

## **Comments on Pakistan’s replies to the List of Issues in relation to its fifth periodic report to the Committee on the Rights of the Child**

The Justice Project Pakistan (JPP) and Reprieve have previously made thematic submissions to the Committee on the Rights of the Child ahead of the review of Pakistan’s state report which is set to take place during the Seventy-second Session of the Committee. These submissions covered issues relating to Pakistan’s Juvenile Justice System, in particular the death penalty and torture. The present submission aims to respond to the sections of Pakistan’s replies to the Committee’s List of Issues relevant to this thematic area.

### **Comments on replies to Paragraph 4**

In paragraph 4 of the List of Issues, the Committee requested that Pakistan: *“describe the strategy or strategies that have been developed or planned at the federal and provincial levels to achieve universal free birth registration, including for refugee and internally displaced children. Please clarify whether birth registration is considered to be a right for all children without discrimination, or whether it is left to the discretion of local authorities”.*

In its written reply to paragraph 4 the Government of Pakistan explains that *“National Data Base and Registration Authority (“NADRA”) acts as a federal body under NADRA Ordinance, 2000 to oversee and regulate affairs related to birth registration in the entire country. The local governments are also authorized and responsible to maintain birth registration record at Union Council level in collaboration with NADRA. NADRA has developed a grass -root level online program, i.e., Civil Registration Management System (CRMS) for the registration of Birth, Death, Marriage and Divorce. The CRMS is linked with the local governments in the country which are feeding details under the four vital services as well as providing computerized registration and certificates.”*

The current birth registration system is clearly inadequate to address Pakistan’s low birth registration rate of 30% and as a result serve as an effective strategy to achieve universal free birth registration as required by the Convention on the Rights of the Child. The Committee in General Comment 10 links the right to birth registration with the right to a

free birth certificate to a person “whenever he/she needs to prove his birth”.<sup>1</sup> The Committee has stressed that the provision of a free birth certificate to prove the age of the juvenile is essential to the protection of children “particularly within the juvenile justice system”.<sup>2</sup> The Government of Pakistan has consistently undermined the realisation of this right by refusing to rely upon birth certificates issued by NADRA in age determination proceedings under the Juvenile Justice System Ordinance, particularly in capital punishment cases. As described in detail in the Comments on reply to paragraph 26 below, in the case of Shafqat Hussain, the Supreme Court of Pakistan refused to consider a government issued birth certificate showing him to be a juvenile at the time of his arrest to overturn his death sentence on the grounds that petition was raised out of time. Similarly, in the case of Ansar Iqbal, the trial Court refused to admit a certified Form-B National Registration Document issued by NADRA in 2015 showing him to be a juvenile at the time of the occurrence of the crime on the grounds that no record-holder had been called as a witness to verify its authenticity. The Court instead chose to rely upon Mr Iqbal’s age recorded by the police based upon a brief visual assessment. Additionally, in the Supreme Court case of Ali Hasan alias Jamshed v The State it was held that so far as the National Database and Registration Authority’s record is concerned, there is no cavil to the proposition that the entry made therein may not be conclusive proof of the age of petitioner.

The Government and Courts’ failure to rely upon government-issued certificates and thereby use them to protect rights of juvenile offenders severely undermines the realisation of the right to birth registration as interpreted by the Committee. The Government of Pakistan in its reply to the current issue has failed to provide strategies to address this significant impediment.

### **Comments on replies to Paragraph 8 on torture**

In paragraph 8 of the List of Issue, the Committee requested that Pakistan “*indicate the progress made towards enacting the bill on torture and custodial death and repealing laws that may be used to impose flogging as a punishment on children, particularly the 1894 Prison Act, the 1926 Punjab Borstal Act and articles 6 and 12 of the Frontier Crimes*

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<sup>1</sup> See Committee on the Rights of the Child (CRC), General Comment No. 10: Children’s Rights in Criminal Justice, UN Doc. CRC/C/GC/10 (2007) at 39

<sup>2</sup> *ibid*

*Regulation, as well as laws related to hadd offences and qisas.” The Committee also asked Pakistan to “indicate the measures taken to prevent, record and monitor cases of torture involving children and to prosecute those responsible.”*

In its response, the Government of Pakistan fails to provide information regarding the enactment of the bill on torture and custodial death as requested by the Committee. The Torture, Custodial Death and Custodial Rape Bill, 2013 has been pending in the National Assembly since its introduction in 2014. No progress was taken on the Bill for over a year whereby it lapsed. In January 2015, the Bill was finally adopted by the Senate Standing Committee and referred to the Chairman Senate for debate. However, as a result of the failure of the Parliament to enact the bill within the constitutionally mandated period of 90 days the Bill was allowed to lapse again. No additional measures have been taken by Pakistan to enact a law criminalising torture in accordance with its international obligations. Similarly no progress has been made by the Government to repeal the 1926 Punjab Borstal Act, the 1894 Prison Act and Article 6 and 12 of the Federal Crimes Regulation and/or their provision that pertain to corporal punishment for children. Additionally, the Offence of Zina (Enforcement of Hadood) Ordinance 1979, stipulates penalties of stoning and whipping for parties engaging in extra-marital sexual intercourse. Under the Ordinance, the age of criminal responsibility is attained at puberty.

The Government in its response also states that *“the constitution as well as Criminal Procedure Code and Pakistan Penal Code prohibit acts of torture”*. Article 14 (2) is the only relevant provision under the Constitution and it states (in its entirety) that “No person shall be subjected to torture for the purpose of extracting evidence”. By applying only to acts of torture specifically targeted for the purposes of extracting, the article goes nowhere near encompassing and criminalising all the acts that constitute torture. Additionally the constitutional provision stipulates no criminal penalties for perpetrators as claimed by the Government in its reply. Similarly, the Criminal Procedure Code and Pakistan Penal Code instead of prohibiting and penalising torture and/or all acts that constitute torture only stipulate penalties for a limited category of torture related acts. 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”, “Wrongful confinement to extort confession or compel restoration of property” or provisions governing “criminal force and assault”. These offences, however, encapsulate only certain limited forms of torture and CIDT and are intended to and, in practice, regulate behaviour between two civilians and not civilians and public agents.

The Government in its reply also states that “*the justice system, in this regard holds the perpetrators accountable*”. However, there is widespread impunity for torture particularly that inflicted by police and security agencies in Pakistan. A lack of independent investigation mechanism for reporting and investigating torture, leaves victims of torture with no choice but to report cases of police torture to the very police that tortured them. Additionally, in the absence of any independent oversight over police custody, detainees are often tortured into providing false confessions and statements. Juvenile detainees are particularly vulnerable to such coercion. Additionally, under the Anti-Terrorism Act, 1997 confessions and statements given in police custody is admissible as evidence in criminal trials with the result that accused parties are often convicted and sentenced, including sentenced to death on the basis of coerced confessions. Shafqat Hussain, who was a juvenile offender, was sentenced to death and executed upon the basis of confession that was the result of days of heinous torture in police custody.

#### **Comments on Paragraph 25 on Juvenile Courts**

In paragraph 25 of the List of Issues the Committee requested that Pakistan “*clarify which courts can exercise jurisdiction over cases involving children in conflict with the law and what steps have been taken to raise the minimum age of criminal responsibility.*” The Committee also asked Pakistan to “*please provide detailed information on the exact procedure for determining, in the absence of a birth CRC/C/PAK/Q/5 5 certificate or other official document, whether a young person was a juvenile at the time of arrest and during trial. Please explain to what extent visual assessments of a child’s age by the police or other law enforcement officials in the process of issuing an arrest or jail certificate complies with a child’s entitlement to a reliable medical or social investigation into his or her age. Please describe the procedure adopted in cases in which the evidence for assessing whether a*

*young person is a juvenile is conflicting or inconclusive and indicate which documents or sources are deemed admissible in this regard.”*

In its response to paragraph 25 Pakistan states that the Juvenile Courts established under Juvenile Justice System Ordinance, 2000 exercise jurisdiction over the children who come in conflict with law. However, whilst the JJSO asks for the establishment of juvenile courts provincial governments have failed to establish dedicated juvenile courts with the result that provincial High Courts have simply vested powers of dealing with juvenile cases to district and sessions judges. Therefore, juveniles are tried jointly with adults in the same courts. Additionally under Section 14 of the JJSO, the JJSO only applies in addition to other laws and does not override them. Therefore, under the current legal framework the JJSO and thus the exclusive jurisdiction of the Juvenile Courts does not extend to juveniles tried under laws with special courts including the Anti-Terrorism Act, 1997. The Lahore High Court in its ruling of 28 June 2004 stated that "an offence of terrorism can be tried only by an Anti-Terrorism Courts (ATC) constituted under the ATA 1997 and the age of the offender has no relevance to the question of such jurisdiction."<sup>3</sup> It cites several sections of the ATA which allow for the trial of juveniles by a court set up under it. The Court also pointed out that section 32 of the ATA provides that the Act has overriding effect over all other laws, whereas the JJSO in section 14 expressly provides that its "provisions shall be in addition to and not in derogation of any other law for the time being in force".

The Government in its response to paragraph 25 also states that *“regarding determining the juvenility, in absence of birth certificate, school certificate or other official documents, the Court directs the prosecution to get the accused examined by the medical board to determine the age of accused with the view to resolve dispute regarding age.”* However, based on Justice Project Pakistan’s experience representing juvenile offenders, it is evident that there are no protocols or consistent court practice with regards to determination of age when the question of juvenility of an accused party is raised. Section 7 of the JJSO contains very limited guidance on how to conduct a determination of age, simply stating that: “If a question arises as to whether a person before it is a child for the purposes of this Ordinance,

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<sup>3</sup> *Muhammad Din vs. Muhammad Jahangir and 4 others*, PLD 2004 Lahore 779

the juvenile court shall record a finding after such inquiry which shall include a medical report for determination of the age of the child.”

The lack of clear and comprehensive guidelines in this section has led to radically different interpretations by the courts. JPP has analysed 89 reported cases relating to the interpretation of the JJSO since its promulgation in 2000.<sup>4</sup> The analysis looked at the way four different types of evidence had been considered across these cases, noting where judges had placed reliance on each, and where they had rejected each:

- 7 of the cases analysed included a decision on whether a defendant’s statement under section 342 of the Code of Criminal Procedure 1898 (i.e. the defendant’s statement at trial) should be relied on as primary evidence of age. In two cases the statement was refused while in five it was accepted. The section 342 statement is the statement made by the accused at trial. Often, accused persons will not expressly mention their age if they are not aware that it may have relevance to criminal proceedings, and the age may be inaccurately recorded, or may not even be recorded at all.
- 48 of the cases analysed included a decision on whether a medical board report should be relied on over and above documentary forms of evidence. In eleven of these cases, the opinion of the board was rejected in favour of the documentary evidence, but in 37, it was accepted despite contradictory documentary evidence. Overreliance on medical tests can be dangerous, however, and experts in the field have made it clear that there is no “‘silver bullet’ method that will give government and agencies an ‘objective’ and ‘scientific’ answer as to the precise chronological age of an individual.”<sup>5</sup>
- 41 of the cases analysed included a decision on whether the defendant’s birth certificate should be relied on. In 27 cases the certificate was not accepted, while in fourteen cases it was. Where birth certificates are not relied on, it is usually because

<sup>4</sup> 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](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

<sup>5</sup> Aynsley-Green, T.J. Cole, H. Crawley, N. Lessof, L.R. Boagi and R.M.M Wallace, Medical, statistical, ethical and human rights considerations in the assessment of age in children and young people subject to immigration control, British Medical Bulletin (2012)

the courts believe that such certificates are false or fabricated, despite the fact that these are Government issued documents. If even government issued identity documents can be ignored by the courts in determining juvenility, then the defendant is placed in an impossible position if they are to be required to prove their age.

- 34 of the cases analysed included a decision on whether the defendant's school leaving certificate should be relied on. In 22 cases it was not accepted, while in twelve cases it was. As with birth certificates, courts frequently refuse to rely on these documents on the basis that they may be fabricated.

This lack of consistency and clarity has already resulted in the execution of a number of people who were under eighteen at the time of their alleged offence and has doubtless also resulted in lengthy custodial sentences and other punishments being unlawfully imposed on children in conflict with the law. The Government's failure to ensure that the right of every child and citizen to be registered has been a major contributing factor in such cases.

### **Comments on replies to paragraph 26**

In paragraph 26 of the List of Issues, the Committee requested that Pakistan provide: *“detailed information on the investigations undertaken and their outcome, if any, into allegations that the young person concerned is a juvenile, as well as into allegations of torture in the cases of Muhammad Afzal, Aftab Bahadur, Shafqat Hussain, Ansar Iqbal and Faisal Mahmood. Please explain how the right of the child to the benefit of the doubt is protected in cases in which filed evidence indicating that the young person is a juvenile is dismissed on procedural grounds. Please comment specifically on the Supreme Court's refusal to consider Ansar Iqbal's birth certificate, issued by the National Database and Registration Authority, as evidence of his juvenility on procedural grounds as being submitted too late.”*

In its written replies to paragraph 26 the Government of Pakistan has stated that the Criminal Justice System of Pakistan provides mechanisms for consideration of evidence of

age to be presented at different stages of proceedings. However, based on a review of jurisprudence it is discovered that in the majority of cases a plea of juvenility is only deemed admissible by courts if raised at the first instance. In the case of Muhammad Aslam v. State<sup>6</sup> and Sultan Ahmed v. Additional Sessions Judge, Mianwala-I<sup>7</sup>, the Supreme Court of Pakistan, while laying down guidelines for the considerations of pleas of juvenility unequivocally stated that “ such a plea of minority must be taken by the accused at the earliest possible opportunity, preferably during the course of investigation so that the requisite evidence about the age of the accused” and “that any delayed claim on the said account should be met by adverse inferences”. The principle was followed by the For example, in the case of Shafqat Hussain (discussed below) the Supreme Court of Pakistan reject an appeal bought by Mr. Hussain for the review of evidence of his age on the ground that the petition was raised out of time.

The state further noted that Article 45 of the Constitution granted another potential remedy to condemned prisoners who raised evidence of juvenility. As discussed in the comments on specific cases made below, however, where juvenility has been raised in requests for mercy under Article 45 of the Constitution, this has so far been completely ignored. In fact, since the resumption of executions the Ministry of Interior has confirmed that a policy that was announced in 2014<sup>8</sup> of refusing to grant mercy to any death row prisoner remains in place. While at least 444 people have had their mercy petitions dismissed, not a single mercy petition has been granted.

This policy of the current government is all the more concerning since in the past attempts have been made to use the President’s power to pardon under Article 45 of the Constitution to ensure compliance with the prohibition on the execution of juveniles. In 2001, a Presidential notification was issued stating that any prisoner who had their death sentence confirmed prior to the introduction of the JJSO, but who had evidence that they were a juvenile at the time of the alleged offence, should be granted a “special remission” and have their death sentence commuted to life imprisonment. It was subsequently determined by the Supreme Court that in order for a prisoner to receive the benefit of this notification, a

<sup>6</sup> PLD 2009 SC 777

<sup>7</sup> PLD 2004 SC 758

<sup>8</sup> <http://www.dawn.com/news/1151758/president-briefed-on-decision-to-end-moratorium>

determination of their age should be made by the Sessions Court in accordance with Section 7 of the JJSO.

JPP and Reprieve are, however, aware of a number of cases where despite efforts by prisoners and their families to have their age recognised so that they can receive the benefit of this notification they have been consistently refused the opportunity to have such an assessment conducted. One such example is the case of Muhammad Anwar. Anwar was sentenced to death in 1998 for a crime allegedly committed when he was just 17 years old. His family have tried every possible means to request an age determination – including submitting no fewer than four applications to the Sessions Court but in over a decade no-one has even begun an inquiry into his age. In December 2014 he came within hours of execution until the Lahore High Court intervened to stay his execution. Subsequently, however, the Court dismissed the proceedings in the case, noting that as the appeal from Anwar’s sentence had already been considered by the Supreme Court they could not now consider the issue of juvenility before them. This shows the fundamental lack of communication and comprehension between the Courts and the Government on the issue of the operation of the “Special remission” granted by the President under the 2001 notification, which has allowed juveniles like Muhammad Anwar to fall through the cracks in the system. Anwar himself remains at risk of execution.

In referring to the individual cases of executed juveniles mentioned in the list of issues, the state indicated that *“the Ministry of Interior conducted inquiries for these cases but the alleged claim of juvenility could not be proved.”* This claim is demonstrably false. The Ministry of Interior did conduct an inquiry into the case of Shafqat Hussain – although this inquiry was deeply flawed – but it made no effort to do so in the cases of Aftab Bahadur, Ansar Iqbal, or Faisal Mahmood, or – to the best of the JPP and Reprieve’s knowledge – in the case of Muhammad Afzal. It is of real concern that the Government of Pakistan should have made such an incorrect blanket statement regarding these cases and shows that there has been no serious attempt to investigate these issues to prevent the execution of other juveniles in future. Further comments on the Governments replies regarding each of the individual cases mentioned are provided below:

## **Ansar Iqbal**

In responding to concerns raised about the case of Ansar Iqbal, the Government of Pakistan has cited the Supreme Court's review of the records. Ansar's initial request for leave to appeal his sentence was accepted by the Supreme Court, which in 2009 considered the issue of his juvenility after reviewing the records from the Sessions Court and the High Court. As asserted in the State's response, the Court concluded that the claim of juvenility was not proven by the documents of the record, despite the fact that the trial court notes Ansar's as 17½ years in Ansar's testimony recording during trial two years after he was arrested.<sup>9</sup>

Closer scrutiny of the Supreme Court judgment shows that in reaching their conclusion the Court failed to apply the principle that where there is doubt as to the true age of the defendant the benefit of that doubt should be extended to the juvenile, and to ensure that the state's obligation to fully investigate claims of juvenility was fully discharged.

In its replies the Government states that the following evidence of age was produced at trial: "Ansar's school leaving certificate claimed his year of birth 1979, a duplicate Form B- allegedly issued by NADRA records his year of birth as 1978 while NADRA record related to his father shows his year of birth 1974." This is not accurate. In fact the relevant NADRA document produced before the trial court indicated that Ansar's date of birth was in 1978, but based on other discrepancies in the document relating to other individuals the Court held that "in view of the figures mentioned in his father's identity card **it could be inferred** that year of birth of Ansar Mahmood is 74 and not 78."<sup>10</sup> An inference is clearly distinct from a fact. The trial court went on to conclude that the documents Ansar's lawyers had produced could "not be accepted as true" because "no record was summoned from the office". Despite the fact that the records presented were State documents, the Court made no attempt to have the original record summoned, instead dismissing Ansar's claim of juvenility without a substantive investigation of the facts.

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<sup>9</sup> Copies of all court documents quoted in this document can be provided by JPP and Reprieve if requested.

<sup>10</sup> *Ibid.*

On appeal, the High Court also dismissed the claim of juvenility on the basis of discrepancies cited by the trial court relating to Ansar’s juvenility – despite the fact such discrepancies are commonplace in Pakistan where birth registration rates remain extremely low. Like the trial court, the High Court also noted that “No witness was produced **by the defence** to prove the authenticity” of the documents Ansar sought to rely on, again ignoring the fact that where an issue of juvenility arises the burden must be on the state, rather than the juvenile, to ensure that all the relevant evidence is properly considered.

Finally, in deciding Ansar’s final appeal the Supreme Court also failed to apply the principle that doubt as to the defendant’s age should be resolved in their favour even though government birth records confirm his juvenility. Instead, the court dismissed the claim of juvenility on the basis of the contradictions between pieces of documentary evidence, noting that “no effort was made by the appellant seeking for production of the original record through the concerned offices and **most probably** this was not done for the reason that the production of the original record might not have supported to the case of the appellant.”

A subsequent petition to have the issue of Ansar Iqbal’s juvenility reconsidered was filed after a birth certificate which confirmed his juvenility was issued by NADRA in 2015. As the government body responsible for maintaining other identity records, including the Form B that was disputed and dismissed as fake by the courts, NADRA can only issue the birth certificate once it verified that Ansar’s age given in the birth certificate tallied with the “original record”. The NADRA record should therefore have been presumed accurate, but instead it was not even considered by the Court which dismissed the petition for reconsideration of the issue as “barred by time”.

The Government has summed up the position in Ansar’s case by noting that his juvenility claim was dismissed “since the documents could not be verified.” In fact, the claim was dismissed since no attempt was made to verify the documents by the courts or the state. The state therefore failed to discharge its obligation to protect the right of the child to the benefit of the doubt in this case.

## Shafqat Hussain

The Government has relied on an inquiry conducted by the Federal Investigation Authority (FIA), at the behest of the Ministry of Interior to dismiss claims that Shafqat was a juvenile at the time of his alleged offence to defend his execution in its replies to the List of Issues. This inquiry, however, has been roundly criticised as being both illegal and deeply flawed both domestically and internationally.

A High Court judge referred to it as “prima facie illegal” and the Sindh Human Rights Commission – a statutory rights body which conducted a comprehensive review of Shafqat’s case prior to his execution deemed it “not admissible”.<sup>11</sup> The inquiry was also challenged by the Government of Azad Jammu and Kashmir (AJK) – the semi-autonomous region where Shafqat was born and where the birth certificate which was “declared fake” by the FIA was issued. Prior to Shafqat’s execution on 4<sup>th</sup> August 2015, the President of AJK wrote to the Prime Minister of Pakistan requesting a stay of execution so that the AJK authorities could conduct their own investigation into the issue as the “FIA lacks jurisdiction in this behalf”.<sup>12</sup>

Prior to Shafqat’s execution, a group of UN experts, including the Chair of the Committee on the Rights of the Child, noted that: “international law, accepted as binding by Pakistan, provides that capital punishment may only be imposed following trials that comply with the most stringent requirements of fair trial and due process, or could otherwise be considered an arbitrary execution.” They called for a retrial of the case in “light of reports that the trial against Mr. Hussain and the FIA inquiry fell short of such standards.”<sup>13</sup>

In conducting its review of the case, the Sindh Human Rights Commission concluded that Shafqat’s execution should be stayed and the case re-opened. The Commission criticised the “careless handling” of a case where a human life was at stake and noted that “important evidence is missing on many issues”. These concerns, and the concerns raised by others regarding Shafqat’s execution were never addressed by the Government of Pakistan. Instead the Government chose to proceed with the execution despite the continued existence of significant doubt over its legality.

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<sup>11</sup> Copies of these recommendations are available on file at JPP or Reprieve.

<sup>12</sup> A copy of this letter is available on file at JPP or Reprieve

<sup>13</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16046&LangID=E>

### **Faisal Mahmood**

In its replies, the Government has stated that in Faisal's case *"the claim of juvenility was never made and proved by the record except his solitary statement recorded under Section 342 Cr.PC during trial."* This statement, giving rise as it does to a question of juvenility, should however have been enough for an inquiry into Faisal's age to take place. Had such an inquiry been conducted, it would have found that the claim in Faisal's Section 342 statement was corroborated by his high school leaving certificate and birth certificate, both of which state that his date of birth was 1<sup>st</sup> February 1981 making him just 17 at the time of arrest on 26th January 1999.

At trial, Faisal was initially awarded a life sentence instead of a death sentence. Although there was no prohibition on sentencing juveniles to death at the time, sections 306 and 305 of the Pakistan Penal Code stated that those who are minors should be treated with leniency and it appears that the trial judge decided to apply these provisions on the basis of Faisal's statement that he was 17. On appeal, however, the High Court overturned this decision and substituted the life sentence for a death sentence. The issue before the Supreme Court – which heard the case in 2009, long after the introduction of the JJSO - was whether, on the basis of Faisal's juvenility the death sentence should be vacated and a life sentence reinstated. The Supreme Court, however, ignored the arguments of both Faisal's counsel and the Deputy Prosecutor General's office that Faisal's juvenility should be taken into account and instead of ordering an inquiry into the issue, simply confirmed the death sentence on the basis that the plea of minority was made out of time.

### **Muhammad Afzal**

JPP and Reprieve are unable to confirm as much information about this case as for the others referred to in the list of issues. We understand, however, that Afzal's lawyer argued that he was a juvenile at the time of his alleged offence, as demonstrated by official documentation which showed that he was originally held in a juvenile detention facility at the time of his arrest. A prima facie case for Afzal's juvenility had therefore been established

prior to his execution. Despite this, Afzal's execution went ahead on 17<sup>th</sup> March without any full investigation into the issue of his juvenility being initiated by either the courts or the executive.

### **Aftab Bahadur**

In its replies, Pakistan notes only that *"the claims of juvenility...of Aftab Bahadur could not be proved by any evidence on the record."* No further detail is given of the attempts made to investigate Aftab's case or to stay his execution so that evidence of juvenility could be fairly examined.

On 7<sup>th</sup> June 2016, Aftab's counsel submitted a mercy petition requesting a stay of execution and an inquiry into Aftab's age on the basis of evidence that he was a juvenile at the time of his alleged offence. This evidence consisted of a government-issued birth certificate (form Number: L06977680) issued by the Government of Punjab, Pakistan which records his date of birth as 30<sup>th</sup> June 1977, a NADRA ID card issued whilst he was detained in Lahore Central Jail, and educational records issued by the Board of Intermediate and Secondary Education, which included a Certificate of Matriculation that recorded Aftab's date of birth as 30<sup>th</sup> June 1977 and a primary school leaving certificate which also recorded his year of birth as 1977. The petition also requested mercy for Aftab on the basis that his trial, which was conducted under the now defunct *Special Courts for Speedy Trials Act 1992*, severely curtailed his fair trial rights.

On 9<sup>th</sup> June 2016, Aftab's counsel received a response from the Punjab Home Department rejecting the petition and noting that *"the matter regarding determination of age/juvenility claim does not falls in jurisdiction of this department. The matter regarding determination of the claim is concerned with the learned District & Session Judge Lahore. I am further directed to ask you to approach the concerned Session Judge/ Juvenile Court in connection with determination of the age."* However, a writ petition filed before the High Court seeking relief from the Courts on the same issue was also rejected out of hand, with the judge commenting in court that any stay in the case should be sought from the Government and not the courts. Despite the fact that Aftab's counsel responded to the Provincial and Federal authorities with further correspondence asking that Aftab's execution be stayed so that the

necessary inquiry into his age could be conducted, Aftab's execution nonetheless went ahead on 10<sup>th</sup> June 2015.

Given the refusal of both the courts and the executive to take responsibility for conducting an inquiry into Aftab's age, it is hard to see how the Government's claims that the Ministry of Interior conducted an investigation into his case or that his age "could not be proved by any evidence on the record" could possibly stand up.

The Government of Pakistan must urgently acknowledge that all of these cases were grossly mishandled, and immediately implement a full review of its policy and practice on executions to determine how and why these cases were handled in the manner that they were, and to put in place protections to ensure that future cases are handled differently. It should also initiate a country-wide review of its death row population to ensure that any prisoner who has evidence of juvenility but has not yet had an independent judicial inquiry into their age is now granted such an inquiry. In the interim, to avoid the possibility of any further juveniles being executed, a moratorium on executions should be re-introduced.

#### **Comment on response to Part III Paragraph 2 (A) to (C)**

In Part III, para 2 (a) the Committee requested that Pakistan provide data on the number of "*Children condemned to death, including for hadd offences, and the number of defendants currently on death row who may have been sentenced for crimes they committed as children;*"

The Government responded that "*In accordance with Pakistan domestic and international human rights obligations, death penalty is not awarded to children. No child has been awarded death penalty as well as no defendant is currently on death row.*" This response, however, fails to acknowledge the fact that as the Government previously acknowledged in issuing the 2001 Presidential Notification: that there are prisoners on death row who were convicted for crimes committed when they were children prior to the introduction of the JJSO. The failure to implement the notification means that the vast majority of these individuals will remain on death row to this day, like Muhammad Anwar. In addition, due to problems with birth registration and ineffective assistance of counsel even following the

introduction of the JJSO prisoners like Shafqat Hussain have be tried and sentenced to death without the issue of their age being considered by the courts.

**Comment on response to Part III, para 2 (e)**

In Part III, para 2(e) the Committee requested Pakistan to *“provide, if available, updated statistical data, disaggregated by age, sex, ethnic origin, national origin, geographic location and socioeconomic status, for the past three years, on the number of” “children subjected to torture and ill-treatment and the number of perpetrators of these crimes who were prosecuted and found guilty, as well as information on the sanctions applied to them”*.

In its response, the Government of Pakistan states that *“currently no disaggregated data is available. However, after the planned Census, it is expected that more detailed data would be made available.”*

In the absence of an independent monitoring body on torture, torture, let alone torture faced by children, remains undocumented. Victims of torture who bring forth complaints to the police are often turned away. Very few who manage to lodge a complaint often withdraw it subsequently as a result of continued harassment from police and other accused parties. The National Commission on Human Rights, the statutory body tasked with the monitoring of human rights violations, has essentially been rendered defunct by the Government as a result of not being allocated adequate funding since its establishment in 2015.