

Violations of Pakistan's Obligations under the International Covenant on Civil and Political Rights and the Convention against Torture

The Commission's most recent report, submitted earlier this year in January, on the implementation of the GSP+ scheme in Pakistan ('2016 Report') set out a number of concerns about Pakistan's enforcement of the seven human rights conventions. Among the concerns highlighted were the "fundamental weaknesses of the police and the judicial system combined with the use of the death penalty carry a very high risk of irreversible miscarriages of justice" including retention of the death penalty "overwhelmingly... for common, albeit serious, crimes" rather than the "most serious crimes" and the execution of juveniles.¹ The Commission also set out a number of concerns relating to violations of the right to a fair trial and the continued prevalence of torture and cruel, inhuman, and degrading treatment and punishment (CIDT).

The death penalty was also the subject of significant debate during the public hearing held on 16th February 2016, by the Committee on International Trade and the Sub Committee on Human Rights of the European Parliament regarding the GSP + mechanism. Parliamentarians questioned Pakistan's refusal to reinstate the moratorium on executions, despite the clear evidence of violations of Pakistan's treaty obligations entailed in the current policy on executions.²

This briefing note summarises violations of the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT), the Convention on the Rights of the Child (CRC) and key developments in this area over recent months, and provides recommendations for the upcoming monitoring mission.

1. Pakistan arbitrarily deprives life (Article 6(1) ICCPR)

FACTS:

- The Government of Pakistan ("GOP") resumed executions in December 2014 as part of a new counter-terrorism policy. Since then at least 418 prisoners, 86 in 2016, have been executed. Initially the moratorium was lifted only for those tried under the special laws of the anti-terror regime, however, from March 2015 onwards the moratorium was lifted for all prisoners, irrespective of the offence.
- Executions are often carried out as an outcome of trials that fail to meet the standards of fair trial under Article 14 of the ICCPR.

¹ European Commission, "The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014 – 2015", (Jan 2016), Pages 189 – 190, http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc_154178.pdf accessed on 12 October 2016

² Fourteen parliamentarians also expressed ongoing concern about this issue in a letter sent to the President of Pakistan to mark World Day Against the Death Penalty on 10 October 2016. Copies available on request.

TRENDS:

- Despite repeated calls from the international community, the GOP has failed to reinstate the moratorium on the death penalty.
- Figures analysed by Reprieve and the Justice Project Pakistan show that since 2014 only 6% of executed prisoners had links to terrorism. Despite this, the GOP continues to justify the use of the death penalty by arguing that it is an effective deterrent to terrorism, using recent figures relating to the number of civilian deaths as a result of terrorist incidents published by the US State Department as evidence for this position. This analysis fails to show any causal link between this apparent decline in the numbers of casualties and the resumption of executions.

RECOMMENDATIONS:

- Request the GOP to reinstate the moratorium on the Death Penalty.
- Request the GOP to direct the National Commission on Human Rights, the country's National Human Rights Institution, to initiate a review of all cases of detainees on death row.
- Question the connection made by the GOP between the current policy of executions and the number and nature of terrorist incidents in the country.
- Ask the GOP to disclose exact figures on the total number of prisoners on death row, along with details of the crimes for which they were sentenced and executed.

2. Pakistan imposes the death penalty for a wide array of lesser offences that do not constitute as "the most serious crimes (Article 6(2) ICCPR and 16 CAT).

FACTS:

- As many as 27 offences carry the death penalty, including non-lethal offences such as kidnapping, blasphemy and narcotics offences.

TRENDS:

- Pursuant to the National Action Plan on Human Rights (published by the Office of Prime Minister in February 2016), the GOP aimed to conduct a review of Pakistan's criminal legislation including, the Pakistan Penal Code and the Code of Criminal Procedure. Whilst we are aware that a committee has been appointed by the GOP to conduct such a review, the exact nature and scope of this review has not been disclosed to the public.
- The First Secretary of the Pakistan Permanent Mission in Geneva explicitly stated at a side-event held at the 33rd Session of the Human Rights Council, hosted by OMCT, JPP and Reprieve that one of the aims of the aforementioned review was to see what possibilities there might be for narrowing the scope of the death penalty.

RECOMMENDATIONS:

- Request the GOP to disclose the mandate and ongoing activities of the review committee entrusted with revising the country's criminal law.
- Request the GOP to limit the scope of crimes that fall within the ambit of terrorism under the Anti-Terrorism Act, 1997 and provisions which stipulate for the mandatory imposition of the maximum stipulated penalty should be repealed.

3. Pakistan fails to properly consider mercy petitions (Article 6(4) ICCPR)

FACTS:

- Since the lifting of the moratorium on executions, the GOP has adopted a blanket ban on granting executive clemency. This ban was first announced in December 2014,³ and informally confirmed by the Ministry of Interior as recently as March 2016.⁴ This policy is in clear violation of international law in particular Article 6(4) of the ICCPR, which guarantees death row prisoners the right to an effective and transparent clemency process.
- Abdul Basit, a paraplegic prisoner on death row, has come within hours of being executed over three times with the latest one being in November 2015. Khizer Hayat and Imdad Ali, both diagnosed with paranoid schizophrenia, have also been issued black warrants multiple times. All three cases deal with prisoners with disabilities whose mercy petitions were summarily dismissed

TRENDS:

- Based on publicly available information, not a single mercy petition has been accepted since December 2014.
- The execution of Abdul Basit, the paraplegic prisoner on death row, was stayed at the last minute after the President of Pakistan intervened. Such intervention appears to have been a direct result of interventions from the international community and particularly from the EEAS and the Commission.

RECOMMENDATIONS:

- Ask the GOP for the exact number and details of mercy petitions that have been accepted since the lifting of the moratorium.

³ Dawn, "President briefed on decision to end moratorium" (Islamabad, 19 December 2014), <http://www.dawn.com/news/1151758/president-briefed-on-decision-to-end-moratorium> accessed 12 October 2016

⁴ See Hasnaat Malik, "Over 250 death row prisoners hanged since Dec 2014, govt informs SC" The Express Tribune (Islamabad, 22 March 2016).

- Based on data compiled by the Justice Project Pakistan, the average prisoner spends on average 11.4 years on death row. The Mission should direct the GOP to automatically accept mercy petitions of prisoners who have spent over 8 years on death row.
- Ask the GOP to permanently commute the death sentence of Abdul Basit and Imdad Ali through acceptance of their mercy petitions.
- Ask the GOP to constitute provincial Executive Boards that will vet mercy petitions through a transparent process and forward those they deem compelling for acceptance by the President.

4. Pakistan has executed multiple juvenile offenders (Articles 6(5) ICCPR , 1 and 16 CAT, and 37 CRC)

FACTS:

- Even though under the Juvenile Justice System Ordinance 2000 (JJSO) prohibits the death penalty for juveniles, since lifting the moratorium in 2014 Pakistan has executed at least 5 individuals who were under the age of 18 at the time of the alleged crime. In fact, it is estimated that nearly 10% of Pakistan's death row population of 8000 consists of juvenile offenders.
- Birth registrations are very low, thus complicating the age determination process, especially as domestic law in practice places the burden of proof to raise the plea of juvenility squarely on the defendant.

TRENDS:

- The courts employ an arbitrary methodology for age determination and often give credence to the visual assessment of the police over GOP produced documentary evidence. Moreover, the superior courts refuse to admit pleas of juvenility not raised at the trial court level.
- The GOP is in the process of reforming the Juvenile Justice System Ordinance, 2000 through a bill titled Juvenile Justice System Bill, 2015, which would bring the existing legislation in line with the recommendations of the UN CRC has been proposed but the same is yet to presented in the parliament for discussion.⁵

⁵ The News, "Government urged to implement UN recommendations on child rights", (19 December, 2015) <https://www.thenews.com.pk/print/82841-Government-urged-to-implement-UN-recommendations-on-child-rights>

RECOMMENDATIONS:

- Request an update on the progress towards the implementation of the recommendations from the Committee on the rights of the Child, particularly regarding the implementation of age determination protocols.
- Request information on the steps taken to enact and implement the proposed Juvenile Justice System Bill 2015 and further explain this bill's compliance with Articles 6 and 24 of the ICCPR.

5. Pakistan has not passed legislation criminalising torture (Articles. 7 ICCPR, 4 CAT)**FACTS:**

- Torture at the hands of police and other security agencies is endemic and widespread. Almost six years after ratification of the ICCPR and the CAT, not only is torture still accepted as an inevitable part of law enforcement, but perpetrators of torture are granted virtual impunity.
- The Constitution of Pakistan in article 14(2) states (in its entirety) that "No person shall be subjected to torture for the purpose of extracting evidence". This provision fails to define torture in any meaningful way and limits its scope only to acts committed for the purpose of extracting evidence and does not describe penalties.

TREND:

- Under the National Action Plan on Human Rights, the GOP had committed to passing legislation implementing the CAT by July 2016. An Anti-Torture Bill has been debated since 2012 but has not passed into law.

RECOMMENDATION:

- Ask for information on steps taken to prevent torture and ill-treatment, including trainings in human rights for police, military and other officials.
- Express concern at the delay in the enactment of legislation on the issue of torture and request the enactment of the draft Anti-Torture Bill.
- Direct the GOP to provide adequate resources and authority to the National Commission on Human Rights to independently investigate torture allegations. Such authority should allow the NCHR to intervene in ongoing proceedings and/or remand cases where torture is alleged for reinvestigation and/or retrials.

6. Pakistan has failed to institute a mechanism for independent and impartial investigations into allegations of torture (Articles 7 ICCPR and 12 CAT)

FACTS:

- Police operate with little or no independent oversight, due to the lack of monitoring bodies that can entertain complaints of torture against the police. Victims have to approach the police to register torture and mistreatment complaints. Such complainants are often turned away by police, who refuse to file complaints.⁶

TREND:

- The GOP reformed the functioning and institutional organisation of the police forces through the Police Order 2002, however such initiative failed to address systemic issues. No further concrete steps have been taken to increase the accountability of the police.

RECOMMENDATION:

- Request the GOP to provide information on the investigations and number of complaints of torture or ill-treatment against police, military and other officials received.

7. Pakistan executes mentally ill prisoners (Articles 6 and 7 ICCPR and 16 CAT)

FACTS:

- There is a clear consensus among the international community that the execution of mentally ill prisoners is a violation of Articles 6 and 7 ICCPR and 16 CAT. Despite this, Pakistan has no legislative provision that protects the mentally ill from the death penalty.
- In the recent case of Imdad Ali, a death row prisoner suffering from schizophrenia, the Supreme Court refused to admit an appeal to halt the execution, in light of Imdad Ali's severe mental illness.⁷ The Supreme Court commented that 'schizophrenia is not a permanent mental disorder...a recoverable disease, which, in all cases, does not fall within the definition of 'mental disorder' as defined in the Mental Health Ordinance.'

⁶ JPP and Allard K Lowenstein International Human Rights Clinic, Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan (March 2014)

⁷ Dawn, "Appeal Dismissed: Top Court Upholds Death Penalty for Mentally Ill Man" (28 Sept 2016), <http://tribune.com.pk/story/1189913/appeal-dismissed-top-court-upholds-death-penalty-mentally-ill-man/> accessed on 12 October 2016

TREND:

- Pakistan is known to have executed at least one mentally ill prisoner – Muneer Hussain – in April 2015.⁸

RECOMMENDATIONS:

- Request the GOP to enact legislation explicitly prohibiting the imposition of the death penalty against persons with mental illness. Such prohibition should apply even if mental illness is diagnosed subsequent to conviction and sentencing.
- Request the GOP to enact legislation specifically including schizophrenia in the definition of mental disorder in the Mental Health Ordinance, 2001.
- Request the GOP to intervene on the case of Imdad Ali granting him clemency and move him to a mental health hospital for treatment.
- Direct the GOP to cease with immediate effect placing prisoners with mental illness in solitary confinement.
- Request the establishment of independent medical boards in all provinces to investigate allegations of mental illness. In the event that such illness is discovered prisoners should be transferred to mental health facilities for treatment.

8. Pakistan detains individuals without charge (Articles 9(1) and 9(2) ICCPR and 16 CAT)

FACTS:

- Under the Pakistani legal system, the executive retains sweeping powers to detain individuals without charge on a broad range of grounds. Multiple laws currently in operation in Pakistan provide for preventive detention, such as Article 10(4) of the Pakistan Constitution or section 11E of the ATA 1997.
- Courts have the discretion to review preventive detention cases on the basis of relevant domestic law and the Constitution, although this remedy is often extremely difficult for detainees to access in practice.

TREND:

- Over the years, military and civilian governments alike have routinely used preventive detention for their own political agendas particularly to silence and intimidate critics all under the guise of national security.

⁸Bar Human Rights Committee of England and Wales, 'A Death Day Pakistan's Return to the Death Penalty' (July 2015) http://barhumanrights.org.uk/sites/default/files/documents/biblio/bhrc_pakistan_death_penalty_report_2015_0.pdf accessed on 3 October 2016

RECOMMENDATION:

- Require information on laws allowing for preventive detention and their compatibility with the ICCPR.

9. Pakistan denies fair and public hearings for offences relating to ‘terrorism’ (Article 14(1) ICCPR)

FACTS:

- Many death penalty cases are heard by the anti-terrorism courts (ATC). These courts explicitly impose multiple curtailments on a defendant’s right to a fair trial, many of which are a departure from standard judicial procedure. These violations do not only affect those who have been charged with offences internationally recognised as related to terrorism.

TREND:

- A significant number of cases tried in the ATCs are concerned with ordinary crimes.⁹

RECOMMENDATION:

- Request the GOP to limit the scope of crimes that fall within the anti-terror regime and direct prosecution authorities to prosecute only terror related crimes in the ATCs along with safeguarding fundamental right of fair trial enshrined in the Pakistani Constitution.

10. Pakistan fails to provide defendant with minimum guarantees and presumes them guilty rather than innocent (Article 14(3) ICCPR)

FACTS:

- An investigation officer’s report plays a central role in criminal trials, the prosecution relies heavily on this report thereby shifting the burden on the accused to prove his or her innocence.
- The defendants are not given adequate time to prepare for their defence. In the case of Aftab Bahadur, who was convicted in 1993 just 44 days after his arrest under the much maligned Speedy Trials Act. Despite the abrogation of this act in 1994, Bahadur was executed in 2015.

TREND

- Criminal defendants, including those facing the death penalty, are usually appointed a counsel who is often incompetent and uninterested.

⁹ JPP and Reprieve, Terror on death row: The abuse and overuse of Pakistan’s anti-terrorism legislation (December 2014) (Terror on Death Row Report) accessed on 3 March 2016

RECOMMENDATION:

- Request the GOP to provide information on the steps taken to ensure that all legal proceedings are conducted in full accordance with Article 14 ICCPR, including in particular the presumption of innocence and the exclusion of evidence extracted in contravention of Articles 7 ICCPR and 1 CAT.

11. Pakistan fails to honour post-conviction review (Article 14(5) ICCPR)**FACTS:**

- In its Initial Report to the Human Rights Committee regarding its compliance with the ICCPR, the GOP indicated that it was possible for criminal cases to be re-opened pursuant to Articles 199 and 187 of the Constitution, coupled with the court's inherent power to recall an order mistakenly passed,¹⁰ but there remains a clear gulf between the interpretation of these powers suggested by the GOP and that adopted by the courts.

TREND:

- Pakistan's superior courts have consistently refused to re-examine closed cases when new evidence emerges to suggest there has been a miscarriage of justice since the moratorium has been lifted.

RECOMMENDATIONS:

- Request that the GOP take action – either through legislative or administrative measures – to ensure that there is an adequate mechanism in place to review closed cases to avoid wrongful executions and irreversible miscarriages of justice.
- Request that the Supreme Court clearly articulate its policy on post-conviction reviews, especially in death penalty cases.

¹⁰ Human Rights Committee, Initial Report of Pakistan, 19 October 2015, para 137