

**Pakistan: Alternative Report to the
Human Rights Committee**

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Submitted by

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A. Introduction

1. The following submission has been prepared by the Justice Project Pakistan(JPP), World Organisation Against Torture (OMCT), and Reprieve for submission to the 120th session of the Human Rights Committee (HRC). The report comments on the Government of Pakistan's Initial Report under the International Covenant on Civil and Political Rights (ICCPR) particularly with regards to its failure to fulfil its obligations with respect to its application of the death penalty and police torture. The report supplements the information contained in the submission made by the parties to the HRC for the List of Issues (LOIs) and is meant to be read in conjunction thereof.¹

B. Applicability of the ICCPR in the domestic legal system

2. Whilst the Government of Pakistan (GOP) has stated in its Replies to the List of Issues that the ICCPR became applicable to Pakistan upon ratification, superior courts refuse to rely upon provisions of the ICCPR, and other international treaties. The Lahore High Court in 2015 dismissed a writ that challenged the scheduled execution of Abdul Basit, a paraplegic prisoner who became paralysed after contracting tuberculosis meningitis in prison, on the grounds that it would constitute cruel, inhuman and degrading treatment under Article 7 of the ICCPR. In dismissing the writ the Court noted that based on the Supreme Court's precedent "*when all legal remedies have been exhausted then there will be no legal justification to suspend an execution and matter should be dealt in accordance with the laws of Pakistan and the International laws should be kept aside*".² The cited precedent was a dismissal order wherein the Court declined to accept an appeal to suspend the execution of Shafqat Hussain, a juvenile in conflict with the law, on the basis of its violation of international treaty obligations, including Article 6 of the ICCPR.³
3. The implementation of the ICCPR by courts currently depends upon the discretion of individual judges to use the provisions as a guiding principle to interpret the provisions of the 1973 Constitution of the Islamic Republic of Pakistan, provided that there is no conflict between the two.⁴ Additionally, domestic legislation falls well short covering the breadth of the rights contained in the ICCPR. For instance, repeated delays in the enactment of the Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Bill 2015 means that torture as defined under international law is not criminalised and there exists no independent investigation mechanism to examine allegations of torture.⁵

¹ Justice Project Pakistan(JPP), World Organisation Against Torture (OMCT) & Reprieve, Pakistan: Alternative Report to the Human Rights Committee (June 2016) Available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PAK/INT_CCPR_ICO_PAK_24479_E.pdfhttp://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PAK/INT_CCPR_ICO_PAK_24479_E.pdf

² Lahore High Court, W.P. No. 22496/2015 Nusrat Perveen v. Home Department (01.09.2015). Available on file with JPP

³ Supreme Court of Pakistan, Civil Petition No: 1127/2015: Shafqat Hussain v. President of Pakistan and others (10.06.2015). Available on file with JPP

⁴ In the case of Al Jihad Trust v Federation of Pakistan (1999 SCMR 1379) the Supreme Court of Pakistan concluded (in para 16) that international human rights law may be referred to in interpreting the constitution, provided that "there is no inconsistency between the two".

C. Pakistan routinely tortures suspects with impunity in violation of Article 7

4. Domestic law neither defines nor criminalizes torture as required by the ICCPR. The Constitution only prohibits torture for the purpose of extracting evidence⁶ and the Pakistan Penal Code (XLV of 1860) (Penal Code) only punishes the infliction of hurt that encompasses bodily harm in general. There are three similar draft anti-torture bills, introduced by individual lawmakers, pending in Parliament for several years. However, the government has not supported any of the bills or announced its intentions to introduce its own bill despite the government's National Action Plan on Human Rights⁷ making anti-torture legislation a priority. The government's support for an anti-torture law is key for such a law to pass in Parliament given that it has the majority of seats. In May 2017, the Committee against Torture thus encouraged Pakistan to adopt one of the current draft bills or to propose new legislation that is in full compliance with the Convention against Torture.
5. Torture and Cruel, Inhuman or Degrading Treatment (CIDT), particularly at the hands of police and other security agencies, are endemic and widespread in Pakistan. A study conducted by JPP and Yale University on a sample of 1,867 medical legal certificates prepared by government-appointed District Standing Medical Board (DSMB) from the District of Faisalabad, revealed **1,424** allegations of police torture with physical evidence that were confirmed by independent medical professionals.⁸
6. Almost six years after ratification of the ICCPR, not only is torture still accepted as an inevitable part of law enforcement, but perpetrators of torture are granted virtual impunity through sociocultural acceptance, lack of independent oversight, widespread powers of arrest and detention, procedural loopholes and ineffective safeguards. As demonstrated by cases mentioned in this report, confessions extracted through torture often form the basis of convictions and harsh sentences, including the death penalty. Whilst Article 38 of the Qanun-e- Shahadat renders any statement given in police custody inadmissible, in practice police circumvent the law. First, they torture a prisoner into confessing, and then take the prisoner before the magistrate with the promise that if he does not repeat the confession before the magistrate he will be returned to the station house for more abuse. Second, they torture the prisoner into making a false statement about physical evidence, and the physical evidence that is then confected by the police becomes admissible at trial. Furthermore, under section 21-H of the Anti-Terrorism Act 1997, confessions made under the custody of police and/or security forces in terrorism cases are now admissible in evidence.
7. There is almost complete impunity for torture as recently found by the Committee against Torture with hardly anyone being found criminally responsible for torture.⁹ According to the government's own statistics from the Punjab Police for instance, in 2014 only five police

⁶ Article 14(2) of the Constitution of Pakistan

⁷ The National Action Plan on Human Rights set July 2016 as the deadline for the enactment of the Torture and Custodial Death (Prevention and Punishment) Bill, 2013. See Ministry of Human Rights, Government of Pakistan. National Action Plan on Human Right (Feb 2016). Available at <http://202.83.164.138/new/userfiles/file/Action%20Plan%20Booklayout.pdf> (Last accessed on 04.06.2017)

⁸ JPP and Allard K Lowenstein International Human Rights Clinic, Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan (March 2014),

<https://www.law.yale.edu/system/files/documents/pdf/JPP_Launch_Report_050514.pdf>

⁹ Committee against Torture, Concluding Observations on Pakistan, para. 10.

officers of the police force that has over 180,000 personnel faced a disciplinary sanction.¹⁰ The complete lack of criminal sanction is further reflected in the government's report to this Committee that only mentions "disciplinary actions" that had been taken against those responsible of torture.¹¹

8. In the absence of relevant legislation, victims and their lawyers are unable to litigate torture cases and get justice.

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

9. In December 2014, Pakistan removed a six-year de facto moratorium on the death penalty. The moratorium was initially lifted to execute terrorists however, in March 2015, the Government of Pakistan, without any public justification, lifted it for all offences carrying the death penalty. Since December 2014, the Government of Pakistan has executed **468** prisoners.¹² Despite the government's narrative that the death penalty is essential in its fight against terrorism only **139** of the total executions were for terrorism related crimes out of which 74 were under the Anti-Terrorism Courts (ATC's) and 65 under the military courts.¹³ Moreover, of the 74 executed prisoners sentenced to death by the ATCs, only around 20% were convicted for crimes pertaining to terrorism, as it is commonly understood, thus making the actual figures of individuals executed for terrorism much lower.¹⁴
10. There are currently no confirmed figures available for Pakistan's total death row population. Government estimates have ranged from 8,261¹⁵ to 6000¹⁶, which speaks to the lack of transparency on its death penalty policy. With an average of 4 executions per week, thousands of prisoners remain at risk.¹⁷ Pakistan applies the death penalty to at least 27 capital offences, including those that do not meet the standard of "most serious crimes" – understood by the HRC to mean only those which are carried out intentionally and lead to death.¹⁸ These include offences such as kidnapping, abduction, blasphemy and narcotics offences.
11. Executions carried out in Pakistan often fail to fulfil the requirement of fair trial and are carried out as a consequence of torture and/or cruel, inhuman or degrading treatment in breach of Articles 7 and 14 ICCPR and thus constitute an arbitrary deprivation of life. Christof Heyns, the former UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that

¹⁰ See Punjab Police, Accountability Mechanism available at <https://www.punjabpolice.gov.pk/statistics>

¹¹ Replies of Pakistan to the List of Issues, UN Doc. CCPR/C/PAK/Q/1/Add.1, para. 39.

¹² For a chronological and geographical breakdown of execution figures see JPP: Execution in Pakistan: Fact Sheet attached herewith as **Annexure A** (Annex A)

¹³ See Annex A

¹⁴ JPP & Reprieve. 'Terror on Death Row: The abuse and overuse of Pakistan's anti-terrorism legislation'. (December 2014) Available at http://www.reprieve.org.uk/wp-content/uploads/2014/12/2014_12_18_PUB-Pakistan-Terror-Courts-Report-JPP-and-Reprieve.pdf

¹⁵ Zahid Gishkori. "8,621 prisoners: Hanging in the Balance" The Express Tribune (18.12.2014) Available at <https://tribune.com.pk/story/808727/6261-prisoners-hanging-in-the-balance/>

¹⁶ Iftikhar A. Khan "Over 6,000 death-row convicts in jails, Senate told". DAWN. (07.10.2015) Available at <https://www.dawn.com/news/1211376>

¹⁷ JPP and Allard K. Lowenstein International Human Rights Clinic, Yale Law School. "A Most Serious Crime" (Sept 2016), available at https://law.yale.edu/system/files/area/center/schell/2016_09_23_pub_dp_report.pdf [A Most Serious Crime]

¹⁸ United Nations Human Rights Committee, General comment No 6: Article 6 (Right to Life) (emphasis added) <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=INT%2fCCPR%2fGEC%2f6630&Lang=en>

many of the executions carried out by Pakistan “fall short of international norms”.¹⁹ On 19 March 2015 and 3 July 2015, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment punishment, asked the President of Pakistan to halt the execution of Shafqat Hussain, a juvenile in conflict with the law, on account of its incompatibility with, inter alia, Article 6(5) ICCPR.²⁰ Despite these communications, the Government of Pakistan executed him on 4 July 2015. Additionally, UN Special Rapporteurs have also sent communications to the President of Pakistan urging clemency for death row prisoners, including Khizar Hayat, a diagnosed schizophrenic, on 28 July 2015,²¹ and Abdul Basit, a paraplegic, on 24 July 2015²² on the basis that their executions would contravene the ICCPR. Clemency has been granted in neither case thus far. Additionally, on 27 September 2016, 4 UN experts urged Pakistan to halt the execution of Imdad Ali, a man with a severe mental illness, and to re-try him under international standards.²³ The case is currently in review before the Supreme Court.

E. Pakistan executes persons suffering from mental illness and/or intellectual disabilities in violation of Article 6 and Article 7

12. Under paragraph 8 of its responses to the List of Issues, the Government of Pakistan has incorrectly stated that “no mentally ill prisoner has been executed so far”. However, the 100th person executed in Pakistan, following the lifting of the moratorium on the death penalty, was **Muneer Hussain**. Hussain was convicted in 2001 for murder and sentenced to death.²⁴ Per his family, he suffered from a serious mental illness which was exacerbated following a head trauma sustained from an accident in 1990. During his trial, his lawyer failed to raise his mental illness as a defence. On account of the illness, Muneer remained silent and unable to answer any of the questions put before him. Muneer received his first psychiatric evaluation in September 2014, after intervention from his lawyers and was diagnosed as suffering from “symptoms of intense neuralgia and psychological illness”. However, despite the psychologist’s recommendation that additional testing and medical and psychiatric treatment be provided, the Pakistani government failed to provide such care and Muneer was executed in March 2015.

13. Pakistan’s Penal Code, states under Section 84 that nothing a person does by “reason of unsoundness of mind” is a crime.²⁵ Similarly Section 465, of the Code of Criminal Procedure

¹⁹ United Nations, UN rights experts urge Pakistan to halt ongoing surge in executions and to reinstate moratorium on death penalty (29 July 2015) <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16275&LangID=E#sthash.eRwCuSkR>>

²⁰ Special Rapporteur on extra judicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment punishment, Letter to President of Pakistan (3 August 2015) <[https://spdb.ohchr.org/hrdb/31st/public_-_UA_Pakistan_03.08.15_\(7.2015\).pdf](https://spdb.ohchr.org/hrdb/31st/public_-_UA_Pakistan_03.08.15_(7.2015).pdf)>

²¹ Special Rapporteur on the rights of persons with disabilities, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Letter to President of Pakistan (28 July 2015) <[https://spdb.ohchr.org/hrdb/31st/public_-_UA_Pakistan_28.07.15_\(6.2015\).pdf](https://spdb.ohchr.org/hrdb/31st/public_-_UA_Pakistan_28.07.15_(6.2015).pdf)>

²² Special Rapporteur on the rights of persons with disabilities, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Letter to President of Pakistan (24 July 2015) <[https://spdb.ohchr.org/hrdb/31st/public_-_UA_Pakistan_24.07.15_\(5.2015\)_pro.pdf](https://spdb.ohchr.org/hrdb/31st/public_-_UA_Pakistan_24.07.15_(5.2015)_pro.pdf)>

²³ United Nations, UN rights experts urge Pakistan authorities to halt execution of man with disability, (27 September 2016) <<http://www.un.org/apps/news/story.asp?NewsID=55142#.WSgUA4iGNPY>>

²⁴ Muneer Hussain was a client of JPP and all relevant documents are available on file with JPP

²⁵ Pakistan Penal Code (Act XLV of 1860), S.84. Available at <<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>>

provides that if the accused is of “unsound mind” he/she must be acquitted²⁶. However, the law contains no explicit prohibition on the sentencing to death and executions of persons suffering from mental illness. As a result, that there is no protection from executions for those whose mental illness remain undiagnosed or undetected prior to sentencing, like Muneer, and those who develop mental illness during their time on death row.

14. A lack of access to mental health care in Pakistan, particularly among indigents, means that most mentally ill persons remain undiagnosed and thus without effective proof to demonstrate their illness during trial.²⁷ An example is the case of **Imdad Ali**, a diagnosed schizophrenic currently on death row since 2002.²⁸ During his trial, his wife tried to raise his mental illness by appearing as a defence witness. She stated that he had been examined by a doctor a year before the offence and she had tried to put him in a mental hospital. However, the court refused to rely on this evidence since there was no documentary record and the relevant doctor was not produced as a witness. Similarly, a lack of sensitization to mental health within Pakistan’s criminal justice system leads to gross miscarriages of justice. The discretion to order a psychological assessment for the accused rests with the judge who often basis this on rudimentary questions such as “Who is the president of Pakistan?”²⁹. If the accused person answers correctly the court decides that there exist insufficient grounds to prove mental illness and no additional assessment is needed. Even once an assessment is ordered it is carried out by state-appointed medical professionals who are inclined to agree with the prosecution.³⁰

15. Pakistan also fails to provide requisite procedural safeguards for those with mental illness or intellectual disabilities. These are critical to the fulfilment of its obligations under Articles 6 and 14 ICCPR 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.”³¹ Similarly, mental illness may yield false confessions, due to greater tendency for impulsivity, extreme compliance, and suggestibility.³² Whilst under the High Court Rules, counsel is provided for accused who are convicted of capital offences at state expense, these lawyers are of poor quality and are only engaged once a death sentence has already been awarded.³³ This means that during the arrest, detention, trial and sentencing those who are unable to afford legal counsel are left without effective legal representation or must rely upon private counsel of poor quality. As a result, the defence of mental illness is hardly ever raised or is raised ineffectively with the result that mentally ill accused are convicted and sentenced to death regularly.

²⁶ Code of Criminal Procedure (Act No. V of 1898), Sec 465 available at <https://www.oecd.org/site/adboecdanti-corruptioninitiative/39849781.pdf>

²⁷ See A Most Serious Crime, supra note 11, at p. 31

²⁸ Imdad Ali is a client of JPP and all relevant documents are available on file with JPP

²⁹ Isabel Buchanan. Trials on Death Row in Pakistan. Penguin Random House: UK (2016), at 157

³⁰ Id.

³¹ 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>

³² 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)).

³³ International Federation of Human Rights (FIDH) and Human Rights Commission of Pakistan(HRCP). Slow March to the Gallows. Death Penalty in Pakistan (Jan 2007) at p. 54. < <https://www.fidh.org/IMG/pdf/Pakistan464angconjointpdm.pdf>>

16. Under Pakistan's Prison Rules, 1860 a special scheme of protections for persons with mental illness is provided for the treatment of "criminal mental patients". Under Rule 440, a "criminal mental patient" is required to be transferred to a mental health facility rather than being made to serve out their sentence. However, in practice, prisoners are rarely transferred to mental health facilities and instead are kept in detention in death row cells under deplorable conditions which worsens their mental health without requisite access to treatments. They are often the subject of violent attacks from fellow prisoners due to their mental state. For example, **Khizar Hayat**, another JPP client, was sentenced to death in 2003 and was diagnosed as a paranoid schizophrenic in 2008 by jail authorities. Khizar's jail records show that in 2009 he was admitted to a public hospital with severe head injuries and required an urgent operation. As the record goes on to explain, these injuries had been caused when Khizar's cellmates – unable to cope with spending 24 hours a day cooped up in a cell with a delusional and confused individual – violently attacked him. Sadly, this incident was far from isolated, and Khizar's lawyers frequently recorded seeing Khizar suffering from injuries during their visits, most likely sustained during similar attacks. Eventually in 2012 the attacks on Khizar became so frequent and severe that he was moved to an isolated cell in the jail hospital. Khizar's mother began requesting his transfer to a proper medical facility in early 2009. Despite the pendency of these proceedings, the Government of Pakistan has scheduled Khizar's execution twice in the past two years.

Imdad Ali : Paranoid Schizophrenic on Death Row

Imdad Ali was sentenced to death in 2002 for the murder of a religious teacher. Imdad has been suffering from mental illness since 1993. His wife claimed in her statement as a defence witness that she had taken him to a doctor who recommended that he be treated in a mental hospital. However, this evidence was not accepted by the trial court (judgment dated 29 July 2002) and in appeal to the Supreme Court (on 19 October 2015) on the basis that the doctor could not be produced as a witness.

In 2004, whilst in District Jail, Vehari, Imdad was diagnosed with psychosis by the Medical Officer and prescribed anti-psychosis medication. However, he was not provided with adequate medical care and his mental illness continued to decline due to overcrowded conditions of the death row cell. In 20th November 2012, a medical report upon the request of the Superintendent, District Jail, Vehari diagnosed him as a paranoid schizophrenic.

Despite his mental illness an execution warrant scheduling Imdad's execution for 26 July 2016 was issued. It was however, suspended upon the filing of a writ petition before the Lahore High Court on the basis that despite Imdad's history of mental illness- documented in the jail's medical records- he was not evaluated by a medical board as required under the Mental Health Ordinance 2001 (MHO) and was not transferred to a psychiatric facility as provided under Pakistan Prison Rules. The petition was dismissed by the Lahore High Court (on 23 August 2016) and later in appeal by the Supreme Court (on 27.09.2016). On 27.09.2016, four UN human rights experts issued a statement urging the authorities in Pakistan to halt the execution of Imdad Ali and conduct a retrial where his medical record is considered.

The Supreme Court's dismissal order (dated 20.10.2016) ruled that **schizophrenia is not a mental disorder** under the MHO as it is a recoverable disease and a subsequent execution warrant was issued scheduling his execution for 2.11.2016. The Government of Pakistan along with Imdad's lawyers filed review petitions challenging the Supreme Court's order which were accepted by the court. The proceedings in the review remain pending. During previous hearing the Supreme Court ordered the constitution of a medical board that examined Imdad and submitted its report to the Court.

F. Pakistan's failure to grant clemency violates Article 6(4), ICCPR

17. All persons sentenced to death, pursuant to Article 6(4), have the right to meaningful consideration, on an individual basis, of their clemency requests. Prisoners on death row, who have been convicted and sentenced to death have been denied access to a meaningful clemency process because Pakistan exercises a blanket refusal to meaningfully consider clemency applications.³⁴ At least 444 people have had their mercy petitions rejected.³⁵ In March, 2016, the Ministry of Interior informally confirmed that the Government of Pakistan's policy to summarily reject all pleas for mercy will remain in force.³⁶
18. In the case of JPP's client **Abdul Basit**, a paraplegic prisoner on death row in Pakistan, whose condition is a result of a disease he contracted due to the negligence of jail authorities, a mercy petition submitted on behalf of Basit by his family was refused on the purely administrative basis of a lack of certified copies. Warrants for his execution have been issued at least three times since.

Khizar Hayat

Police arrested Khizar Hayat on 21 October 2001 for murder. At trial, he maintained his innocence but his attorney did not introduce a single piece of evidence in his defence. On 2.04.2003, the Court convicted Hayat and sentenced him to death.

Khizar suffers from severe mental illness which is demonstrated by his Jail medical records. Despite taking anti-psychotic medication since 2008, his condition has significantly deteriorated and since 2012, he has been kept in solitary confinement due to the severity of his illness. Despite being repeatedly diagnosed as an "active psychotic case", Khizar's black warrants were issued on 23.07.2015. Due to an application filed by Khizar's lawyers the execution was ultimately stayed by the Sessions Court with the direction to the Jail Authorities to constitute a Medical Board to assess his mental health. The Medical Board concluded that Khizar is "suffering from psychosis at the moment and he has been receiving anti-psychotic treatment since 2009".

On 24.10.2016 the said application was dismissed and on 27.10.2016 his lawyers at JPP filed a writ before the Hon'ble Lahore High Court against the orders and requested to transfer Khizar Hayat to a medical facility which remains sub judice. On 02.11.2016, JPP also submitted a complaint to the National Commission for Human Rights ("NCHR") to conduct an inquiry into the case. Taking cognizance of the matter, on 11.11.2016, the NCHR directed the Home Department, Punjab to look into the matter and submit a report regarding the present mental status of the prisoner. On 16.11.2016, the Home Department, Punjab sent a letter to the Inspector General of Prisons, Punjab stating NCHR concerns. However, no report/findings have been submitted to the NCHR till date and the matter remains pending.

Despite ongoing proceedings before the Lahore High Court and the National Commission on Human Rights, a new request for the issuance of Khizar's warrant was sent by the jail authorities and another execution warrant for 17.01.2017 was issued. JPP filed an application seeking the suspension of the warrant on the basis of ongoing proceedings. This application was accepted by the Court on the basis that given that proceedings pertaining to another mentally ill prisoner, Imdad Ali (see details below), are pending at the Supreme Court it would not be appropriate to execute Khizar.

³⁴ Syed Irfan Raza, 'President rejects mercy appeal of 17 death penalty convicts' *Dawn* (Islamabad, 18 December 2014) <<http://www.dawn.com/news/1151758/president-briefed-on-decision-to-end-moratorium>>

³⁵ "SC rejects petition for formation of larger bench to hear mercy petitions" *Pakistan Today* (Islamabad, 23 March 2016) <<https://www.pakistantoday.com.pk/2016/03/23/sc-rejects-petition-for-formation-of-larger-bench-to-hear-mercy-petitions/>>

³⁶ See Hasnaat Malik, "Over 250 death row prisoners hanged since Dec 2014, govt informs SC" *The Express Tribune* (Islamabad, 22 March 2016).

July 2015. In November 2015, the President of Pakistan promised an inquiry into Basit's condition and issued a stay of execution. This stay expired in January 2016 without any further progress in the resolution of the case of Basit. In April 2016, a further stay was ordered however, no decision has been made on the several requests for mercy from Basit's family. It is clear that Basit's execution cannot lawfully proceed. Presently, he remains in legal limbo as even though the Government of Pakistan has suspended his execution, the President continues to avoid deciding his mercy petition.

G. Pakistan executes Juveniles in Conflict with the law in violation of Article 6(5)

19. Since the lifting of the moratorium on the death penalty, the Government of Pakistan has executed at least 6 prisoners despite the existence of credible evidence in favour of their juvenility at the time of the commission of their alleged offences. These include: Shafqat Hussain, Aftab Bahadur, Muhammad Sarfraz, Ansar Iqbal, Faisal Mahmood and Saqi Shah. Despite the prohibition on the imposition of death sentences and capital punishment on persons below the age of 18 years at the time of the commission of an offence under the Juvenile Justice System Ordinance, 2000 (JJSO), in March 2015, 4 United Nations human rights experts noted that "several hundred" prisoners on Pakistan's death row "may have been sentenced for crimes they committed as children".³⁷ Similarly in June 2016, the UN Committee on the Rights of the Child, in its Concluding Observations on Pakistan's fifth periodic report expressed serious alarm at reports of executions of several juveniles in conflict with the law and stated that it was "*seriously concerned that a large number of persons are currently on death row for crimes committed while they were under the age of 18 years*".³⁸ The Committee urged the state to order a stay and launch a review of all cases where there was any indication that a death sentence had been handed to a juvenile. However, following a year after the Concluding Observations were issued, no such measures have been undertaken.
20. The existence of juvenile offenders on Pakistan's death-row results from the failure of the juvenile justice system to formulate and implement age determination mechanisms in compliance with international legal standards. According to Pakistan's Demographic and Health Survey 2012-2013, 34% of children under the age of 5 are registered and 46% of the general population has no form of registration.³⁹ In the absence of documentary proof of age, arresting officers rely upon arbitrary visual assessments of physical appearance to record age. In practice, police are more likely to record the age of the accused as much higher than it appears to avoid the application of juvenile safeguards under law.⁴⁰ Despite their unreliability,

³⁷ U.N. Office of the High Commissioner for Human Rights, UN experts urge Pakistan not to execute juveniles (Mar. 20, 2015), 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).

³⁸ Concluding Observations of the Comm. on the Rights of the Child: Pakistan, ¶ 41, U.N. Doc. CRC/C/PAK/CO/3-4 (2009).

³⁹ National Institute of Population Studies (NIPS), Pakistan: Demographic and Health Survey: 2012-2013, 19-22, (December 2013) <<http://www.dhsprogram.com/pubs/pdf/FR290/FR290.pdf>>

⁴⁰ See Justice Project Pakistan (JPP). Death Row's Children: Pakistan's Unlawful Executions of Juvenile Offenders. (Feb 2017), at p. 21 <<http://www.jpp.org.pk/wp-content/uploads/2017/02/JPP-Final-Edited.pdf>>

courts continue to rely on these arbitrary assessments as proof of age despite the existence of contradictory record, including government documents.⁴¹

21. Contrary to international standards, Courts in age determination proceedings, place the burden of proof squarely upon the accused raising the juvenility plea - who is also not accorded any benefit of doubt.⁴² Given the country's dismal registration rate, this is an impossible burden to dispel. Domestic jurisprudence demonstrates that in the absence of age determination procedures the courts consistently adopt conflicting opinions; in practice, they are free to choose the verdict of their choice. Thus, despite the existence of credible evidence in favour of their juvenility a significant number of juveniles are sentenced to death and executed. A study by Justice Project Pakistan of **140** cases between 2000-2016 wherein a plea of juvenility was raised discovered that courts inevitably rely upon the evidence that goes against the claim of the accused party, regardless of its nature⁴³.
22. The Government of Pakistan has erroneously claimed in its responses to paragraph 8 of the list of issues that information pertaining to the age of the accused *can be presented and corrected*" at a number of stages, including during an appeal or revision petition at the Supreme Court of Pakistan." However, in practice, courts have ruled in several cases that a plea of juvenility is only admissible if it is raised at the time of investigation and trial and that a delayed claim "must be visited with an adverse inference against [the accused]."⁴⁴ Thus, courts in Pakistan refuse to admit evidence of juvenility if raised at the appellate stages or during post-conviction reviews. The unwillingness of the superior judiciary to entertain inquiries into age during the appellate stages of a case or even after the appeals have been concluded has certainly led to the execution of several juveniles.
23. The JJSO was not expressly enacted retroactively. However, the President of Pakistan issued Notification No. F.8/41/2001-Ptns dated 13.12.2001 (Notification) according to which special remission under Article 45 is to be granted to all juveniles sentenced to death whose sentences were confirmed by the High Court before 17 December 2001, and their death sentences are to be commuted to life imprisonment. On 18 August 2003, the Government of Punjab issued a letter to the Registrar of the Lahore High Court setting out the eligibility criterion for the special remission for juveniles under the Presidential Notification.⁴⁵ The letter confirmed that such remission was to accrue automatically without the need for the submission of a mercy petition under Article 45 of the Constitution. Attached with a letter was a list of juveniles with regards to whom the responsibility was placed on the Home Department to forward their claims to "*the concerned District and Sessions Judge/Juvenile Court through the concerned Superintendent Jail.*"
24. Despite the existence of the Notification and the letter by the Government of Punjab, juveniles sentenced prior to the enactment of the JJSO continue to be denied its protections. Requests by prisoners and/or family members for an inquiry regarding their juvenility under the Presidential Notification continue to be denied by the provincial Home Departments and the

⁴¹ Id.

⁴² Death Rows Children, supra note 37 at p. 25

⁴³ Death Rows Children, supra note 37 at p. 26

⁴⁴ Muhammed Raheel v. The State (PLD 2015 SC 145); Baber Shahzad v. The State (2007 YLR 2151) [Lahore]

⁴⁵ Government of the Punjab, Home Department, Grant of Special Remission Under Article 45 of the Constitution to Condemned Prisoners, (Aug 19,2003). Copy available with JPP on file.

Courts.⁴⁶ An analysis of case studies reveals that there is simply a lack of awareness regarding the effect of the Notification amongst the provincial home departments and the Sessions Judges who are responsible for its implementation.

Muhammad Sarfraz – Juvenile executed after 22 years on death row

Muhammad Sarfraz was arrested in 1993 at the age of 17 years and 3 months. During his trial the JJSO had not been promulgated and thus his juvenility was not raised at the trial stage. Sarfraz was convicted and sentenced to death on 21.01.1998.

Following the passage of the JJSO in 2001, the President issued a notification granting special remission to juveniles sentenced to death prior to the JJSO. In 2008, the Punjab Home Secretary wrote a letter to the Superintendent of Sarfraz's jail about holding a juvenility inquiry for Sarfraz, which was subsequently referred to the Sessions Court, Rawalpindi. During the inquiry, the file was misplaced by a member of the court staff and the juvenility inquiry was never conducted.

On 7 July 2015, the High Court upon learning that the Session's Court had misplaced the file directed it to "reconstruct it and "conclude the requisite inquiry" within 30 days. During the inquiry, the Session's Court dismissed the juvenility claim on the basis of conflicting documentary evidence in the form of a school record.

On 6 October 2015, Sarfraz's legal team challenged this inquiry before the Lahore High Court, Rawalpindi. However, on 9 March 2016, after 13 hearings, the challenge was dismissed, and, thereafter a further warrant for Sarfraz's execution was issued on 16 March 2016.

Efforts by Sarfraz's lawyers to appeal this dismissal of his juvenility claim to the Supreme Court of Pakistan were deliberately frustrated by the jail authorities in Rawalpindi through obstructing their access to a necessary power of attorney from Sarfraz; a requirement for proceedings before the Supreme Court. Sarfraz's Supreme Court appeal was subsequently rejected and he was executed after spending 22 years behind bars. Despite the strong case for his juvenility, which included government issued certificates, he was executed on 10 May 2016.

25. **Muhammad Anwar** was sentenced to death in 1998 for a crime allegedly committed when he was just 17 years old. Following the 2001 special remission, his family submitted an application to the Home Department requesting that he be granted the special remission on the basis of his age. Although an age determination inquiry was initiated by the Home Department – which gathered contemporaneous birth records showing Anwar to have been a juvenile at the time of the offence – this inquiry was never completed due to the decision in Ziaullah set out above. Since then, Anwar's family have tried every possible means to request an age determination from the Sessions Court, submitting no fewer than four applications. In over a decade and a half, however, no forum has ever taken a final decision on this issue. In December 2014 Anwar came within hours of execution and he remains at serious risk of receiving another execution warrant. Anwar faces imminent execution.
26. **Muhammad Azam** is another juvenile in conflict with the law who was arrested in 1998 for murder and convicted and sentenced to death by an Anti-Terrorism Court vide judgment dated 8 July 1999 - prior to the promulgation of the JJSO. Copies of his birth records, jail

⁴⁶ Death Row's Children, supra note 37, at p. 27

records, including a copy of the birth roll all confirm that he was 17 when he was first admitted into custody. Jail records also demonstrate that Azam was initially held in Youthful Offenders Industrial School Karachi – a borstal institution specially designed for juveniles in conflict with the law. Following the 2001 Notification the jail authorities, on 9 August 2004, sent a request to the trial Court asking the Court to make a determination of Muhammad Azam’s age to ascertain whether his sentence should be commuted. The request was however rejected by the court on the basis that no plea of majority was raised during the course of the trial and on the basis that the trial court was already functus officio following the conclusion of the appeals. Azam faces imminent execution.

H. Pakistan's Anti-Terrorism Act, 1997 fails to provide fair trial safeguards enshrined under Article 14

27. The Anti-Terrorism Act, 1997 (ATA) is Pakistan's primary legislation addressing terrorism. It explicitly overrides all other legal provisions and applies to the entire country. ATA's special courts called the Anti-Terrorism Courts, conduct trials that fall short of fair trial guarantees under the Constitution and Article 14 - particularly in death penalty cases. The definition of terrorism under Section 6 is overly broad, vague and covers essentially any violent crime. Section 6(1) includes within terrorism the "use of threat or action" that "create a sense of fear or insecurity". Section 6(2) lays out 17 acts (or threats of acts) that fall within this ambit and includes a broad range of offences including murder, kidnapping, robbery, banditry and barring public servants from their duties. Under Section 34 of the ATA the Government holds the authority to add even more offences as "scheduled offences" under the Third Schedule. For offences added to the Third Schedule, no mens rea requirement specified under S. 6(1) needs to be proved.
28. A study by JPP and Reprieve discovered that due to the broad definition of terrorism, almost **88%** of those sentenced under ATA were convicted of crimes bearing no link to terrorism as the term is commonly understood. The research also showed that **86%** of those sentenced to death by anti-terrorism courts had convictions not related to terrorism but pertaining to personal motives or enmity. This is inherently problematic as the ATA prescribes the death penalty for at least 3 crimes including causing the death of any person; kidnapping for ransom or hostage taking and hijacking.⁴⁷ For example, in the case of **Kashif Ali v. the Judge Anti-Terrorism Court No. II, Lahore**, the Supreme Court of Pakistan held that a single murder as a consequence of personal enmity fell within the ambit of terrorism as it was committed in a public place. The Court held that the motive or intention behind the act was not relevant but whether or not the act had the "*the tendency to create sense of fear or insecurity in the minds of the people or any section of the society*".⁴⁸
29. Based on interviews conducted by JPP, police exercise inordinate discretion in deciding who to charge under ATA. Police commonly charge accused parties for offences under ATA rather than under ordinary criminal law owing to pressure exerted by the complainant.⁴⁹ For example, **Shabbir Hussain** was convicted and sentenced to death for the murder and kidnapping of the brother of his business associate for ransom by an Anti-Terrorism Court on 29.08.2009. Shabbir claimed that the death was due to an armed robbery and in fact it was he who lead the police to the body. Even though the alleged murder took place within the vicinity of the house of Shabbir, where the deceased was willingly residing as a guest, without the presence of any public, it was tried by an Anti-Terrorism Court. The ATC accepted jurisdiction in the case, without any discussion about why the case could not be heard under the corresponding provision on kidnapping and murder under ordinary criminal law. According to Shabbir, the police charged him under the ATA because of his inability to pay a hefty bribe.⁵⁰

⁴⁷ Anti-Terrorism Act, 1997 (Act No. XXVII of 1997) [ATA], Section 7(a)

⁴⁸ PLD 2016 Supreme Court 951

⁴⁹ Interviews available on file with JPP

⁵⁰ Judicial record and testimonies available on file with JPP

30. Trials conducted under the Anti-Terrorism Courts waive key procedural safeguards that are provided under Article 14, ICCPR thereby paving the way for arbitrary executions. Firstly, police and law enforcement agencies enjoy wide powers which include, arrests and seizure without a warrant; recording and admissibility of confessions in police custody; shoot to kill powers; preventive detention up to 90 days, and indemnity for all acts done in good faith (section 39). Additionally, the ATA provides that for expedited investigations and trials both to be concluded within 7 days each. The expedited investigation incentivizes police to employ torture and abuse in order to extract confessions from accused suspects, particularly those belonging to vulnerable communities including minorities, juveniles in conflict with the law and persons with disabilities. These confessions, eventually, form the basis of conviction and death sentences under S 21-H, ATA - that contrary to Pakistan's law of evidence – allows for confessions recorded before police to be admitted as evidence.
31. **Amjad Ali** was convicted of kidnapping for ransom and sentenced to death by Anti-Terrorism Court, Gujranwala on 31.01.2007. The police arrested Amjad from his house, blindfolded him and kept him unlawfully in a secret location for 14 days. During the detention, the police asked him for an exorbitant bribe which he was unable to pay. He was severely tortured and starved for long periods of time which led to his confessing to the crime. Amjad's family was too poor to hire a lawyer and he had to be represented by the counsel of his co-accused who he never met outside the courtroom. The counsel did not raise a single piece of evidence in Amjad's defence nor was he provided a chance to record his statement. Amjad was convicted entirely upon the basis of recovery of cash that police claim to have found from his residence. Even though the evidence had not been collected in violation of criminal procedure, the court admitted it by stating that *"standard of investigation in this area is very low, and because of such technical defects no disadvantage can be caused to the prosecution case"*.
32. Pakistan continues to try juveniles as adults and sentence them to death under the ATA contrary to article 6(5), ICCPR. Section 32 of the ATA grants the law overriding effect over all other laws in force. Additionally, the provisions of the JJSO stipulate that the law is to apply "in addition to" other laws. The courts have been unable to uniformly address the question about the jurisdiction of specially designated juvenile courts over crimes for which special courts, including the ATC's, have been established. As a result, juveniles in conflict with the law are tried as adults by the ATC and sentenced to death on the basis of trials that fail to fulfil fair trial standards under the ICCPR. For example, in the case of Qamar Hussain Shah v. The State the court held that a juvenile charged under the ATA would be charged by the Anti-Terrorism Courts (ATC) and not by the juvenile courts⁵¹. The Full Bench of the Sindh High Court in the Qamar Hussain case ruled that the ATC would not be bound by the rules of procedures required for juvenile courts.⁵²
33. **Shafqat Hussain** was working as a caretaker in a block of flats when, on 10th April 2004, when a 7 year old boy went missing. Shafqat – who had helped the family search for their son and even went with his father to report his son missing to the Police – was arrested on 21 May 2014, 42 days after the disappearance. Shafqat was eventually charged with kidnap and murder under that ATA. The sole evidence relied upon during the trial was a confession (immediately recanted) extracted from Shafqat after days of brutal torture. Shafqat's family

⁵¹ PLD 2006 Karachi 331. Qamar Hussain Shah v The State.

⁵² Id.

have maintained that he was a juvenile when he was arrested, a fact corroborated by school record from his native village and a government birth certificate issued while he was in prison. During his trial under the Anti-Terrorism Court, Shafqat's counsel failed to introduce a single piece of evidence or call a single witness in Shafqat's defence, neglecting even to ascertain the age of his client. Shafqat was convicted and sentenced to death on 1st September 2004. On 4th August 2015, after six previous black warrants had been stayed and despite calls from the Sindh Human Rights Commission and the United Nations that the case be reopened, Shafqat was executed in Karachi Central Jail.

Muhammad Iqbal: A Juvenile Offender in conflict with the law facing imminent execution

Muhammad Iqbal was tried for murder and robbery offences along with 4 co-accused by an Anti-Terrorism Court. The primary evidence connecting Iqbal to the offence was being identified in an identification parade that was held 2 months after the alleged incident. Iqbal maintains his innocence and claims that he was kept in unlawful custody by police for a month and severely tortured before being formally arrested. Whilst in unlawful custody Iqbal was shown by the police to the witnesses several times prior to the identification parade.

An ossification test, conducted on the request of the prosecution, determined Iqbal's age as 17 at the time of committing the offence. His juvenility was also confirmed through a school-leaving certificate produced before the trial court. However, despite the trial's court acknowledgment of his juvenility Muhammad Iqbal was convicted of murder and sentenced to death on 05.07.1999. His death sentence was upheld by the High Court on 20.03.2002 and his appeal was dismissed by the Supreme Court on 11.09.2002.

An execution warrant scheduling his execution were issued in 2016. The warrant was suspended on the basis of a petition filed to the Supreme Court on the basis of the possibility of a compromise between Iqbal and the family of the deceased. However, the petition was rejected in May 2017 since a death sentence under the ATA cannot be compounded on the basis of a compromise. Iqbal's execution warrants are expected to be issued any day now.

I. The way Pakistan notifies prisoners and their families of execution dates and stays is cruel, inhuman and degrading treatment under Article 7

34. 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. It has also held that a delay in the notice of a stay amounted to cruel and inhuman treatment. 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.⁵³ Furthermore, under international law, the families of death row prisoners must be informed about a capital defendant's detention and execution. 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

⁵³ Rayos v. Philippines, ¶ 7.1, U.N. Doc. CCPR/C/81/D/1167/2003 (2004).

*of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress”.*⁵⁴

35. In Pakistan, despite revised guidelines for the issuance of black warrants in 2014,⁵⁵ 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 counsels at JPP were unable to obtain a copy of the warrant, and subsequently were 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.

J. The children of those on death row suffer from psychological trauma and economic deprivation, with no safeguards in place for their protection in violation of Article 7 and 24

36. As recognized by the UN Human Rights Council resolution 22/11, the sentencing to death of a parent can have devastating psychological impact on a child.⁵⁶ Not only are children negatively affected by grief and anxiety arising from knowing their parent is condemned and the uncertainties of the legal system, they suffer from social stigma and ostracization. Given that most Pakistan's death row comprises of the poorest and vulnerable segments of society, the impact of losing a parent can have extreme economic consequences too that hinder the child's development, health and education. The trauma suffered by the children makes them victim of cruel, inhuman, or degrading treatment and violates the protections afforded to them as minors under article 24.

37. The two daughters of **Zulfiqar Ali Khan**, a client of JPP executed in May 2015, suffered immensely from the incarceration and eventual execution of their father. Khan, who remained on death row for over 16 years, was the sole breadwinner for his family before being arrested for murder. Khan's second daughter was born after his incarceration while Khan's wife passed away from cancer soon after due to insufficient funds for medical treatment. Thus, the two girls effectively grew up orphans in an impoverished environment without the emotional and financial support of parents. In addition to the absence of parents, which impeded their education and social relations, the two girls had to suffer from the anguish and trauma of repeated black warrants and an ultimately futile quest for compromise and mercy in their father's case.⁵⁷

⁵⁴ Pratt & Morgan v. Jamaica, ¶ 13.7, U.N. Doc. Supp. No. 40 (A/44/40) at 222 (1989)

⁵⁵ 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”).

⁵⁶ UN General Assembly, Human Rights Council: resolution/ adopted by General Assembly, 15 March 2013, A/HRC/22/L.18, available at <https://documents-dds-ny.un.org/doc/RESOLUTION/LTD/G13/119/56/PDF/G1311956.pdf?OpenElement>

⁵⁷ See “Zulfiqar Ali Khan – Executed 06 May 2015”, Justice Project Pakistan < http://www.jpp.org.pk/case_study/model-prisoner-zulfiqar-ali-khan-executed/>

K. Hangings as an execution method constitutes as Cruel, Inhuman and Degrading Treatment under Article 7

38. Hanging is the primary method of execution in Pakistan. The way Pakistan carries out its hangings result in pain and suffering. JPP is aware of at least one case wherein the execution was botched. Testimonies from the family of **Shafqat Hussain** who saw the body following the execution report that half of the neck was severed from the body.⁵⁸ His brother Abdul Majeed reported “*There is a cut mark on his neck and half his neck is separated from his body*”.⁵⁹

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

39. States parties to the ICCPR must observe certain minimum standards of detention, including the provision of medical care for prisoners. 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. Despite its international obligations, Pakistan houses prisoners in poor, overcrowded conditions and routinely denies them adequate medical care.

40. **Abdul Basit** contracted tuberculosis meningitis during his time in “punishment wing” of the Central Jail in Faisalabad in 2010. After 18 months in solitary confinement, Basit caught a fever for which he received no treatment despite complaining about extreme headaches on several occasions. His condition became so severe that he slipped into a coma for 3 weeks and upon regaining consciousness discovered that he had lost all movement in his limbs and will spend his life confined to a wheel chair.⁶⁰

M. Pakistan fails to combat trafficking and protect its citizens from arbitrary executions in the Gulf Countries in violation of Article 6, 7 and 8.

41. Since October 2014, the Kingdom of Saudi Arabia has executed over **46** Pakistani migrant workers with **26** executions taking place in 2016. With over **2,393** Pakistanis currently in jail all over Saudi Arabia, many more remain at risk of execution.⁶¹ A significant majority of those executed are convicted for drug-related offences on the basis of trials that failed to comply with international standards of fair trial and due process under the ICCPR and the Convention Against Torture (CAT).

⁵⁸ See Pakistan: Shafqat Hussain executed in Karachi despite appeals. [Video file]. Available at <<https://www.youtube.com/watch?v=Hw3WDsgTQm4>>

⁵⁹ Jack Sommers. Pakistan's Hanging of Shafqat Hussain Condemned by Human Rights Groups. (August 2015) Available http://www.huffingtonpost.co.uk/2015/08/04/pakistan-shafqat-hussain-hanging_n_7930854.html

⁶⁰ Abdul Basit is a JPP client and his judicial orders, testimonies and interviews are available on file with JPP

⁶¹ Iftikhar A. Khan. 2,393 Pakistanis languishing in Saudi Jails, Senate told. DAWN (May 2016). Available at <https://www.dawn.com/news/1259484>

42. The Government of Pakistan derives great economic benefit in the form of remittances from overseas Pakistanis travelling to Saudi Arabia.⁶² Therefore it facilitates employment of its citizens in Saudi Arabia through licensed Overseas Employment Promoters (OEPs) who are regulated by its Bureau of Emigration and Overseas Employment Promoters. These OEP's routinely deceive poor migrants with false promises of employment and work visas only to exploit them as drug mules. During interviews conducted by JPP, death row prisoners in Saudi Arabia reported being kidnapped, tortured, made to ingest drug capsules and forced to board planes.⁶³ The GOP has however, failed to take any effective action in identifying and prosecuting its licensed agents who are involved in drug trafficking and smuggling.
43. Upon arrest in Saudi Arabia, detainees face long periods of pre-trial detention and are at no point provided with legal counsel. Many reported being tortured into signing false confessions. All trial and interrogation proceedings are conducted in Arabic, a language unknown to most, and translators and defense counsel are rarely provided. Detainees are provided limited opportunities to communicate with their families who remain ignorant about their arrest, detention and often executions.⁶⁴ The bodies of the executed are not returned in a significant number of cases. Families of the detained spend their lives in abject poverty and psychological distress waiting to hear any news.
44. The Government of Pakistan currently has no comprehensive policy on access to consular and diplomatic support for its citizens facing imprisonment or the death penalty abroad.⁶⁵ In 2014, JPP filed a public interest litigation against the GOP on behalf of the families of 10 Pakistani migrant workers sentenced to death or executed in Saudi Arabia.⁶⁶ In violation of their rights under the Vienna Convention on Consular Relations, 1963 and ICCPR, at no point have the petitioners been given the opportunity by the prison authorities to approach the Pakistan embassy or its consular offices nor has the Pakistani embassy ever provided them or their families with any information, consular support or assistance.

N. Pakistan fails to provide post-conviction review of new and potentially exculpatory evidence, contrary to Article 14(5)

45. In Paragraph 137 of its State Report, Pakistan claims that "*Information which surfaces after conviction may be placed before a court under Articles 199 and 187 of the Constitution, and coupled with the courts inherent power to recall an order passed mistakenly, a conviction may be reversed.*" However, in practice, that when writ petitions containing new information are actually filed under these Articles in the cases of prisoners facing imminent execution, the Superior Courts refuse to admit them.

⁶² In the Financial Year 2015-2016 Overseas Pakistanis in Saudi Arabia remitted over 5.9 Billion (USD). See Kazim Alam. Saudi Arabia remains largest source of remittances for Pakistan. THE EXPRESS TRIBUNE. Available at <https://tribune.com.pk/story/1142758/saudi-arabia-remains-largest-source-remittances/>

⁶³ See Justice Project Pakistan. The Justice Bulletin: Plight of Migrant Workers (September 2016). Available at <https://www.yumpu.com/en/document/view/55941471/the-justice-bulletin-plight-of-migrant-workers>

⁶⁴ See Razia Bibi. 'Pakistan Embassy has done nothing to help my husband on death row in Saudi Arabia' (March 2017) GEO NEWS. Available at <https://www.geo.tv/latest/134113-The-Pakistan-Embassy-has-done-nothing-to-help-my-husband-on-death-row-inSaudiArabia>

⁶⁵ Jailed Abroad. DAWN. Available at <https://www.dawn.com/news/1320666/jailed-abroad>

⁶⁶ Petition and orders available on file with JPP and will be provided on request

46. The case of **Shafqat Hussain** is particularly instructive in highlighting the disconnect between the official position of the State of Pakistan and the jurisprudence developed by the superior judiciary regarding the re-opening of cases based on new evidence. Hussain, who was ultimately executed in August 2015, had his execution stayed no less than six times once evidence of his juvenility at the time of the alleged offence came to light. At the time of his initial trial, Hussain's counsel had not raised the point of juvenility, nor was it included in his subsequent appeals to the High and Supreme Court. The first instance of his juvenility being raised in a judicial setting was in a review petition before the Supreme Court. However, the Court rejected the petition on the grounds that it was too late to admit new evidence after the exhaustion of the regular appeals process, noting, "*Once the facts leading to conviction of the petitioner attained finality up to this court, they cannot be re-agitated through different garb and guise*".⁶⁷
47. A few months after the execution of Hussain, the precedent set in his case was used against **Abdul Basit**, who became paraplegic after contracting tubercular meningitis in prison while on death row. However, a writ petition, filed before the Lahore High Court, seeking a post-conviction review of his death sentence on account of his medical condition was set aside because, in the Court's words, "*...when all legal remedies have been exhausted then there will be no legal justification to suspend an execution...*" despite his illness being a post-trial fact. Basit is currently awaiting a decision on a mercy petition filed before the presidency.⁶⁸
48. However, despite the acceptance of a second review petition by the Supreme Court in Imdad Ali's case, there is still no explicit law that guarantees the admittance of new and exculpatory evidence at the appellate stage in the jurisprudence of Pakistan. For instance, the appellate courts have accepted review petitions citing new evidence for only two of JPP's clients and have rejected them in four other cases.

O. In light of the facts highlighted above, the Human Rights Committee may consider making the following recommendations to the Government of Pakistan

- I. Adopt anti-torture legislation that is in full compliance with the ICCPR and the Convention against Torture and that particularly defines and criminalizes torture, provides an independent complaint mechanism and provides redress and remedies to victims.
- II. Revise the Pakistan Penal Code, 1860 and the Anti-Terrorism Act, 1997 to limit the death penalty to cases of intentional killing that resulted in death.
- III. Reinstate the moratorium on the death penalty. Following the reinstatement, the Government of Pakistan should initiate an independent and impartial investigation into all cases on death row where there is even the slightest indication of a human rights violation including juvenility at the time of the commission of the offence, mental illness, torture, and abuse.

⁶⁷ Supreme Court of Pakistan, Civil Petition No: 1127/2015: Shafqat Hussain v. President of Pakistan and others (10.06.2015). Available on file with JPP

⁶⁸ Lahore High Court, W.P. No. 22496/2015 Nusrat Perveen v. Home Department (01.09.2015). Available on file with JPP

- IV. Admit post-conviction reviews on the basis of evidence of the use of torture, juvenility at the time of commission of the offence, mental illness, duration spent on death row or other forms of ill-treatment.
- V. Introduce and enforce protocols for the determination of age at the time of arrest and provide the benefit of doubt to the accused person at all stages of investigations and proceedings.
- VI. Ensure that all juvenile offenders, including Muhammad Anwar, sentenced to death prior to the enactment of the JJSO, are granted a fair and just inquiry into their age as provided under the Presidential Notification dated 13.12.2001
- VII. Bar death sentences delivered primarily on the basis of confessions and/or oral testimonies.
- VIII. Enact legislation explicitly prohibiting the execution of mentally ill prisoners even if the illness is diagnosed post-conviction and/or sentencing.
- IX. Request Pakistan to permanently commute the death sentences of Abdul Basit, Khizar Hayat, and Imdad Ali through acceptance of their mercy petitions.
- X. Ensure that prison conditions and sentences of juveniles and mentally disabled detainees are in accordance with the ICCPR and other relevant international laws and rules.
- XI. Revise and review the definition of terrorism under the Anti-Terrorism Act, 1997 to limit the scope of offences that fall within the ambit of “terrorism”. Include a provision within the ATA that bars the jurisdiction of the Anti-Terrorism Courts over juvenile offenders.
- XII. Take all appropriate measures to ensure that all allegations of torture and ill-treatment are investigated promptly and thoroughly by independent bodies and that all perpetrators are punished commensurate with the gravity of the crime.