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Joint Submission in Advance of the Adoption of Issues for the Second Periodic Report of Pakistan in the 138th Session of the Human Rights Committee (26 June - 28 July 2023)

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

The World Coalition Against the Death Penalty

and

Justice Project Pakistan

Submitted 18 August 2023

The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. In 1991, the Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently hold a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty, an alliance of more than 160 NGOs, bar associations, local authorities, and unions was created in Rome on May 13, 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

Justice Project Pakistan (JPP) is a legal action non-governmental organization dedicated to representing the most vulnerable Pakistani prisoners facing the harshest punishments. JPP

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investigates, advocates, educates, and litigates, building public and political support as well as legal precedents that will lead to systemic reform of the criminal justice system in Pakistan. Our work combines strategic litigation, fierce domestic and international public and policy advocacy campaigns, and building the capacity of stakeholders who can improve the representation and treatment of individuals facing capital punishment in Pakistan and abroad.

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A. Applicability of the Covenant (Article 2)

1. Historically, Pakistan's judiciary has emphasized the difference between national and international law, and has required the translation of the latter into the former through domestic legislation. This dualist system has often led to occasions where Pakistan's courts have applied international human rights treaty principles simply as authoritative guidelines rather than legally binding obligations, and the Government of Pakistan rarely enacts legislation to give effect to treaty rights domestically. Recently, however, there has been an increasing trend of superior court judgements that discard the dualist principle and directly read from international law and human rights treaties ratified by Pakistan.
2. Whilst the 1973 Constitution of the Islamic Republic of Pakistan¹ (Pakistan Constitution) contains a list of civil and political rights in the chapter on Fundamental Rights; it does not cover the entire breadth of rights covered under the International Covenant on Civil and Political Rights (ICCPR). Additionally, the Pakistan Constitution fails to specify penalties for perpetrators of rights violations under the ICCPR and/or remedies available to victims. While the erosion of the dualist principle is leading to increased application of Covenant rights in Pakistani courts, this practice nevertheless remains a discretionary one. As such, there is a need for direct translation of international human rights protections for those facing capital punishment, including an improved mercy petition procedure, reform of the Anti-Terrorism Act 1997, age-determination protocols for juveniles and safeguards for death row defendants with psychosocial disabilities.

3. Recommended Questions

- What steps have been taken to bring existing procedures for the consideration of mercy petitions in line with the ICCPR?
- What steps have been taken to enact legislation/formulate policies to provide safeguards for prisoners with psychosocial disabilities in line with the ICCPR?
- What are existing remedies under the domestic legal framework available to victims who have suffered violations of their rights under the ICCPR?
- What sanctions are prescribed under the domestic legal framework for perpetrators for violations committed under the ICCPR?
- Provide information on the number of times courts and administrative bodies have relied directly upon ICCPR in their decisions/judgments.

¹ *Constitution of the Islamic Republic of Pakistan* [Pakistan], 10 April 1973, available at: <https://www.refworld.org/docid/47558c422.html>

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B. Right to Life (Article 6)

I. Imposition of the Death Penalty for crimes other than the “most serious crimes”

4. In its 2017 Concluding Observations, the Human Rights Committee noted that the State had lifted its moratorium on executions.² It also expressed its concern that Pakistani courts imposed the death penalty for crimes other than the “most serious.”³
5. The Committee recommended that Pakistan adopt the Second Optional Protocol to the ICCPR and take “all measures necessary” to reserve the death penalty for only the “most serious crimes.”⁴
6. In its Second Periodic Report, the Government of Pakistan defended its use of the death penalty, noting that the Covenant permits the use of capital punishment within certain limitations.⁵ Pakistan’s use of the death penalty, however, does not adhere to the “most serious crimes” standard of crimes that involve an intentional killing.⁶ The State did not address whether it planned to accede to the Second Optional Protocol to the ICCPR.⁷
7. The Government of Pakistan also noted that its death penalty policy aligns with its Constitution, national circumstances, and international obligations.⁸ The Government confirmed, however, that it is currently examining the provisions of its Criminal Procedure Code (Cr.P.C) and Penal Code (PPC) to narrow the death penalty’s scope.⁹
8. On December 17, 2014, Pakistan lifted a seven-year moratorium on the death penalty in the wake of the tragic attack on the Army Public School in Peshawar. Pakistan subsequently executed more than 300 people within a year, followed by 325 in 2015, 88 in 2016, 66 in 2017, 15 in 2018, and ten in 2019.¹⁰ In total, the state has executed 516 people while 3,831 are currently on death row.¹¹

² Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶ 17.

³ Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶ 18.

⁴ Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶ 18.

⁵ Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 63.

⁶ UN Human Rights Committee (HRC), *General comment no. 36, Article 6 (Right to Life)*, 3 September 2019, CCPR/C/GC/35, available at: <https://www.refworld.org/docid/5e5e75e04.html>

⁷ Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 63.

⁸ Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 63.

⁹ Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 63.

¹⁰ Justice Project Pakistan, Death Penalty Database, Library • Justice Project Pakistan - Death Penalty Database Accessed on 14 Aug 2023 <https://data.jpp.org.pk/>

¹¹ Justice Project Pakistan, Death Penalty Database, Library • Justice Project Pakistan - Death Penalty Database Accessed on 14 Aug 2023 <https://data.jpp.org.pk/>

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9. Following a period of executions from 2014 to 2019, which saw 516 individuals being executed in Pakistan, there have been no executions in Pakistan since December 2019.¹²
10. In 2018, the Ministry of Human Rights initiated an official review of all existing offenses that are punishable by death, with an aim towards reducing the scope of the death penalty by imposing life imprisonment for more serious offenses and alternative punishments for less serious offenses. Subsequently, the Government adopted two amendments that reduce the number of death-penalty eligible crimes.¹³ In November 2022, Pakistan eliminated sabotage of the railway systems as an offense punishable by death,¹⁴ and in July 2023, Pakistan removed the death penalty for narcotics offenses.¹⁵
11. It remains to be seen whether Pakistan will commute the sentences of those currently on death row for narcotics offenses.
12. In the absence of a concrete policy articulating the Government's decision to halt executions, the President's office rejected seven mercy petitions of people on death row and the first executions were scheduled for October 13, 2022.¹⁶ Nevertheless, the Government stopped these executions and noted in official communication that in light of international obligations, the use of the death penalty should be paused until further notice.
13. In 2023, 31 offenses, many of which do not meet the "most serious crimes" threshold, remain punishable by death.¹⁷ The following crimes are eligible for the death penalty under the Pakistan Penal Code: murder;¹⁸ robbery resulting in death;¹⁹ terrorism;²⁰ kidnapping or abduction of a minor;²¹ kidnapping for ransom or extortion;²² abduction to subject someone

¹²Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Pakistan*, U.N. Doc A/HRC/53/13 (Mar. 31, 2023), ¶ 3.

¹³ Justice Project Pakistan (JPP) Follow-up report on Pakistan Under ¶ 18, CCPR/C/PAK/CO/1, 120th Session of Human Rights Committee (Sept. 2019).

¹⁴ See The Railway (Amendment) Bill 2022; see also Sardar Sikander Shaheen, *Senate passes Railways (Amendment) Bill 2022 unanimously*, Business Recorder (Oct. 12, 2022), available at <https://www.brecorder.com/news/40202520>.

¹⁵ Anadolu Agency, *Pakistan ends capital punishment for drug trafficking convicts*, July 2023, Accessed on 14 Aug 2023 <https://www.pakistantoday.com.pk/2023/07/26/pakistan-ends-capital-punishment-for-drug-trafficking-convicts/>

¹⁶ The Newspaper's Staff Reporter *Mercy Petitions Of Five Death Row Prisoners Rejected*, Dawn News, October 6th 2022 <https://www.dawn.com/news/1713716>

¹⁷ Amnesty International, *Death Sentences and Executions: 2022* 12, 26, available at <https://www.amnesty.org/en/documents/act50/6548/2023/en>

¹⁸ Pakistan Penal Code 1860 (PPC) §§ 301, 302.

¹⁹ PPC § 396.

²⁰ Anti-Terrorism Act 1997 § 7.

²¹ PPC § 364-A.

²² PPC §365-A.

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to unnatural lust;²³ blasphemy;²⁴ adultery;²⁵ stripping a woman's clothes;²⁶ gang rape;²⁷ harabaha (robbery, rape or terrorism) with murder;²⁸ sexual abuse;²⁹ unnatural offences;³⁰ mutiny and insubordination;³¹ abetment of mutiny;³² disclosure of parole, watchword, or countersign;³³ giving or fabricating false evidence with intent to procure conviction of a capital offence;³⁴ high treason;³⁵ offences against the state;³⁶ offences in relation to the enemy;³⁷ arms trading;³⁸ and hijacking and harboring hijacking.³⁹ Pakistan does not have a mandatory death sentence.⁴⁰

14. Pakistan's lower courts continue to impose death sentences for less serious crimes.⁴¹ The Supreme Court, however, upholds death sentences only for crimes that result in death and involve exacerbating circumstances: murder; murder and terrorism; and murder, kidnapping and terrorism.⁴² Supreme Court precedent also states that only in the most exceptionally aggravated offenses is "the infliction of the death penalty" justified.⁴³

15. While Pakistan's Provincial High Courts are required to automatically review death sentences, an overburdened judiciary significantly slows down the appeals process.⁴⁴ This

²³ Offense of Zina (Enforcement of Hudood) Ordinance 1979 (Hudood Ordinance) § 12; The Pakistan Capital Punishment Study 42.

²⁴ PPC § 295-C. PPC (295-C describes blasphemy, in part, as the use of derogatory remarks, etc. in respect of the Holy Prophet. PPC. 295-C states, "Whoever by words, either spoken or written, or by visible representation or by imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished by death, or imprisonment for life, and shall also be liable to fine.")

²⁵ Hudood Ordinance § 10(4), § 5 - 6.

²⁶ PPC § 354-A. rape; PPC §§ 375- 376.

²⁷ PPC § 376(2).

²⁸ Offenses Against Property (Enforcement of Hudood) Ordinance 1979 § 15, § 17.

²⁹ PPC §§ 377B & 376(1A).

³⁰ PPC §§ 377 & 376(1A). (The term "unnatural offences" criminalizes "whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal" and rape.)

³¹ Pakistan Army Act 1952 § 31.

³² PPC § 132.

³³ Pakistan Army Act 1952 § 26. (The crime of disclosure of parole or watchword encompasses the following acts under the Pakistan Army Act: treacherously making known the parole, watchword or countersign to any person not entitled to receive it, or treacherously giving a parole, watchword, or countersign different from what one received. If an individual commits these acts when on active service, that individual could be sentenced to death. Pakistan Army Act 1952 § 26(a)-(b).

³⁴ PPC § 194.

³⁵ High Treason Act 1973 §. 2.

³⁶ PPC § 121.

³⁷ Pakistan Army Act 1952 § 24.

³⁸ Pakistan Arms (Amendment) Ordinance 1996 § 13-A.

³⁹ PPC § 402B - 402C.

⁴⁰ Justice Project Pakistan Follow-up report on Pakistan ¶ 18, CCPR/C/PAK/CO/1, 120th Session of Human Rights Committee (Sept. 2019).

⁴¹ Foundation for Fundamental Human Rights & Reprieve, The Pakistan Capital Punishment Study 2 (2019).

⁴² Foundation for Fundamental Human Rights & Reprieve, The Pakistan Capital Punishment Study 2, 21 (2019).

⁴³ *Muhammad Sharif v. the State*, 2009 PLD 709 (confirming *Iftikhar Ahmed Khan v. Asghar Khan & another* (2009 SCMR 502)).

⁴⁴ Justice Project Pakistan, and International Human Rights Clinic: Yale Law School, *A "Most Serious Crime": Pakistan's Unlawful Use of the Death Penalty* (September 2016), https://law.yale.edu/sites/default/files/area/center/schell/2016_09_23_pub_dp_report.pdf.

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often results in extended periods of incarceration on death row for defendants who have appealed their sentences.

16. In 2021, an Anti-terrorism Court (ATC) sentenced three people to death for allegedly sharing blasphemous content on social media platforms.⁴⁵
17. In 2022, one new death sentence was recorded for drug trafficking in Pakistan and four new death sentences were imposed for blasphemy.⁴⁶
18. In 2022, Aneeqa Ateeq was convicted of sharing blasphemous material on WhatsApp despite Ateeq's contention that her accuser deliberately pulled her into a religious discussion because she refused his sexual advances.⁴⁷ Similarly, in 2022 an unnamed resident of Lower Dir was sentenced to death for sharing blasphemous material on a WhatsApp group.⁴⁸

19. Recommended Questions

- What steps are being taken to introduce legislative reforms to remove the death penalty as a possible punishment for all crimes that do not meet the “most serious crimes” standard?
- What steps are being taken to ensure that lower courts follow the practice of superior judiciary in limiting the application of the death penalty to lethal crimes, in line with jurisprudence of the Supreme Court and applicable international standards?
- What steps are being taken to adequately transmit information and monitor application of the Control of Narcotics Substances Act, 2023 by members of lower and superior judiciary?
- Provide information on how many people on death row are currently facing the death penalty for drug offenses. What steps are being taken to commute their sentences under the Control of Narcotics Substance Act, 2023 and international standards?
- Provide clarification on whether the Federal Amendment to the Control of Narcotics Substances Act, 2023 will override the provincial narcotics laws in Sindh and Khyber Pakhtunkhwa (KP). If the Federal Amendment does not have the effect

⁴⁵ Justice Project Pakistan, *Death Penalty in Pakistan: Data Mapping Capital Punishment, 2022* (Oct. 2022), <https://jpp.org.pk/report/death-penalty-in-pakistan/>

⁴⁶ Amnesty International, *Death Sentences and Executions: 2022* 25–6 <https://www.amnesty.org/en/documents/act50/6548/2023/en>.

⁴⁷ Asaid Hashim, *Pakistani court sentences woman to death for WhatsApp 'blasphemy'*, Aljazeera, Jan. 20, 2022, available at <https://www.aljazeera.com/news/2022/1/20/pakistan-rawalpindi-court-sentences-woman-death-whatsapp-blasphemy#:~:text=Islamabad%2C%20Pakistan%20%E2%80%93%20A%20Pakistani%20court,holy%20personage%20by%20many%20Muslims>.

⁴⁸ Waseem Ahmad Shah, Dawn News, *Dir resident gets death, prison terms over blasphemy, other religious offences*, December 2022, 14 Aug 2023 <https://www.dawn.com/news/1724073/dir-resident-gets-death-prison-terms-over-blasphemy-other-religious-offences>

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of overriding relevant provincial laws, what steps are being taken to ensure that the death penalty is no longer a possible penalty for drug crimes in the provinces?

- What steps are being taken and what support is needed to ratify the Second Optional Protocol to the International Covenant on Civil and Political Right (ICCPR)?

II. Death sentences and executions of individuals for crimes committed while under 18 years of age.

20. The Committee expressed concern that Pakistan reportedly sentences individuals to death for crimes they committed while under 18 years of age. It recommended that Pakistan ensure that no person who commits a crime while under 18 years of age be subject to the death penalty, and that those already charged with a capital offense “have access to an effective and independent age determination process.”⁴⁹ In addition, the Committee recommended the State to presumptively treat individuals it has detained as children if there are any doubts about their age at the time of a crime.⁵⁰
21. In its Second Periodic Report, Pakistan responded to this recommendation by noting that it has not sentenced to death any individuals below the age of 18, in accordance with its Juvenile Justice System Ordinance 2000 (JJSO).⁵¹ Pakistan also reported that the State implemented the Juvenile Justice System Act of 2018, a law that the United Nations viewed as an attempt to correct legal loopholes of the JJSO that still allowed the unlawful execution of juveniles and the deprivation of their rights as children.⁵²
22. Despite these assertions, it is unclear whether these legal measures have reduced the number of juveniles in Pakistan being sentenced to death.⁵³ There are reports that the Government executed at least six children between 2014 and 2019.⁵⁴
23. While the Juvenile Justice System Act of 2018 was promulgated with the intent to abolish capital punishment for individuals under the age of 18, the Act has failed to achieve this goal.⁵⁵ A lack of sensitization of law enforcement means courts routinely sentence children to death due to inadequate age determination procedures that enable investigators to consider people who were children at the time of an offense to be adults at the time of arrest and police processing.⁵⁶

⁴⁹ Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶ 18.

⁵⁰ Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶ 18(b).

⁵¹ Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 69.

⁵² Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 69.

⁵³ Human Rights Council, *Briefing on Recommendations for the Universal Periodic Review of Pakistan*, ¶ 25.

⁵⁴ Human Rights Council, *Briefing on Recommendations for the Universal Periodic Review of Pakistan*, ¶ 25.

⁵⁵ *Pakistan: Poor and marginalized suffer disproportionately from capital punishment*, International Federation for Human Rights 30 (Oct. 2019).

⁵⁶ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Pakistan*, U.N. Doc A/HRC/53/13 (Mar. 31, 2023), ¶ 25

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24. Pakistan has also failed to bring its trial and appellate courts in compliance with the Juvenile Justice Act of 2018, which requires that the age of the accused be verified by the courts.⁵⁷ Considering that more than 70% of children are not registered at birth in Pakistan, these gaps in the justice system routinely result in courts improperly sentencing minors to death.⁵⁸ These weaknesses in age determination protocols are exacerbated by the fact that the JJSA “does not accord the benefit of the doubt to the child in case of conflicting or inconclusive evidence.”⁵⁹

25. A majority of the above-mentioned issues arise from the fact that the Government has yet to pass rules under the JJSA 2018, outlining the procedural framework through which the provisions of the Act will be implemented, including age determination protocols and safeguards for juveniles in the criminal justice system.⁶⁰

26. Recommended Questions

- Provide information on the number of cases law enforcement agencies and the judiciary have relied upon the age-determination protocols as provided under the Juvenile Justice Systems Act, 2018 to determine the age of those charged with capital offenses.
- What steps have been taken to transmit information and monitor implementation of international safeguards for juvenile offenders by law enforcement agencies and the judiciary?

III. Sentencing and executing individuals with psychosocial and intellectual disabilities.

27. In its 2017 Concluding Observation, the Committee expressed concern that the State sentences to death and executes individuals with psychosocial and intellectual disabilities. It recommended that the Government stop issuing death sentences to and execution of these individuals, including by creating “an independent mechanism to review all cases where there is credible evidence that prisoners who are facing the death penalty have such disabilities and reviewing the mental health of death row inmates.”⁶¹

28. In its 2020 follow-up report to its Concluding Observations, the Committee regretted that “no information was provided on measures taken to prevent executions or the imposition of the death sentence on persons with serious intellectual or psychosocial disabilities.”⁶²

29. In February 2021, the Supreme Court referenced the ICCPR in the *Safia Bano v. Home Department* case, in which it barred the execution of individuals with severe psychosocial

⁵⁷ Correspondence with The Advocates for Human Rights (Jul. 8, 2022), on file with the authors.

⁵⁸ Correspondence with The Advocates for Human Rights (Jul. 8, 2022), on file with the authors.

⁵⁹ Justice Project Pakistan (JPP) Follow-up report on Pakistan Under Para. 18, CCPR/C/PAK/CO/1, 120th Session of Human Rights Committee (Sept. 2019).

⁶⁰ Justice Project Pakistan, Valerie Khan, *Pakistan’s Compliance with the Convention on the Rights of the Child* (2022) <https://jpp.org.pk/gspplusweek/>

⁶¹ Human Rights Committee, Concluding observations on the initial report of Pakistan, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶ 18.

⁶² Human Rights Committee, Report on follow-up to the concluding observations of the Human Rights Committee, UN Doc. CCPR/C/127/2/Add.2.

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disabilities who are “unable to comprehend the rationale behind their execution”⁶³ and commuted the death sentences of Kanizan Bibi and Imdad Ali to life imprisonment.

30. Both Bibi and Ali had been diagnosed with schizophrenia and had spent 30 and 18 years, respectively, on death row. The judgment established key safeguards for defendants with psychosocial disabilities on death row, and reiterated and upheld protections that must be afforded to such persons at every stage in the criminal justice system – at the time of arrest, during the investigation, and at trial and sentencing – to ensure due process.
31. The Court also issued directions to the Federal and Provincial Governments to establish forensic mental health facilities for the assessment, treatment and rehabilitation of under trial prisoners and convicts with psychosocial disabilities. In its Second Periodic Report, Pakistan reported that the judgment directed both the Federal and Provincial Governments to launch training programmes and certification courses on forensic mental health assessment for psychiatrists, clinical psychologists, social workers, police and prison personnel.⁶⁴
32. Additionally, the judgment added that the Federal Judicial Academy, Islamabad, and all the provincial judicial academies shall also arrange courses for trial court judges, prosecutors, lawyers and court staff on mental illness including forensic mental health assessment.⁶⁵
33. There have been no indications or reports that these facilities have been established or these training sessions have taken place.⁶⁶ Although some civil society-led trainings have taken place in the province of Sindh, the Federal and Provincial Governments have yet to follow the Supreme Court’s directions in this matter.⁶⁷
34. The Supreme Court also directed authorities to amend the Prison Rules to harmonize provincial prison manuals. The Draft Punjab Prison Rules 2020 and the revised Punjab Prison Rules 2022, which provide increased protections for prisoners with psychosocial disabilities, as well as an improved framework for their access to adequate care in line with the UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), have yet to be passed by the Punjab Government and there have been no attempts to incorporate these revisions to the Pakistan Prison Rules 1978 at the federal level.
35. According to the State Report, since 2019, 31 mental health professionals have been posted in prisons across Punjab to provide mental health services to people on death row. While this is an important step, the report fails to mention that these professionals are employees of Punjab Prisons, thereby violating international standards that require clinical independence of prison healthcare services and the longstanding domestic law under which medical personnel from the provincial health departments are deputed to the prisons as

⁶³ Human Rights Committee, Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020, Dec. 7, 2022, UN Doc. CCPR/C/PAK/2, ¶ 65.

⁶⁴ Justice Project Pakistan, Pakistan’s Compliance with Article 6: The Right to Life (ICCPR) (Jun. 2023)

⁶⁵ Justice Project Pakistan, Pakistan’s Compliance with Article 6: The Right to Life (ICCPR) (Jun. 2023)

⁶⁶ Justice Project Pakistan, Pakistan’s Compliance with Article 6: The Right to Life (ICCPR) (Jun. 2023)

⁶⁷ Justice Project Pakistan, Pakistan’s Compliance with Article 6: The Right to Life (ICCPR) (Jun. 2023)

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medical officers.⁶⁸ Having been recruited through the Public Service Commission by Punjab Prisons, their functions and obligations remain undefined and unregulated in the Prison Rules. As such, their clinical independence is compromised by their subordination to the prison authorities.

36. Not everyone with a psychosocial or intellectual disability is exempt from the death penalty and who is exempt is decided by a medical board of mental health professionals.⁶⁹ Defendants with psychosocial or intellectual disabilities are rarely informed of the fact that their disability may be a mitigating factor in sentencing, and because they often lack adequate legal representation, the issue is rarely raised in court.⁷⁰ Prison officials and judges lack basic understanding of psychosocial disabilities and its interaction with criminal culpability .
37. The process of determining whether an individual with disabilities qualifies for a commutation of a death sentence is lengthy and individuals with potentially qualifying disabilities are routinely charged with capital offenses and sentenced to death or spend years on death row waiting for a determination by a medical board.⁷¹
38. Mohammad Saleem Ahmad, an individual with a psychosocial disability has been on death row for 16 years. He was arrested for murder in 2001, and even though the investigation officer testified to having knowledge of his mental illness and the trial court acknowledged that he was “insane” and “did not have any orientation about time and space,” he was sentenced to death in 2004. Saleem was first diagnosed “as a case of psychiatric illness” in 2013 and has since then been prescribed strong anti-psychotic drugs.
39. Saleem was scheduled to be executed on November 7, 2017, but the execution was canceled by the District and Session Court three days before the execution. The District and Session Judge directed that a fresh medical report be submitted in line with the Supreme Court’s directions in *Safia Bano*.
40. In 2018, a court-appointed medical board confirmed Saleem’s psychosocial disability and suggested that he be shifted to Punjab Institute of Mental Health, yet he remains in the hospital cell of Central Jail (Kot Lakhpat) Lahore. Saleem’s health continues to deteriorate due to his frail medical condition and the conditions of his confinement. He is currently experiencing a significant decline in social, personal, and occupational functioning.

41. Recommended Questions

- Provide information on the number of cases that law enforcement agencies, prison authorities, and the judiciary have relied upon/implemented the safeguards

⁶⁸ UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*: resolution / adopted by the General Assembly, 8 January 2016, A/RES/70/175, Rule 25(2), 30-34.

⁶⁹ Human Rights Committee, Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020 (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 67.

⁷⁰ The Advocates for Human Rights et al., Pakistan: Stakeholder Report on the Death Penalty for the United Nations Universal Periodic Review (Jul. 14, 2022), ¶ 32.

⁷¹ Justice Project Pakistan, *Trapped Inside: Mental Illness and Incarceration*, 2022

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provided by the Honorable Supreme Court under *Safia Bano and Others v. The Home Department*.⁷²

- Provide information on the number of death row prisoners in prisons across all provinces who have undergone examination and evaluation in line with the Supreme Court’s directions in *Safia Bano and Others v. The Home Department*.
- What steps are taken to inform prisoners on death row and/or their legal representatives that their psychosocial disabilities could be mitigating factors in sentencing?

IV. Execution Protocol

42. The Committee, in its 2017 Concluding Observations, recommended that Pakistan bring its “execution protocol in line with international standards,” and in cases where executions must take place, they should do so “in accordance with the established protocol.”
43. Due to Pakistan’s silence on this issue in its State Review and subsequent follow-up, the Committee’s 2020 report on the follow-up to the 2017 Concluding Observations reiterated its recommendation and request for information on this matter.⁷³
44. The Second Periodic Report does not address the issue of Pakistan’s execution protocol being in violation of international standards. There has been no change to the extant law and procedure since Pakistan underwent its first review by the Committee.
45. The current law calls for execution of people under sentence of death three to eight days after their execution warrant has been issued by a judge, under the Pakistan Prison Rules 1978. The original and long-standing rule, which was revised in the aftermath of the moratorium being lifted in December 2014, required a period of 14-21 days between the issuance of an execution warrant by the judge and the date of execution.⁷⁴ As such, legal counsel are left with a significantly reduced period within which they may effectively represent and halt an execution when there are extenuating circumstances.
46. Moreover, a tabulation of all execution dates since the revision of this rule, reveal that jail officials purposefully issue execution warrants later in the week (mostly on Wednesdays and Thursdays), so that there are only two working days for the counsel of the accused to pursue relief.⁷⁵
47. The protocols for execution outlined in Pakistan Prison Rules 1978 are outdated, and are seldom followed in practice. Rule 357 provides for compensation of Rs. 10 (\$0.035) for the executioner, who is often untrained and belongs to a minority community. Furthermore, Rule 355 outlines the procedure for testing execution equipment, but in practice these tests

⁷² *Mst. Safia Bano v Home Department*, Govt. of Punjab C.R.P. No. 420 etc, 2021 PLD 488

⁷³ Human Rights Committee, Report on follow-up to the concluding observations of the Human Rights Committee, Un Doc. CCPR/C/127/2/Add.2.

⁷⁴ Justice Project Pakistan (JPP) Follow-up report on Pakistan Under Para. 18, CCPR/C/PAK/CO/1, 120th Session of Human Rights Committee (Sept. 2019).

⁷⁵ Justice Project Pakistan (JPP) Follow-up report on Pakistan Under Para. 18, CCPR/C/PAK/CO/1, 120th Session of Human Rights Committee (Sept. 2019).

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often do not take place, resulting in botched executions and unnecessary suffering for individuals already being deprived of their lives.

48. Rule 353 of the Pakistan Prison Rules 1978 calls for any mishaps or departure from the rules to be reported to the Inspector General of Prisons. However, it is unclear whether this information is recorded, and has not been provided to the Committee.
49. The lack of an explicit legislative provision in the Pakistan Prison Rules 1978 that bars execution of all individuals on death row in the absence of clearance by a medical board, and a ban on execution of people with psychosocial disabilities, is in direct contravention of the 2021 *Safia Bano* judgment.

50. Recommended Questions

- What steps has Pakistan taken to bring its execution protocol in line with international standards?
- What steps have been taken to accord adequate time between the issuing of an execution warrant and the date of execution, specifically in the province of Punjab?
- Provide data on botched executions and mishaps occurring during execution in all prisons in each province of Pakistan.

V. Executions of Overseas Pakistanis in violation of international law

51. In its 2017 Concluding Observations, the Human Rights Committee noted with concern the large number of Pakistani migrant workers who have been sentenced to death and executed overseas and the reportedly insufficient consular and legal services made available to them.
52. The Committee highlighted the need to provide adequate consular and legal protections to these migrant Pakistanis throughout their legal proceedings in foreign countries.
53. In its 2020 report on the follow-up to the 2017 Concluding Observations, the Committee regretted that Pakistan has not provided any information on Pakistani migrant workers sentenced to death overseas.
54. Pakistan has made no reference to migrant Pakistanis facing execution overseas in its Second Periodic Report.
55. In 2015, there were 8,597 Pakistanis imprisoned in 63 countries, according to official statistics submitted by the Ministry of Foreign Affairs in the Lahore High Court.⁷⁶ By 2020, there were 10,896 prisoners in 28 countries.⁷⁷ As per the latest statistics presented in the lower house of parliament by the Ministry of Foreign Affairs in July 2023, 12,080 Pakistani citizens are currently in foreign prisons.⁷⁸ Around 6,200 of these Pakistanis are incarcerated

⁷⁶ Data submitted before Parliament by Ministry of Foreign Affairs, Government of Pakistan, on file with the authors (2022)

⁷⁷ Daily Pakistan, 'Details of Pakistanis imprisoned abroad have come to light' 13th January 2020 <https://dailypakistan.com.pk/13-Jan-2020/1077769>

⁷⁸ Daily Pakistan, 'Details of Pakistanis imprisoned abroad have come to light' 13th January 2020 <https://dailypakistan.com.pk/13-Jan-2020/1077769>

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in the prisons of the United Arab Emirates and Saudi Arabia, the two countries with the highest number of Pakistanis in detention, respectively.⁷⁹ Pakistanis also comprise a significant part of the death row population in countries that retain the death penalty.

56. Pakistanis imprisoned abroad proceed through local courts without access to lawyers, impartial translators, or adequate consular assistance from the Pakistani diplomatic missions. Indigent Pakistanis face the harshest punishments because of a lack of understanding of the legal process, ability to communicate directly with the court, and difficulty producing evidence from Pakistan in their defense.⁸⁰
57. While only 4% of residents of Saudi Arabia are Pakistani, 15% of total death sentences issued go to Pakistanis.⁸¹ Moreover, out of the 490 foreign nationals executed by Saudi Arabia during 2010-2021, Pakistanis make up the highest number, 164 or 34%. The number of Pakistani prisoners in Saudi Arabia increased from 1,509 in 2015 to 3,248 in 2020. In February 2022, Pakistan and Saudi Arabia finalized an agreement for the transfer of people convicted of crimes, but its implementation has remained limited.⁸²
58. After a period of three years with no execution of Pakistanis, Saudi Arabia has executed five Pakistani nationals for drug trafficking since November 2022. This is despite the Saudi Commission for Human Rights having announced a moratorium on executions for drug-related crimes in January 2021.⁸³ Currently, close to 40 Pakistanis remain on death row in Saudi Arabia, facing the threat of imminent execution.⁸⁴
59. In 2017, the Chief Justice of the Lahore High Court – pursuant to litigation filed by Justice Project Pakistan on behalf of the families of 10 people facing execution in Gulf Cooperation Council countries– directed the Ministry of Foreign Affairs to draft a consular policy for Pakistanis who are imprisoned abroad and facing execution within two months.⁸⁵ Despite being under orders of the Lahore High Court, the Ministry of Foreign Affairs has

⁷⁹ Amir Waseem, Dawn News, ‘Over 12000 Pakistanis languishing in Foreign Jails’, July 23 2023, <https://www.dawn.com/news/1766262>

⁸⁰ Justice Project Pakistan, ‘Caught in a Web: Treatment of Pakistanis in the Saudi Criminal Justice System’, March 2018, <https://www.jpp.org.pk/wp-content/uploads/2018/03/CAUGHT-IN-A-WEB.pdf>

⁸¹ Carolyn Hoyle, Jocelyn Hutton, and Lucy Harry, ‘A Disproportionate Risk of Being Executed: Why Pakistani Migrants Are Vulnerable to Capital Punishment in Saudi Arabia’, *The British Journal of Criminology*, 7 January 2023, azac100, <https://doi.org/10.1093/bjc/azac100>.

⁸² Pakistan Today, *Pakistan, Saudi Arabia agree to implement treaty on release of prisoners*, Feb 7 2022, <https://www.pakistantoday.com.pk/2022/02/07/pakistan-saudi-arabia-agree-to-implement-treaty-on-release-of-prisoners/>

⁸³ Amnesty International, *Saudi Arabia: Execution of two Pakistani nationals is callous attack on right to life* (2022) Accessed on 14 August 2023 <https://www.amnesty.org/en/latest/news/2022/11/saudi-arabia-execution-of-two-pakistani-nationals-is-callous-attack-on-right-to-life/>

⁸⁴ Justice Project Pakistan, *Submission for the United Nations Secretary General’s Report on a Moratorium on the Use of the Death Penalty* (Apr. 2022) <https://www.ohchr.org/sites/default/files/documents/issues/deathpenalty/moratorium-2022/ngos-others/2022-07-12/CFI-DP-2022-justice-project-pakistan.docx#:~:text=Pakistanis%20on%20Death%20Row%20Abroad&text=Pakistanis%20are%20also%20part%20of,at%20risk%20of%20imminent%20execution.>

⁸⁵ *Asma Shafi etc v. the Federation of Pakistan etc* (W.P No 32288/214). Order date: .06-02-2017

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yet to devise a consular policy which ensures that missions follow through on their responsibilities to Pakistani citizens arrested or detained abroad.

60. Despite entering into several bilateral Prisoner Transfer Agreements with other countries, the Ministry of Foreign Affairs does not make these documents public, and State-led efforts to implement these agreements are sparse. This impedes repatriation attempts by overseas prisoners, their families, and their attorneys, who, without knowing the provisions of the agreements and the requirements for transfer, cannot initiate domestic legal or advocacy efforts to effect repatriation.
61. Resultantly, the fate of overseas Pakistanis in detention rests at the discretion of individual embassies. Although the Government's advocacy resulted in the repatriation of 1,200 prisoners from the United Arab Emirates⁸⁶ and 41 prisoners from Sri Lanka⁸⁷ in 2020, these efforts have been sporadic and have since waned.
62. In the absence of a policy framework that outlines to whom, when, and how to extend consular assistance, it is impossible for diplomatic missions to uphold their constitutional obligation to protect the due process rights of such a large number of overseas Pakistanis in detention.⁸⁸

63. Recommended Questions

- Provide disaggregated data (names, ID card numbers, prisons within which they are detained, crimes for which they have been sentenced) on the number of Pakistanis detained and facing capital punishment abroad.
- Provide information on how many Pakistanis detained abroad and facing capital punishment have been provided with consular assistance, and the nature of this consular assistance.
- What steps have been taken to devise a uniform consular protection policy for Pakistanis detained abroad, in line with the directions of the superior judiciary?
- What steps have been taken to publicize and implement existing prisoner transfer agreements for the repatriation of overseas Pakistani in detention?
- What steps have been taken to inform and sensitize Pakistani missions and embassies of their obligations to provide consular assistance to overseas Pakistanis facing death sentences? What actions have been taken against Pakistani missions and embassies that have failed to uphold their obligations in this regard?

⁸⁶ Arab News, *1,200 Pakistani prisoners brought back from the UAE amid pandemic – PM aide* Accessed 14 Aug 2023 <https://www.arabnews.com/node/1710231/amp>

⁸⁷ Muhammad Asghar and Ifikhar A. Khan, Dawn News, *41 prisoners repatriated from Sri Lanka*, Nov 5 2020, Accessed 14 Aug 2023 <https://www.dawn.com/news/1588686/41-prisoners-repatriated-from-sri-lanka>

⁸⁸ *Constitution of the Islamic Republic of Pakistan* [Pakistan], Art. 4 10 April 1973, available at: <https://www.refworld.org/docid/47558c422.html> (“Article 4: Right of Individuals to be dealt with in accordance with law, etc. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.”)

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C. Torture and Cruel, Inhuman and Degrading Treatment (Article 7)

I. Torture by police and law enforcement

64. The Committee expressed concern that the State has neither defined “torture” nor criminalized the act of torture in compliance with international standards.⁸⁹ Specifically, it mentioned that “torture is allegedly widely employed by the police, military and security forces and intelligence agencies; and that allegations of torture are not promptly and thoroughly investigated, and perpetrators are rarely brought to justice.”⁹⁰
65. In the 2017 Concluding Observations, the Committee recommended that Pakistan amend its laws to ensure compliance with Article 7 of the ICCPR, ensure accountability and impartial prosecution of offenders and that confessions obtained by coercion are never admissible as evidence, and take all necessary measures to prevent torture such as training the judiciary, prosecutors, law enforcement and the military.⁹¹
66. The Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Act 2021 mentioned in Pakistan’s Second Periodic Report was never passed. Instead, the Government passed the Torture and Custodial Death (Prevention and Punishment) Act in October 2022, which defines and criminalizes torture, and imposes sanctions and punishment for public servants who employ torture. The Act “provide[s] for the prevention of all acts of torture, custodial death and custodial rape perpetrated by public servants or any person acting in an official capacity.”⁹²
67. The Torture and Custodial Death (Prevention and Punishment) Act 2022 defines and criminalises torture, custodial death, custodial rape, and cruel and inhuman treatment. It sets up a complaint and investigation procedure whereby the Federal Investigation Agency (FIA) is authorized to investigate under the supervision of the National Commission for Human Rights (NCHR) and the sessions court has the jurisdiction to try cases. The Act also renders evidence extracted through torture inadmissible in judicial proceedings.⁹³
68. There remain key aspects in which the Act falls short of meeting the international norms on torture prohibition, however, which can be addressed through legislative amendments and rules.⁹⁴
69. In the year since the Act came into effect and the FIA now has the pivotal role of receiving complaints related to such incidents, a discernible framework for lodging

⁸⁹ Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶ 25.

⁹⁰ Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶ 25.

⁹¹ Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶ 26.

⁹² Pakistan National Assembly, *The Torture and Custodial Death (Prevention and Punishment) Act 2022 (Jul. 12, 2021)* 1, available at: https://na.gov.pk/uploads/documents/1415360249_881.pdf.

⁹³ Government of Pakistan, *Torture and Custodial Death: Prevention and Punishment Act (2022)*.

⁹⁴ Justice Project Pakistan, *Pakistan’s Compliance with the Convention Against Torture (2023)* <https://jpp.org.pk/gspplusweek/>. These include the inclusion of psychological torture in the definition of torture, which has been left out in the Act. Furthermore, the Act itself does not stipulate standalone punishments,

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complaints has yet to materialize. Further, the NCHR, which has been tasked with investigative oversight, currently lacks the institutional capacity and resources to effectively address torture complaints and exercise oversight.⁹⁵

70. There persists a notable lack of public awareness regarding the rights enshrined within the ambit of this significant legislation, given that no efforts have been made to publicize the existence of this Act, let alone the rights civilians are entitled to under it.
71. It is unclear whether any prosecutions have taken place under the Act. In the absence of enabling rules notified under the Act, it is likely that the torture will continue. Enabling rules reflect international best practices and provide a legal framework for investigation, including medico-legal examination and prosecution of torture complaints, and adequate training and sensitization of all relevant stakeholders.
72. In its Second Periodic Report, Pakistan noted its recent efforts to prevent torture.⁹⁶ These include police initiatives to adopt modern, forensic investigative techniques and accountability mechanisms and building the capacity of relevant stakeholders, such as the judiciary, police officers and prosecutors. The Government mentions its zero-tolerance policy towards torture, highlighting its prosecution and punishment of officers found guilty of torture.
73. For example, it highlights the fact that in 2021 alone, 624 police officials were punished for offenses of “torture or misbehaviour” in Punjab.⁹⁷ In 2019, only 20 cases of torture in police custody were reported. These officials were disciplined under the Punjab Police Efficiency and Discipline Rules, 1975 and the Punjab Civil Servants (E&D) Rules, 1999.
74. The Government also provided examples of specific measures and training programs that its branches are implementing to curb the use of torture.⁹⁸

rather it falls back on the existing punishments in Pakistan Penal Code (PPC). Since torture is not an offence in the PPC this creates confusion as to how punishment will be meted out for different degrees of torture. Other amendments include the granting of sole investigative power to the NCHR or at the very least, increased investigative capacity, standalone punishments, a supporting legal framework for the prevention of torture in prisons, a streamlined forensic medical examination framework, and adequate capacity building of all relevant stakeholders. Additionally, the Act only criminalizes custodial rape and not all forms of sexual violence. The inclusion of harsh penalties for mala fide complaints under the Act is in contravention to the right of torture victims to make complaints while protected from ill-treatment and intimidation as a consequence. As such, penalizing “false” complaints can be used as an intimidation tactic to dissuade victims from filing complaints. Lastly, the Act only provides for criminal proceedings against perpetrators of torture, not the full range of redressal mechanisms which should include pecuniary compensation and rehabilitation measures for the victim, which have some precedence in domestic case law.

⁹⁵ As submitted by the NCHR during the proceedings before the Islamabad High Court in Writ Petition No. 3512/2022 filed by Mst. Imtiaz Bibi

⁹⁶ *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 77.

⁹⁷ Government of Pakistan (2022). *Second periodic report submitted by Pakistan under article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FPAK%2F2&Lang=en

⁹⁸ *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 79–84.

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75. Torture in Pakistani prisons, however, continues. The NCHR has reported that 26 people in detention alleged they experienced torture and inhuman and degrading treatment of different types during NCHR's visit to the Adiala Jail in Rawalpindi.⁹⁹
76. The State's report does not adequately acknowledge that the State has not fully implemented all of its listed initiatives. The report also fails to account for the under-reporting of cases of torture due to fear of reprisals and a lack of accessible complaint mechanisms and accountability frameworks. For example, in its 2022 report on Pakistan, Amnesty International stated that the practice of torture remained routine in Pakistan.¹⁰⁰
77. In order to bring tangible reduction in the practice of torture in Pakistan, there is a need for specialised legislative action and capacity building regarding the implementation of the Torture and Custodial Death (Prevention and Punishment) Act 2022. The legislative action needs to outline the duties and responsibilities of the wide array of stakeholders, the process of holding perpetrators accountable, and educate citizens of their rights under the Act. Additionally, the State is also duty-bound to record disaggregated data on torture and make it publicly available so as to identify systemic gaps and inform future policy change.

78. Recommended Questions

- What steps have been taken to spread public awareness about the Torture and Custodial Death (Prevention and Punishment) Act 2022?
- What steps have been taken to address the under-reporting of cases of torture, including due to a fear of reprisals?
- What steps have been taken and what safeguards are available to protect those making complaints of torture from facing prosecution for bringing malafide complaints?
- What measures exist to prevent torture in prisons?
- Provide information submitted to the NCHR by concerned authorities on punitive actions taken in response to torture complaints submitted to the NCHR.
- Provide information on the number of complaints received, number of cases prosecuted, and number of convictions and the nature of sentences for torture and cruel, inhuman and degrading punishment.

D. Rights of Persons Deprived of Liberty (Article 10)

I. Detention conditions in Pakistan violate national and international standards.

79. The Committee previously expressed concern over overcrowding and inadequate detention conditions in Pakistani prisons, as well as the high proportion of persons held in prolonged

⁹⁹ National commission for Human Rights, 'Torture at Adiyala' 2022 <https://www.nchr.gov.pk/wp-content/uploads/2022/11/Report-on-Torture-at-Adiala-Jail.pdf>

¹⁰⁰ Amnesty International, ed. *Amnesty International Report 2022/23: The State of the World's Human Rights*. London: Amnesty International Ltd, 2023.

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pre-trial detention.¹⁰¹ It recommended that Pakistan “intensify its efforts to reduce prison overcrowding and improve the conditions of detention, particularly health care and hygiene” and use pretrial detention only in exceptional cases and not for long periods of time.¹⁰²

80. The State Report specifically addresses the Committee’s concerns regarding overcrowding, recognizing it as an issue, particularly in Punjab.¹⁰³ Moreover, Pakistan noted that it is committed to reducing overcrowding by releasing prisoners on parole and those involved in petty crimes, and by constructing more jails and prisons across the country, including in Punjab, Khyber Pakhtunkhwa, Balochistan, and Sindh.¹⁰⁴
81. Since the Committee published its Concluding Observations, Pakistan also promulgated the Punjab Probation and Parole Service Act 2019 and the Sindh Prisons and Corrections Services Act 2019 to safeguard prisoner’s rights.¹⁰⁵ The Government reported that the Punjab Probation and Parole Services Act seeks to establish an “effective and efficient probation and parole service” and ensure that conditions of release and rehabilitation of offenders are fulfilled.¹⁰⁶ The Sindh Prisons and Corrections Services Act seeks, in part, to transform prisons into more rehabilitative spaces.¹⁰⁷
82. The State Report refers extensively to the construction of new prisons across the country as a measure to reduce overcrowding. It is widely accepted, however, that increasing prison capacity does not, on its own, constitute a sustainable strategy to combat prison overcrowding. The United Nations Office on Drugs and Crime has expressed concerns that in the long term a constant expansion of the prison estate may even lead to an increase in imprisonment rates.¹⁰⁸
83. The State Report asserts that pre-trial detention in Pakistan is used solely as an exceptional measure, mostly in terrorism related cases. Yet, figures as recent as 2022 show that 68% of the prison population in Punjab (33,787 individuals) are people awaiting trial.¹⁰⁹
84. The levels of overcrowding in Pakistani prisons and detention centers is life threatening.¹¹⁰ Recent estimates of Pakistan’s prison population place the number of people deprived of

¹⁰¹ Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶ 27.

¹⁰² Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶ 28.

¹⁰³ Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 86.

¹⁰⁴ Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 87-90.

¹⁰⁵ Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 87, 90.

¹⁰⁶ The Punjab Probation and Parole Service Act 2019 (Act XXXVI of 2019).

¹⁰⁷ *Government of Sindh*, Sindh Prisons and Corrections Service Act 2019.

¹⁰⁸ UNODC, ‘Handbook on strategies to reduce overcrowding in prisons’ 2013, https://www.unodc.org/documents/justice-and-prison-reform/Overcrowding_in_prisons_Ebook.pdf

¹⁰⁹ Justice Project Pakistan, *Data Dashboards: Prison Population of Pakistan* (2022).

<http://jpp.jppprisonreforms.com/>

¹¹⁰ U.S. State Department, *2022 County Reports on Human Rights Practices: Pakistan*, available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/pakistan/>.

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their liberty between 87,712 – 88,650, housed across 116 prisons. In total, these prisons have an estimated capacity of around 65,000, which places Pakistani prisons over capacity by 36% (136% overcrowded).¹¹¹ On a small scale, this means that prison cells designed for a maximum of three people may hold up to 15 people.¹¹² This degree of overcrowding directly impacts individuals held in detention’s due process rights.¹¹³

85. The floods that happened in 2022 exacerbated overcrowding by damaging prisons, specifically in the Sindh province.¹¹⁴ In the aftermath of these floods, several facilities were forced to close or lost all access to light and electricity for weeks.¹¹⁵ Individuals in detention were transferred from impacted areas to other facilities, increasingly burdening already overcrowded facilities.¹¹⁶
86. High rates of pre-trial detention, delayed trial proceedings, the difficulty of obtaining bail, the expansive power of police to arrest and detain suspects, limited state-provided legal aid, and a “reluctance of judges to impose non-custodial sentences” also contribute to overcrowding.¹¹⁷
87. Individuals in detention are often without access to healthy food and clean water.¹¹⁸ Prisoners frequently rely on family members to provide them with sufficient food and essential supplies, and those without this familial support are forced to purchase food from the prison commissary.¹¹⁹ Many prisons also lack clean drinking water. One prisoner who spent three months in Faisalabad prison told Human Rights Watch, “If there was a water filter, we never saw it. Everyone had stomach and water-related issues.”¹²⁰

¹¹¹ 2022 Country Reports on Human Rights Practices: Pakistan, United States Department of State (last visited Jul. 7, 2023), <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/pakistan/>; Human Rights Watch, *A Nightmare for Everyone: The Health Crisis in Pakistan’s Prisons*, (Mar. 29, 2023), <https://www.hrw.org/report/2023/03/29/nightmare-everyone/health-crisis-pakistans-prisons>.

¹¹² Human Rights Watch, *A Nightmare for Everyone: The Health Crisis in Pakistan’s Prisons*, (Mar. 29, 2023), <https://www.hrw.org/report/2023/03/29/nightmare-everyone/health-crisis-pakistans-prisons>.

¹¹³ 2022 Country Reports on Human Rights Practices: Pakistan, United States Department of State (last visited Jul. 7, 2023), <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/pakistan/>.

¹¹⁴ Human Rights Watch, *A Nightmare for Everyone: The Health Crisis in Pakistan’s Prisons*, (Mar. 29, 2023), <https://www.hrw.org/report/2023/03/29/nightmare-everyone/health-crisis-pakistans-prisons>; see also Fatima Umer Farooqui, *The forgotten fraction and floods*, The Express Tribune (Oct. 30, 2022), <https://tribune.com.pk/story/2383875/the-forgotten-fraction-and-floods>.

¹¹⁵ Zainab Mahboob, Pakistan: submerged and forgotten, Prisoner Insider (Oct. 18, 2022), <https://www.prisoner-insider.com/en/articles/pakistan-submerged-et-oublies>.

¹¹⁶ Zainab Mahboob, Pakistan: submerged and forgotten, Prisoner Insider (Oct. 18, 2022), <https://www.prisoner-insider.com/en/articles/pakistan-submerged-et-oublies>.

¹¹⁷ Human Rights Watch, *A Nightmare for Everyone: The Health Crisis in Pakistan’s Prisons*, (Mar. 29, 2023), <https://www.hrw.org/report/2023/03/29/nightmare-everyone/health-crisis-pakistans-prisons>.

¹¹⁸ Human Rights Watch, *A Nightmare for Everyone: The Health Crisis in Pakistan’s Prisons*, (Mar. 29, 2023), <https://www.hrw.org/report/2023/03/29/nightmare-everyone/health-crisis-pakistans-prisons>.

¹¹⁹ Human Rights Watch, *A Nightmare for Everyone: The Health Crisis in Pakistan’s Prisons*, (Mar. 29, 2023), <https://www.hrw.org/report/2023/03/29/nightmare-everyone/health-crisis-pakistans-prisons>.

¹²⁰ Human Rights Watch, *A Nightmare for Everyone: The Health Crisis in Pakistan’s Prisons*, (Mar. 29, 2023), <https://www.hrw.org/report/2023/03/29/nightmare-everyone/health-crisis-pakistans-prisons>.

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88. Pakistan’s prisons are “notoriously unsanitary.”¹²¹ In March 2020, the Islamabad High Court noted in a judgment the “unprecedented and grave conditions prevailing in the prisons across the country” and said that the “living conditions and treatment of prisoners in overflowing and inadequately equipped prisons has raised serious constitutional and human rights concerns.”¹²² The court concluded that, “A prisoner who is held in custody in an overcrowded prison, having lack of sanitation, [is] tantamount to cruel and inhuman treatment for which the State ought to be accountable because it amounts to a breach of fiduciary duty of care.”¹²³ This holding has not resulted in measurable changes to prison conditions in the last three years.
89. Further, there are reports of torture within Pakistani prisons and detention centers. In 2022, in connection with the *Imtiaz Bibi* case before the Islamabad High Court, the NCHR’s inquiry report highlighted an ineffective State response and weak accountability and redress mechanisms. During the inquiry, the NCHR came across numerous instances of torture against the individuals held in the Rawalpindi Jail. Of the 35 people deprived of their liberty who were interviewed, 26 or 74% spoke about instances of torture. All of them spoke about financial extortion for provision of basic necessities in jail. Methods of torture ranged from physical beatings with a rubber tire to solitary confinement.¹²⁴
90. The Second Periodic Report presents the fact that Pakistan has passed the Transgender Persons (Protection of Rights) Act, 2018¹²⁵, which “guarantees basic rights for transgender citizens.”¹²⁶ This Act specifically prohibits discrimination against transgender persons and establishes “separate prisons and detention cells for transgender people,” as well as “instituting periodic sensitization and awareness of public servants, particularly law enforcement and health care officials.”¹²⁷

¹²¹ Human Rights Watch, ‘*A Nightmare for Everyone*’: *The Health Crisis in Pakistan’s Prisons*, (Mar. 29, 2023), <https://www.hrw.org/report/2023/03/29/nightmare-everyone/health-crisis-pakistans-prisons>.

¹²² See *Khadim Hussain v. Secretary, Ministry of Human Rights* (IHC Prison Reforms case), Writ Petition No. 4037 of 2019, Islamabad High Court, per Chief Justice Athar Minallah, Mar. 14, 2020, http://mis.ihc.gov.pk/attachments/judgements/WP-4037-2019_637216920356707546.pdf; see also Human Rights Watch, ‘*A Nightmare for Everyone*’: *The Health Crisis in Pakistan’s Prisons*, (Mar. 29, 2023), <https://www.hrw.org/report/2023/03/29/nightmare-everyone/health-crisis-pakistans-prisons>.

¹²³ See *Khadim Hussain v. Secretary, Ministry of Human Rights* (IHC Prison Reforms case), Writ Petition No. 4037 of 2019, Islamabad High Court, per Chief Justice Athar Minallah, Mar. 14, 2020, http://mis.ihc.gov.pk/attachments/judgements/WP-4037-2019_637216920356707546.pdf; see also Human Rights Watch, ‘*A Nightmare for Everyone*’: *The Health Crisis in Pakistan’s Prisons*, (Mar. 29, 2023), <https://www.hrw.org/report/2023/03/29/nightmare-everyone/health-crisis-pakistans-prisons>.

¹²⁴ *Id.*

¹²⁵ Mehr Muhammad Adeel Riaz, Mehrub Moiz Awan, *Transgender rights in Pakistan: implications of Federal Shariat Court ruling*, *The Lancet* (2023), p. 20 Vol 10. In May 2023, a ruling of the Federal Shariat Court ruled that the sections 2(f), 3 and 7 of the Transgender Persons Act 2018 which relate to gender identity, the right to self-perceived gender identity and the right of inheritance for transgender people do not conform with their interpretation of Islamic principles. As such, the Court struck down these provisions, effectively striking down the rights and protections enshrined in the Act for transgender persons.

¹²⁶ Human Rights Committee, Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020 (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 20.; Transgender Persons (Protection of Rights) Act, 2018.

¹²⁷ Human Rights Committee, Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020 (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 20.

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91. Despite this, prisons continue to operate without separate barracks for transgender persons.¹²⁸ In 2021, the Sindh High Court noted the lack of these barracks in Sindh prisons was a direct violation of both the Transgender Persons Act and the Sindh Prison Rules and Correction Services Act of 2019.¹²⁹
92. Prisons in Pakistan lack an accessible, confidential and impartial complaint mechanism for individuals in detention to report torture, sexual violence, and harsh treatment.
93. Extended time on death row can also amount to cruel, inhuman or degrading treatment or punishment.¹³⁰ Pakistan maintains one of the largest death rows in the world and hundreds of individuals under sentence of death have been added to death row since 2014.¹³¹ Detention conditions on death row are also egregious, with individuals incarcerated in incredibly small and overcrowded cells.¹³²
94. Police often subject individuals on death row to torture in order to illicit confessions.¹³³ Courts also rely on these forced confessions in determining an individual's guilt and in sentencing.¹³⁴ It remains to be seen how this issue will be resolved in light of the new Torture and Custodial Death (Prevention and Punishment) Act 2022 which prohibits the admissibility of evidence extracted through coercion.
95. Despite being home to 59.1% of Pakistan's incarcerated population, with around 50,644 prisoners spread across 43 correctional facilities,¹³⁵ Punjab, the nation's most populous province, has retained unchanged prison rules since 1978 which considerably fall behind the UN's minimum standards. Two separate committees for prison reform were notified in 2020 and 2022, but ultimately could not pass the draft Punjab Prison Rules 2020, which would have amended over 1200 sections of the Prison Rules 1978 in line with international

¹²⁸ 2022 Country Reports on Human Rights Practices: Pakistan, United States Department of State (last visited Jul. 7, 2023), <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/pakistan/>.

¹²⁹ Staff Reporter, SHC seeks report about separate barracks in prisons for transgender inmates, Dawn (Mar. 7, 2021), <https://www.dawn.com/news/1611039>

¹³⁰ International Federation for Human Rights & Human Rights Commission of Pakistan, *Pakistan: Briefing note on the death penalty – 10 October 2022* (Oct. 10, 2022), 5, available at:

<https://www.fidh.org/en/region/asia/pakistan/World-Day-Against-Death-Penalty-capital-punishment-Pakistan> (citing *Case of Soering v. the United Kingdom* (Application no. 14038/88), European Court of Human Rights (Jul. 7, 1989), available at:

<https://hudoc.echr.coe.int/fre#%7B%22fulltext%22:%5B%22soering%22%5D,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%5D,%22itemid%22:%5B%22001-57619%22%5D%7D>).

¹³¹ Home, Justice Project Pakistan (last visited Jul. 13, 2023), <https://data.jpp.org.pk/>.

¹³² *Pakistan: Briefing note on the death penalty – 10 October 2022* 7 (Oct. 10, 2022), available at:

<https://www.fidh.org/en/region/asia/pakistan/World-Day-Against-Death-Penalty-capital-punishment-Pakistan>.

¹³³ See generally Justice Project Pakistan & Allard K. Lowenstein International Human Rights Clinic, Yale Law School, *Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan* (Jun. 2014), available at: <https://www.jpp.org.pk/wp-content/uploads/2018/08/policing-as-torture.pdf>.

¹³⁴ Asad Hashim, 'Pakistani academic Junaid Hafeez sentenced to death for blasphemy', Al Jazeera (Dec. 21, 2019), available at <https://www.aljazeera.com/news/2019/12/21/pakistani-academic-junaid-hafeez-sentenced-to-death-for-blasphemy>.

¹³⁵ Justice Project Pakistan, *Data Dashboards: Prison Population of Pakistan* (2022).

<http://jpp.jppprisonreforms.com/>

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standards.¹³⁶ The inability of the Government of Punjab to revise their rules constitutes a violation of the fundamental rights of individuals deprived of their liberty in Punjab.

96. Recommended Questions

- Provide information on the number of people deprived of their liberty who are released on parole, and measures being taken to reduce the significant overcrowding in Pakistan's prisons.
- Please confirm if the following new jails and prisons are now operating and whether their existence has reduced the prison population in Punjab and Sindh: District Jail Lodhran, High Security Prison Mianwali, Thatta District Prison, and the new barracks in District Prison Shikarpur.
- What steps have been undertaken to reduce the use and maximum allowed length for pre-trial detention?
- What measures have been implemented to further reduce overcrowding, such as reforming the state's bail structure?
- Please describe the provisions for food and water provided at each detention or prison facility, including whether authorities provide regular, sanitary, and nutritionally adequate meals to persons being detained.
- What steps have been taken to ensure that detention conditions comply with the Nelson Mandela Rules, particularly Rules 15-18 regarding sanitation and personal hygiene, Rule 22 regarding food and drinking water, and Rule 43 regarding torture and other cruel, inhuman, or degrading treatment or punishment?
- What steps are being taken to eliminate torture in prisons, in light of the Torture and Custodial Death (Prevention and Punishment) Act 2022?
- What safeguards are in place to ensure that transgender individuals are housed in separate barracks while detained or imprisoned?
- What steps are being taken to introduce a confidential, impartial, and effective complaint mechanism for people in detention across the country to report abuse, violence, and harsh treatment throughout prisons in every province of Pakistan?
- What measures have been taken to improve the conditions of death row cells?
- What measures have been taken to update the Pakistan Prison Rules to bring them in line with international standards such as the UN Minimum Standards for the Treatment of Prisoners?

¹³⁶ *Draft Punjab Prison Rules* (2020) on file with the authors. These standards included provisions related to humane and dignified treatment, such as banning the practice of whipping, fetters etc, as well as provisions pertaining to conditions of confinement such as food, healthcare, ventilation, transfer of prisoners to outside hospitals for treatment, and contact with the outside world.

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E. Right to Fair Trial (Article 14)

I. Lack of meaningful consideration of mercy petitions

97. The Committee noted with concern that Pakistan has a policy of “blanket refusal of clemency applications in place” and that “no clemency applications have been granted.”¹³⁷ As a result, the Committee recommended that pardon and commutation of death sentences be available in all cases, regardless of the crime committed.¹³⁸
98. In its Concluding Observations, the Committee also expressed concern that the death penalty was being imposed in the absence of fair trial procedures.¹³⁹
99. In the Follow-Up Report, the Committee noted the information provided on the power of the President to grant pardons to prisoners on death row, but requested information on: the number of death sentences passed in the last two years; the number of pardons granted by the President and commutations of death sentences in the last two years; and whether death sentences can be pardoned and commuted irrespective of the crime committed.¹⁴⁰
100. In its Second Periodic Report, Pakistan affirmed that every person accused and sentenced to death has the “constitutional right to get pardon, reprieve and respite, and to have such sentence remitted, suspended or commuted.”¹⁴¹ Pakistan further referenced Article 45 of its Constitution, which provides the right to seek a presidential pardon and is part of the State’s due process rights afforded individuals: “The 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.”¹⁴²
101. The report failed to provide information on the number of pardons granted by the President and commutations of death sentences in the last two years. Despite the Supreme Court’s 2010 ruling¹⁴³ affirming the presidential power of pardon, this power is never exercised in practice.
102. In 2016, Pakistan’s Ministry of Interior stated that the President’s office had rejected all 513 mercy petitions filed by condemned prisoners during the previous five

¹³⁷ Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶ 17.

¹³⁸ Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶ 18(a).

¹³⁹ Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶ 18(a).

¹⁴⁰ Human Rights Committee, Report on follow-up to the concluding observations of the Human Rights Committee, UN Doc. CCPR/C/127/2/Add.2.

¹⁴¹ Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant*, due in 2020 (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 64.

¹⁴² Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant*, due in 2020 (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 64.

¹⁴³ *Nazar Hussain and Another v. The State* (PLD 2010 SC 1021). In 2010, a 7 member bench of the Supreme Court stated, “The exercise of the discretion by the President under Article 45 of the Constitution is to meet at the highest level the requirements of justice and clemency, to afford relief against undue harshness, or serious mistake or miscarriage in the judicial. process, apart from specific or special cases where relief is by way of grace alone.”

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years.¹⁴⁴ According to the data collected by JPP, six mercy petitions from Sindh and 15 from Punjab are pending before the President including those of prisoners with psychosocial and physical disabilities.

103. Ismail Parvez, a death row prisoner with a documented history of severe psychosocial disability and more than one suicide attempt in prison, has had his mercy petition pending before the President since 2020.¹⁴⁵ An ATC convicted Parvez under the Anti-Terrorism Act of 1997 for killing two individuals in 2014.¹⁴⁶ Since 2007, Parvez has been held in prison, instead of a mental health facility where his illness can be accommodated, despite ample evidence and documentation.¹⁴⁷ Furthermore, Parvez's detention, trial, and incarceration have not adequately taken his psychosocial disability into account, nor were his rights upheld in a way that accommodated said psychosocial disability.

104. In 2019, the Federal Ministry of Human Rights received approval to reform the mercy petitions procedure.¹⁴⁸ In October 2019, the Ministry of the Interior issued new standard operating procedures (SOPs) for mercy petitions to streamline the process by which they are drafted, submitted, and decided.¹⁴⁹ These SOPs fail, however, to meet international standards or fulfill Pakistan's obligations under international law and were never implemented uniformly. Thereafter, mercy petitions with strong evidence of human rights abuses and violations continue to be wrongfully rejected by the provincial committees as they lack any direction for review under the SOPs.

105. The Criminal Law and Justice Reforms Bill 2022, drafted by the previous Ministry of Law and Justice, contained a significant set of proposed amendments that aimed to revamp the procedure through which mercy petitions are reviewed in Pakistan in line with the recommendations of the UN Human Rights Committee.¹⁵⁰ Owing to a continued failure to reintroduce this Bill, however, these reforms have not been adopted.

106. **Recommended Questions**

- Provide information on the number of mercy petitions and commutations of death row sentences that have been granted.

¹⁴⁴ Justice Project Pakistan, Yale Law School, *No Mercy – A Report on clemency for death row prisoners in Pakistan*, 4, https://www.jpp.org.pk/wp-content/uploads/2018/04/No-Mercy_Final-Report1.pdf (last visited Jul. 6, 2023).

¹⁴⁵ Aoláin, Devandas-Aguilar, Callamard, Puras, and Melzer, *Public Comment on Case of Mr. Ismail Parvez*, *UN Submission* (Jun. 4, 2020), UA PAK 9/2020.

¹⁴⁶ Aoláin, Devandas-Aguilar, Callamard, Puras, and Melzer, *Public Comment on Case of Mr. Ismail Parvez*, *UN Submission* (Jun. 4, 2020), UA PAK 9/2020.

¹⁴⁷ Aoláin, Devandas-Aguilar, Callamard, Puras, and Melzer, *Public Comment on Case of Mr. Ismail Parvez*, *UN Submission* (Jun. 4, 2020), UA PAK 9/2020.

¹⁴⁸ Human Rights Committee, *Concluding observations on the initial report of Pakistan, Addendum, Information received from Pakistan on follow-up to the concluding observations* (May 29, 2012), UN Doc. CCPR/C/PAK/CO/1/Add.1, ¶ 7.

¹⁴⁹ Justice Project Pakistan, *Submission for the United Nations Secretary General's Report on the Question of the Death Penalty* (Mar. 2022), <https://www.ochr.org/sites/default/files/2022-6/DP-HRC51-JPP.pdf>.

¹⁵⁰ Justice Project Pakistan, *Submission for the United Nations Secretary General's Report on the Question of the Death Penalty* (Mar. 2022), <https://www.ochr.org/sites/default/files/2022-6/DP-HRC51-JPP.pdf>.

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- Provide information on the factors considered by the President’s Office in deciding whether to grant or reject a mercy petition.
- Provide information on the number of mercy petitions reviewed and recommended for commutation or mercy by the Provincial Committees from all provinces.
- What steps have been taken to bring the Standard Operating Procedures issued by the Ministry of Interior in 2019 in line with applicable international standards and safeguards?
- What steps have been taken to revise these SOPs in line with international standards and ensure that the remaining mercy petitions are completed and filed accordingly, so that cases with strong evidence of human rights abuses and violations, such as persons sentenced to death as juvenile offenders, those with severe psychosocial and physical disabilities are presented clearly to the Presidency with a strong appeal for clemency?

II. Overbroad use of the Anti-Terrorism Act (ATA).

107. The Committee has expressed concern about Pakistan’s overuse of the ATA.¹⁵¹ Acknowledging that Pakistan seeks to combat terrorism, the Committee recommended Pakistan to narrow its definition of “terrorism” to align with international standards.¹⁵² In addition, the Committee has expressed concern with “the extensive jurisdiction of antiterrorism courts and the huge backlog of cases, as well as the absence of procedural safeguards in court proceedings.”¹⁵³
108. Following the school massacre in Peshawar in 2014 (see paragraph 9 above), the Government has increasingly designated civilians as “terrorists,”¹⁵⁴ meaning they must be tried in specialized terrorism courts known as Anti-Terrorism Courts (ATCs).¹⁵⁵
109. To try individuals as “terrorists,” Pakistan has relied on the broad definition of “terrorism” under the ATA which “overrides all other legal provisions and applies to the entire country.”¹⁵⁶ The ATA defines “terrorism” as the use or threats of action that are

¹⁵¹ Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶ 21.

¹⁵² Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶¶ 21, 22.

¹⁵³ Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), ¶ 21.

¹⁵⁴ Justice Project Pakistan & Reprieve, *Terror on Death Row: The abuse and overuse of Pakistan’s anti-terrorism legislation* (Dec. 2014), 2, available at <https://reprieve.org/uk/2015/01/09/terror-on-death-row-the-abuse-and-overuse-of-pakistans-anti-terrorism-legislation/>.

¹⁵⁵ Justice Project Pakistan & Reprieve, *Terror on Death Row: The abuse and overuse of Pakistan’s anti-terrorism legislation* (Dec. 2014), 2, available at <https://reprieve.org/uk/2015/01/09/terror-on-death-row-the-abuse-and-overuse-of-pakistans-anti-terrorism-legislation/>.

¹⁵⁶ Justice Project Pakistan, *Reforming the Anti-Terrorism Act, 1997* 1 (last visited Jul. 13, 2023), available at https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Terrorism/JusticeProjectPakistan_3.pdf; Justice Project Pakistan (JPP) *Follow-up report on Pakistan Under Para. 18*, CCPR/C/PAK/CO/1, 120th Session of Human Rights Committee (Sept. 2019) (last visited Jul. 7, 2023).

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designed to — among other things — intimidate the Government or the public, advance a religious purpose, or damage public installations.¹⁵⁷

110. In the four years that followed the Peshawar school massacre, the Government executed 516 civilians that it had designated as “terrorists.”¹⁵⁸ More than 86% of the death sentences that ATCs have issued were for ordinary criminal offenses in which the accused had no indication of terroristic intent.¹⁵⁹
111. Multiple due process rights are curtailed under this Act, such as police not requiring a warrant for search and arrest; admissibility of confessions made in detention, which lead to heightened police torture; extremely short deadlines for investigation and trial; and non-compoundability of offences. The arbitrary manner in which the ATA is applied to cases in which there is no perceivable element of terrorism is concerning, both in light of the curtailment of fundamental rights, and in the misdirection of resources which should instead be focused on those responsible for perpetrating acts of terror in Pakistan.¹⁶⁰
112. The Government’s State Report notes that the 2019 Supreme Court decision in *Ghulam Hussain vs. the State* laid down a conclusive and narrow scope of the definition of terrorism and its application with respect to criminal cases, thereby preventing misuse of anti-terrorism law. Moreover, the Government notes that the three-fold test articulated in the judgment effectively limits the scope of the ATA, both in law and in practice.
113. The 2019 case of *Ghulam Hussain vs. the State* by the Supreme Court narrowed the scope of “terrorism.”¹⁶¹ In this case, the Supreme Court held that in order to classify an individual as a “terrorist,” there must be an (1) an actual act of terrorism (2) the intent to commit an act of terrorism, and (3) “intention to advance an ideological, political, or religious cause.”¹⁶² This decision set a new precedent within the Pakistani courts, and established that acts of revenge or disputes did not qualify as terrorism and physical harm to the victim alone was not enough to classify an act as terrorism. The Supreme Court further recommended that the Parliament bring changes to limit the application of the term “terrorism” which is currently too wide and to bring it in line with the international perspective of the term. However, this judgment has not been codified and there has been no change in the scope of the definition of the ATA.
114. The scope of the ATA also means that juveniles unfairly and unlawfully face capital punishment without any safeguards in place. Azam (aka Abdur Rehman) and Moinuddin were arrested in 1998 and convicted in 1999 for murder and armed robbery. The investigating officer filed the case under the Anti -Terrorist Act (ATA), and confessions

¹⁵⁷ National Assembly of Pakistan & Senate of Pakistan, Anti-Terrorism Act, 1997 (Aug. 20, 1997) [ATA], ¶ 6.

¹⁵⁸ Home, Justice Project Pakistan (last updated Dec. 16, 2019), <https://data.jpp.org.pk/>.

¹⁵⁹ Justice Project Pakistan, *Reforming the Anti-Terrorism Act, 1997* 1 (last visited Jul. 13, 2023), available at https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Terrorism/JusticeProjectPakistan_3.pdf.

¹⁶⁰ Justice Project Pakistan. ‘Trial and Terror: The Overreach of Pakistan’s Anti-Terrorism Act’ (Nov 2017) <https://jpp.org.pk/report/trial-and-terror-the-overreach-of-pakistans-anti-terrorism-act/>

¹⁶¹ *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, ¶ 74.

¹⁶² See Hassnain Raza, Determining the Scope of the Anti-Terrorism Act 1997 *Ghulam Hussain v The State*, Shaikh Ahmad Hassan School of Law (last visited Jul. 24, 2023), <https://sahsol.lums.edu.pk/node/12931>

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were extracted from the accused by severe torture.¹⁶³ At the time of their arrest, both Azam and Moinuddin were 17 years of age. Though their conviction predates the implementation of the Juvenile Justice System Ordinance, the retrospective scope of JJSO means that both the accused should be barred from being executed. Indeed, there was an initial recognition of their adolescence as Azam, despite being tried as an adult, was kept in a juvenile facility until he was awarded the death penalty. In 2004, the jail authorities had lodged an appeal to have both the prisoners' sentences reduced because of their ages but the appeal was rejected.¹⁶⁴ Despite assurances from jail officials and a government doctor that both Azam and Moinuddin were 17 at the time of the crime, the court refused to take it into consideration. This is because the JJSO is not a supreme law, and as the ATA has no minimum limit on death penalty, the JJSO is not applied in "terrorism" cases. Moreover, a compromise was reached between the complainant and Azam and Moinuddin and a pardon was granted. However, the ATA does not acknowledge compromises, therefore, their death sentences were upheld.¹⁶⁵

115. **Recommended Questions**

- What steps have been taken to reduce the scope of the definition of terrorism under the Anti-Terrorism Act in order to bring it in line with the jurisprudence of the Supreme Court and international standards?
- What steps have been taken to ensure that individuals under the age of 18 are not tried and sentenced by the Anti-terrorism Courts (ATCs)?

¹⁶³Justice Project Pakistan, *Death Row's Children: Pakistan's Unlawful Executions of Juvenile Offenders* (2017). <https://data.jpp.org.pk/api/files/1542107289267oecto36u8jg.pdf>

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*