312679.pdf?OpenElement> accessed on 4 March 2016

92 ibid, paras 101-107

93 ECOSOC Safeguards

94 State v Ghulam Shabbir alias Billu & Ansar Iqbal, Sargodha Sessions Court Judgment (10 September 1996), s 342 Code of Criminal Procedure 1898, Statement of the Accused No 2, Ansar Mahmood Alias Ansar Iqbal, aged 17½ year (23 July 1996)

95 State v Ghulam Shabbir alias Billu & Ansar Iqbal, Sargodha Sessions Court Judgment (10 September 1996), 10

96 ibid, 15

97 Pakistan State Report, para 131

124. This is due in part to the fact that, in Pakistan, the investigating police officer's report plays a central role in many criminal trials. The prosecution often relies almost entirely upon these reports at trial, as a result the accused is effectively required to prove their own innocence, rather than the prosecution being required to prove their guilt beyond a reasonable doubt. To be accused is often conflated with being guilty.

125. Furthermore, a line of case law has developed which dictates that false testimony from a witness does not necessarily mean all evidence of that witness will be excluded; the "real task of a judge" is to extract the truth from the wider evidence, even in the face of a "greater and clearer falsehood".[98]

126. Confessions extracted extra-judicially and later retracted are often used as the basis for death sentences. Section 21-H of the ATA 1997 permits the use at trial of extra-judicial 'confessions' given to police or security forces in terrorism cases. .

127. Death row prisoner Muhammad Amin described his torture: "Police tortured me to try and make me confess. I was hung by my hands, beaten repeatedly with batons, punched, slapped and kicked. They held a gun to my head and said they would kill me if I did not confess."

Case studies: defendants in Pakistan are guilty until proved innocent

128. Shafqat Hussain was arrested and sentenced to death for his alleged involvement in the kidnapping and death of a child. Mr Hussain was subjected to extensive torture over a period of nine days, during which the police extracted a 'confession' though he always maintained his innocence and no other evidence was presented to implicate him.

129. On appeal to the Sindh High Court, the judge recognised that the case against him "hinge[d] upon Mr Hussain's confession only"[99] yet proceeded to uphold the death sentence. The Supreme Court held similarly. In its review of the case the Sindh Human Rights' Commission condemned the initial handling of the case as "careless",[100] however the Commission's recommendations were ignored and Shafqat was executed despite clear doubt about his guilt, his age, and the conduct of his trial.

d. Pakistan fails to provide defendant with minimum guarantees, contrary to Article 14(3) ICCPR

Case study: Article 14(3)(b) defendant not given "adequate time and facilities for the preparation of his defence" or adequate opportunity "to communicate with counsel of his own choosing"

130. Aftab Bahadur was sentenced to death in 1993 under the now-repealed Special Courts for Speedy Trials Act 1991. Under the Act, investigators had just 14 days to bring a case against

98 Ghulam Muhammad and others v State PLD 1951 Lah 66, 73

99 Judgment of the Sindh High Court in Spl Anti Terrorism Appeal No. 36 of 2004 & Confirmation Case No.15 of 2004 dated 5 May 2005, 8, para 13

100 Petition No. 01 of 2015 before the Sindh Human Rights Commission at Karachi (16 July 2015), 6

the accused.[101] It took just 44 days from the time of Mr Bahadur's arrest for him to be convicted; clearly insufficient time for him to prepare his defence.

131. The Special Courts for Speedy Trial were widely criticised internationally. Amnesty International noted:

"the trials conducted by the Special Courts for Speedy Trial do not conform to the minimum standards for fair trial as laid down in international human rights instruments such as the International Covenant on Civil and Political Rights. Some of the procedures as laid down in the Ordinance a priori are unfair, while others have the potential to be applied in practice in a way that would severely prejudice the accused."[102]

132. The Speedy Trials Act was repealed in July 1994, three years after its inception. Nonetheless, Aftab Bahadur's conviction under the Act remained in place and he was executed on 10th June 2015.

Case study: Article 14(3)(c) defendant not "tried without undue delay"

133. Pakistan claims in its State Report that the Code of Criminal Procedure 1898 mandates that trials are commenced, conducted and concluded without undue delay.[103] Undue delay, however, appears to be the rule rather than the exception in death penalty cases.

134. Ansar Iqbal was arrested in June 1994 but the trial judgment sentencing him to death was not released until September 1996. He submitted his appeal that same month, but his appeal was not heard until February 2002, five and a half years later. Seven years after that, he received the Supreme Court judgment.

135. Pakistan's State Report notes that the grant of bail is "a right whose refusal is an exception" and that "where there is unreasonable and inordinate delay in trial", bail will usually also be granted.[104] However, in practice this is not always the case with many defendants facing serious criminal charges being denied bail simply on the basis that the serious nature of the charges against them is enough to suggest they are "hardened, desperate, and dangerous" and that bail should be denied.[105]

Case studies: Article 14(3)(d) individuals not given adequate legal assistance

136. The adequacy of many of the lawyers appointed by the state is highly questionable.

137. Shafqat Hussain is a prime example of a young, vulnerable defendant from a small, impoverished village in AJK. At trial, his state-appointed lawyer failed to introduce a single piece of evidence or call a single witness, and neglected to ascertain his client's age.

138. In the case of Muneer Hussain, JPP and Reprieve met with his trial lawyer. The lawyer indicated that he had not been given sufficient time, resources or information to properly defend his client, only meeting with Mr Hussain in court for a few minutes at each hearing. He also did not investigate signs of physical and mental impairment in his client, or

101 Special Court for Speedy Trials Act 1991
102 Amnesty International, Pakistan: Special Courts for Speedy Trials (1991), 2
103 Pakistan State Report, para 131
104 Pakistan State Report, para 130
105 Section 3, Code of Criminal Procedure (Amendment) Act 2011

approach Mr Hussain's family to identify any possible witnesses, stating that it was the responsibility of the family to prepare evidence for his client's defence.

139. Khizar Hayat pleaded not guilty during trial, but his lawyer failed to introduce any evidence or call a single witness in his client's defence. He was convicted and sentenced to death.

Case study: Article 14(3)(g) - "not to be compelled to testify against himself or to confess guilt"

140. Pakistan's State Report lists the provisions of the Pakistan Constitution and Code of Criminal Procedure 1898 that purport to protect these rights. [106] However, in practice, these provisions are ignored and prisoners can be convicted solely on the basis of "confessions" which have subsequently been retracted – as in the case of Shafqat Hussain.

e. In Pakistan, juveniles are often tried as adults, contrary to Article 14(4)

141. There are many examples of juveniles being tried as adults due to failures to admit evidence of juvenility, lack of birth registration or absence of a juvenile-specific court.

f. Pakistan fails to honour post-conviction review, contrary to Article 14(5) ICCPR

142. In its State Report, Pakistan claims that "Information which surfaces after conviction may be placed before a court under Articles 199 and 187 of the Constitution, and coupled with the courts inherent power to recall an order passed mistakenly, a conviction may be reversed."[107] However, in practice Pakistan's superior courts have consistently refused to use these powers to reconsider previous convictions.

Case study: Shafqat Hussain's application under Article 199 was rejected

143. Shafqat Hussain's lawyer in his Anti-Terrorism Court trial neglected to ascertain the age of his client. Mr Hussain's subsequent appeals to the High Court and Supreme Court were dismissed. A juvenility claim was only raised on his behalf in an Article 199 review petition to the Supreme Court. This review petition was dismissed on the ground that it was late.[108]

144. In the case of Faisal Mahmood the courts also refused to hear juvenility evidence on the basis that no mention of juvenility was made in the trial judgment. This 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.[109]

145. **The Human Rights Committee may consider asking the Government of Pakistan to:**

a) **Provide information on the steps taken to ensure that all legal proceedings are conducted in full accordance with Article 14 ICCPR, including in particular the presumption of innocence and the exclusion of evidence extracted in contravention of Article 7.**

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106 Pakistan State Report, paras 132-137

107 Pakistan State Report, para 137

108 Case briefing in Terror in Death Row by JPP and Reprieve, page 11. Available at: <http://www.reprieve.org.uk/wp-content/uploads/2014/12/2014_12_18_PUB-Pakistan-Terror-Courts-Report-JPP-and-Reprieve.pdf>

109 Reprieve, Pakistan executed juvenile in May, court documents show (31 July 2015) <http://www.reprieve.org.uk/press/pakistan-executed-juvenile-in-may-court-documents-show/>

b) **Clarify whether a review is possible at any stage of the process where new evidence is available.**

E. ARTICLE 18: FREEDOM OF RELIGION

146. The Pakistan Constitution contains provisions designed to protect freedom of religion: "Subject to law, public order and morality (a) every citizen shall have the right to profess, practice and propagate his religion; and (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions."[110] The Pakistan State Report also outlines legislation and jurisprudence on this subject.[111] In particular, it states that: "the law affords protection to members of all religions and criminalizes incitement of religious hatred.""

147. However, sections 295-B and 295-C of the Penal Code 1860 contain the "blasphemy laws" under which individuals can be prosecuted and even sentenced to death for committing offences relating to insulting the religion of Islam specifically. These laws are consistently misused to, *inter alia*, target religious minorities and as a result these groups are severely limited in their freedom to express their beliefs, contrary to Article 18 ICCPR.

148. Blasphemy carries dangerous public stigma. As Human Rights Watch reported in 2015, "Since 1990, at least 60 people have been murdered after being accused of blasphemy. At present, 17 people convicted of blasphemy are on death row; 19 others are serving life sentences."[112]

a. Mentally ill defendants are sentenced to death under the blasphemy laws, contrary to Article 18

149. The vague language of Sections 295-B and 295-C presents a problem for those with mental illness. As Dr Muzaffar Hussain, a psychiatrist working with the Pakistan Association of Mental Health has pointed out: "The entire spectrum of psychopathology lends itself to various behavioural infringements that could fall foul of the blasphemy laws in place in Pakistan."[113] For these laws to operate fairly, protection against prosecution for mentally disordered patients must be guaranteed.

150. **The Human Rights Committee may consider asking the Government of Pakistan to:**

a) **Provide data on cases prosecuted under the offence of blasphemy.**

b) **Provide information on the type of charges and convictions brought under the blasphemy law.**

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110 Pakistan Constitution, article 20

111 Pakistan State Report, para 148

112 Human Rights Watch, World Report 2015 <https://www.hrw.org/world-report/2015/country-chapters/pakistan> accessed on 4 March 2016

113 Muzafar Husain, Blasphemy laws and mental illness in Pakistan Psychiatric Bulletin (2014) 38, 40-44 <http://pb.rcpsych.org/content/38/1/40.full.pdf> accessed on 4 March 2016

F. ARTICLE 24: PROTECTION OF CHILDREN

a. Children are denied basic "measures of protection", contrary to Article 24(1) ICCPR

151. Among the "measures of protection" specified in Article 24(1) ICCPR, to which every child is entitled, are those relating to the protections of a child in conflict with the law. In General Comment 17, the Human Rights Committee noted that "if lawfully deprived of their liberty, accused juvenile persons shall be separated from adults and are entitled to be brought as speedily as possible for adjudication."[114]

152. In 2000 Pakistan introduced the Juvenile Justice System Ordinance (JJSO), which provides a number of protections for juveniles in conflict with the law. The JJSO establishes a separate system of juvenile courts; prohibits the trial of children in the same case as adults; prevents the publication of details of juvenile cases; and sets out a number of orders that shall not be passed in juvenile cases, including sentences of death.

153. However, there are major concerns with the application of the JJSO. Section 14 expressly states that the provisions of the ordinance will be in addition to and not in derogation of other laws. This means that where juveniles are tried under special legislative regimes like the Anti-terrorism Courts, the provisions of the JJSO do not apply.

154. A further concern is that the JJSO was not expressly enacted retroactively. In death penalty cases, this has meant that a number of individuals convicted when they were under eighteen before the introduction of the law remain on death row – or have been executed. A 2001 Presidential Commutation Order commuted death sentences against juvenile offenders issued prior to 17 December 2001 to life imprisonment. Unfortunately, the order excluded those sentenced for *qisas* or *hadd* crimes. In addition, while subsequent Supreme Court case law confirmed that in order for a prisoner to benefit from this Presidential Order a determination of their age should be made by the courts,[115] in practice, courts have consistently refused to conduct such age determinations.

155. In cases where determinations of a prisoner's age are conducted, there are major concerns about the inconsistent and often perfunctory manner in which such determinations are made.

156. In its State Report, Pakistan has noted that "In order to harmonize the Juvenile Justice System in conformity with the international standards… the Juvenile Justice System Bill 2015 (**Bill**) has been drafted in consultation with all relevant stakeholders. The Bill is in process of finalization." In its current draft, this Bill contains a number of positive amendments, including the express provision that it shall have primacy over all other laws, and confirmation that a claim of juvenility can be raised at any time, including during the appellate stages of a case.[116] However, no timeline has yet been established for consideration of the Bill by the legislature.

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114 UN Human Rights Committee, CCPR General Comment No 17: Article 24 (Rights of the Child) (7 April 1989), para 7 <http://www.refworld.org/docid/45139b464.html> accessed on 26 February 2016

115 See decision issued by the Supreme Court in 2003 in the case of Zia Ullah v Najeeb Ullah (Civil Petition No. 1837/02)

116 See Juvenile Justice Bill, ss 31, 7

b. The rate of birth registration in Pakistan is extremely low, contrary to Article 24(2) ICCPR

157. Article 24(2) specifically provides that it is a right of every child to be registered at birth. The Committee recognized in General Comment 17 that "The main purpose of the obligation to register children after birth is to reduce the danger of […] types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant."[117]

158. At present, Pakistan has one of the lowest rates of birth registration in the world, with only 27% of births registered.[118] There is continued disparity between rural and urban registration, with only 23% in rural areas.

159. This has, in many cases, made the process of age determination in cases of juveniles in conflict with the law extraordinarily difficult. There are major inconsistencies in the process, in part because section 7 of the JJSO contains very limited guidance and in practice age determination proceedings frequently fall short of international minimum standards.

160. **The Human Rights Committee may consider asking the Government of Pakistan to:**

a) **Provide information on the compatibility of the JJSO with the ICCPR.**

b) **Provide information on steps taken to guarantee the systematic registration of births.**

[117] UN Human Rights Committee, CCPR General Comment No 17: Article 24 (Rights of the Child) (7 April 1989), para 7 <http://www.refworld.org/docid/45139b464.html> accessed on 26 February 2016

[118] UNICEF, Every Child's Birth Right, Inequalities and Trends in Birth Registration (December 2013) <http://www.unicef.org/mena/MENA-Birth_Registration_report_low_res-01.pdf> accessed on 4 March 2016