



A "MOST SERIOUS CRIME"

PAKISTAN'S UNLAWFUL USE OF THE DEATH PENALTY

ALLARD K. LOWENSTEIN
INTERNATIONAL HUMAN RIGHTS
CLINIC
YALE LAW SCHOOL



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A report by Justice Project Pakistan, in collaboration with the Yale Law School's
Allard K. Lowenstein International Human Rights Clinic

September 2016



ALLARD K. LOWENSTEIN
INTERNATIONAL HUMAN RIGHTS
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ACKNOWLEDGMENTS

Justice Pakistan Project(JPP) and the Allard K. Lowenstein International Human Rights Clinic at Yale Law School prepared this report in collaboration. Tal D. Eisenzweig, Peter Posada, and Mara Revkin researched and authored the report. Hope Metcalf, Lecturer in Law, and Nick Robinson, Visiting Lecturer in Law and Robina Foundation Visiting Human Rights Fellow, supervised the work and edited the report. Zainab Z. Malik, Policy and Advocacy Manager at Justice Project Pakistan, and Amn Nasir, Research Officer at Justice Project Pakistan, provided extensive edits and guidance throughout the drafting process. The authors are grateful to JPP for sharing their clients' stories, as well as to the clients themselves and their families, for demonstrating such humanity and fortitude.

ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC AT YALE LAW SCHOOL

The Allard K. Lowenstein International Human Rights Clinic is a Yale Law School course that gives students first-hand experience in human rights advocacy under the supervision of international human rights lawyers. The Clinic undertakes litigation and research projects on behalf of human rights organizations and individual victims of human rights abuses. Recent work has included involvement in human rights litigation in U.S. courts; preparing amicus briefs on international and comparative law for U.S., foreign, and international fora; advocacy before international and regional human rights bodies; and investigating and drafting reports on human rights situations. The Clinic recently partnered with JPP to produce the 2014 report, *Policing as Torture*, which examined the prevalence of torture by police in Faisalabad, Pakistan.

JUSTICE PROJECT PAKISTAN

Justice Project Pakistan (JPP) is a non-profit, human rights law firm based in Pakistan that provides pro-bono legal advice, representation and investigative services to the most vulnerable prisoners facing the harshest punishments. JPP's clients include prisoners on death row, survivors of police torture, mentally ill and physically disabled prisoners and victims of the "war on terror."

JPP conducts strategic litigation to challenge unjust laws and to create progressive legal precedents. JPP's litigation aims to improve the rights of the mentally ill, restrict the application of the death penalty, bring Freedom of Information to Pakistan, and enforce the fundamental rights of prisoners. It also organizes conferences and trainings in its areas of expertise for judges and lawyers to build capacity within the legal community.

INTRODUCTION: PAKISTAN'S DRAMATIC INCREASE IN EXECUTIONS

On December 17, 2014, Pakistan lifted a seven-year moratorium on the death penalty. Coming in the wake of the tragic terrorist attacks on the Army Public School in Peshawar, the resumption of executions initially applied only to individuals convicted of terrorist offenses.¹ Yet within several months and without public justification, the Interior Ministry lifted the moratorium for all death-eligible crimes.² As a result, more than 8,000 individuals are now at risk of execution, many for offenses that are ineligible for capital punishment under international law.³ Since ending the moratorium, Pakistan has executed more than 400 people, bringing the country's annual rate of executions to the highest point in its history and making it the "third most prolific executioner in the world."⁴

In the twenty months since the lifting of the moratorium, the Government of Pakistan has carried out 418 executions.⁵ This means that an average of 6 executions have been carried out every week since the death penalty was reinstated, with the highest number of executions taking place in the province of Punjab. Whilst there is no confirmed figure for Pakistan's total death row population, in December 2014, the Ministry of Interior and the Ministry of Law and Justice stated that there were 8,261 prisoners⁶ on death row in Pakistan. Therefore, thousands of prisoners remain at risk of imminent execution.

Initially, in December 2014, executions were reinstated for terrorism-related offences only. In March 2015, however, the Government – without any public justification – bought back the death penalty for all capital offences. Thereafter, from December 2014 to March 2015, the Government executed a total of 24 people, or an average of 2 per week. That rate more than doubled in March 2015 to over 5 per week, when executions were also resumed for non-terrorism cases. In the period March 2015 to September 2016, the Government has executed an alarming total of 393 people.⁷

Pakistan's resumption of executions has drawn sharp criticism from international actors. On June 11, 2015, UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein said, "[t]he idea that mass executions would deter the kinds of heinous crimes committed in Peshawar in December is deeply flawed and misguided, and it risks compounding injustice."⁸ That same week, the European Union delegation mission to Pakistan urged its government "to reinstate the moratorium immediately to commute the sentences of persons sentenced to death" in order to comply with its international legal obligations.⁹ British and German officials have also urged Pakistan to reconsider its decision.¹⁰

Pakistan's imposition of the death penalty is, at its core, arbitrary. To begin with, Pakistan does not reserve the death penalty for the "most serious crimes," as required by international law, but instead imposes execution for commonplace offenses, such as kidnapping and drug-trafficking. Second, Pakistan's justice system is riddled with deficiencies and abuses of authority. Police routinely coerce defendants into confessing, often by torture, and courts admit and rely upon such evidence. Poor defendants must rely on attorneys who typically provide only cursory and ineffective representation.

Once sentenced, defendants lack effective recourse to post-conviction relief, even in the face of new exonerating evidence. Finally, the Anti-Terrorism Act of 1997 offers even fewer safeguards than the ordinary criminal justice system and has the effect of fast-tracking convictions.

Each of these failings constitutes a human rights violation in itself; taken together, they reveal an unreliable system that is fundamentally incapable of administering the ultimate and irreversible penalty of death. As the cases examined in this report illustrate, the systemic problems described above fall most heavily on Pakistan's most vulnerable members—the poor, juveniles, and persons with mental illness and development and intellectual disabilities.

This report, written by the Allard K. Lowenstein International Human Rights Clinic at Yale Law School (Lowenstein Clinic) in partnership with Justice Project Pakistan (JPP), documents the many ways in which Pakistan's application of the death penalty is in breach of its obligations under international law. In analyzing Pakistan's use of the death penalty, the authors focused on “crucial cases”¹¹ that exemplify the numerous international law violations and that illustrate the particularly damaging impact of these violations on certain vulnerable populations: juveniles, the mentally ill, and persons with physical disabilities. Relying on public records¹² for a dozen of JPP's clients sentenced to death, the report tracks the many junctures at which violations occur, from charging to sentencing to execution. Several of the individuals selected have been executed since research for this report began.

The systemic violations illustrated in this report compel the conclusion that Pakistan's continuing practice of capital punishment violates international law. The irreversible nature of execution mandates the immediate reinstatement of the moratorium on all executions. Yet a moratorium alone will not suffice. Today, Pakistan continues to sentence to death persons who are juveniles, mentally ill, or very likely innocent. What procedural safeguards exist in theory are largely ignored on the ground. Given the multi-level failings of its criminal justice system, Pakistan should suspend indefinitely all capital sentencing and launch investigations into those cases marked by allegations of juvenility, mental illness, the use of torture and other abuses of authority, and evidence of innocence.

AVERAGE NUMBER OF EXECUTIONS PER WEEK IN PAKISTAN SINCE DECEMBER 2014	6
NUMBER OF EXECUTIONS IN PAKISTAN FROM DECEMBER 2014 TO SEPTEMBER 2016	418
NUMBER OF PRISONERS ON DEATH ROW IN PAKISTAN	8261

I. DISPROPORTIONATE APPLICATION OF THE DEATH PENALTY

Pakistan imposes the death penalty on a wide array of lesser offenses that do not constitute “the most serious crimes.”

International law places strict limits on the scope and processes whereby states may engage in executions. Though not yet prohibited under international law,¹³ capital punishment may be imposed only for the gravest criminal offenses. Under the International Covenant on Civil and Political Rights (ICCPR), which Pakistan ratified in 2010, a “sentence of death may be imposed only for the most serious crimes”¹⁴ The United Nations Human Rights Committee, the body responsible for overseeing the interpretation and implementation of the ICCPR, maintains that the term ‘most serious crimes’ must be read restrictively to mean that the death penalty should be a quite exceptional measure.”¹⁵ While Article 6(2) of the ICCPR does not define the precise boundaries of what constitutes “most serious crimes”, the only crimes that clearly fall within that term are intentional killings or attempted killings.¹⁷ Through its authoritative published opinions, the Committee has held that the various lesser offenses do not constitute “the most serious crimes”¹⁶ and therefore cannot incur the death penalty without violating Article 6.

At the time of Pakistan's independence in 1947, only two crimes, murder and treason, were death-eligible. Today, Pakistani law identifies 27 crimes punishable by death, in addition to terrorist offenses¹⁸ and the threat of capital punishment looms over much of the criminal justice system. During the reign of military leader Gen. Zia Ul-Haq, who initiated a campaign to “Islamize” Pakistan's legal system in the 1970s and 1980s, the list of death-eligible crimes expanded significantly to include crimes such as blasphemy¹⁹ and adultery.²⁰ In 1997, the list grew once again to include a broadly defined array of terrorism-related offenses with the adoption of the Anti-Terrorism Act.²¹

Today, Pakistani law makes 27 crimes punishable by death. Many of those crimes, such as blasphemy and adultery, directly contravene the holdings of the Human Rights Committee.

OFFENSES DEEMED BY HRC TO VIOLATE ICCPR ARTICLE 6 IF PUNISHABLE BY DEATH	CORRESPONDING OFFENSES RECEIVING DEATH PENALTY IN PAKISTAN
Apostasy ²²	Blasphemy ²³
Treason ²⁴	High Treason: ²⁵ Mutiny And Insubordination: ²⁶ Abetment Of Mutiny: ²⁷ Offenses Against The State: ²⁸ Offenses In Relation To The Enemy ²⁹
Drug Trafficking ³⁰ Or Drug-related Offenses ³¹	Drug smuggling: ³² importing or exporting dangerous drugs into and from Pakistan ³³
Adultery or illicit sex ³⁴	Zina ³⁵ (adultery and illegal sexual intercourse, including rape); stripping a woman's clothes ³⁶
Abduction not resulting in death ³⁷	Kidnapping or abduction, including for the purpose of extorting property: ³⁸ hijacking and harboring hijacking ³⁹
Robbery ⁴⁰ or theft by force ⁴¹	Haraba ⁴² (highway robbery)
Vague offenses related to internal and external security ⁴³	Sabotage of the railway system ⁴⁴

In addition, the Human Rights Committee has found that a crime that does not “produce the death or wounding of any person” violates the same provision.⁴⁵ In Pakistan, however, still more crimes that do not result in the death or wounding of another might incur capital punishment. These nonviolent offenses include arms trading; “⁴⁶show[ing] cowardice [in the presence of any enemy]” as a member of the Pakistani Army;⁴⁷ and giving or fabricating false evidence with intent to procure the conviction of a capital offence.⁴⁸ Simply put, these lesser offenses clearly do not constitute the “most serious crimes” under international law and therefore should not be punishable by death. In addition, the broad definition of certain crimes, such as blasphemy, may result in the wrongful execution of persons with mental illness or other disabilities.

NUMBER OF OFFENCES THAT CARRY THE DEATH PENALTY IN PAKISTAN

27

II. PERVASIVE LACK OF DUE PROCESS

Pakistan's criminal justice system is incapable of fairly adjudicating capital cases.

The human rights violations described in this report are linked inextricably with structural and socioeconomic features of Pakistan's criminal justice system. Inadequate training and resources, widespread corruption, a culture of police brutality, an inadequate indigent defense system, and ineffective trial courts have created a permissive environment for the routine miscarriage of justice. Despite numerous efforts at reform,⁴⁹ the system remains incapable of reliably administering the irreversible sanction of death.

Under international law, the death penalty may only be imposed pursuant to a legal process that rigorously observes the procedural guarantees required under the International Covenant on Civil and Political Rights.⁵⁰ Based on the Covenant's mandate that "[n]o one shall be arbitrarily deprived of his life,"⁵¹ states may not impose the death penalty in the absence of a fair trial.⁵² The Human Rights Committee has specified that in trials involving capital punishment, states must observe "scrupulous respect of the guarantee of fair trial."⁵³ The Economic and Social Council has further stated that "[c]apital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14" of the ICCPR.⁵⁴ The execution of individuals in the absence of such protections may also constitute a violation of Article 7's prohibition on inhuman and degrading treatment.⁵⁵

Examination of Pakistan's criminal justice system reveals striking flaws throughout the adjudicatory process. At each stage—arrest, charging, trial, appeal, and confinement—Pakistan fails to protect defendants' fundamental rights. The continued imposition of capital punishment violates international law. This section provides an overview of the various deficiencies endemic to Pakistan's adjudication of capital cases in the regular criminal courts as well as in the Anti-Terrorism Courts, which provide even fewer protections. Sections IV through XIII provide detailed discussions of some of the most serious violations: reliance on confessions obtained via torture, ineffective counsel for poor defendants, lack of procedural protections and resources required for a fair trial, placement of the burden of proof on defendants, and insufficient appellate review.

A. Pakistan's under-resourced criminal justice system creates Incentives for corruption and other abuses of authority

Pakistan routinely appears at the bottom of global surveys of corruption and the rule of law. The World Bank, in its global governance index, finds that across nearly every category—including government effectiveness, rule of law, and control of corruption—Pakistan is in the lowest quartile.⁵⁶ The World Justice Project's Rule of Law Index places Pakistan at 98th out of 102 countries,⁵⁷ and Transparency International consistently ranks Pakistan as the third most corrupt country in the region (behind Bangladesh and Afghanistan) in its annual survey.⁵⁸ In a 2011 Gallup Poll, 81 percent of Pakistanis felt that government corruption was “widespread.”⁵⁹

The systemic lack of resources for law enforcement increases the incentives for corruption and other abuses of authority. A 2012 report by the Asia Society's Independent Commission on Pakistan Police Reform notes that Pakistan's police are handicapped by “[a] lack of resources, poor training facilities, [and] insufficient and outmoded equipment,”⁶⁰ with some officers earning as little as \$100 per month.⁶¹ The Independent Commission concluded that “the system simply is not structured to reward good behavior, as merit-based opportunities for professional advancement are scarce, low pay is the norm, and a lack of support and resources compels even many well-intentioned officers to misuse their authority in order to survive.”⁶² In a recent survey by Transparency International, 82 percent of respondents rated police as corrupt or extremely corrupt.⁶³

Undertrained and under resourced, police rely heavily on confessions as evidence of guilt, and the use of torture is widespread.⁶⁴ Police lack forensics capabilities and other means of investigation.⁶⁵ Torture is prohibited under Pakistan's Constitution, but police training texts “not only neglect to reinforce this right, but also hardly discuss the issue of torture as a means of eliciting a confession at all.”⁶⁶ The Independent Commission found that police training “is archaic both in its content and in its methodology. The emphasis is on muscle over mind.”⁶⁷ In one survey police officers said that they resorted to torture because they had not been taught any other method.⁶⁸ Consequently, as detailed below, torture is routine and seldom punished.

Prosecutors are also underfunded and ill-equipped.⁶⁹ According to one former prosecutor, “Weak cases come to trial because ‘prosecutors do not want to weed out cases [since] they believe it makes them look weak or dishonest.’”⁷⁰ Oftentimes, “prosecutors do not speak to witnesses until the case comes to court, undermining their effectiveness against the defense, and making them over-dependent on the police.”⁷¹

The lower courts, which play an essential gatekeeping function for fair trials, “are in poor shape [due to] . . . limited resources, lack of professionalism, and incompetence.”⁷² Judges are overworked, underpaid, and receive only two months of training upon appointment.⁷³ In 2013, Freedom House reported that Pakistani courts were struggling to process a backlog of more than a million cases, resulting in procedural delays and lengthy pretrial detention periods.⁷⁴ Judges in the lower courts are particularly susceptible to the influences of bribery, intimidation, and political pressure. In the view of Mehmood ul Hassan, a Pakistani lawyer and member of the Sindh Bar Council, corruption was still “rampant” in the lower courts and spreads to higher courts as judges are promoted.⁷⁵ Peshawar High Court Chief Justice Dost Muhammad Khan has expressed similar concerns: “Most of the corruption cases stem in the lower courts where bribery and blackmail are normal routine matters for lawyers as well as clients.”⁷⁶

The failings of the legal system are compounded by an outdated Criminal Procedure Code (CrPC), which has remained virtually unchanged since its enactment in 1898, when it was adapted—with only minor revisions—from the British Indian Penal Code. A former civil judge said of the CrPC, “[w]hile living in 2014, we are centuries old in terms of legislations.”⁷⁷ Ijaz Ahmad, a Pakistani judicial magistrate, has described the code as “prehistoric,” pointing out that Section 46(2) “has given a free hand to the police to summarily kill the accused if wanted under an offence punishable with death or a life term.”⁷⁸ Furthermore, the CrPC’s failure to define the term “accused” permits warrantless arrests on the basis of a “reasonable complaint” or “reasonable suspicion.”⁷⁹

B. Pakistan's Overbroad Anti-Terrorism Laws Undermine Fundamental Protections

Procedural safeguards are even weaker for terrorism suspects. The Anti-Terrorism Act (ATA),⁸⁰ passed in 1997, established a parallel system for the prosecution of terror-related crimes. The ATA governs the procedures for the arrest, detention, prosecution, and sentencing of terrorism suspects in Pakistan. The Act's broad scope funnels large numbers of non-terrorist defendants into a parallel anti-terrorism court system with even fewer judicial protections than Pakistan's ordinary criminal justice system. At least 800 of the prisoners currently on death row were convicted by special Anti-Terrorism Courts (ATCs).⁸¹ In July 2014, there were more than 17,000 cases pending in ATC courts across the country.⁸² Although the ATCs were originally established for the purpose of prosecuting terror-related crimes, in practice, they have issued death sentences for crimes including murder and kidnapping that have nothing to do with terrorism.

Under the ATA, terrorism entails "the use or threat of action designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society."⁸³ The definition covers any such actions "made for the purpose of advancing a religious, sectarian or ethnic cause, or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians," and lists examples as broad as "damaging property by ransacking, looting, arson or by any other means. . . ."⁸⁴ This description of terrorism is so expansive that it could be interpreted to cover virtually any crime or public disturbance, apart from its vague and rarely used carve-out for "a democratic and religious rally or a peaceful demonstration."⁸⁵

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Like ordinary courts, the ATCs are "severely understaffed, underfunded, and lack essential resources," leading to huge backlogs of cases.⁸⁶ But whereas these backlogs have created severe delays in ordinary courts, the ATCs are legally required to complete trials within seven days. In order to process cases quickly, ATCs were designed with procedural shortcuts, including a *de facto* shift in the burden of proof from the prosecution to the accused;⁸⁷ loosened standards of admissibility for confessions;⁸⁸ removal of any warrant requirement for police searches or arrests in connection with ATC trials;⁸⁹ and even the potential trial of the accused *in absentia*, in certain circumstances.⁹⁰ The result is a hasty process that has

been stripped of important safeguards. According to a Karachi-based former anti-terrorism prosecutor, “[p]olice have fourteen days to submit a charge sheet, so the IOs [investigating officers] are in a hurry, it’s always a rushed job.”⁹¹

A closer analysis of ATA prosecutions reveals the overreach of anti-terrorist laws in Pakistan and the overuse of the death penalty in particular. JPP statistics indicate that in 2014, more than 800 alleged “terrorists” were on death row due to ATA prosecutions; of these, 256 had no pretense of a link with terrorism.⁹² Of the remaining 562 cases, JPP concluded that only 20 percent of those sentenced to death under the ATA were genuinely “terrorists” as the word is commonly understood—that is, motivated by a broader political or religious ideology that distinguishes the offense from normal criminal or personal motives like profit or revenge.⁹³

The charging of Shafqat Hussain⁹⁴ exemplifies this problem. At the age of 14, Shafqat was accused of kidnapping, a crime normally heard in ordinary criminal courts under Pakistan’s Penal Code.⁹⁵ However, because the charge was deemed to have “created a sense of terror in the wider community,” he was tried in an anti-terrorism court, dramatically altering the trajectory of his case.⁹⁶ As a minor, Shafqat should never have been sentenced to death. Further, the prosecution relied almost exclusively on a confession obtained via torture. Speaking in the National Assembly, Minister of Interior Chaudhry Nisar Ali Khan admitted that the case was in reality “not connected to terrorism” at all and had more appropriately “concerned civil society.”⁹⁷ Even so, Shafqat was ultimately executed for his sentence under the ATA.⁹⁸

III. INVESTIGATION BY TORTURE

The widespread reliance on confessions obtained by torture violates the right to a fair trial.

International law prohibits the use of torture and requires the exclusion of evidence obtained through torture.⁹⁹ First, as a State Party to the Convention Against Torture (CAT) and to the ICCPR, Pakistan is required to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”¹⁰⁰ International law separately provides that legal assistance must be made available during pre-trial procedures including police questioning.¹⁰² For instance, the Human Rights Committee has stated that “[i]n cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings.” Second, and moreover, the use of torture undermines the fairness and legitimacy of the justice system. Article 14(g) of the ICCPR guarantees the right of defendants “[n]ot to be compelled to testify against himself or to confess guilt.”¹⁰³ The Human Rights Committee elaborates that “[d]omestic law must ensure that statements or confessions obtained in violation of article 7 of the Covenant are excluded from the evidence.”¹⁰⁴ Similarly, in *Othman v. United Kingdom*, the European Court of Human Rights stressed the importance of excluding evidence obtained through torture, stating: “Torture evidence is excluded to protect the integrity of the trial process and, ultimately, the rule of law itself.”¹⁰⁵

In Pakistan, torture at the hands of the police as an instrument for collecting evidence is widespread and rarely punished.¹⁰⁶ In a 2007 report on the death penalty in Pakistan, the International Federation of Human Rights concluded that “[t]orture in order to obtain confession, to intimidate and terrorise is widespread, common and systematic.”¹⁰⁷

JPP and the Lowenstein Clinic confirmed those findings in a 2014 report. Researchers examined 1,867 medical-legal certificates of independent physical examinations of criminal defendants from Faisalabad. The figures were striking; physicians found conclusive evidence of abuse in 1,424 of the 1,867 cases.¹⁰⁸ Police were documented as having “beaten victims, suspended, stretched and crushed them, forced them to witness other people's torture, put them in solitary confinement, subjected them to sleep and sensory deprivation, confined them to small spaces, exposed them to extreme temperatures, humiliated them by imposing culturally inappropriate or unpleasant circumstances, and sexually abused them.”¹⁰⁹

The routine reliance on torture has been documented repeatedly over the last thirty-five years,¹¹⁰ but genuine reforms have yet to take hold.¹¹¹ Formal prohibitions against torture exist under Article 14(2) of Pakistan's Constitution, yet there is still no law expressly criminalizing torture in Pakistan, despite its ratification of the Convention Against Torture in 2010.¹¹² The Pakistan Penal Code fails to define and specifically prohibit torture, further contributing to a “culture of impunity.”¹¹³ The fact that Pakistan's police “have traditionally been used by the state to suppress dissent and tame opposition” has contributed to an institutional culture in which torture and abuse of power are pervasive and tolerated.¹¹⁴ Further, while the Code of Criminal Procedure provides that a confession obtained under police custody is inadmissible,¹¹⁵ courts routinely admit and rely on confessions made under duress.¹¹⁶

Pakistan does not have any independent state-sponsored mechanism for investigating or documenting allegations of torture. As a consequence, torture¹¹⁷ is rarely investigated and seldom punished.¹¹⁸

The lack of safeguards at the arrest stage fosters a permissive environment for widespread custodial cruelty. While the Pakistani Constitution provides that “[e]very person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest,”¹¹⁹ police routinely detain individuals for days without entering them into the system.¹²⁰ As a result of this practice, police have the ability to abuse prisoners before bringing them before a magistrate and, because “lawyers in Pakistan seldom visit people in police custody,”¹²¹ extrajudicial and coerced confessions are common.

Once a defendant has confessed under torture, few procedural protections exist. Under Pakistani law, interrogations are supposed to be excluded on a showing of torture, but in practice, coercive interrogations are admitted regularly at trial. Often, such “confessions” are the *only* evidence prosecutors have against defendants, as it was for Shafqat Hussain, whose case is reviewed below. In practice, the “[l]ack of use of sophisticated methods of investigation . . . leaves the investigation team with only one method to solve a crime i.e. confession.”¹²² Too often, this leads the police to use torture to force confessions in order to proceed with a case. The admission of such testimonies is made easier by the low-quality representation of defendants who fail to challenge it.

The Anti-Terrorism Act of 1997 (ATA) vitiates even the formal procedural safeguards afforded in regular criminal trials, notably the exclusion of confessions obtained in police custody.¹²³ Section 21(H) of the ATA specifically permits extra-judicial confessions—such as confessions written up by the police—to be used in trials in ATC courts.¹²⁴ Failure to exclude such confessions has the effect of tacitly condoning the use of coercion and torture by police to extract inculpatory testimony from detainees. Further, the Act explicitly immunizes officials from accountability for abuse: “No suit, prosecution or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done under this Act.”¹²⁵ Under the ATA, as detailed in the following case study, Shafqat Hussain's¹²⁶ torture-procured admission of guilt became the basis for his conviction.

In the majority of the 12 cases reviewed for this report, there was evidence that police tortured the defendant and that the resulting confession was critical to the conviction. The father of Kanizan Bibi,¹²⁷ a woman sentenced to death and whose story is detailed later on, appealed to the Pakistani government for mercy. His letter to the government recounted the torture his daughter had suffered at the hands of the police:

[The police] charged my daughter with murder and she kept crying but they did not listen to her, and kept inflicting their cruelty on her. They hung her from the fan and beat her. When I went there to see her, they did not let me meet her... I was a poor man. If I were able to pay her bail, I could have saved her. They beat her so much, that she became unwell. Then they took her to the hospital, and brought her back to the police station after 4 days.

Kanizan Bibi's conviction largely rested on a testimony she gave after days of torture while in custody.

Aftab Bahadur was tortured by police into falsely confessing to a crime and coerced into creating inculpatory evidence that would later be used against him. Aftab claimed that he was taken to the scene of the crime, where the police smeared his hands with oil and forced him to leave fingerprints by wiping his hands all over the scene.¹²⁸ Similarly, death row prisoner Muhammad Amin recounted how "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. I was 17 years old at the time."¹²⁹

In the cases reviewed, there was little indication that police followed safeguards to prevent against custodial abuse, or that courts, including appellate ones, later gave due consideration to allegations of coercive confessions. Kanizan Bibi was arrested on August 9, 1989, but her confession was recorded only eleven days later, on August 20—in violation of Pakistani law. Yet when confronted with a challenge on this ground, the Supreme Court threw out the appeal, finding that "[t]he nature of the voluntary confessions cannot be doubted." Specifically, the Court observed that the "learned Magistrate . . . faithfully complied with all the formalities" of the Criminal Procedure Code, such as the "necessary questions to [appellant] to satisfy himself that the confession was being made voluntarily."

SHAFQAT HUSSAIN

Years On Death Row: 11

Status: Executed on August 3, 2015.



A Juvenile Tortured Into A Murder Confession

Shafqat Hussain was arrested on suspicion of involvement in the kidnapping of another child, who lived in the Karachi apartment building where he worked as a guard and caretaker. In the days that followed, Shafqat underwent nine days of brutal torture to elicit a confession, which proved to be the sole piece of evidence used against him at trial.

At the time, he was just fourteen years old.

"The police [were] under a lot of pressure from a [member of the National Assembly], so they just wanted to find someone to pin it on. They told me to give them 5 laks [~4,270 Euros] and they'll let me go and find someone else. That's how they let the other [watchman] go. But I had no money to give them."

While in their custody, police subjected Shafqat to electrocution, sleep deprivation, and repeated beatings. In a written request to extend Shafqat's detention, the sub-inspector in Karachi ominously hinted at the further cruelty awaiting the young boy:

"Accused is cunning and clever and looks like a professional criminal. We expect more information from him; that is why further interrogation is required."

Shafqat described the harrowing experience that led to his confession:

"In the first four days, they just didn't talk to me. The police just kept beating me. They didn't even tell me why I had been picked up. When I would ask, they would simply say, 'You'll find out in good time.'

They always tortured me after 11pm/12am, but there was no fixed time: it could be at 11pm, or 3am – I never knew when they would come. They would usually torture me in 15 to 30 minute stretches, sometimes multiple times in one night depending on how many times the complainant visited.

The real torture started after physical remand. They kept detaining people and forcing me to say that they were my accomplices so that they could get a bribe out of them. And I would do it because I had no choice. . . they were torturing me.

They would hit me with sticks on the bottom of my feet. They would tie my hands and feet together and run a thick wooden stick between them under my belly and suspend me like that and hit me on my feet. They even beat me with a chittar. I have scars on my wrists from the handcuffs and arm from the cigarette burns.

They pulled out three of my fingernails and I was in excruciating pain. Once I was so badly beaten that I passed out. I do not remember how long they tortured me that time.

They even electrocuted me. They would set out a live wire mesh and force me to drink lots of water. Basically, they electrocuted me through urination. Whenever the complainant would visit they would torture me more.

I was tortured so severely and continuously that my mind 'just stopped.' They could make you say a deer was an elephant."

Since Shafqat was effectively alone at the time of the trial with no identification documents in his name, the police erroneously noted his age to be 23 years old. Terrified and traumatized, Shafqat did not dare disagree with anything that the police had told him to say for fear of being tortured again. The trial court conducted no inquiry into his young age, nor did his trial lawyer ever raise the issue of juvenility, so he was tried as an adult and, inexplicably, as a terrorist. Moreover, despite the absence of any probative evidence against him, Shafqat Hussain's counsel did not introduce a single piece of evidence in Shafqat's defense, nor did he call any witnesses on his client's behalf. Instead, amid constant requests for money, he told Shafqat that the Anti-Terrorism Courts were not designed to acquit people and effectively abandoned the young boy to his fate.

Shafqat's family, who lived in a small village more than 2,000 kilometers from Karachi, were unaware that Shafqat had even been arrested until after he had been sentenced to death by the Anti-Terrorism Court.

On appeal to the High Court, Shafqat's murder charge was overturned. Based on the evidence shown, the Court held that the most that could be proven was guilt of a botched kidnapping in which death was accidental. Yet the Court did not strike down the associated "terrorism" charge of kidnapping.

On August 3, 2015, after spending nearly half his life on death row, Shafqat entered the gallows and was hung to death.

IV. INEFFECTIVE LEGAL REPRESENTATION

Pakistan does not provide indigent capital defendants with effective legal assistance.

All defendants are entitled to effective legal counsel under international law.¹³⁰ In death penalty cases, according to the Human Rights Committee, it is “axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings.”¹³¹ “[B]latant misbehavior or incompetence”¹³² violate this standard. Where it is “manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice,”¹³³ the state violates the Article 14 right to fair trial.¹³⁴

Though Pakistan provides indigent capital defendants with counsel at state expense,¹³⁵ the quality of representation is poor. The International Federation for Human Rights notes that, for the most part, state-appointed counsel are “young and inexperienced lawyers, or briefless ones.”¹³⁶ Furthermore, Pakistan does not provide for recourse to justice due to incompetent or ineffective counsel.¹³⁷

More than half of the defendants in the cases reviewed suffered from inadequate representation by state-appointed lawyers in the early stages of their cases. In some, egregious errors by these lawyers directly resulted in convictions based on false testimony and in the execution of juveniles and members of other vulnerable groups that are owed special protection under international law. For instance, Zulfiqar Ali Khan¹³⁸ spent sixteen years on death row prior to his execution on May 6, 2015, by firing squad. When the prosecution presented falsified witness statements during his trial, Zulfiqar's state-appointed lawyer failed even to challenge this testimony, causing irreparable damage to his case. Aftab Bahadur also was provided with a state-appointed lawyer at trial. This lawyer like wise failed to produce any evidence or witnesses in defense of Aftab.

ZULFIQAR ALI KHAN

Years On Death Row: 17

Status: Executed On May 6, 2015.



Undermined by "clueless" state-appointed lawyers

In 1998, Zulfiqar and his younger brother were held up in an armed robbery outside of Islamabad. Fearing for his life and that of his brother, he shot the two thieves in self-defense.

Although his alleged crime had nothing to do with terrorism, Zulfiqar's case was nonetheless tried by the Anti-terrorism Court (ATC) in Rawalpindi in 1999. His case illustrates the dangerous over breadth of Pakistan's counter-terror framework, which has been used to prosecute an array of crimes that have nothing to do with terrorism.

Due to severe poverty, Zulfiqar's family was unable to afford a lawyer. As a result, he relied on state-appointed lawyers whose incompetence severely undermined his case. When the prosecution presented falsified witness statements, Zulfiqar's state-appointed lawyer failed to challenge this erroneous testimony, causing irreparable damage to his case.

As Zulfiqar described the incompetence of his lawyer, *"Since a defense counsel was needed to fulfill a legal formality, the judges . . . enlisted peremptorily one of the lawyers at that time present in court, who was clueless about my case."* According to Zulfiqar's younger brother, Abdul Qayyum, his defense was *"a mere formality."* By the time the case reached the penultimate stage of appeal, Qayyum still had not met his brother's lawyer. He only learned from another lawyer that *"the Supreme Court had dismissed [Zulfiqar's] final petition (against execution) because our lawyer was not present in court."*

Zulfiqar was sentenced to death by firing squad by the Anti-Terrorism Court. His sentence was confirmed by the High Court in 2001 and his Supreme Court appeal was rejected in 2002.

During his 18 years on death row, Zulfiqar was a model prisoner. Not only did he complete 33 diploma courses, but he also educated more than 50 of his fellow prisoners. As one of Zulfiqar's students described him, *"When I was put on death row I was completely uneducated. Thanks to his hard work, I am now preparing for my bachelor's degree. He was like an angel in my life."* Another fellow prisoner said of Zulfiqar, *"He has spent the last 14 years of his life imparting the message of peace, patience, and piety... He is a source of inspiration and deserves to be honoured."*

By the time Zulfiqar was executed on May 6, 2015, his execution had been scheduled (and postponed) more than 22 times.

V. INADEQUATE OPPORTUNITY FOR DEFENSE

Pakistan does not provide individuals with adequate time and facilities for the preparation of their defense.

The ICCPR requires that all defendants have “adequate time and facilities for the preparation of [their] defence and to communicate with counsel of [their] own choosing.”¹³⁹ The Human Rights Committee has found violations where a court refused to postpone a trial, despite the fact that the defendant had never met with defense counsel until trial¹⁴⁰ or in very brief meetings.¹⁴¹ The Committee has also found such a breach when lack of time “affected counsel’s possibility of determining which witnesses to call.”¹⁴² An adequate defense is all the more vital where a conviction may result in deprivation of life;¹⁴³ a state must “[a]fford special protection [to accused] by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases.”¹⁴⁴

Aside from poor quality of representation, limited time and resources further handicap the legal defense that capital defendants in Pakistan are able to mount. Counsel is often assigned to indigent defendants once a trial is already under way,¹⁴⁵ and as a result defense attorneys are rarely involved in investigations, nor provided sufficient time and resources to expend upon parallel inquiries.

Pakistan’s special courts for political and terrorism-related acts have dramatically reduced the time available to prepare for trial. Between 1987 and 1994, Pakistan established Special Courts for Speedy Trial that had exclusive jurisdiction over certain offenses.¹⁴⁶ These included non-violent acts of political dissidence such as sedition¹⁴⁷ as well as acts of violence such as “waging or attempting to wage war, or abetting waging of war against Pakistan,”¹⁴⁸ for which the death sentence could be imposed. Aftab Bahadur, who was arrested on murder charges in October 1992, was convicted and sentenced to death by the Special Court for Speedy Trials in Lahore in April 1993. His conviction was confirmed by the Supreme Appellate Court in March 1994. During the trial, “Pakistan refused even to grant his lawyers the few days needed to present evidence which would have proved his innocence.”¹⁴⁹

The ATA requires that the investigating officer complete the investigation of cases triable by the court within thirty working days.¹⁵⁰ Furthermore, the ATA imposes a seven-day limit (with a two-day extension) on trials.¹⁵¹ These time limits, combined with an enormous caseload,¹⁵² impose further strain on the ability of lawyers to prepare an adequate defence for their clients, and would seem to increase pressure on prosecutors to rely on confessions, all-too-often coerced. Stated differently, these hastened proceedings, in combination with the shifted burden of proof and lowered evidentiary standards, “give the federal government unwarranted procedural shortcuts and a tool with which to coerce suspects,” according to the International Crisis Group.¹⁵³

VI. WEAK EVIDENTIARY STANDARDS IN CAPITAL TRIALS

Pakistan's evidentiary standard does not meet that required under international law for the imposition of the death penalty.

International law enshrines the presumption of innocence in its requirements for a fair trial. The ICCPR provides that “[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”¹⁵⁴ This presumption of innocence “is fundamental to the protection of human rights.”¹⁵⁵ The ECOSOC Safeguards guaranteeing protection of the rights of those facing the death penalty develop further this requirement, stipulating that a death sentence may only follow “when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.”¹⁵⁶

While Pakistan asserts that “courts operate on the salutary principle that an accused is presumed innocent until proven guilty,”¹⁵⁷ the reality on the ground suggests differently. Coerced confessions, ineffective counsel, and the resource constraints confronted by both defendants and police, all work together to call into question courts' adherence to the standard presumption of innocence. These deficiencies are greatly amplified by a series of problematic Supreme Court decisions dating from the early 2000s. Most significantly, in a 2002 decision, the Supreme Court of Pakistan ruled that if a court “is satisfied that the offence has been committed in the manner as alleged by the prosecution, the technicalities should be overlooked.”¹⁵⁸ According to the International Federation of Human Rights, “small discrepancies in the evidence” increasingly have been overlooked and more questionable evidence let in since that ruling.¹⁵⁹

This trend is even more acute under the ATA framework, which expressly shifts the burden of proof from the prosecution to the accused.¹⁶⁰ This shift has been reinforced by subsequent anti-terrorism legislation in the form of the Protection of Pakistan Act (PoPA). Article 15 of the PoPA states that those arrested for suspected terrorism offenses “shall be presumed to be engaged in waging war or insurrection against Pakistan unless he establishes his non-involvement in the offense.”¹⁶¹

Because Pakistan does not abide by the stringent evidentiary standard demanded under international law, it is likely that many prisoners on death row are innocent. The conviction of Kanizan Bibi,¹⁶² who has always maintained her innocence, was based on sparse and highly suspect evidence. Aside from her coerced “confession,” the prosecutors' only other evidence was blood-stained clothing, which they alleged Kanizan was wearing upon her arrest, thirteen days after the murder.

VII. DEFICIENT APPELLATE PROCESS

Pakistan fails to provide effective and timely appeals and post-conviction review of new and potentially exculpatory evidence.

International law requires not only that persons accused of capital crimes be guaranteed a right to appeal, but also requires that this right be “effective”¹⁶³ in practice and that it be granted without “undue delay.”¹⁶⁴ Article 14(5) of the ICCPR provides the right of each criminal defendant “to his conviction and sentence being reviewed by a higher tribunal according to law.”¹⁶⁵ The appellate procedure must also be effective.¹⁶⁶ The Human Rights Committee has stated that this Article “imposes on the State party a duty to review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case.”¹⁶⁷

While the ICCPR does not explicitly require that individuals be given the right to an appeal upon discovery of new evidence, this right is strongly implied by the Human Rights Committee's interpretation of Article 14. According to the Human Rights Committee, the ICCPR requires that a higher court review the allegations against a convicted person “in great detail” and consider “the evidence submitted at the trial *and referred to in the appeal*.”¹⁶⁸

Defendants also have a right under the International Covenant, “to be tried without undue delay,” which includes the right to appeal.¹⁶⁹ In the case of *Pratt and Morgan v. Jamaica*, the petitioners were unable to proceed to appeal to the Privy Council because it took the Court of Appeal almost three years and nine months to issue a written judgment. The Human Rights Committee, in concluding that Jamaica had violated Article 14(3)(c), stated that “in all cases, and especially in capital cases, accused persons are entitled to trial and appeal without undue delay, whatever the outcome of those judicial proceedings turns out to be.”¹⁷⁰ In other cases, the Human Rights Committee has concluded that a delay of 29 months from arrest to trial was contrary to Article 14(3)(c), and that a delay of two years between arrest and trial also violates Articles 14(3)(c)¹⁷¹ and 9(3) of the Covenant.

Article 14(5) of Pakistan's Constitution provides for the right to appeal death sentences. The provincial high courts hear appeals and are required to automatically review death sentences. The highest level of appeal for criminal cases is the federal Supreme Court.¹⁷² Although guaranteed on paper, the appeals process is often so slow as to be rendered ineffective in practice. Inadequate procedural safeguards at the pre-trial and trial stages for capital defendants are reproduced and compounded at the appellate level. Defendants have difficulty exercising their right to appeal due to “severe backlogs at both trial and appellate levels.”¹⁷³ Delays in the appellate process are compounded by “an acute nation-wide shortage of judges.”¹⁷⁴

Even when individuals sentenced to death succeed in initiating the appeals process, higher courts often refuse to consider arguments and factual determinations that are often dubious and worthy of scrutiny. In the case of Kanizan Bibi,¹⁷⁵ who was tortured into falsely confessing to a murder, defense lawyers challenged the confession evidence on the basis that it was involuntary. However, the Supreme Court summarily affirmed the judgments of the lower courts on the grounds that "conviction on the basis of retracted judicial confession alone is sustainable provided the confession has been recorded in accordance with law."¹⁷⁶ The Court declined to even acknowledge Kanizan Bibi's claim that the confession was rendered invalid by torture.¹⁷⁷

Despite provisions in Pakistani law that supposedly allow for the introduction of new and important evidence, such requests are denied routinely. Pakistan's Supreme Court has the authority to review convictions for any reason.¹⁷⁸ Under the Constitution, the "Supreme Court shall have power to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it."¹⁷⁹ Pakistan has claimed in a report to the Office of the United Nations High Commissioner for Human Rights that this Article, as well as Article 199 and the courts inherent power to recall an order passed allows for post-conviction reviews.¹⁸⁰ However, in practice, attempts to introduce potentially exculpatory evidence almost never succeed. Out of the 12 cases analysed in this report, requests for post-conviction review were denied in at least 4 cases.

The case of Aftab Bahadur illustrates the insufficiency of post-conviction review processes. Originally convicted for murder in 1992, Bahadur claimed that police had tortured him, eliciting both a false confession as well as fabricated fingerprints to link him to the crime.¹⁸¹ Even so, Bahadur's trial attorney failed to question the magistrates who had overseen his confession or the fingerprint bureau officers. Despite the effort of new and competent legal representation on appeal, the judge refused to consider new evidence of the false confession or the fingerprints. The state executed Bahadur in 2015.

Finally, Pakistan violates international law by failing to ensure individuals' right to appeal without undue delay. To cite just a few examples, the trial court decided Muneer Hussein's case¹⁸² in 2001, and it took six years for the High Court to hear his appeal in 2007. Ubeid Pershaad has been on death row for 13 years pending appeal. Asia Bibi was finally granted an appeals hearing in July 2015, six years after being sentenced to death on blasphemy charges. As these cases illustrate, a nominal right to appeal is meaningless unless it is effective in practice.

KANIZAN BIBI

Years On Death Row: 26 Years

Woman on death row tortured into insanity

Kanizan Bibi was born into a very poor family and worked as a housemaid to help support her family. In 1989, her employer's wife and children were murdered, and Kanizan and her employer were subsequently arrested and convicted for the crimes. According to her family, the real culprits, who had been in a longstanding land dispute with the employer, had been arrested but released upon bribing the police, and had then filed a false police report accusing Kanizan.

Kanizan has always maintained her innocence. Indeed, the only evidence presented at trial was highly suspect.

(1) *Her 'confession.'* Kanizan was held for eleven days in police custody before being brought to the magistrate to confess. Her father recounts how the torture was so extreme that Kanizan had to be admitted to the hospital during that time. Kanizan's lawyers later challenged the admissibility of the confession, to no avail.

(2) *Her 'bloody clothes.'* The trial court relied on blood-stained clothes the police asserted she was arrested in—a full thirteen days after the alleged crime. For the judge, however, this anomaly simply followed from the “so abnormal and foreign to ordinary human beings [the] killing of [a mother] and [five] innocent children.” As a result, the judge was “left with no doubt that both accused are real culprits.”

Court after court upheld her conviction.

Over the 26 years Kanizan has been on death row, her mental health deteriorated significantly. She is mute; at times unable to feed or clothe herself; and rarely recognizes or responds to family members. In 2000, she was diagnosed with schizophrenia, and in 2006, transferred to the Punjab Institute of Mental Health.

In 2015, the President of Pakistan rejected Kanizan's mercy plea. Kanizan Bibi could be given a black warrant at any time.

VIII. NO MERCY FROM EXECUTIONS

Pakistan fails to provide an effective right to seek pardon or commutation of the sentence of death.

The right to seek pardon or commutation of death sentences is enshrined clearly in international law. The ICCPR provides unambiguously: "Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."¹⁸³ The right to seek pardon or clemency has been affirmed by the practices of almost every country applying the death penalty and is sufficiently widespread to be considered a rule of customary international law.¹⁸⁴ In the words of the U.S. Supreme Court, clemency "is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted . . . the 'fail safe' in our criminal justice system."¹⁸⁵

The right to pardon must exist in fact, not just on paper. The Inter-American Commission on Human Rights held in the case of *Lamey v. Jamaica* that the state failed to fulfill its obligation "to guarantee . . . an effective right to apply for amnesty, pardon, or commutation of sentence."¹⁸⁶ In that case, the Commission found that Jamaica, by denying the plaintiffs access to legal counsel and delaying their criminal proceedings, had "effectively barred recourse for those victims."¹⁸⁷

Pakistan's clemency process makes it virtually impossible for the accused to obtain pardons or commutations of death sentences. The Pakistan Prison Rules formally require prison authorities to submit a mercy petition on behalf of each prisoner unrepresented by legal counsel.¹⁸⁸ In practice, most mercy petitions contain just three perfunctory lines: "The prisoner's Supreme Court decision has come through. He has been sentenced to death. Please consider his case for mercy."¹⁸⁹ Even prisoners who are fortunate enough to secure legal representation face insurmountable odds. Although the President of Pakistan possesses the constitutional authority to pardon death row defendants by accepting mercy petitions under Article 45 of the Constitution,¹⁹⁰ in practice, such petitions are always denied. The President's office repeatedly denied mercy petitions submitted by all prisoners whose cases were reviewed by the authors of this report. According to a recent press article, the President's office has rejected mercy petitions filed by more than 444 people since December 2014.¹⁹¹

The enactment of the Juvenile Justice Systems Ordinance (JJSO) in 2000 prohibited the sentencing and the application of the death penalty to juvenile offenders. However, since the JJSO was not retrospective in effect, the President of Pakistan on 13.12.2001 issued a Notification¹⁹² stating that any prisoner who had their death sentences confirmed prior to the introduction of the JJSO, but in whose cases there existed evidence that they were juveniles at the time of committing the alleged offences, should be granted a "special remission" and have their death sentences commuted. Following the Notification, the Supreme Court of Pakistan directed in the case titled *Ziaullah v. Najeebullah*¹⁹³ that the benefit of the Notification was to accrue on the basis of determination by a trial court under the provision of the JJSO.

On 18.08.2003, the Government of Punjab issued a letter¹⁹⁴ to the registrar of the Lahore High Court stating that the benefit of the President's Notification should apply automatically to all death row defendants who were juveniles at the time of commission of a *ta'zir*¹⁹⁵ offense without the need for submission of a mercy petition. However, the President has not granted a single pardon—either for juveniles or adults—since the lifting of the moratorium in 2014.

Additionally, rulings by the Federal Shari'at Court (FSC) and the Supreme Court have further undermined the ability of death row prisoners to seek pardon and commutation by the President. In a 1992 judgment, the Supreme Court held that the President had no power to commute death sentences resulting from *hudud* or *qisas* offenses, although the President retains the power to commute death sentences given as *ta'zir* punishments.¹⁹⁶ In 1996, the full bench of the Supreme Court held that “[u]nder article 45 of the Constitution, the President enjoys unfettered powers to grant remissions in respect of offences . . . apart from specific cases where relief is by way of grace alone.”¹⁹⁷ The FSC, which was created to evaluate the conformity of Pakistani laws with *shari'a*, ruled that the legal heirs of a murder victim are the sole persons entitled to grant mercy to the culprit.¹⁹⁸ A Punjab Home Department official stated in 2006, “[a]ccording to the law, a death penalty can only be pardoned by relatives of victims.”¹⁹⁹

The Anti-Terrorism Act expressly forbids commutations or pardons: “[N]o remission in any sentence shall be allowed to a person who is convicted and sentenced for any offence [under the Act].”²⁰⁰ Consequently, death row prisoners have been denied the post-conviction rights to which they are entitled under international law. For example, Muhammad Amin was a minor when he was arrested in 1998 for allegedly killing a man during a burglary gone wrong. In fact, Muhammad had accompanied a classmate to the house of the classmate's stepmother and was waiting outside when he heard shots.

The classmate came running from the house and fled, leaving Muhammad to be apprehended and severely beaten by police. Upon the conclusion of his trial, Muhammad received two death sentences: one for murder under the Pakistani Penal Code, and another for murder under the Anti-Terrorism Act, since the offense caused “terror, sense of fear and insecurity in the people of [the] locality.”²⁰¹ Though the victim's family has pardoned Muhammad for the murder conviction, he is unable to seek a pardon and remains under threat of execution.²⁰²

The death penalty is the ultimate and irreversible punishment. Given the many procedural failings in Pakistan's criminal justice system, it is imperative that these individuals be provided with a fair opportunity to seek pardon or commutation, and to introduce new and potentially exculpatory evidence.

IX. EXECUTING JUVENILES

Pakistan fails to respect its special obligations to protect juveniles.

International law recognizes that, for the purposes of criminal justice, children are inherently different from adults and thus merit special considerations throughout the legal process, particularly at sentencing. International law clearly, repeatedly, and categorically condemns use of the death penalty for offenses committed by juveniles. The United Nations Convention on the Rights of the Child (CRC), which Pakistan ratified in 1990, dictates that “neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”²⁰³ Moreover, the ICCPR states: “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age. . . .”²⁰⁴ These binding prohibitions reflect a universal and unqualified protection of juveniles from the death penalty.

Crimes committed by juveniles often derive from youthful impulse, underdeveloped faculty for reasoned decision-making, or fear.²⁰⁵ Despite their diminished capacity for self-control, juveniles also maintain a greater capacity for self-improvement, and consequently should be given a sentence that reflects that opportunity for rehabilitation.²⁰⁶ Compared to adult defendants, juveniles' lessened capacity to make legal decisions only necessitates a heightened need for effective and competent legal counsel.

The Human Rights Committee commentary reflects this view, noting the involvement of parents or legal guardians where appropriate, as well as an obligation for “appropriate assistance in the preparation and presentation of their defense.”²⁰⁷ While “[j]uveniles are to enjoy at least the same guarantees and protection as are accorded to adults,” they additionally require “special protection” and treatment “in a manner commensurate with their age.”²⁰⁸ As a result of physiological and psychological differences, juveniles need proceedings that are fundamentally more protective than those accorded to their adult counterparts. Capital punishment, the most severe form of state retribution, wholly disregards a child's “limited culpability, circumscribed choices, and enhanced potential for redemption.”²⁰⁹ Pakistan has failed to implement these standards in violation of its international legal obligations.

The ICCPR provides that “the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation”²¹⁰ and that “[a]ccused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.”²¹¹ Moreover, “[d]etention before and during trial should be avoided to the extent possible.”²¹² Similarly, the CRC reiterates these special protections, mandating that “every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits”²¹³

Upon commission of a criminal offense, “[e]very child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance,”²¹⁴ as well as a right “[t]o have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation. . . .”²¹⁵ These safeguards “overwhelmingly” reflect the accepted international norm.²¹⁶

Because of the weight and breadth of these obligations to protect children, international law dictates that when written or official proof of age is unavailable, the ambiguity should be resolved in favor of the defendant. The CRC emphasized this favorable presumption in its commentary on children's rights in juvenile justice, stating that: “If there is no proof of age, the child is entitled to a reliable medical or social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt.”²¹⁷

In response to Pakistan's continued failure to grant that presumption, UN experts issued a statement²¹⁸ reiterating that the prohibition on executing juveniles should apply in all cases: “International law, accepted as binding by Pakistan, is clear: it is unlawful to execute someone who was under 18 years old when they allegedly committed a crime.”²¹⁹

A. Pakistan's age determination procedures fall short of International standards

Pakistan's procedural protections for juveniles do not meet international standards, and even the limited protections it does provide are widely ignored in practice. Given its obligations as a party to both the ICCPR and CRC, the burden is on the Pakistani government to take all necessary steps to ensure that individuals not be executed for offenses committed as juveniles. However, the continued execution of individuals for offenses committed while under the age of 18 underscores a persistent and widespread failure to determine accurately the age of defendants. Though Pakistan's domestic enactment of the CRC, the Juvenile Justice System Ordinance of 2000 (JJSO),²²⁰ ostensibly appears to satisfy international legal protections for the due process of children, its application perpetuates what the Pakistani Supreme Court once deemed a "feeble right."²²¹ For instance, Section 7 states: "If a question arises as to whether a person before it is a child for the purposes of this Ordinance, the juvenile court shall record a finding after such inquiry which shall include a medical report for determination of the age of the child."²²² In practice, however, these Section 7 reviews fail to occur or simply recycle earlier inaccurate age determinations.²²³ Consequently, juveniles enter the justice system with unprotected "adult" status, subjecting juveniles to the same (broken) legal proceedings as adults. In turn, many are sentenced to death, rendering hollow the JJSO's prohibition on juvenile capital punishment.

Judicial inquiries into the juvenility of criminal defendants are crucial in Pakistan, where more than 70 percent of children are not registered at birth, especially children belonging to religious or minority groups and children living in rural areas.²²⁴ Juveniles who have not been admitted to school regularly lack any documentation of their estimated age, but even school records may prove unreliable as a result of inattentiveness or carelessness by school staff about the registration of correct birth years. Because alternative age determination techniques in the country remain rudimentary, Pakistani courts have pronounced and confirmed death sentences on children based solely on visual assessment by the police. Often, courts refuse to take into account evidence of juvenility even when such evidence is provided by the Pakistani authorities themselves.²²⁵ Pakistani jail authorities concede that the medical exam conducted when a prisoner enters a jail is usually based only on a visual assessment of the prisoner, as is the age recorded in their own statement before the court. Though prisoners formally sign such statements, these declarations are often unreliable, as many prisoners are illiterate. The Pakistani Supreme Court discussed this problematic practice in a recent judgment: "Recording of an accused person's age at the time of recording his statement under s.342 CrPC is invariably based upon a cursory visual assessment which can substantially be off the mark, as proverbially, appearances can be deceptive."²²⁶ Despite this acknowledgment from the country's highest tribunal, the criminal justice system continues to rely on unscientific—and often flawed—determinations of age.

Yet this evidentiary difficulty forms only one part of the problem. Because accused individuals are not aware that juvenility may even be relevant to their criminal proceedings, they often fail to raise this issue in court. Crucially, both defendants' counsel and trial courts habitually fail to inquire into this

issue despite the recognition of such a duty under Pakistani law. As a 2004 Supreme Court opinion noted:

Irrespective of the fact, whether the issue of the age of an accused person is or is not raised before the Court, it is the obligation of the Court to suspend all further proceedings in a trial and hold an inquiry to determine the age of the accused, if and whenever, it appears to be necessary... It would be horrendous to visualize a "CHILD" or a "MINOR" being hanged to death only because the question of his minority had not been raised before the relevant Court. It is the function of the Court to ensure that no illegality is permitted to occur and no injustice is allowed to creep into its decisions.²²⁷

Worse still, the appellate process provides little relief in cases where defendants do successfully broach the issue. Datasets of juvenile cases suggest that many defendants' attempts to use documentary evidence, including that issued by government authorities, to support their claims of juvenility fail, both at the trial and appellate levels.²²⁸ Pakistani courts remain divided on the evidentiary value of conflicting records,²²⁹ and empirical data indicates that there is no apparent consistency of age-determination procedure adopted by the courts; in practice, they are free to choose any evidence that favors the verdict of their choice. Birth certificates are often rejected outright as forgeries, despite the fact that they are government-issued documents. Similarly, medical board reports and school-leaving certificates are often deemed to be inaccurate or fabricated. As a result, juvenile defendants are left with no options to rebut the presumption of adulthood made by the arresting police.²³⁰

The age-determination inquiry for Shafqat Hussain²³¹ epitomizes the egregious but all-too-common failure of judicial safeguards for juveniles, particularly within the ATA. As one report notes, "Section 32 of the Anti-Terrorism Act gives the Act overriding effect over all other laws, ruling out a trial for the juvenile accused under the JJSO. In more than one instance, high courts in Pakistan have insisted that juveniles charged under the ATA cannot have a separate trial [and that] a court under the ATA has complete jurisdiction to try any offence irrespective of whether the offender is a minor or not."²³² Pakistan's Federal Investigation Agency relied on five trial court documents suggesting that Shafqat was 23 at the time of the offense. However, all five derived from the original flawed arrest certificate, which simply recorded the police's incorrect overestimation of Shafqat's age. This mistake condemned him to adult proceedings and, in turn, a death sentence.

Another juvenile offender, Ansar Iqbal, was 14 years old when he was arrested in 1994 for the murder of a neighbor. The victim's family claimed that Ansar killed the neighbor over an argument at a cricket match, but Ansar said police framed him after planting two guns at his house.²³³ At trial, defendant's counsel raised the issue of juvenility and offered both a school record and a government-issued Form-B National Registration Document as evidence in support of that claim. The trial court dismissed both the school record (on the ground that it was inadmissible because the record keeper had not testified) and the Pakistani Form-B (on the ground that it was a "duplicate document" and bore "discrepancies").²³⁴ Instead, the trial court relied upon the police's assessment that Ansar was 22 or 23 years old. By trying Ansar as an adult, the court subsequently permitted him to be sentenced to death.

B. Pakistan fails to provide adequate protections to juveniles In police custody

Pakistan also fails to provide adequate protections to children in police custody. Article 37(a) of the CRC imposes an affirmative obligation on State Parties to ensure that “[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.”²³⁵ Torture, already a violation of international law, is made even more egregious by its application to juveniles. Pakistan has a clear and non-derogable duty to ensure that juveniles are not exposed to torture. In the context of criminal justice, torture heightens the likelihood that juveniles will make false confessions during interrogation. Aftab Bahadur, for instance, was tortured into confessing murder at age 15. In Aftab's words, “It would perhaps have been better not to have to think of what the police did to try to get me to confess falsely to this crime.”²³⁶

These harmful practices are perpetuated by shortcomings at the appellate phase. International law mandates that such inquiries be available at all stages in the adjudicatory process. This obligation requires a review of any evidence made available that may verify a defendant's juvenile status. Yet Pakistani appellate courts rarely question the trial court's age determination (or lack thereof), a failure that has prevented hundreds of juveniles from obtaining relief or retrials in age-appropriate proceedings.

That the Pakistani government reduced some death sentences on the basis of new evidence about the defendant's age—but not others—illustrates the extent to which the government arbitrarily and inconsistently applies its own domestic law. Muhammad Amin attempted to submit evidence of his juvenility during the appeal of his death sentence. However, the Supreme Court in his case rejected the introduction of those documents, declaring that “[t]he tendering of documents . . . at this stage should also be of no avail so belatedly.” Similarly, in 2004, Muhammad Azam and Moinuddin requested commutation of their death sentence under Article 45 of the Constitution and the JJSO. Their request was quickly denied. In dismissing their petition, the Anti-Terrorism Court judge wrote:

[I]t is apparent that the accused never raised any defence regarding their minority during the course of trial or before any appellate court as such it does not lie in the mouth of the convicted prisoner to agitate that they are minor. . . . The accused have also not been proceeded under the provision of [the] Juvenile Justice Ordinance 2000 and their cases have been decided much prior to the promulgation of [the] Juvenile Justice Ordinance 2000. Even otherwise [the] Juvenile Justice Ordinance 2000 does not provide that after conclusion of the case the accused may be referred to medical board for ascertainment of their ages.²³⁷

Exposing children to these heightened penalties directly contravenes international law and runs counter to the rehabilitative purpose underlying international criminal process safeguards for juveniles. Furthermore, the failure to implement the terms of the JJSO not only violates Pakistan's international obligations, but also violates its obligations to its own people.²³⁸ The execution of juveniles neither serves the interests of justice, nor makes Pakistan any safer, and certainly does not respect the rule of law.

"I want to say this to the whole world: is this child a terrorist? He has not attacked the army, or the government or anybody. This is the height of injustice. They give these sentences to innocent people. The guilty people, they don't even look towards them, for fear their eyes will be torn out."

Manzoor Hussain
Brother of juvenile death-row inmate Shafqat Hussain

X. EXECUTING PERSONS WITH DISABILITIES

Pakistan executes individuals with mental illness and intellectual and developmental disabilities.

Because procedural deficiencies fall particularly hard on defendants with mental illness and intellectual and development disabilities, and those with mental illness may lack the criminal intent required for the charged offense, international law condemns the execution of this vulnerable class of people. The Convention on the Rights of Persons with Disabilities (CPRD), which Pakistan ratified in 2011, guarantees the “inherent dignity” of individuals with disabilities.²³⁹ Furthermore, the Human Rights Committee has found that the issuance of an execution warrant in the case of a mentally ill prisoner violates Article 7 of the ICCPR.²⁴⁰ Persuasive sources of international law are more explicit in their prohibition of executions of prisoners with disabilities. For instance, the third of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty provides that “the death penalty [shall not] be carried out . . . on persons who have become insane.”²⁴¹ The Commission on Human Rights has urged retentionist countries “not to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person.”²⁴² Finally, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has made repeated calls to States to stop executing those with mental disabilities, stating that “international law prohibits the capital punishment of mentally retarded or insane persons.”²⁴³ Along these lines, Europe has urged states not to impose the death penalty on those “suffering from any mental illness or having an intellectual disability.”²⁴⁴ Even the United States prohibits the execution of insane persons or those with intellectual disabilities.²⁴⁵

While in theory, Pakistani law provides safeguards to prevent the execution of those mentally ill at the time of the offense, and permits the defense of legal insanity,²⁴⁶ in practice, Pakistan sentences to death and executes prisoners who suffer from mental illness. The lack of mental health treatment and training in the criminal justice system, as well as in Pakistan generally, means that many individuals never even get diagnosed. The dearth in procedural safeguards upon arrest and in the course of trial results in the sentencing to death of many mentally ill persons.

The lack of mechanisms to detect and classify mentally ill individuals poses an initial and significant obstacle to ensuring Pakistan does not execute persons with mental and intellectual disabilities. In Pakistan, prior to defendants' entanglement with the criminal justice system, access to psychiatric care is limited, especially among the poor. As a result, many indigent, mentally ill individuals are rarely diagnosed. Indeed, “[t]hose who experience mental illness often turn first to religious healers, rather than mental health professionals,” and then only to traditional and alternative healers.²⁴⁷

Muneer²⁴⁸ Hussein was one such case. Muneer Hussein came from a low socioeconomic background with no access to mental health services. In the years prior to his execution, his lawyers were able to gather an extensive file documenting the numerous indicators of mental illness that arose early on in his childhood, and that worsened over time. As a child, Muneer experienced episodes of extreme anxiety and hallucinations.

When he was 22-years old, he accidentally shot himself in the face. Because the pellets were made of lead, it is likely that this wound—visible to all—exacerbated his mental illness. According to the affidavit of his uncle, “[a]fter this incident, Muneer's behaviour changed a lot. He started to behave strangely, but not all the time. Sometimes he would be normal and then he would suddenly change, as if he was a completely different person.”

Until his lawyers' intervention, Muneer's mental illness remained undiagnosed and untreated. Yet, it clearly manifested during his time on death row. In an affidavit, his wife recounts how when she would visit, Muneer would have “frequent fits of extreme anger and violence, and on other occasions, turn[] extremely pale, and become[] silent and distant, as if he was lost in his own world,” sometimes not recognizing his own family. According to fellow prisoners, Muneer had episodes where he would not eat for days on end.

Finally, in September 2014, Muneer received his first psychiatric evaluation by a psychiatrist retained by his counsel, who diagnosed “symptoms of intense neurological and psychological illness.” Yet, despite the psychologist recommending additional testing and medical and psychiatric treatment, the Pakistani government never provided such care and Muneer was executed in March 2015.

Pakistan also fails to provide the requisite procedural safeguards for those with mental or intellectual disabilities, which are critical in light of these individuals' heightened vulnerability at different stages of the criminal justice process. As the Special Rapporteur on extrajudicial, summary or arbitrary executions has noted, “[b]ecause of the nature of mental retardation, mentally retarded persons are much more vulnerable to manipulation during arrest, interrogation, and confession.”²⁴⁹ Similarly, mental illness may yield false confessions, due to greater tendency for impulsivity, extreme compliance, and suggestibility.²⁵⁰ Accordingly, the CRPD requires “effective legislative, administrative, judicial or other measures”²⁵¹ to ensure persons with disabilities are equally protected from torture or CIDT. Persons with mental disabilities also are affected acutely by incompetent representation due to their diminished capacity to represent themselves. As a commentator has observed, “[o]ne of the most critical issues . . . in a mental disability law context is the right to adequate and dedicated counsel.”²⁵² Thus, the CRPD mandates that “States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.”²⁵³

The dearth in procedural safeguards—both generally and those specifically designed to assist vulnerable persons—means that Pakistan regularly deprives mentally ill defendants of a fair trial, including recourse to mental health defenses. First, the lack of procedural safeguards at the arrest stage exposes persons with mental illness to high risks of manipulation and abuse during police interrogations. Once in the court system, access to psychiatric care remains very limited, and the lack of diagnosis compounded by the dearth in competent representation renders ineffective the procedural protections

set out in Pakistan's Criminal Procedure Code. The Code provides a number of potential mental health defenses, and requires that the magistrate and the Court of Sessions note and postpone further proceedings pending a medical examination if there is "reason to believe that the accused is of unsound mind" or "[i]f any person . . . appears to the Court at his trial to be of unsound mind." Such discretionary judgments, especially where the defense of mental illness was unsound mind²⁵⁴. Such discretionary judgments, especially where the defense of mental illness was not raised by defendant's counsel, are inadequate to ensure mentally ill defendants are properly protected. Consequently, "given the generally poor psychiatric services available in the country and the dearth of training in the provision of expert psychiatric evidence in courts,"²⁵⁵ mental health defenses are rare. The Mental Health Ordinance, enacted in 2001, provides for the establishment of special security forensic facilities for mentally ill prisoners.²⁵⁶ However, in reality, they are rarely transferred to forensic facilities and instead are kept in detention in death row cells without requisite treatment. Khizar Hayat was sentenced to death in 2003. He was diagnosed as a paranoid schizophrenic in 2008 by jail authorities and suffers from severe delusions. Despite facing multiple attacks in prison, Khizar has not been transferred to a psychiatric facility. Instead, he remains in effective solitary confinement in the jail hospital.

Muneer Hussein's experience with his counsel demonstrates how the impact of incompetent representation is amplified for those individuals suffering from mental illness—and may even obscure a defendant's mental illness from judicial notice for years to come. Muneer's trial counsel was assigned to the case just before he was supposed to begin cross-examination. As a result, he knew nothing about Muneer's family background or mental illness and did not move to have Muneer examined by a medical board. Had Muneer's lawyer had the competence, or the time and resources, to reach out to the defendant's family, he might have learned from other family members about Muneer's long history of mental illness.

Even when an individual on death row receives a mental illness diagnosis, the death sentence may not be lifted. During her incarceration, Kanizan Bibi's²⁵⁷ mental health has deteriorated significantly over the twenty-six years she has been on death row. For the last eight years, she has been mute; at times, she is unable to feed or clothe herself; and when family members visit, she does not recognize them. Yet, after two medical boards diagnosed Kanizan as schizophrenic, the President rejected her mercy plea. She could receive a black warrant at any time.

The dearth in mental health resources interacts troublingly with another critique of the capital punishment regime in Pakistan: individuals who are mentally ill are overrepresented in the group of defendants prosecuted under the blasphemy laws of Pakistan. As one scholar has noted, "[i]ndividuals with psychotic disorders, such as mania and schizophrenia, can present symptoms of grandiose and bizarre delusional systems of being of divine origin, behavioral disinhibition and lack of insight, which place them at risk of prosecution under these laws."²⁵⁸

MUNEER HUSSEIN

Status: executed on april 28, 2015.

Mentally ill prisoner becomes 100th person to be executed

On April 28 2015, an extremely mentally ill man became the 100th prisoner executed since the moratorium's end. Muneer Hussein entered the criminal justice system after a lifetime of serious mental illness. Despite numerous indicators, he remained undiagnosed until 2014, and only then by a psychiatrist retained by his new counsel. Previously, his counsel at trial had failed to request a medical examination, having also failed to reach out to the family members who would have informed him of Muneer's erratic and strange behavior. Yet even upon a formal diagnosis, the Pakistani government refused to conduct the appropriate tests or provide Muneer with the requisite care. On April 28, 2015, Pakistan executed Muneer.

According to his uncle, Muneer did not comprehend fully that he was sentenced to die.

"Muneer seems to know that he might be executed... He does not seem to show the panic or fear that I would expect . . . I feel that he does not fully understand what is going on and is simply going along with what he has been told by other people."

XI. SUFFERING ON DEATH ROW

Prisoners on death row languish in limbo for years and even decades.

Conditions on death row echo the systemic failures of the criminal justice system: overcrowded cells result from an oversized death row population, many of whom are sentenced for “less serious crimes,” and prisoners are provided inadequate medical care, sometimes resulting in the deterioration of prisoners' mental and physical health. Similarly, confinement of juveniles and mentally ill persons on death row is proof of past and enduring transgressions of international law. These two groups are also more vulnerable to severe mental trauma that may result from confinement on death row, giving rise to further violations of international law. Finally, prisoners experience mental distress when Pakistan responds in ad hoc fashion to international condemnation of its execution practices, with many prisoners receiving a large number of black warrants before the stay of their executions. These experiences of prisoners on death row are a testament to the need for a comprehensive and urgent response from the international community.

A. Conditions on death row amount to cruel, inhuman or degrading treatment and infringes on prisoners' human dignity.

States parties to the ICCPR must observe certain minimum standards of detention, including the provision of medical care for prisoners.²⁵⁹ According to the Human Rights Committee, poor conditions of detention may amount to inhuman and degrading treatment in violation of Articles 7 and 10 of the ICCPR. Such transgressions have included overcrowding,²⁶⁰ inadequate sanitary facilities,²⁶¹ inadequate nutrition,²⁶² and lack of recreational facilities.²⁶³ In addition, the Committee has affirmed that “the obligation to treat individuals with respect for the inherent dignity of the human person encompasses the provision of, inter alia, adequate medical care during detention.”²⁶⁴

Despite its international obligations, Pakistan houses prisoners in poor, overcrowded conditions and routinely denies them adequate medical care.²⁶⁵ The cases examined in this report are replete with examples of inadequate or non-existent medical care for death row prisoners.

AVERAGE NUMBER OF YEARS SPENT
BY A PERSON ON PAKISTAN'S DEATH ROW

11.41

ABDUL BASIT

Status: Death Row (7 Years)



Paralyzed by the prison system

Abdul Basit, a former administrator at a medical college, was convicted of murder and sentenced to death in 2009. Abdul has always maintained his innocence.

After 18 months in prison, Abdul became ill with a severe fever that caused him to fall into a coma for approximately three weeks. At the time, guards were too busy putting down riots to notice his deteriorating condition.

In the absence of necessary medical attention, Abdul was left paralyzed from the waist down. A Medical Board concluded in April 2012 that he was suffering from paraplegia and spinal atrophy. In 2011, medical officials concluded that Abdul's condition would be very difficult to treat in prison, but the following year, a new medical report concluded that Abdul was capable of administering his own physiotherapy in prison because no special equipment was needed—despite the fact that Abdul was confined to a wheelchair. Petitions to the High Court requesting Abdul's transfer back to a hospital have been denied repeatedly. He suffers from bedsores because he relies on neglectful guards to assist him with personal hygiene and to move him—which they do too infrequently.

Abdul's case epitomizes the inability of Pakistan's justice system to comply with basic human rights standards. Not only does the system fail to rehabilitate prisoners, but in many cases it actually inflicts physical and psychological injuries upon them.

B. Pakistan fails to distinguish and protect prisoners vulnerable to death row syndrome, specifically juveniles and mentally ill person

Conditions on Pakistan's death row, where prisoners spend an average 11.41 years on death row, expose prisoners to a high risk of death row syndrome. Especially vulnerable are juveniles and individuals with mental illness or intellectual disabilities. The inquiry as to whether the combination of circumstances runs afoul of the ICCPR's prohibition of inhuman treatment is case-specific, but typically considers the prolonged detention of the prisoner; the physical conditions of imprisonment; and the psychological impact of the incarceration on the prisoner.²⁶⁶ The Human Rights Committee has acknowledged that "the psychological tension created by prolonged detention on death row may affect persons in different degrees."²⁶⁷ Critical to this last factor are "personal circumstances of the [prisoner], especially his age and mental state at the time of the offense."²⁶⁸

Pakistan continues to hold juveniles on death row. The Human Rights Committee maintains that holding juveniles on death row amounts to cruel and inhuman punishment in direct contravention to Article 7 of the ICCPR.²⁶⁹ Holding juveniles on death row also violates Article 10(3) of the treaty, which provides that "juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status in so far as conditions of detention are concerned."²⁷⁰ However, case after case details instances of juveniles confined with adults on death row, simultaneously violating both of these important international obligations. Furthermore, as noted above, juveniles are especially susceptible to the death row syndrome. Ansar Iqbal endured 21 years on death row. He was 15 years old when he was arrested. Shafqat Hussain, arrested at 14 years of age, suffered 11 years on death row. Aftab Bahadur was executed after spending 22 years on death row. Collectively, all three spent more than half of their brief lives awaiting death in the gallows.

Pakistan also continues to hold on death row persons with mental illness and developmental and intellectual disabilities. The Human Rights Committee has found a violation of the Covenant where the death row inmate's "mental condition was exacerbated by his treatment in, as well as the conditions of his detention, and resulted in documented long-term psychological damage to him."²⁷¹

In finding such a breach, the Human Rights Committee considers the prisoner's current mental health, and not only that presented at time of sentencing. Thus, a breach occurs when "[c]ounsel has provided information that shows that the author's mental state at the time of the reading of the death warrant was obvious to those around him and should have been apparent to the prison authorities."²⁷² Furthermore, a prisoner with mental illness may be especially vulnerable to inmate and guard violence and abuse, which infringes upon a prisoner's inherent dignity.²⁷³

Many Pakistani prisoners with diagnosed mental illnesses are on death row, with consequences both for their safety and for the deterioration of their mental health. The case files illustrated the violence death row confinement imparts on mentally ill prisoners. Khizar Hayat, who has been on death row since his conviction for allegedly murdering a fellow policeman in 2003, suffers from severe schizophrenia, for which he received an official diagnosis. His illness is a source of conflict with other prisoners who have beaten and harassed him. In 2010, a medical officer recommended that Hayat be transferred to a mental hospital after he showed signs of injuries, and after a fellow prisoner reported that Hayat was being beaten by other prisoners as a result of his mental illness. When his lawyers expressed concerns about a “deep wound” inflicted on Hayat by another inmate, a prison official responded that “such incidents are very normal in the prisons that houses 4,000 prisoners.”

C. The way Pakistan notifies prisoners and their families of execution dates and stays is arbitrary and inflicts further psychological damage on prisoners.

Because of the gravity around receiving notice of one's imminent execution, the way in which a state issues execution dates and stays may rise to cruel, inhuman, or degrading treatment in violation of international law. The Human Rights Committee has found gratuitous cruelty in a State's delay in giving a prisoner notice of his execution.²⁷⁴ It has also held that a delay in the notice of a stay amounted to cruel and inhuman treatment.²⁷⁵ The Committee has also found a violation of Article 7 where death row inmates were held in “death cells” for over two weeks after being issued a warrant for execution.²⁷⁶ Furthermore, under international law, the families of death row prisoners must be informed about a capital defendant's detention and execution.²⁷⁷

For example, the Human Rights Committee has found that a violation of Article 7 where “[c]omplete secrecy surround[s] the date of execution . . . [because it] ha[s] the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress.”²⁷⁸ The Special Rapporteur on extrajudicial, summary or arbitrary executions has likewise concluded that such practices were inhuman and degrading, stating that “[r]efusing to provide convicted persons and family members with advance notice of the date and time of execution is a clear human rights violation.”²⁷⁹

In Pakistan, despite revised guidelines for the issuance of black warrants in 2014,²⁸⁰ notification to prisoners of their imminent execution remains arbitrary and at odds with international law. Mohammad Sarfraz's case illustrates how an arbitrary notification system can further infringe on a prisoner's fundamental rights. On March 16, 2016, a black warrant was issued for Mohammad by the Rawalpindi District and Sessions Court. However, the very next day, his counsel was unable to obtain a copy of the warrant, and subsequently was informed that none had been issued. Such misrepresentation hindered Mohammad's ability to avail himself of the legal and judicial remedies to which he has a right. Ultimately counsel was able to obtain a stay of execution from the Supreme Court, but the violations persisted.

While the Supreme Court stayed Mohammad's execution after scheduling a hearing for April 22, a black warrant was issued scheduling his execution for April 19. On May 10, Mohammad Sarfraz was executed. Such practices, while unlawful under Pakistani law,²⁸¹ are widespread.

In Pakistan, the lack of comprehensive intervention on behalf of persons condemned to die in violation of international law results in further suffering of these prisoners. With each new black warrant, prisoners and their families are subjected to renewed trauma.

Shafqat Hussain's execution was stayed four times over the course of six months, in large part because of significant pressure from human rights groups and the international community. With each stay, he was made to change into white clothes and moved to a different part of the prison in preparation for what he believed to be imminent death. Shafqat described the harrowing psychological torture that attends protracted time on death row:

[T]he four black warrants that I have received. . . have destroyed me. . .

[After the stay in January] I was ecstatic. . . That stay came 2-3 days before my execution so it was a relief. But the second stay that I got just hours before my execution...I just cannot explain how that felt. It was just torture and it happened so close to the time of my execution. . .

At one point I am told I am to die; the next thing I know is there is a stay. And I see a ray of hope. But then again I am told I am going to die. You become a victim of psychological pressure. . .

[On the day of the execution:] They came and took my measurements for the clothes I had to wear when hung. They took my temperature and weight and gave me soap and special instructions on how to shower. The maulvi came and made me recite the qalma 6 times as well. They even measured my neck...it was so unreal. I was like a ghost; I had no idea what to think or say or do. When the stay came, I had no idea how to feel. Just two days before I had met Faisal and Afzal [two fellow prisoners ultimately hanged] before they were taken to the gallows. I cannot explain to you what that feeling was. I was so scared. And then two days later I had to start thinking about my own execution. . . I had not slept or eaten in three to four days. My face was swollen; I had no idea what they were asking me or what answers I was giving them. I was in a daze.

On August 4, 2015, Pakistani authorities hanged Shafqat. At the time of his death, Shafqat, who was 14 at the time of his arrest in 2004, had spent nearly half his life on death row.

CONCLUSION AND RECOMMENDATIONS

International law dictates that capital punishment be reserved only for the most serious crimes, subject to fair and legitimate processes that protect a defendant's basic rights and provide avenues for post-conviction relief. International law unambiguously prohibits the imposition of the death penalty on juveniles, and international customary law prohibits execution of the mentally ill as well.

On all of these fronts, Pakistan has not lived up to its international obligations. At each stage of a defendant's encounter with this system, severe violations of international law emerge. And where laws do protect fundamental rights, such as laws that prohibit the introduction of evidence obtained by torture and forbid the execution of juveniles and the mentally ill, they are applied inconsistently, if at all. Once on death row, prisoners in Pakistan not only are subjected to persisting human rights violations, but different aspects of their experience reproduce and amplify the many failures of the criminal justice system.

These widespread and fundamental failings mandate an immediate suspension of the capital punishment regime. Specifically, Pakistan must:

1. Reinstate the moratorium on all executions

In contravention with international law, many prisoners on death row received death sentences for offenses that did not involve the "most serious crimes." Pakistan has routinely denied a fair trial to defendants sentenced to death. Once on death row, these individuals lack almost complete recourse to challenge their sentences either through effective appeals or mercy petitions, which are routinely denied. Yet, since lifting the moratorium, Pakistan has executed 418 individuals at rapid pace. International intervention calling for anything short of a complete moratorium on executions means the continued killing of individuals whose rights have repeatedly been violated from the time of their arrest to their conviction, and beyond. Many of these individuals are likely to be innocent, mentally ill, or juveniles when first arrested. Furthermore, such intervention results in the continued suffering of death row prisoners, who undergo the trauma of repeated notification of execution dates and stays.

2. Cease sentencing persons to death

Given these systematic failings, simple reforms at one stage of the process will not bring Pakistan into compliance with international law. Furthermore, as this report has highlighted, legal reforms, while an important first step, are inadequately implemented and followed at the local level—if at all. Today, Pakistan continues to sentence to death juveniles and persons with mental illness, and institutional shortcomings and widespread corruption also mean that many individuals continue to be wrongly convicted. In light of the severity of the death penalty, and the near-absence of review or relief upon conviction, Pakistan must immediately cease to sentence individuals to death in the first place. Resources should be preserved to ensure the review of the cases of the over-8,000 individuals already on death row.

3. Launch independent investigations into cases alleging coerced confessions; juvenility; mental illnesses or developmental or intellectual disabilities

The cases and documentation reviewed illuminate how the lack of procedural safeguards at the outset—mental health and juvenility determinations, for instance—compound violations throughout a defendant's trial, sentencing, and death row confinement. Robust investigations, coupled with effective avenues for post-conviction relief, are crucial if justice is to be served. Because of the lack of transparency and independence of the judiciary and other branches of the government, this report recommends that independent actors conduct the investigations. The National Human Rights Commission a statutory body constituted under the National Human Rights Commission Act, 2012 would be an ideal platform to lead such an investigation.

4. Commute death sentences of all juveniles and individuals with mental illness, as well as those with convictions based primarily on circumstantial evidence or coerced confessions.

Pakistan should commute the death sentences of all those who have made showings of juvenility and mental illness, including those whose mental health has deteriorated significantly on death row. Because the death sentence demands a high standard of proof, Pakistan should also commute cases for individuals whose convictions were based primarily on confessions, in recognition of the high prevalence of custodial torture and the inadequate safeguards currently in place.

APPENDIX

Executions by Month

The table below provides a monthly breakdown of number of executions carried out all over the country during the period December 2014 to September 2016. The Government executed 7 people in 2014, 86 people in 2016, and a staggering total of 325 people in 2015. If executions in 2016 continue at their current rate, by the end of this year Pakistan will have executed a total of 547 individuals in just two years.

2014		2015		2016	
December	7	January	13	January	11
		February	4	February	17
		March	42	March	11
		April	36	April	21
		May	41	May	13
		June	37	June	3
		July	21	July	9
		August	18	August	1
		September	27	September	
		October	46	October	
		November	9	November	
		December	31	December	
Total	07		325	86	418

EXECUTIONS BY PROVINCE

Since the lifting of the moratorium on the death penalty more than 87 percent of executions have been carried out in the Province of Punjab. Within the province of Punjab the highest number of executions have been recorded in the provincial capital of Lahore (52), with 46 in Faisalabad and 39 in Rawalpindi. Sind, the province with the second highest number of executions, accounts for merely 4.3 percent of the total execution. The lowest number of executions were recorded in Balochistan (7) and Azad Jammu and Kashmir (4).

Punjab		Sindh		Khyber Pakhtunkhwa		Balochistan		Azad Jammu And Kashmir	
Lahore	52	Karachi	10	Kohat	11	Machh	7	Mirpur	4
Faisalabad	46	Sukkur	5	Haripure	7				
Rawalpindi	39	Hyderabad	2	Peshawar	2				
Bahawalpur	33	Larkana	1	Timergara	1				
Sahiwal	31								
Multan	25								
Attock	18								
Sialkot	17								
Mianwali	17								
Gujrat	16								
Gujranwala	14								
Sarghoda	13								
Jhang	9								
Dera Ghazi Khan	9								
Vehari	8								
Toba Tek Singh	6								
Kasur	6								
Jhelum	6								
Total	365		18		21		7		4

ENDNOTES

¹BBC, *Pakistan Ends Death Penalty Suspension After Seven Years*, March 10, 2015, <http://www.bbc.com/news/world-asia-31812177>.

²*Id.*

³*Id.*

⁴ Office of the High Commission for Human Rights, *Pakistan: Mass Executions, Particularly of Juvenile Offenders, Serve Neither Deterrence nor Justice – Zeid*, June 11, 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16068&LangID=E>.

⁵ See Tables 1 and 2 in the appendix.

⁶ Zahid Gishkori, 8261 prisoners: Hanging in the balance, EXPRESS TRIBUNE, December, 18, 2014, <http://tribune.com.pk/story/808727/6261-prisoners-hanging-in-the-balance/>

⁷ *Id.*

⁸ *Id.*

⁹ European Union Delegation to Pakistan, *Press Release: Local Statement on the Death Penalty Following Resumption of Executions in Pakistan After Ramadan*, June 29, 2015, http://eeas.europa.eu/delegations/pakistan/documents/press_corner/20150729_01_en.pdf.

¹⁰ Zahid Gishkori, *UK, Germany Express Deep Concern over Restoration of Death Penalty*, EXPRESS TRIBUNE, March 11, 2015, <http://tribune.com.pk/story/851608/uk-germany-express-deep-concern-over-restoration-of-death-penalty>.

¹¹ The “crucial-case” method, which has been developed by qualitative social scientists (Eckstein 1975; Gerring 2007), involves the deliberate selection of particular case studies that best illustrate a particular theory or hypothesized trend, rather than randomly selecting a sample of all possible cases.

¹² These records include charging reports; court transcripts; affidavits; medical records; motions, briefs, and judicial opinions; and death warrants. Figures used in this report were obtained from JPP's monitoring of Pakistan's use of the death penalty.

¹³ International Bar Association, *The Death Penalty Under International Law* (2008) http://www.ibanet.org/Human_Rights_Institute/About_the_HRI/HRI_Activities/death_penalty_resolution.aspx.

¹⁴ International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, art. 6(2) [hereinafter ICCPR] (emphasis added).

¹⁵ Human Rights Comm., General Comment No. 6, ¶ 7, U.N. Doc. HRI/GEN/1/Rev.1 (1994).

¹⁶ NIGEL RODLEY & MATT POLLARD, *The Death Penalty, in THE TREATMENT OF PRISONERS UNDER INTERNATIONAL LAW* 299-300 (3d ed. 2011).

¹⁷ The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions set forth an even higher standard, namely that the death penalty should only be available in “cases where it can be shown that there was an intention to kill which resulted in the loss of life.” UN Doc A/HRC/4/20 (2007). A concurring opinion in the Committee's decision, *Kennedy v Trinidad and Tobago* (845/98), suggested “that unintentional or ‘inadvertent’ killing was not serious enough to attract the death penalty under article 9(2).” Comm. on Human Rights, U.N. Doc. CCPR/C/74/D/845/1998 (2002). In Concluding Observations on Kenya, the Committee “note[d] with concern that . . . the death penalty applies to crimes not having fatal or similarly grave consequences, such as robbery with violence or attempted robbery with violence, which do not qualify as ‘most serious crimes’ within the meaning of article 6, paragraph 2, of the Covenant.” Comm. on Human Rights, Concluding Observations of the Human Rights Comm.: Kenya U.N. Doc. CCPR/CO/83/KEN (2005).

¹⁸ Human Rights Commission of Pakistan, *Death Penalty Offenses*, <http://hrqp-web.org/hrqpweb/death-penalty-offences> (visited September 1, 2016).

¹⁹ BURJOR AVARI, ISLAMIC CIVILIZATION IN SOUTH ASIA: A HISTORY OF MUSLIM POWER AND PRESENCE 239 (2013).

²⁰ Richard Blue, Richard Hoffman & Louis-Alexandre Berg, *Pakistan Rule of Law Assessment*, USAID, at 6 (Nov. 2008), http://pdf.usaid.gov/pdf_docs/PNADO130.pdf.

²¹ Anti-Terrorism Act of 1997 (XXVI of 1997).

²² Concluding Observations of the Human Rights Comm.: Sudan, ¶ 8, 61st Sess., 1 Nov. 1997 U.N. Doc. CCPR/C/79/Add.85.

²³ PAK. PENAL CODE § 295-C.

²⁴ Comm. on Human Rights, ¶ 83, U.N. Doc. E/CN.4/2001/9 (11 January 2001) (affirming that “[t]he Special Rapporteur is strongly of the opinion that these restrictions exclude the possibility of imposing death sentences for economic and other so-called victimless offences, actions relating to prevailing moral values, or activities of a religious or political nature - including acts of treason, espionage or other vaguely defined acts usually described as “crimes against the State”).

²⁵ High Treason Act of 1973 (LXVIII of 1973), § 2(b).

²⁶ Pakistan Army Act of 1952 (XXXIX of 1952), § 31.

²⁷ PAK. PENAL CODE § 132.

²⁸ PAK. PENAL CODE § 121.

²⁹ Pakistan Army Act of 1952 (XXXIX of 1952), § 24.

³⁰ Concluding Observations of the Human Rights Comm.: Thailand, 84th Sess., ¶ 14 (July 2005) U.N. Doc. CCPR/CO/84/THA, ¶ 14

³¹ Concluding Observations of the Human Rights Comm.: Kuwait, 103d Sess., 17 Oct.-4 Nov. 2011, ¶ 14(b) U.N. Doc. CCPR/C/KWT/CO/2..

³² Control of Narcotics Substances Act (XXV of 1997) § 9©.

³³ Dangerous Drugs Act (II of 1930) § 13.

³⁴ Concluding Observations of the Human Rights Comm.: Sudan, ¶ 8, 90th Sess., July 9-27, 2007, U.N. Doc. CCPR/C/SDN/CO/3.

³⁵ Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979) § 5(2)(a).

³⁶ PAK. PENAL CODE § 354-A.

³⁷ Concluding Observations of the Human Rights Comm.: Guatemala, ¶ 17, 2001, U.N. Doc. CCPR/CO/72/GTM.

³⁸ PAK. PENAL CODE, §§ 364-A, 365-A.

³⁹ PAK. PENAL CODE, § 402-B, C.

⁴⁰ Concluding Observations of the Human Rights Comm.: Republic of Korea, ¶ 9 (1992) U.N. Doc. A/47/40, 1224.

⁴¹ Concluding Observations of the Human Rights Comm.: Sudan, ¶ 8, 1997, U.N. Doc. CCPR/C/79/Add.85 Concluding Observations of the Human Rights Comm.: Sudan, ¶ 19, 90th Sess., July 9-27, 2007, U.N. Doc. CCPR/C/SDN/CO/3.

⁴² Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979) § 17(4).

⁴³ Concluding Observations of the Human Rights Comm.: Kuwait, ¶ 14(b) U.N. Doc. CCPR/C/KWT/CO/2.

⁴⁴ Railways (Amended) Act (IV of 1995) § 126.

⁴⁵ Lubato v. Zambia, U.N. Doc. CCPR/C/55/D/390/1990/Rev.1 (1995). In that case, the defendant was convicted and sentenced to death for aggravated robbery involving the use of firearms. A concurrence noted the sorts of serious crimes for which punishment would not constitute a per se violation under article 6. For instance, “bombing of busy quarters, destruction of reservoirs, poisoning of drinking water, gassing in subway stations and probably espionage in war-time . . . create a grave danger which may result in death or irreparable harm to many and unspecified persons.” *Id.* In its Concluding Observations on Iraq, the Human Rights Commission indicated that “non-violent” infringements are not serious enough to warrant the death penalty. Concluding Observations of the Human Rights Comm.: Iraq, ¶ 10, 1997, U.N. Doc. CCPR/79/Add.84; see also Concluding Observations of the Human Rights Comm.: Kuwait, ¶ 14(b), 2011, U.N. Doc. CCPR/C/KWT/CO/2.

⁴⁶ Pakistan Arms (Amendment) Ordinance, § 13-A(1) (1996).

⁴⁷ Pakistan Army Act of 1952 (XXXIX of 1952), § 24(b).

⁴⁸ PAK. PENAL CODE, § 194.

⁴⁹ See Tariq Khosa, *Agenda for Reform*, in ASIA SOCIETY, REPORT BY THE INDEPENDENT COMMISSION ON PAKISTAN POLICE REFORM: STABILIZING PAKISTAN THROUGH POLICE REFORM 29-35 (Hassan Abbas ed., 2012), http://asiasociety.org/files/pdf/as_pakistan_police_reform.pdf [hereinafter STABILIZING PAKISTAN]; Shoaib Suddle, *Obstacles to Reform*, in STABILIZING PAKISTAN 36-40. For a detailed discussion of reform efforts over the past several decades, see Justice Project Pakistan & Allard K. Lowenstein International Human Rights Clinic, *Policing as Torture: A Report on Systematic Brutality and Torture By the Police in Faisalabad, Pakistan*, 23-27 (2014) [hereinafter JPP-Lowenstein, *Policing as Torture*]. In December 2015, Prime Minister Nawaz Sharif established a committee to work on legal reforms including an overhaul of the criminal justice system. *PM Sets up Committee for Legal Reforms*, THE NEWS, Dec. 1, 2015, <https://www.thenews.com.pk/print/77981-pm-sets-up-committee-for-legal-reforms>.

⁵⁰ ICCPR, art. 6(2).

⁵¹ ICCPR, art. 6(1).

⁵² RODLEY & POLLARD, *supra* note ; see also Human Rights Comm., General Comment No. 6, ¶ 7, U.N. Doc. HRI/GEN/1/Rev.1 (1994) (stating that “[t]he procedural guarantees . . . prescribed [in article 14] must be observed” for the purposes of article 6).

⁵³ Human Rights Comm., General Comment No. 32, ¶ 59, U.N. Doc. CCPR/C/GC/32 (2007); see also *Gunan v. Kyrgyzstan*, ¶ 6.5, U.N. Doc. CCPR/C/102/D/1545/2007 (2011) (“[T]he imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 of the Covenant have not been respected, constitutes a violation . . . of article 6 of the Covenant. In light of the Committee’s findings of a violation of article 14, it concludes that the author is also a victim of a violation of his rights under article 6, paragraph 2, read in conjunction with article 14, of the Covenant.”).

⁵⁴ U.N. Econ. & Soc. Council Res. 1984/50 (May 25, 1984).

⁵⁵ Human Rights Comm., *Views of the Human Rights Committee Under Article 5, Paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights Concerning Communication No. 1421/2005*, 87th session, ¶ 7.11, U.N. Doc. CCPR/C/87/D/1421/2005 (2006) (“[T]o impose a death sentence on a person after an unfair trial is to subject that person wrongfully to the fear that he will be executed. In circumstances where there is a real possibility that the sentence will be enforced, that fear must give rise to considerable anguish. Such anguish cannot be dissociated from the unfairness of the proceedings underlying the sentence. Indeed, as the Committee has previously observed, the imposition of any death sentence that cannot be saved by article 6 would automatically entail a violation of article 7. The Committee therefore concludes that the imposition of the death sentence on the author after the conclusion of proceedings which did not meet the requirements of article 14 of the Covenant amounts to inhuman treatment, in violation of article 7.”). The European Court of Human Rights has similarly held that “the imposition of the death sentence . . . following an unfair trial by a court whose independence and impartiality were open to doubt amounted to inhuman treatment in violation of Article 3 of the European Convention of Human Rights.” U.N. Doc. E/CN.4/2006/83 at 7, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2006/83&Lang=E> (discussing *Ocalan v. Turkey*, 2005-IV Eur. Ct. H.R. 282).

⁵⁶ World Bank, *Worldwide Governance Indicators*, <http://info.worldbank.org/governance/wgi/index.aspx#reports>.

⁵⁷ World Justice Project, *Rule of Law Around the World* (2015), <http://worldjusticeproject.org/rule-law-around-world>. The Rule of Law Index compiles country-specific public and expert surveys for 44 indicators organized around 8 themes: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice.

⁵⁸ Transparency International, *Sri Lanka Placed 79th in Global Corruption Perception Index*, (Dec. 5, 2012), http://www.transparency.org/news/pressrelease/20121205_sri_lanka_placed_79th_in_global_corruption_perception_index. The World Economic Forum ranks Pakistan 116th out of 140 countries in terms of the prevalence of bribery and irregular payments, and 90th for the specific category of bribery aimed at influencing judicial decisions. World Economic Forum, *Pakistan Report, 2016 Global Competitiveness Survey*, <http://reports.weforum.org/global-competitiveness-report-2015-2016/economies/#economy=PAK>. The question posed to survey respondents to measure perceptions of bribery was, “In your country, how common is it for companies to make undocumented extra payments or bribes in connection with obtaining favorable judicial decisions? [1 = very common; 7 = never occurs].”

⁵⁹ Gallup, *Pakistan's Troubled State*, <http://www.gallup.com/poll/157055/pakistan-troubled-state.aspx>.

⁶⁰ STABILIZING PAKISTAN, *supra* note , at 18. Government spending on police has been declining steadily—as a percentage of the federal budget—over the past century. In the early 1900s, 17-19 percent of the budget was spent on policing. During the 1970s and 1980s, the percentage fell to 11 percent, and it stood at 7 percent in 2014. Business Recorder, *The Demise of Policing in Pakistan*, Jul. 21, 2014, <http://www.brecorder.com/br-research/999:all/4603:the-demise-of-policing-in-pakistan/?date=2014-07-21>.

⁶¹ *Id.*

⁶² STABILIZING PAKISTAN, *supra* note , at 27.

⁶³ TRANSPARENCY INTERNATIONAL, GLOBAL CORRUPTION BAROMETER 2013, <http://www.transparency.org/gcb2013/country/?country=pakistan>.

⁶⁴ See, e.g., *id.* at 21, 69 (July 2012); Human Rights Commission of Pakistan, *Revisiting Police Laws 1* (Jan. 2011), <http://www.hrcp-web.org/pdf/Revisiting%20Police%20Laws%20-%20Asad%20Jamal.pdf>.

⁶⁵ Hassan Abbas, *Reforming Pakistan's Police and Law Enforcement Infrastructure: Is It Too Flawed to Fix?*, U.S. INSTITUTE OF PEACE, at 2, 9 (Feb. 2011), http://www.usip.org/sites/default/files/SR266-Reforming_Pakistan%E2%80%98s_Police_and_Law_Enforcement_Infrastructure.pdf.

⁶⁶ STABILIZING PAKISTAN, *supra* note , at 70.

⁶⁷ *Id.* at 37.

⁶⁸ *Id.* at 69.

⁶⁹ Hassan Abbas, *Internal Security Issues in Pakistan: Prospects of Police and Law Enforcement Reform*, in *PAKISTAN AT THE CROSSROADS: DOMESTIC DYNAMICS AND EXTERNAL PRESSURES* 146 (Christophe Jaffrelot ed., 2016).

⁷⁰ INTERNATIONAL CRISIS GROUP, *REFORMING PAKISTAN'S CRIMINAL JUSTICE SYSTEM*, Asia Report N°196, 18 (6 Dec. 2010), <http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/196%20Reforming%20Pakistans%20Criminal%20Justice%20System.pdf> [hereinafter ICG, *REFORMING*].

⁷¹ *Id.* at 19.

⁷² Hassan Abbas, *Internal Security Issues in Pakistan: Prospects of Police and Law Enforcement Reform*, in *PAKISTAN AT THE CROSSROADS: DOMESTIC DYNAMICS AND EXTERNAL PRESSURES* 159 (Christophe Jaffrelot ed., 2016).

⁷³ Blue, Hoffman & Berg, *supra* note , at 12.

⁷⁴ *Pakistan: Freedom in the World*, FREEDOM HOUSE (2013), <https://freedomhouse.org/report/freedom-world/2013/pakistan>.

⁷⁵ Our Correspondent, *No Merit, Only Corruption Qualifies for a Promotion in the Judiciary*, EXPRESS TRIBUNE, June 17, 2013, <http://tribune.com.pk/story/563987/no-merit-only-corruption-qualifies-for-a-promotion-in-the-judiciary>.

⁷⁶ *Corrupt Judges*, NATION, Oct. 28, 2013, <http://nation.com.pk/editorials/28-Oct-2013/corrupt-judges>.

⁷⁷ Syeda Saima Shabbir, *The Failure of the Police System in Pakistan*, EXPRESS TRIBUNE, July 6, 2014, <http://blogs.tribune.com.pk/story/22237/the-failure-of-the-police-system-in-pakistan>.

⁷⁸ Ijaz Ahmad, *Pakistan Criminal Law Needs Amendments: A Proposal*, ASIAN HUMAN RIGHTS COMMISSION 1 (Oct 2002), <http://www.humanrights.asia/resources/journals-magazines/article2/0105/pakistan-criminal-law-needs-amendments-a-proposal>.

⁷⁹ *Id.*

⁸⁰ Anti-Terrorism Act of 1997 (XXVI of 1997).

⁸¹ Justice Project Pakistan & Reprieve, *Terror on Death Row: The Abuse and Overuse of Pakistan's Anti-Terrorism Legislation* 3 (Dec. 2014), http://www.reprieve.org.uk/wp-content/uploads/2014/12/2014_12_18_PUB-Pakistan-Terror-Courts-Report-JPP-and-Reprieve.pdf [hereinafter JPP & Reprieve, *Terror on Death Row*].

⁸² Asad Hashim, *Pakistan Activists Upset By New Security Law*, AL JAZEERA, July 13, 2014, <http://www.aljazeera.com/indepth/features/2014/07/pakistan-activists-upset-new-security-law-201471316625972647.html>.

⁸³ Anti-Terrorism Act of 1997 (XXVI of 1997) § 6(1)©.

⁸⁴ *Id.*; see also TARIQ PARVEZ AND MEHWISH RANI, AN APPRAISAL OF PAKISTAN'S ANTI-TERRORISM ACT 5 (United Institute of Peace 2015), <https://www.usip.org/sites/default/files/SR377-An-Appraisal-of-Pakistan%E2%80%99s-Anti-Terrorism-Act.pdf>. Parvez and Rani emphasize that the overuse of ATA prosecutions puts undue strain on counterterrorism resources and distracts from genuine and serious threats to national security. *Id.* at 1.

⁸⁵ Anti-Terrorism Act of 1997 (XXVI of 1997) § 6(1)©.

⁸⁶ Law Library of Congress, *Legal Provisions on Fighting Extremism: Pakistan* (2015), <https://www.loc.gov/law/help/fighting-extremism/pakistan.php>.

⁸⁷ According to the FIDH report, the burden of proof from the prosecution to the accused resulting in a presumption of guilt. In 1999, in the case *Khawaja Hasanullah v. The State* (1999 MLD 51), the Karachi High Court ruled that the burden of proof was indeed shifted onto the accused. The High Court relied on section 8 of the Suppression of Terrorist Activities (Special Courts) Act 1975, which states: "When any person accused of having committed as scheduled offence is found to be in possession of, or to have under his control any article or thing which is capable of being used for, or in connection with the commission of such offence, or is apprehended in circumstances which lead to raise a reasonable suspicion that he had committed such offence, he shall be presumed to have committed the offense unless he can prove that he had not in fact committed the offense." Human Rights Commission of Pakistan, *Slow March to the Gallows: Death Penalty in Pakistan* 40 (Jan. 2007), <https://www.fidh.org/IMG/pdf/Pakistan464angconjointpdm.pdf> [hereinafter FIDH, *Slow March*].

⁸⁸ Section 21(H) of the ATA states: "[W]here in any court proceedings held under this Act the evidence (which includes circumstantial and other 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." Anti-Terrorism Act of 1997 § 21(H) (XXVI of 1997).

⁸⁹ JPP & Reprieve, *Terror on Death Row*, *supra* note , at 12.

⁹⁰ Section 19(10) of the ATA states: "Any accused person may be tried in his absence if the [Anti-Terrorism Court] after such inquiry as it deems fit, is satisfied that such absence is deliberate and brought about with a view to impeding the course, of justice." Anti-Terrorism Act § 19(10). (XXVI of 1997).

⁹¹ ICG, REFORMING, *supra* note , at 14.

⁹² JPP & Reprieve, *Terror on Death Row*, *supra* note , at 10. In these 256 cases, the prisoners were convicted only of charges under the Pakistan Penal Code; despite the absence of any proven causal link to terrorist organizations or activity, those cases were tried in the anti-terrorism court. *Id.*

⁹³ An extrapolation of this sample, combined with the 256 cases from the Pakistan Penal Code, suggests that over 85% of all those sentenced to death by Pakistan's anti-terrorism courts had no connection to terrorism. See *id.* at 27 (2015). That figure is corroborated by the Center for Research and Security Studies, a Pakistani think tank, which concluded in 2010: "in the three [Anti-Terrorism Courts] based in Karachi, 199 individuals were on trial for heinous but non-terrorist offenses, compared with only thirty-five members of terrorist groups awaiting trial—meaning fully 83 percent of cases under trial in the ATCs were not of terrorists, but of normal criminals." Center for Research and Security Studies, *Pakistan's Challenges in Anti-Terror Legislation* (2013) <http://pgil.pk/wp-content/uploads/2014/04/Pakistan-Challenges-in-Anti-Terror-Legislation.pdf>.

⁹⁴ For details on Shafqat Hussain's case, please see page 21.

⁹⁵ PAK. PENAL CODE, § 364-A.

⁹⁶ JPP & Reprieve, *Terror on Death Row*, *supra* note , at 11.

⁹⁷ Justice Project Pakistan & Reprieve, *Juveniles on Pakistan's Death Row*, at 6-7 (2015), http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/PAK/INT_CRC_NGO_PAK_21444_E.pdf.

⁹⁸ Jon Boone, *Pakistan Hangs Shafqat Hussain Despite Claim He Was a Child at Time of Crime*, GUARDIAN (Aug. 4, 2015), <https://www.theguardian.com/world/2015/aug/04/pakistan-hangs-shafqat-hussain-claim-child-crime>.

⁹⁹ The prohibition of torture is non-derogable. Article 1 of the Convention Against Torture (CAT) explicitly prohibits “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession.” Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, art. 1(1) [hereinafter CAT]. This prohibition is enshrined in the ICCPR. ICCPR, art. 7 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. . .”).

¹⁰⁰ CAT, art 2(1).

¹⁰¹ Gridin v. Russian Federation, ¶ 8.5, U.N. Doc. CCPR/C/69/D/770/1997 (2000).

¹⁰² Human Rights Comm., General Comment No. 32, *supra* note , ¶ 38.

¹⁰³ ICCPR, art. 14(g).

¹⁰⁴ Human Rights Comm., General Comment No. 32, *supra* note , ¶ 41.

¹⁰⁵ Othman (Abu Qatada) v. United Kingdom, App. No. 8139/09, 2012 Eur. Ct. H.R. 56.

¹⁰⁶ After a 2011 visit to Pakistan, the Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment concluded that “[t]orture, including rape, and similar cruel, inhuman or degrading treatment are rife in Pakistan,” and that it is “most frequently used to secure confessions or information relating to suspected crimes.” U.N. Commission on Human Rights, E/CN.4/1997/7/Add.2 (1996). The International Federation of Human Rights further reports how “torture is routinely used to extract information or confessions from suspects, and illegal detentions are common,” and quotes a police superintendent as affirming that “in effect, the police has complete and unchecked powers. And the lack of modern investigative techniques means that we are ‘forced’ to torture to secure confessions.” FIDH, *Slow March*, *supra* note , at 47.

¹⁰⁷ FIDH, *Slow March*, *supra* note , at 47.

¹⁰⁸ JPP-Lowenstein, *Policing as Torture*, *supra* note , at 1.

¹⁰⁹ *Id.* at 5.

¹¹⁰ See International Crisis Group, *Reforming Pakistan's Police*, Asia Report N°157, at 1-4, 9, 25 (July 14, 2008), http://www.genocidewatch.org/images/Pakistan_08_07_14_Reforming_Pakistan_s_Police.pdf; STABILIZING PAKISTAN, *supra* note , at 36; Sikander Ahmed Shah, et al., *Police Order 2002: Police Reforms in Pakistan*, in DEVOLUTION AND GOVERNANCE: REFORMS IN PAKISTAN 221 (Syed Mubashir Ali & Muhammad Amjad Saqib eds., 2008).

¹¹¹ While the Torture and Custodial Death (Prevention and Punishment) Bill has been pending in National Assembly since it was first introduced in 2012, the Bill has been allowed to lapse several times with no demonstrable political will pushing for its enactment. The National Action Plan of Human Rights had set July of 2016 as the deadline for the enactment of this law. U.S. Department of State, *Country Reports on Human Rights Practices for 2015: Pakistan*, at 6 (2016), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=252973>.

¹¹² Asian Human Rights Commission, *AHRC Special Report: Torture Situation in Pakistan* 1, 2 (June 26, 2010), <http://www.humanrights.asia/resources/special-reports/AHRC-SPR-001-2010-01/>. For a general discussion of the difficulties of police reform, see Shoaib Suddle, *Obstacles to Reform*, in STABILIZING PAKISTAN, *supra* note , at 36.

¹¹³ REDRESS, *Torture in Asia: The Law and Practice*, at 138 (Oct. 2013), <http://www.refworld.org/docid/52fa25204.html>.

¹¹⁴ Hassan Abbas, *Internal Security Issues in Pakistan*, *supra* note , at 150.

¹¹⁵ PAK. CODE CRIM. PROC., § 164 (“Any magistrate . . . may, if he is not a police-officer, record any statement or confession made to him”) (emphasis added).

¹¹⁶ REDRESS, *Torture in Asia*, *supra* note , at 135 (“[T]his principle is substantially disregarded in practice chiefly due to the police and prosecutors heavily relying upon confessions obtained through torture-related acts.”).

¹¹⁷ PCHR, *Torture in Pakistan: A Lawyer's Handbook*, at 3 (Undated).

¹¹⁸ For a detailed discussion of the lack of accountability mechanisms, see JPP-Lowenstein, *Policing as Torture*, *supra* note

¹¹⁹ PAKISTAN CONST. art. 10 § 2.

¹²⁰ See, e.g., Human Rights Commission of Pakistan, *State of Human Rights in 2014* at 94 (2015), <http://hrcp-web.org/hrcpweb/data/HRCPP%20Annual%20Report%202014%20-%20English.pdf>; U.S. Department of State, *Country Reports on Human Rights Practices for 2014: Pakistan*, at 13 (2015), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dld=236648> (“Some authorities did not observe these limits on detention.”); see also REDRESS, *supra* note , at 138 (“Constitutional provisions that serve to limit pre-trial detention, and set out the right to consult a lawyer upon arrest are undermined by counter-terrorism and security measures, or are simply disregarded in practice by officials.”).

¹²¹ JPP-Lowenstein, *Policing as Torture*, *supra* note , at 27.

¹²² Human Rights Commission of Pakistan, *State of Human Rights in 2014*, *supra* note , at 94; see also STABILIZING PAKISTAN, *supra* note ; see also Peter G. Strasser, *The Evolving Pakistani Criminal Justice System: A Study of the Raymond Davis Matter*, 23 TUL. J. INT'L & COMP. L. 107, 122 (2015).

¹²³ Anti-Terrorism Act of 1997 (XXVI of 1997) § 21(H) (“Notwithstanding any . . . other law . . . the evidence . . . 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 . . .”).

¹²⁴ Anti-Terrorism Act of 1997 (XXVI of 1997) § 21(H).

¹²⁵ FIDH, *Slow March*, *supra* note , at 41.

¹²⁶ For details on Shafqat Hussain's case, please see page 21.

¹²⁷ For details on Kanizan Bibi's case, please see page 30.

¹²⁸ Anti-Death Penalty Asia Network, *Aftab Bahadur, Pakistan*, at 1 (Dec. 2011), <https://adpandotnet.files.wordpress.com/2011/11/adpan-appeal-case-pakistan-aftab-bahadur-final.pdf>.

¹²⁹ JPP & Reprieve, *Terror on Death Row*, *supra* note , at 18.

¹³⁰ ICCPR, art. 14(3)(d) (“To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”).

¹³¹ General comment No. 32 ¶ 38.

¹³² General comment No. 32 ¶ 38.

¹³³ *Id.*; see also *Campbell v. Jamaica*, U.N. Doc. CCPR/C/44/D/248/1987, IHRL 2371 (UNHRC 1992) (“The Committee recalls its jurisprudence that the State party cannot be held accountable for alleged errors made by a defence lawyer, unless it was or should have been manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice.”).

¹³⁴ *Id.*

¹³⁵ U.S. Department of State, *Country Reports on Human Rights Practices for 2015: Pakistan*, *supra* note , at 13 (noting that the government “provided state-funded legal counsel to prisoners facing the death penalty”).

¹³⁶ FIDH, *Slow March*, *supra* note , at 55.

¹³⁷ *Id.*

¹³⁸ For details on Zulfiqar Ali Khan, please see page 24.

¹³⁹ ICCPR, art. 14.

¹⁴⁰ RODLEY & POLLARD, *supra* note (summarizing *Reid v. Jamaica*, ¶¶ 11.3-11.5, U.N. Doc. CCPR/C/39/D/250/1987 (1990)).

¹⁴¹ *Id.* (summarizing *Little v. Jamaica*, ¶¶ 8.4 & 3.2, U.N. Doc. CCPR/C/43/D/283/1988 (1991)).

¹⁴² *Smith v. Jamaica*, ¶ 10.4, U.N. Doc. CCPR/C/47/D/282/1988 (1994).

¹⁴³ *McLawrence v. Jamaica*, ¶ 5.10, CCPR/C/60/D/702/1996 (“Where a capital sentence may be pronounced on the accused, sufficient time must be granted to the accused and his counsel to prepare the trial defence.”).

¹⁴⁴ U.N. Econ. & Soc. Council Res. 1989/64 (May 24, 1989) (emphasis added).

¹⁴⁵ Death Penalty Worldwide, Pakistan Death Penalty in Practice: Comments on Quality of Legal Representation, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=pakistan#f41-6>.

¹⁴⁶ PAKISTAN: A COUNTRY STUDY 310 (Peter R. Blood ed., 1996).

¹⁴⁷ PAK. PENAL CODE, § 124-A.

¹⁴⁸ PAK. PENAL CODE, § 121.

¹⁴⁹ Jon Boone, Pakistan Executes Man Who Was 15 When Convicted of Murder, GUARDIAN, June 10, 2015, <http://www.theguardian.com/world/2015/jun/10/pakistan-executes-atab-bahadur-sentenced-to-death>.

¹⁵⁰ Anti-Terrorism Act of 1997 (XXVI of 1997) § 19(1). This provision resulted from a set of 2013 amendments specifically designed “to grant more leverage to the law-enforcement agencies while dealing terrorism related cases.” Ordinance Issued to Amend Anti-Terrorist Act, NATION (Oct. 11, 2013), <http://nation.com.pk/islamabad/11-Oct-2013/ordinance-issued-to-amend-anti-terrorist-act>.

¹⁵¹ Anti-Terrorism Act of 1997 (XXVI of 1997) § 19(7). Specifically, the provision states: “The Court shall, on taking cognizance of a case, proceed with the trial from day-to-day and shall decide the case within seven days, failing which the matter shall be brought to the notice of the Chief Justice of the High Court concerned for appropriate directions for expeditious disposal of the case to meet the ends of justice.” *Id.*

¹⁵² An estimated 17,000 cases were pending in July 2014. Asad Hashim, Pakistan Activists Upset By New Security Law, *supra* note .

¹⁵³ International Crisis Group, Building Judicial Independence in Pakistan 27 (Nov. 2004), <http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/086%20Building%20Judicial%20Independence%20in%20Pakistan.pdf>.

¹⁵⁴ ICCPR, art. 14(1).

¹⁵⁵ Human Rights Comm., General Comment No. 32, *supra* note , ¶ 30.

¹⁵⁶ U.N. Econ. & Soc. Council Res. 1984/50 (May 25, 1984). Rodley and Pollard suggest that this is a “gloss on Covenant article 14.” RODLEY & POLLARD, *supra* note , at 312.

¹⁵⁷ Periodic Report of the Human Rights Comm.: Pakistan, ¶131, Oct. 2015, U.N. Doc. CCPR/C/PAK/, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/267/96/pdf/G1526796.pdf?OpenElement>.

¹⁵⁸ *The State (through Advocate-General, Sindh, Karachi) v. Salman Hussain*, PLD 1995 SC 1.

¹⁵⁹ FIDH, *Slow March*, *supra* note , at 34.

¹⁶⁰ In 1999, the Karachi High Court ruled that a defendant charged under the ATA bore the burden of proof: “When any person accused of having committed as scheduled offence is found to be in possession of, or to have under his control any article or thing which is capable of being used for, or in connection with the commission of such offence, or is apprehended in circumstances which lead to raise a reasonable suspicion that he had committed such offence, he shall be presumed to have committed the offence unless he can prove that he had not in fact committed the offence.” FIDH, *Slow March*, *supra* note , at 40 (quoting *Khawaja Hasanullah v. The State*, 1999 MLD 51).

¹⁶¹ Protection of Pakistan Act of 2014 (X of 2014), § 15.

¹⁶² For details on Kanizan Bibi's case, please see page 30.

¹⁶³ Human Rights Comm., General Comment No. 32, *supra* note , ¶ 45.

¹⁶⁴ *Id.* ¶ 35.

¹⁶⁵ ICCPR, art. 14(5).

¹⁶⁶ RODLEY & POLLARD, *supra* note , at 314.

¹⁶⁷ Human Rights Comm., General Comment No. 32, *supra* note , ¶ 48.

¹⁶⁸ *Id.* ¶ 45 (emphasis added).

¹⁶⁹ ICCPR, art. 14(3)©.

¹⁷⁰ Pratt and Morgan v. Jamaica, Human Rights Committee, Communication No.210/1986 & 225/87, HRC 1989 Report, Annex X.F.

¹⁷¹ J. Leslie v. Jamaica, Communication No. 564/1993, U.N. Doc. GAOR, A/53/40 (vol. II) ¶ 9.3.

¹⁷² PAKISTAN: A COUNTRY STUDY 310 (Peter R. Blood ed., 1996).

¹⁷³ SUDHIR KUMAR SINGH, HUMAN RIGHTS IN PAKISTAN 67 (2007).

¹⁷⁴ OSAMA SIDDIQUE, PAKISTAN'S EXPERIENCE WITH FORMAL LAW: AN ALIEN JUSTICE 20 (Cambridge ed. 2013).

¹⁷⁵ For details on Kanizan Bibi's case, please see page 30.

¹⁷⁶ Supreme Court of Pakistan, Criminal Appeals Nos. 414 & 415 of 1994.

¹⁷⁷ *Id.*

¹⁷⁸ See PAKISTAN CONST. art. 185(2)(a); PAK. PENAL CODE (XLV of 1860) §§ 302, 342 & 365: "This Court has every right of examining evidence in a criminal appeal if the interest of justice so demand for which purpose each case will have to be adjudged upon its on facts and circumstances and in case the Court reaches the conclusion that the person has been dealt with in violation of the accepted principles of the administration of criminal justice."

¹⁷⁹ PAKISTAN CONST. art. 187.

¹⁸⁰ Periodic Report of the Human Rights Comm.: Pakistan, *supra* note , ¶ 137.

¹⁸¹ Anti-Death Penalty Asia Network, *Aftab Bahadur, Pakistan*, at 1 (Dec. 2011), <https://adpandotnet.files.wordpress.com/2011/11/adpan-appeal-case-pakistan-aftab-bahadur-final.pdf>.

¹⁸² For details about Muneer Hussein's case, please see page 43.

¹⁸³ ICCPR, art. 6(4).

¹⁸⁴ Roger Hood & Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford University Press ed. 2014).

¹⁸⁵ *Herrera v. Collins*, 506 US 390, 411-12 (1993).

¹⁸⁶ *Lamey v. Jamaica*, Case 11.826, Inter-Am. Comm'n H.R., Report No. 41/00, OEA/Ser.L/V/II.106 doc. 3 (2000) (emphasis added).

¹⁸⁷ *Id.* ¶ 225.

¹⁸⁸ Pakistan Prison Rules, Rule 104(l) (1978).

¹⁸⁹ Sanam Maher, *Will the Judiciary in Pakistan Deliver Justice to the Country's Death Row Prisoners As It Determines Abdul Basit's Fate Today?*, CARAVAN (Aug. 25, 2015), <http://www.caravanmagazine.in/vantage/will-judiciary-pakistan-deliver-justice-country-death-row-prisoners-abdul-basit>.

¹⁹⁰ PAKISTAN CONST. art. 45. That portion states that “[t]he President shall have power to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.” *Id.*

¹⁹¹ Hasnaat Malik, *Over 350 Death Row Prisoners Hanged Since Dec 2014, Govt Informs SC*, TRIBUNE (Mar. 22, 2016), <http://tribune.com.pk/story/1070486/over-350-death-row-prisoners-hanged-since-dec-2014-govt-informs-sc>.

¹⁹² President of the Islamic Republic of Pakistan, *Grant of Special Remission Under Article 45 to Juvenile Condemned Prisoners*, (13 December 2001)

¹⁹³ Ziaullah v. Najibullah, PLD 2003 SC 656

¹⁹⁴ Government of the Punjab Home Department, *Grant of Special Remission Under Article 45 of the Constitution to Juvenile Condemned Prisoners*, (Aug. 18, 2003).

¹⁹⁵ In Islamic criminal law, *ta'zir* refers to offenses for which the Quran does not specify a fixed punishment, as it does for *hudud* crimes. As such, *ta'zir* punishments are sometimes referred to as “discretionary” punishments because they are decided by judges rather than being predetermined by the Quran. Another important difference between *hudud* and *ta'zir* punishments is that the former are subject to more stringent evidentiary requirements.

¹⁹⁶ Hakim Khan v. Government of Pakistan, PLD 1992 SC 595.

¹⁹⁷ Shah Hussain vs. The State, PLD 2009 SC 460.

¹⁹⁸ FIDH, *Slow March*, *supra* note , at 32.

¹⁹⁹ *Id.*

²⁰⁰ Anti-Terrorism Act of 1997 (XXVI of 1997) § 21(F).

²⁰¹ JPP & Reprieve, *Terror on Death Row*, *supra* note , at 18.

²⁰² The *Terror on Death Row Report* also describes the case of Zafar Iqbal, who similarly received a pardon for one of his two death sentences, but remains on death row because of an ATA provision purporting to “suspend” a mercy provision that is mandated by Sharia law. *Id.* at 9.

²⁰³ Convention on the Rights of the Child, U.N. Doc. A/RES/44/25, art. 37(a) (1989) [hereinafter CRC].

²⁰⁴ ICCPR, art. 6(5).

²⁰⁵ Quinnipiac University School of Law Civil Justice Clinic & Allard K. Lowenstein International Human Rights Clinic, *Youth Matters: A Second Look For Connecticut's Children Serving Long Prison Sentences*, at 3 (Mar. 2013), <https://www.law.yale.edu/system/files/documents/pdf/YouthMatters2013.pdf>.

²⁰⁶ *Id.*

²⁰⁷ Human Rights Comm., General Comment No. 32, *supra* note , ¶ 42.

²⁰⁸ *Id.* ¶ 42-43.

²⁰⁹ Quinnipiac University School of Law Civil Justice Clinic & Allard K. Lowenstein International Human Rights Clinic, *Youth Matters: A Second Look For Connecticut's Children Serving Long Prison Sentences*, at 1 (Mar. 2013) <https://www.law.yale.edu/system/files/documents/pdf/YouthMatters2013.pdf>.

²¹⁰ ICCPR, art. 14(4).

²¹¹ ICCPR, art. 10(2)(b). In *Thomas v Jamaica*, the detention of the defendant from the ages of 15 to 17 with adult prisoners violated article 10(2)(b) and (3). U.N. Doc. CCPR/C/49/D/321/1988 (1993).

²¹² Human Rights Comm., General Comment No. 32, *supra* note , ¶ 42.

²¹³ CRC, art. 37©.

²¹⁴ CRC, art. 37(d).

²¹⁵ CRC, art. 40(2)(b)(iii).

²¹⁶ RODLEY & POLLARD, *supra* note .

²¹⁷ Comm. on the Rights of the Child, General Comment No. 10, ¶ 39, U.N. Doc. CRC/C/GC/10 (2007).

²¹⁸ U.N. Office of the High Commissioner for Human Rights, *UN experts urge Pakistan not to execute juveniles* (Mar. 20, 2015), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15729&LangID=E>. The expert panel included Christof Heyns (the UN Special Rapporteur on extrajudicial, summary or arbitrary executions), Juan E. Méndez, (the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), and Kirsten Sandberg (the Chairperson of the UN Committee on the Rights of the Child).

²¹⁹ *Id.*

²²⁰ Juvenile Justice System Ordinance of 2000 (XXII of 2000) [hereinafter JJSO].

²²¹ *Zafar v State*, 2001 PCrLJ 1939; see also Khurshid Iqbal, *Judging Juvenility: Determination of Age of Juvenile Offenders Under Pakistan's Juvenile Justice System*, 1 PAKISTAN J. CRIMINOLOGY 105, 109 (2009), <http://www.pakistansocietyofcriminology.com/publications/Vol1No3Oct009.pdf>.

²²² JJSO, § 55.

²²³ *Id.*

²²⁴ Concluding Observations of the Comm. on the Rights of the Child: Pakistan, ¶ 41, U.N. Doc. CRC/C/PAK/CO/3-4 (2009).

²²⁵ U.N. Office of the High Commissioner for Human Rights, *Death Penalty: Pakistan Continues To Execute Child Offenders in Spite of UN Experts' Appeals*, (Oct. 2, 2015), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16560&LangID=E#sthash.71HcxlfK.dpuf>.

²²⁶ *Shafqat's Lawyers Concerned About Premature Conclusion to FIA Inquiry*, DAWN (Apr. 2, 2015), <http://www.dawn.com/news/1173471>; see also FIDH, *Slow March*, *supra* note , at 38.

²²⁷ *Sultan Ahmed v. Additional Sessions Judge*, PLD 2004 SC 758.

²²⁸ See JPP Empirical Data Set (on file with authors).

²²⁹ Khurshid Iqbal, *Judging Juvenility: Determination of Age of Juvenile Offenders Under Pakistan's Juvenile Justice System*, 1 PAKISTAN J. CRIMINOLOGY 105, 108-112 (2009), <http://www.pakistansocietyofcriminology.com/publications/Vol1No3Oct009.pdf>.

²³⁰ The FIDH notes other cases of Pakistani juveniles being subjected to the death penalty, including Mutaber Khan. Khan claimed to have been 16 at the time of commission of his crime, and attempted to prove it with a school certificate and evidence that he had been kept two years in the child section of the Central Prison. However, his appeal was rejected on the grounds that the order to commute death penalty into life for all juveniles should not affect him, since his age had not been recorded at trial. See FIDH, *Slow March*, *supra* note , at 38.

²³¹ For details on Shafqat Hussain's case, please see page 21.

²³² Fahmina Naz, *Pakistan: Out of the Frying Pan, Into the Fire*, Child Rights International Network, (Sep. 28, 2007), <https://www.crin.org/en/library/publications/pakistan-out-frying-pan-fire-juvenile-justice-pakistan>.

²³³ Reuters, *Pakistan Hangs Man Who Said He Was 15 When Arrested*, GUARDIAN (Sep. 29, 2015), <https://www.theguardian.com/world/2015/sep/29/pakistani-man-ansar-iqbal-hanged-murder>.

²³⁴ Justice Project Pakistan & Reprieve, *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*, at 2 (June 7, 2016), http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/PAK/INT_CRC_NGO_PAK_23777_E.pdf (submitted to the Committee on the Rights of the Child in anticipation of its review of Pakistan's state report).

²³⁵ CRC, art. 37(a).

²³⁶ Aftab Bahadur, *My 22 Years on Pakistan's Death Row Could End This Week. What Purpose Will My Execution Serve?*, GUARDIAN (June 9, 2015), <https://www.theguardian.com/commentisfree/2015/jun/09/22-years-pakistan-death-row-what-purpose-execution>.

²³⁷ *Grant of Special Remission Under Article 45 of the Constitution Juvenile Condemned Prisoners*, Anti-Terrorism Court No. 3 at Karachi (2004).

²³⁸ Justice Project Pakistan & Reprieve, *Juveniles on Pakistan's Death Row* 5 (2015), http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/PAK/INT_CRC_NGO_PAK_21444_E.pdf.

²³⁹ Convention on the Rights of Persons with Disabilities, U.N. Doc. A/RES/61/106CRPD (2006), <http://www.un-documents.net/a61r106.htm> [hereinafter CRPD].

²⁴⁰ *Sahadath v. Trinidad and Tobago*, Communication No. 684/1996, CCPR/C/74/D/684/1996 (2002).

²⁴¹ U.N. Econ. & Soc. Council, *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, ¶ 3, E.S.C. Res. 1984/50, U.N. Doc. E/1984/92, 1984. See also U.N. Econ. & Soc. Council, *Implementation of the Safeguards Guaranteeing Protection of Rights of those Facing the Death Penalty*, U.N. Doc. E/1989/91, May 24, 1989. The Council recommended that states eliminate the death penalty “for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.” *Id.*

²⁴² U.N. Comm. on Human Rights, Human Rights Resolution 2005/59: The Question of the Death Penalty, E/CN.4/RES/2005/59 (2005), <http://www.unwatch.org/wp-content/uploads/2014/06/Death-penalty-rev-1.pdf>.

²⁴³ U.N. Comm. on Human Rights, ¶ 686, U.N. Doc. E/CN.4/1994/7 (1993).

²⁴⁴ Council of the European Union, EU Guidelines on Death Penalty, Doc 8416/13 COHOM 64 PESC 403, at 11 (2013), http://eeas.europa.eu/human_rights/guidelines/death_penalty/docs/guidelines_death_penalty_st08416_en.pdf.

²⁴⁵ *Atkins v. Virginia*, 536 U.S. 304 (2002) (banning executions of persons with intellectual disabilities); *Ford v. Wainwright*, 477 U.S. 399 (1986) (banning executions of the mentally ill).

²⁴⁶ PAK. PENAL CODE § 306(a); see also PAK. PENAL CODE § 84 (“Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”); *Shahbaz Masih v. State*, 2007 SCMR 1631 (acquitting mentally ill defendant).

²⁴⁷ Ahmed Ijaz Gilani et. al, *Psychiatric Health Laws in Pakistan: From Lunacy to Mental Health*, 2 PLOS MEDICINE 1106 (2005), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1215469/pdf/pmed.0020317.pdf>.

²⁴⁸ For details about Muneer Hussein's case, please see page 43.

²⁴⁹ U.N. Comm. on Human Rights: Report by the Special Rapporteur, ¶ 58, U.N. Doc. E/CN.4/1998/68/Add.3 (1998), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G98/102/37/PDF/G9810237.pdf?OpenElement>

²⁵⁰ American Civil Liberties Union, *Mental Illness and the Death Penalty*, at 1 (May 5, 2009), https://www.aclu.org/files/pdfs/capital/mental_illness_may2009.pdf (citing William C. Follette et. al, *Mental Health Status and Vulnerability to Police Interrogation Tactics*, 22 CRIM. JUST. 42, 46-49 (2007)).

²⁵¹ CRPD, art. 15(2).

²⁵² MICHAEL L. PERLIN, MENTAL DISABILITY AND THE DEATH PENALTY: THE SHAME OF THE STATES 145 (2013).

²⁵³ CRPD, art. 12(3).

²⁵⁴ PAK. CODE CRIM. PROC., Ch. 34 §§ 464-65; see, e.g., PLD 1960 (W. P.) (Lahore) 111 (“If, during the enquiry, nothing comes to the notice of a Magistrate to induce a belief in him that an accused person is of unsound mind and if at the trial before the Sessions Court it does not appear to the latter that the accused is of unsound mind and consequently incapable of making his defense, there is nothing for them to do except to proceed with the inquiry or the trial in the normal manner.”).

²⁵⁵ Muzaffar Husain, *Blasphemy Laws and Mental Illness in Pakistan*, 38 PSYCHIATRIC BULLETIN 40, 42 (2014), http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4067851/pdf/pbrpsych_38_1_010.pdf.

²⁵⁶ Mental Health Ordinance of 2001 (VIII of 2001), § 55.

²⁵⁷ For details on Kanizan Bibi's case, please see page 30.

²⁵⁸ Husain, *Blasphemy Laws*, *supra* note , at 42.

- ²⁵⁹ *Marinich v. Belarus*, ¶ 10.3, U.N. Doc. CCPR/C/99/D/1502/2006 (2010) (“States parties are under an obligation to observe certain minimum standards of detention, which include provision of medical care and treatment for sick prisoners, in accordance with rule 22 of the Standard Minimum Rules for the Treatment of Prisoners.”).
- ²⁶⁰ *Portorreal v. Dominican Republic*, ¶ 9.2, U.N. Doc. Supp. No. 40 (A/43/40) at 207 (1988).
- ²⁶¹ *Mukong v. Cameroon*, ¶ 9.3, U.N. Doc. CCPR/C/51/D/458/1991 (1994).
- ²⁶² *Id.*; *Brown v. Jamaica*, ¶ 6.13, U.N. Doc. CCPR/C/65/D/775/1997 (11 May 1999).
- ²⁶³ *Edwards v. Jamaica*, ¶ 8.3, U.N. Doc. CCPR/C/60/D/529/1993 (1993).
- ²⁶⁴ *Kelly v. Jamaica*, ¶ 5.7, U.N. Doc. CCPR/C/41/D/253/1987 at 60 (1991).
- ²⁶⁵ See Human Rights Commission of Pakistan, *State of Human Rights in 2014*, *supra* note , at 88 (identifying “[c]hronic issues such as overcrowding, lack of proper healthcare system, inferior quality food, corruption and rampant torture”)
- ²⁶⁶ *Francis v. Jamaica*, U.N. Doc. CCPR/C/54/D/606/1994 (1995).
- ²⁶⁷ *Id.* at ¶ 9.2.
- ²⁶⁸ *Soering v. UK*, ¶ 111, 161 Eur. Ct. H.R. (ser. A) (1989).
- ²⁶⁹ *Johnson v. Jamaica*, CCPR/C/64/D/592/1994 (1998).
- ²⁷⁰ ICCPR, art. 10(3).
- ²⁷¹ *Wilson v. Philippines*, ¶ 7.4, U.N. Doc. CCPR/C/79/D/868/1999 (2003).
- ²⁷² *Sahadath v. Trinidad and Tobago*, ¶ 7.2, CCPR/C/74/D/684/1996 (1996).
- ²⁷³ *Wilson v. Philippines*, ¶ 7.3, U.N. Doc. CCPR/C/79/D/868/1999 (2003).
- ²⁷⁴ *Rayos v. Philippines*, ¶ 7.1, U.N. Doc. CCPR/C/81/D/1167/2003 (2004).
- ²⁷⁵ *Pratt & Morgan v. Jamaica*, ¶ 13.7, U.N. Doc. Supp. No. 40 (A/44/40) at 222 (1989).
- ²⁷⁶ *Martin v. Jamaica*, ¶ 12.3, U.N. Doc. CCPR/C/47/D/317/1988 (1993); *Pennant v. Jamaica*, ¶ 8.6, U.N. Doc. CCPR/C/64/D/647/1995 (1998).
- ²⁷⁷ See generally Helen F. Kearney, *Children of Parents Sentenced to Death*, at 2 (2012), http://www.quno.org/sites/default/files/resources/ENGLISH_Children%20of%20parents%20sentenced%20to%20death.pdf.
- ²⁷⁸ *Lyashkevich v. Belarus*, ¶ 9.2, U.N. Doc. CCPR/C/77/D/887/1999 (2003); see also Concluding Observations of the Human Rights Committee: Japan, ¶ 21, U.N. Doc. CCPR/CO/79/Add.102 (1998) (“[T]he failure to notify the family and lawyers of the prisoners on death row of their execution [is] incompatible with the Covenant.”).
- ²⁷⁹ U.N. Comm. on Human Rights: Report by the Special Rapporteur, ¶ 32, U.N. Doc. E/CN.4/2006/53/Add.3, (2006).
- ²⁸⁰ High Court Lahore Notification No. 402/Legis/H-D-4(HD) (Dec. 24, 2014) (requiring that execution dates be issued “not less than three or more than eight days from the date of the issue of the warrant”).
- ²⁸¹ Rule 5, Order XXIII of the Supreme Court Rules of 1980 provides: “In case of a petition for leave to appeal involving a sentence of death, the Registrar shall, as soon as the petition is filed or received from the Officer-in-charge of a Jail, intimate the fact of the petition having been filed/received in the Court of the Government of the Province concerned and thereupon the execution of the sentence of death shall be stayed pending the disposal of the petition, without any express order of the Court in this behalf.”

