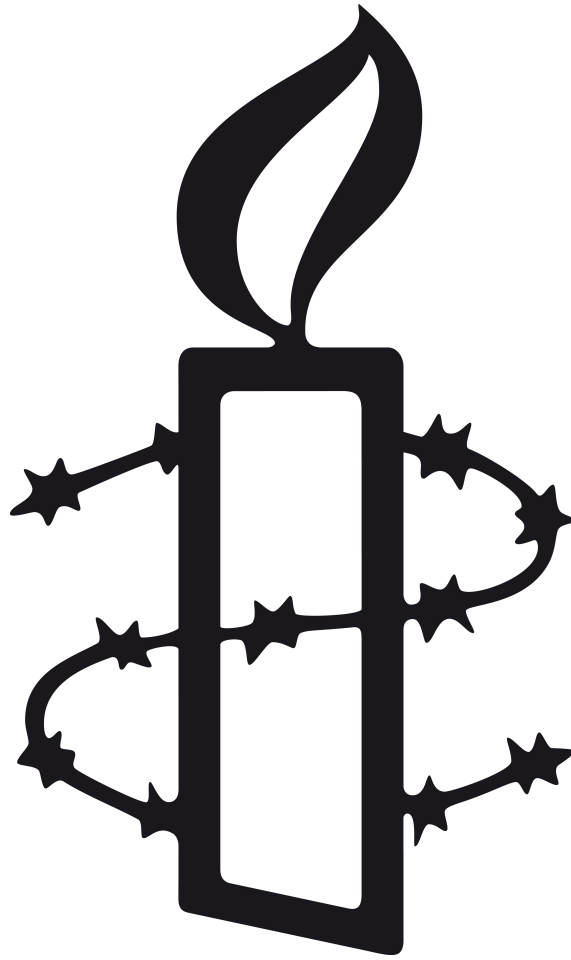


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AMNESTY
INTERNATIONAL



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1. INTRODUCTION

This submission outlines Amnesty International's main concerns ahead of the review of Pakistan's initial report on the implementation of the International Covenant on Civil and Political Rights (hereinafter "the Covenant"), during the 120th session of the United Nations (UN) Human Rights Committee (hereinafter "the Committee") in July 2017. It also takes into account the "list of issues in relation to Pakistan" adopted by the Committee at its 118th session in November 2016.¹

The submission provides information about some of the violations of several substantive rights set out in the Covenant with reference to the use of the death penalty, including by military courts, enforced disappearances, the blasphemy law, and the growing restrictions on the right to freedom of expression. The human rights violations that the submission draws attention to are interconnected, and linked to ongoing armed conflicts, political violence, and Pakistan's National Action Plan to counter-terrorism. In many cases, both state and non-state actors suspected of criminal responsibility have not been held to account for human rights violations or abuses. Human rights defenders have increasingly experienced threats, harassment and other abuses from security forces and armed groups.

¹ UN Human Rights Committee, "List of Issues in relation to the initial report of Pakistan", 15 November 2016. UN Doc. CCPR/C/PAK/Q/1. "List of Issues".

2. THE DEATH PENALTY (ARTICLES 6, 7, 14)

In December 2014, soon after an attack by Taliban gunmen on the Army Public School in Peshawar which killed 141 people, among them 132 children, the government announced a National Action Plan to combat terrorism.² The plan set out 20 action points, including “the implementation of death sentences of those convicted in cases of terrorism”, and setting up of “special trial courts under the supervision of Army” for a duration of two years.³ On 17 December 2014, the government partially lifted a moratorium on executions of civilians which had been in place since 2008, to allow executions of people convicted of terrorism-related offences. Three months later, the government ended the moratorium completely to resume executions for all capital offences, despite urgings from the UN Secretary General and the UN High Commissioner for Human Rights to end executions and re-impose the moratorium.⁴ In January 2015, Parliament authorized the establishment of military courts for two years to try civilians accused of “terrorism motivated by religion or sectarianism”, while civilian courts were strengthened.⁵ On 22 March 2017, Parliament extended the mandate of the military courts for another two years.⁶

Amnesty International opposes the death penalty in all cases and without exceptions, as a violation of the right to life (Article 6 of the Covenant) and as the ultimate cruel, inhuman and degrading punishment. There is evidence which suggests that death sentences have been imposed by military courts in Pakistan after proceedings that have not complied with international standards for a fair trial as set out in Article 14 of the Covenant.⁷ Civilian courts have imposed the death penalty, in contravention of international law, on people with mental disabilities, and individuals who were below 18 years of age when the crime was committed, and after convictions based on evidence/statements obtained through torture or other ill-treatment.⁸

2.1 SCOPE AND INCREASED USE OF THE DEATH PENALTY AND RESUMPTION OF EXECUTIONS

At least 420 people were hanged in the first 25 months since executions resumed in December 2014.⁹ Of those executed, at least 17 had been convicted by military courts in trials that did not meet international fair trial standards (See Section 3 below for details).¹⁰ At least 320 people were executed by hanging in 2015 alone, making it the highest number ever recorded for Pakistan in any given year.¹¹

² “Pakistan Taliban: Peshawar school attack leaves 141 dead”, *BBC*, 16 December 2014. Available: <http://www.bbc.com/news/world-asia-30491435>

³ Government of Pakistan, Ministry of Information, Broadcasting and National Heritage, “20 points National Action Plan”. Available: http://infopak.gov.pk/InnerPage.aspx?Page_ID=46

⁴ BBC, “Pakistan ends death penalty suspension after seven years”. Available: <http://www.bbc.com/news/world-asia-31812177>; See also, UN News Centre, “UN chief urges Pakistan to end execution reinstate death penalty moratorium”, 26 December 2014. Available: <http://www.un.org/apps/news/story.asp?NewsID=49693#.WODxOWnyvIV>

⁵ See Section 2, Pakistan Army (Amendment) Act, 2015.

⁶ Pakistan Army (Amendment) Act, 2017 and Constitution (Twenty-eight Amendment) Act, 2017. See also Amnesty International, “Pakistan is surrendering the judicial system to the military”, 22 March 2017. Available: <https://www.amnesty.org.uk/press-releases/pakistan-surrendering-judicial-system-military>

⁷ Amnesty International, *Annual Report 2016-17: The State of the Human Rights* (Index: POL 10/4800/2017) p. 285. See also section 3 of this document.

⁸ Justice Project Pakistan, *Death Row's Children: Pakistan's Unlawful Executions of Juvenile Offenders*. February 2017. See also, Justice Project Pakistan/Yale Law School, *A Most Serious Crime: Pakistan's Unlawful Use of the Death Penalty*. September 2016.

⁹ Amnesty International, “Death sentences and executions in 2015” (ACT 50/3487/2016), April 2016; and Amnesty International, “Death sentences and executions in 2016” (ACT 50/5740/2017), April 2017.

¹⁰ Amnesty International, “Pakistan: Military courts won't deliver justice”, 22 March 2017. Available: <http://www.amnesty.ca/news/pakistan-military-courts-won%E2%80%99t-deliver-justice>

A majority of people who have been executed in 2015 and 2016 were not convicted of terrorism-related offences. Several prisoners were tried and convicted by special courts established under the Anti-Terrorism Act of 1997, which the authorities have used to try defendants charged with offences under the Penal Code.¹² In violation of international law and standards, Pakistan retains the death penalty for crimes which do not involve intentional killing, including drug-related offences, rape and blasphemy.¹³ Article 6(2) of the Covenant restricts the use of the death penalty in countries that have not yet abolished it to “the most serious crimes”, most recently interpreted to refer to intentional killing.¹⁴

For some of the offences - including blasphemy - the death penalty is provided as the mandatory punishment. The UN Human Rights Committee has stated that “the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life [...] in circumstances where the death penalty is imposed without any possibility of taking into account the defendant’s personal circumstances or the circumstances of the particular offence”.¹⁵

On 10 April 2017, Indian national Kulbhushan Jadhav was convicted and sentenced to death by a military court for espionage, sabotage and terrorism. He had been tried by the Field General Court Martial under S.59 of the Pakistan Army Act 1952 and section 3 of the Official Secrets Act 1923. The Indian government subsequently referred the case to the International Court of Justice (ICJ). India contends that Pakistan has breached its obligations under Article 36 of the Vienna Convention on Consular Relations by preventing Indian diplomatic representative’s access to Kulbhushan Jadhav from the time of arrest and during detention and trial; and that the Pakistani authorities failed to inform Kulbhushan Jadhav of his right to seek consular access. On 18 May, the ICJ stayed the execution pending a decision on the merits of the case.

2.2 INADEQUACY OF PROCEDURAL SAFEGUARDS

The 1984 *ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty* require that ‘capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts’ and “pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.”¹⁶ Sentencing someone to death following a trial that does not respect basic fair trial standards violates the right to life of that person.¹⁷

However, the legal framework of Pakistan does not provide adequate safeguards to ensure that the right to a fair trial or other due process guarantees are not violated in death penalty and other cases. Among other concerns, the special Anti-Terrorism Courts, set up under the Anti-Terrorism Act, 1997 and which have been used to try individuals charged with crimes under the Penal Code, curtail the right to a fair trial by failing to exclude as evidence statements extracted through torture.¹⁸ Judges in Anti-Terrorism Courts, which

12 convicts were executed in 2016 and another five on 8 March 2017. See, “Five hardcore terrorists executed: ISPR”, *Samaa TV*, 8 March 2017. Available: <https://www.samaa.tv/pakistan/2017/03/five-hardcore-terrorists-executed-ispr/>

11 Amnesty International, “Death penalty 2016: Alarming surge in recorded executions sees highest toll in more than 25 years”, 6 April 2016. Available: <http://www.amnestyusa.org/news/press-releases/death-penalty-2016-alarming-surge-in-recorded-executions-sees-highest-toll-in-more-than-25-years>

12 “List of Issues”, para 7. See also, Amnesty International, “Death sentences and executions in 2015” (ACT 50/3487/2016), April 2016; and Amnesty International, “Death sentences and executions in 2016” (ACT 50/5740/2017), April 2017.

13 Amnesty International, *Annual Report 2016*. p 285. See also, HRCP, “Death penalty offences”. Available: <http://hrcp-web.org/hrpweb/death-penalty-offences/>

14 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN doc. A/67/275, 9 August 2012, para. 35.

15 Human Rights Committee, *Pagdayawon Rolando v Philippines*, Communication No. 1110/2002, UN document CCPR/C/82/D/1110/2002, 8 December 2004, para. 5.2.

16 UN ECOSOC Resolution 1984/50 of 25 May 1984, “Safeguards for those facing the Death Penalty”, paras 4 and 5.

17 Article 6(2) ICCPR; see also UN Special Rapporteur on the independence of judges and lawyers, UN Doc. A/62/207 (2007), para. 62.

18 Section 21-H of the Anti-Terrorism Act, 1997 provides that, “notwithstanding anything contained in the Qanoon-e-Shahadat, 1984 (President’s Order No.10 of 1984) or any other law for the time being in force, where in any Court proceeding held under this Act the evidence produced raises the presumption that there is a reasonable probability that the accused has committed the offence, any confession made by the accused during investigation without being compelled, before a police officer not below the rank of a District Superintendent of Police, may be admissible in evidence against him if the Court so deems fit”. Article 38 of the Qanoon-i-Shahadat (The Law of Evidence, 1984) excludes the confessions made before police as evidence in trials.

regularly hear death penalty cases, are under pressure to conclude trials within seven working days.¹⁹ Further concerns are highlighted in section 3 of this submission.

Those sentenced to death can spend years in jail awaiting the outcomes of their appeals. In October 2016, the Supreme Court acquitted two brothers, Ghulam Sarwar and Ghulam Qadir, who had already been hanged in October 2015. The brothers had been convicted and sentenced to death for murder in 2005 despite contradictions in the statements of a prosecution witness.²⁰ The jail authorities executed the brothers before their appeal came up for hearing at the Supreme Court. The UN Safeguards guaranteeing protection of the rights of those facing the death penalty state that executions may not be carried out “pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.”²¹

Article 45 of Pakistan’s Constitution gives the President power to “grant pardon, reprieve and respite, and to remit, suspend or commute” death sentences. However, since executions resumed in 2014, not a single mercy petition has been accepted. The authorities appear to have maintained a blanket policy of rejecting all mercy petitions, undermining the right of those sentenced to death to seek a meaningful review of their cases through pardon procedures, as guaranteed by Article 6 (4) of the Covenant.²² Furthermore, Article 54 of the Penal Code allows for the commutation of a death sentences in cases involving the offence of (murder) “qatl” only with the consent of the heirs of the victim.

2.3 THE USE OF THE DEATH PENALTY ON JUVENILE OFFENDERS

The death penalty has been used on persons who were below 18 years of age when the crime was committed, despite the clear prohibition of the practice in Article 6(5) of the Covenant, Article 37(a) of the Convention on the Rights of the Child, and under customary international law.²³ Pakistan’s Juvenile Justice System Ordinance (JJSO), 2000 also prohibits the imposition of the death penalty on “a person who at the time of commission of an offence has not attained the age of eighteen years”.²⁴ Since December 2014, at least five individuals have been executed who were believed to be younger than 18 years of age at the time when the crime was committed.²⁵

On 10 June 2015, Aftab Bahadur Masih was hanged in Lahore after his mercy petition was rejected. Masih, who had a disadvantaged socio-economic background and belonged to the minority Christian community, was 15 years old when he was convicted of murder. At the time of investigation, the police recorded his age as 21.

Additionally, he was tried under the Special Courts for Speedy Trials Act, 1992, which has provisions aimed at expediting the trial process. This includes Section 7 that obligates the police to complete the investigation in 14 days, and Section 8, under which courts are required to conclude trials within 30 days. Often this leads to violation of the right to a fair trial in the interest of reaching a speedy resolution on the cases. Masih’s lawyers said that he had been tortured by the police into “confessing” his crime. The eyewitnesses in the case had also retracted their testimonies.²⁶ Masih spent 23 years on death row before being executed.

“I am an innocent man who’s spent all my adult life awaiting death, sentenced under legislation meant to stop terrorists.”

¹⁹Section 19(7) of the Anti-Terrorism Act states that “The Court shall on taking cognizance of a case, proceed with the trial from day to day and shall decide the case within seven working days failing which an application may be made to the Administrative Judge of the High Court concerned for appropriate directions for expeditious disposal of the case to meet the ends of justice”.

²⁰ “Wrongfully Hanged”, *Dawn*, 24 October 2016. Available: <https://www.dawn.com/news/1291838>

²¹ UN Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council through resolution 1984/50 of 25 May 1984, para. 8.

²² Reprieve, “Pakistan acquits two hanged men, as ‘insane’ man faces execution”, 28 October 2016. Available: <http://www.reprieve.org.uk/press/pakistan-acquits-two-hanged-men-insane-man-faces-execution/>

²³ Curtis A. Bradley, “The Juvenile Death Penalty and International Law”, 52 *DUKE Law Journal* 485 (2002). See also, “List of issues”, para 18.

²⁴ See Section 2(b) and section 12 (a) of the Juvenile Justice System Ordinance, 2000.

²⁵ JPP, OMCT and Reprieve, “Pakistan: Alternative Report to the Human Rights Committee”, July 2016. p 18; JPP, “Death Row’s Children: Pakistan’s Unlawful Executions of Juvenile Offenders”, February 2017. p 5.

²⁶ JPP, “Death Row’s Children: Pakistan’s Unlawful Executions of Juvenile Offenders”, p 18. See also, “Pakistan executes man who was 15 when convicted of murder”, *The Guardian*, 10 June 2015. Available: <https://www.theguardian.com/world/2015/jun/10/pakistan-executes-aftab-bahadur-sentenced-to-death>

(Aftab Bahadur Masih)

“My 22 years on Pakistan’s death row could end this week. What purpose will my execution serve?” *The Guardian*, 9 June 2015.

Aftab Masih’s and other similar cases illustrate several shortcomings in Pakistan’s juvenile justice system.²⁷ The police, prosecutors and the courts do not follow any age determination protocols. Upon arrest, police officers record a suspect’s age based on physical examination which can be highly misleading. Pakistan has one of the lowest birth registration rates in the world.²⁸ Children who come into conflict with the law therefore often do not have reliable documentary evidence to prove their age.²⁹

In 2016, the Committee on the Rights of the Child (the CRC Committee) urged the government to “establish effective age determination mechanisms in order to ensure that in cases where there is no proof of age, the child is entitled to a proper investigation to establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt”.³⁰ The CRC Committee also called upon Pakistan to ensure that all cases involving children are “overseen by juvenile courts in compliance with the Convention and all applicable international standards”.³¹

The Anti-Terrorism Act, 1997 and the recently promulgated Army Amendment Act, 2017 both have an overriding effect over other laws prevailing in the country, including the JJSO, 2010.³² Thus, contrary to the prohibition under JJSO 2010 of the imposition of the death penalty on children under 18 years old, children are treated as adults before anti-terrorism courts and the military courts, and are liable to be subjected to the death penalty, in contravention of international law.

2.4 THE USE OF THE DEATH PENALTY ON PEOPLE WITH MENTAL DISABILITIES

Pakistan’s domestic legislative framework identifies mental incapacity as a defence, but is silent on the exclusion of those with mental disability from the imposition of the death penalty.³³

In September 2016, the Supreme Court dismissed a petition for a stay of the execution of a convict diagnosed as having paranoid schizophrenia. The Supreme Court declared that “rules relating to mental sickness are not subjugative to delay the execution of death sentence”.³⁴ The petitioner, Imdad Ali, was convicted of murder in 2002. His appeals against his conviction and sentence were rejected by the High Court and the Supreme Court. In November 2015, the President rejected his mercy petition. Throughout his proceedings, Imdad Ali raised the fact that he had a mental disability, but the trial and appeals courts rejected his claim. Ali’s lawyers sought a stay on the execution to enable him to write his will, following necessary medical treatment.³⁵ Amid protests by human rights groups, the Supreme Court constituted a “medical board” to examine Ali in November 2016, stating that his execution would be stayed if he were found to have a mental disability. The court, however, ruled out the possibility of quashing his sentence.³⁶ The court has yet to set a fresh date for hearing. Ali remains on death row.

²⁷ For details of other cases, see JPP, “Death Row’s Children: Pakistan’s Unlawful Executions of Juvenile Offenders”, pp. 18-24.

²⁸ UNICEF, “Progress Report 2013-15: Birth Registration”. Available: https://www.unicef.org/pakistan/Birthregistration_LR.pdf

²⁹ Miqdad Naqvi, “Executing children”, *The News*, 16 February 2017. Available: http://epaper.dawn.com/DetailImage.php?StoryImage=16_02_2017_009_001

³⁰ Committee on the Rights of the Child, “Concluding Observations on the Fifth Periodic Report of Pakistan”, July 2016. UN Doc. CRC/C/PAK/CO/5, para 25 b

³¹ “Concluding Observations on the Fifth Periodic Report of Pakistan”, para 25 c.

³² See Section 32, Anti-Terrorism Act, 1997; Section 4, Pakistan Army Amendment Act, 2017.

³³ Section 84 of the Penal Code. See also, “List of issues”, para 8.

³⁴ Civil Petition No. 2990 of 2016, *Mst Safia Bano w/o Imdad Ali v. Home Department Government of Punjab and Others*, 27 September 2016, para 13.

³⁵ Civil Petition No. 2990, para 4.

³⁶ “Supreme Court forms medical board to examine schizophrenic convict”, *Daily Times*, 19 November 2016. Available: <http://dailytimes.com.pk/islamabad/19-Nov-16/supreme-court-forms-medical-board-to-examine-schizophrenic-convict>

In January 2017, the Lahore High Court gave a last-minute reprieve to Khizar Hayat, another individual diagnosed as having schizophrenia, days before he was to be executed. The court said it would be unjust to execute Hayat before the Supreme Court had made a decision regarding Imdad Ali.³⁷

International law prohibits the imposition and implementation of death sentences against persons with mental or intellectual disabilities. This includes people who have developed mental disorders after being sentenced to death.³⁸

Amnesty International recommends that the State party:

- Abolish the death penalty for all crimes;
- Pending abolition of the death penalty, reinstate a moratorium on executions and commute all death sentences to terms of imprisonment;
- Ensure no person who was below 18 years of age at the time of the commission of an offence is subjected to the death penalty, including by allowing those charged with a criminal offence access to an effective and independent age determination process, and treating them as children if doubts remain about their age at the time of the crime;
- Bring provisions in national legislation that allow for the use of the death penalty in line with international law and standards, including by removing from the scope of the death penalty any offence other than intentional killing and ensuring that all those who have been sentenced to death for other offences have their sentences commuted accordingly, and by ending the mandatory death penalty.
- Ensure that in proceedings related to offences where the death penalty might be imposed, that the most rigorous internationally recognized standards for fair trial are respected;
- Initiate an immediate and independent review of all cases where there is credible evidence that prisoners who have been sentenced to death have mental or intellectual disabilities or disorders, including those who have developed such disabilities or disorders after being sentenced and ensure that no one with such disabilities is executed or sentenced to death in the future.
- Ensure that no execution is carried out while appeals are pending and that genuine consideration is given to all clemency applications by persons under sentence of death, including by ensuring that clemency procedures are an integral part of the overall system for ensuring justice and fairness in the legal process.

³⁷ "Pakistan court stays execution of Khizar Hayat's execution", *Aljazeera*, Available: <http://www.aljazeera.com/news/2017/01/pakistan-court-stays-khizar-hayat-execution-170112150841304.html>

³⁸ Article 6(5) of the ICCPR and Paragraph 3 of the UN Death Penalty Safeguards; UN Human Rights Commission resolution 2005/59 on the question of the death penalty, 20 April 2005, UN Doc. E/CN.4/RES/2005/59; Human Rights Committee Concluding Observation: USA, UN Doc. CCPR/C/USA/CO/3/Rev.1 (2006) para 7, Japan, UN Doc. CCPR/C/JPN/CO/5 (2008) para 16; *Sahadath v Trinidad and Tobago*, UN Doc. CCPR/C/78/D/684/1996 (2002) para 7.2; Special Rapporteur on extrajudicial executions, UN Doc. A/51/457 (1996) paras 115-116.

3. MILITARY COURTS (ARTICLES 6, 7, 9, 14)

Everyone charged with a criminal offence has the right to a trial by a competent, independent and impartial tribunal established by law.³⁹ The UN Special Rapporteur on the independence of judges and lawyers has stated that “using military or emergency courts to try civilians in the name of national security, a state of emergency or counter-terrorism... runs counter to all international and regional standards and established case law”.⁴⁰ Furthermore, the Special Rapporteur on extrajudicial executions has stated that military and other special courts should not have the authority to impose the death penalty.⁴¹

In January 2015, Pakistan’s Parliament authorized the establishment of military courts for two years to try civilians accused of “terrorism motivated by religion or sectarianism”.⁴² On 22 March 2017, Pakistan’s parliament approved a new constitutional amendment to extend the tenure of the military courts for another two years.⁴³ Amnesty International has urged Pakistan’s lawmakers to reverse the decision to reinstate the military courts.⁴⁴

During the initial two-year tenure, the eleven military courts set up in the country convicted 274 individuals following trials held in secret and in violation of fair trial guarantees set out in Article 6 of the Covenant.⁴⁵ These courts imposed death sentences on 161 prisoners, out of whom 17 have been executed as of 31 March 2017. Another 113 were given jail terms, mostly life imprisonment.⁴⁶ The charges against the defendants, the nature of evidence, and written judgments explaining the reasons for conviction, were not made public.⁴⁷

Press statements by the military public relations wing (the ISPR), seemed to indicate that 90% of the accused had “confessed” to their crimes.⁴⁸ Such a high confession rate has raised concerns that the military authorities may have used interrogation techniques involving torture or other ill treatment, in violation of Article 7 of the Covenant. The accused persons in these trials were not given the right to appoint and consult legal counsels “of their own choosing”, as guaranteed under Article 14 of the Covenant.⁴⁹ Instead, they were defended by military officers appointed by the military courts. Those convicted did not have the right to appeal their convictions in civilian courts. The military courts were run by military officers subordinate to the military chain of command - and who had no formal legal training - in breach of the UN Basic Principles on the Independence of the Judiciary.⁵⁰

³⁹ Article 14(1) of the ICCPR.

⁴⁰ “Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul”, 2013. UN Doc A/68/285, para. 46

⁴¹ Report of the Special Rapporteur on extrajudicial executions, 2012, UN Doc. A/67/275.

⁴² See Section 2, Pakistan Army (Amendment) Act, 2015.

⁴³ See the 28th Constitutional Amendment Act, 2017 and the Pakistan Army (Amendment) Act, 2017. Available:

http://www.na.gov.pk/uploads/documents/1489140819_310.pdf

http://www.na.gov.pk/uploads/documents/1489140981_151.pdf

⁴⁴ Amnesty International, “Pakistan is surrendering the judicial system to the military”, 22 March 2017. Available:

<https://www.amnesty.org.uk/press-releases/pakistan-surrendering-judicial-system-military>

⁴⁵ International Commission of Jurists, “Details of civilians convicted by military courts (as of 6 January 2017)”. Available:

<https://www.icj.org/wp-content/uploads/2017/01/Pakistan-Updated-List-of-convicted-Advocacy-2017-ENG.pdf>

⁴⁶ “The sun has set on military courts – here’s why it should never rise again”, *Dawn*, 6 March 2016. Available:

<https://www.dawn.com/news/1306792>

⁴⁷ International Commission of Jurists, “Military Injustice in Pakistan: A Briefing Paper”, July 2016. p. 3.

⁴⁸ Reema Omer, “No more military courts”, *Dawn*, 21 February 2017. Available: <https://www.dawn.com/news/1316058>

⁴⁹ Amnesty International, *Annual Report 2016-17: The State of the Human Rights* (Index: POL 10/4800/2017) p. 285.

⁵⁰ “Basic Principles on the Independence of the Judiciary”, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. See, in particular, Principle 10. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

The military courts tried two broad categories of accused persons. First, there were those whose cases were transferred to the military courts from regular criminal courts and Anti-Terrorism courts. According to official sources, the cases for referral to the military courts were chosen by “apex committees” in provinces comprising civilian and military officials.⁵¹ However, the authorities did not publicize the criteria used for the selection of cases to be tried by the military courts. Though the exact numbers are not known, there are credible accounts suggesting that several cases referred by the apex committees to military courts included accused persons who had been less than 18 years of age at the time of the crime.⁵²

In addition to the cases selected by the apex committees, the military courts tried accused civilians who had been held in internment centres under the Actions in (Aid of Civil Power) Regulation, 2011. The law, promulgated in June 2011, gives the armed forces in the Federally Administered Tribal Areas (FATA) and the Provincially Administered Tribal Areas (PATA) sweeping powers to detain suspects in secret without charge for an indefinite period.⁵³ The law contravenes Article 9 (right to liberty, security and freedom from arbitrary detention) of the Covenant as well as Article 10(4) of Pakistan’s constitution, which bars any law providing for preventive detention of over three months unless a detainee is heard in person by a review board.⁵⁴ In June 2016, the International Commission of Jurists said it had received information on torture and other ill-treatment in the internment centres.⁵⁵ The government has yet to investigate these allegations. As far as Amnesty International is aware, independent observers and human rights groups are not allowed to access internment centres.

In January 2017, it emerged that the military courts had convicted at least five “missing persons”, whose cases were being investigated by the Inquiry Commission on Enforced Disappearances.⁵⁶ In one such case, the family of the missing individual, Haider Ali, heard about him for the first time in six years, when an army press release announced that he had been found guilty and sentenced to death by a military court. The family maintained that Haider Ali was 14 when the Army arrested him. Haider’s family challenged the conviction in the Peshawar High Court, citing fair trial concerns and the fact that the accused had been a child when arrested. In October 2015, the Peshawar High Court ruled that his conviction had been lawful as the Army Act, 1952 superseded other laws, including the Juvenile Justice System Ordinance, 2000, which requires that children can only be tried in juvenile courts and cannot be penalized by death.⁵⁷

The military courts were given a two-year mandate as a temporary measure while the civilian courts were strengthened. However, there have been no apparent efforts by the government to strengthen the judiciary during this period. The decision to revive the military courts for another two years undermines the role of civilian courts and normalizes the denial of the right to a fair trial and other human rights. Currently the jurisdiction of the High Court and Supreme Courts does not extend to FATA.

Amnesty International recommends that the State party:

- Reverse the decision to extend the tenure of the military courts and abrogate military jurisdiction for any offence other than breaches of military discipline - those that only military personnel may commit;
- Investigate the allegations of torture and ill-treatment, and the arbitrary detention of the accused in the military internment centres and bring those suspected of criminal responsibility to justice in fair trials before ordinary civilian courts;
- Allow independent observers and human rights groups access to the internment centres;

⁵¹ “Apex committees formed in all provinces to implement NAP”, 3 January 2015. Available: <https://tribune.com.pk/story/816591/army-chief-attends-meeting-on-formation-of-nap-committees/>

⁵² Amnesty International’s interviews with key informants, 25-30 March 2017. See also, Reema Omar, “Children and Military Courts”, *Dawn*, 14 December 2015. Available: <https://www.dawn.com/news/1226173>

⁵³ Amnesty International, “Open Letter: Pakistan must resolve the crisis of enforced disappearances”, 30 August 2012. (Index: ASA 33/012/2012). Also see Amnesty International, Report: “The Hands of Cruelty: Abuses by armed forces and Taliban in Pakistan’s Tribal Areas”, available: http://www.amnestyusa.org/sites/default/files/p4026_end_impunity_in_tribal_areas.pdf

⁵⁴ Article 10(4) of the Constitution reads: “No law providing for preventive detention shall be made except to deal with persons acting in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof, or external affairs of Pakistan, or public order, or the maintenance of supplies or services, and no such law shall authorise the detention of a person for a period exceeding [three months] unless the appropriate Review Board has, after affording him an opportunity of being heard in person, reviewed his case and reported, before the expiration of the said period, that there is, in its opinion, sufficient cause for such detention, and, if the detention is continued after the said period of [three months], unless the appropriate Review Board has reviewed his case and reported, before the expiration of each period of three months, that there is, in its opinion, sufficient cause for such detention”.

⁵⁵ International Commission of Jurists, “Military Injustice in Pakistan: A Briefing Paper”, July 2016. pp. 19-20

⁵⁶ “Military courts convicted five missing persons”, *Dawn*, 8 January 2017. Amnesty International’s interviews with key informants, March 30-April 2, 2017.

⁵⁷ “PHC upholds terror convictions by military courts”, *Dawn*, 15 October 2015. Available: <https://www.dawn.com/news/1213212>

- Make public the criteria used by the provincial apex committees for selecting the cases for referral to the military courts;
- Repeal the Actions in (Aid of Civil Power) Regulation, 2011. Ensure that the Covenant and the fundamental rights guaranteed in the Constitution of Pakistan apply fully to FATA, and that the jurisdiction of the High Courts and the Supreme Court extends to the region;
- Ensure that all cases where there is evidence that the accused was less than 18 years at the time the crime was committed are tried fairly in the juvenile justice system, without recourse to the death penalty.

4. ENFORCED DISAPPEARANCES (ARTICLES 7, 9)

Enforced disappearances have been historically restricted to Balochistan, FATA, and parts of Khyber Pakhtunkhwa and urban Sindh, but are now taking place in Punjab and Islamabad as well. In August 2015, journalist Zeenat Shahzadi was abducted in Lahore by armed gunmen on her way to work.⁵⁸ She is believed to be the first woman to have been subjected to an enforced disappearance in Pakistan.⁵⁹ Before she was abducted, she had been reporting on the case of Hamid Ansari, an Indian national who had gone missing in 2012.⁶⁰ Zeenat Shahzadi is still missing. In early January 2017, five human rights defenders were abducted from the capital Islamabad and parts of the Punjab province. Four of the five defenders - academic and poet Salman Haider, bloggers Asim Saeed, Ahmed Raza Naseer and Waqass Goraya - returned home between 27 and 29 January 2017. At the time of writing, one of them, Samar Abbas, is still missing.⁶¹ Though authorities have denied any involvement in the cases, one of the defenders, Waqass Goraya, who now lives in the Netherlands, has said that a "government institution" with links to the military held him and tortured him.⁶² All five defenders had used the Internet to express their views on human rights, criticising religious extremism and Pakistan's military establishment. The government has yet to investigate the cases and hold those suspected of criminal responsibility to account in fair trials without recourse to death penalty. Sections of local media have issued threats against human rights defenders, accusing them of "anti-state" activities and "blasphemy".⁶³ One programme in particular, "*Aisay Nahi Chalay Ga*", aired on Bol television, accused

⁵⁸ "Zeenat Shahzadi: Fears for missing Pakistan reporter", *BBC*, 11 May 2016. Available: <http://www.bbc.com/news/world-asia-36149315>

⁵⁹ Amnesty International: Pakistan: "Where is Zeenat Shahzadi?", 30 August 2016. Available: <https://www.amnesty.org/en/latest/news/2016/08/pakistan-where-is-zeenat-shahzadi/>

⁶⁰ Ansari has since been located and is currently serving a three-year sentence in Peshawar jail allegedly for "spying". "Zeenat Shahzadi: Fears for missing Pakistan reporter", *BBC*, 11 May 2016. Available: <http://www.bbc.com/news/world-asia-36149315>

⁶¹ Amnesty International, "Further information: Pakistan: Activists reunite with families; one still missing", 3 February 2017 (Index: ASA 33/5603/2017). Available: <https://www.amnesty.org/en/documents/asa33/5603/2017/en/>

⁶² Pakistan activist Waqass Goraya: The state tortured me", *BBC*, 9 March 2017. Available: http://www.bbc.com/news/world-asia39219307?ocid=socialflow_twitter%3FSThisFB%3FSThisFB

⁶³ Amnesty International, "Open letter calling for greater protection of Human Rights Defenders", 1 March 2017, (Index: ASA 33/5792/2017), Available: <https://www.amnesty.org/en/documents/asa33/5792/2017/en/>

the human rights defenders who had gone missing in January 2017, as well as other activists and journalists, of “blasphemy”.⁶⁴

The Committee has asked the government of Pakistan to “provide information on the measures taken to address the large number of allegations of enforced disappearance” and to “comment on allegations that the practice of enforced disappearance is often used to target political or human rights activists”.⁶⁵ In June 2012, the UN Working Group on Enforced or Involuntary Disappearances visited Pakistan. The information that the Working group received from NGOs and from the families of those subjected to enforced disappearances in Balochistan, Khyber Pakhtunkhwa and Sindh appeared to reveal a pattern. The Working Group said: “The abduction, often taking place in front of witnesses, is reported to have been perpetrated by law enforcement agencies, such as the police, the Frontier Corps (FC) or the Rangers, jointly with members of intelligence agencies in civilian clothing. Most of the time, intelligence agencies, such as Inter-Services Intelligence (ISI) or Military Intelligence (MI) are alleged to be directing the operations”.⁶⁶

The Working Group called on the Government to ratify the *International Convention for the Protection of All Persons from Enforced Disappearance* and “stressed that actions taken to deal with security threats, and in particular with terrorism, must at all times respect nationally and internationally recognized human rights”.⁶⁷ Pakistan has yet to adhere to the Convention. In addition, enforced disappearances are not specifically criminalized in the domestic legal framework.

Between 16 May 2015 and 18 May 2016, the Working Group transmitted to the Government 321 new cases under its urgent action procedure, most of which concerned individuals abducted in Sindh Province who were affiliated with the Muttahida Qaumi Movement.⁶⁸ On 16 September 2016, in a follow-up to the recommendations made in the report on its visit to Pakistan, the Working Group said it was still “gravely concerned about the reported widespread practice of enforced disappearances in Pakistan and the very high number of cases received recently, especially in relation to Sindh”.⁶⁹ The Working Group also observed that “there is a climate of impunity in Pakistan with regard to enforced disappearances, and the authorities are not sufficiently dedicated to investigate cases of enforced disappearance and hold the perpetrators accountable”.⁷⁰ The Working Group’s claim is borne out by the fact that, to date, not a single person has been convicted in relation to acts of enforced disappearances.⁷¹

Pakistan set up a Commission of Inquiry on Enforced Disappearances in 2011. This has the mandate to register all cases of enforced disappearances, request a report on the status of these cases from the agencies, conduct hearings, and issue police investigations. As of March 2017, the Commission was investigating 1,240 unresolved cases of “missing persons”.⁷² NGOs and human rights defenders believe the actual number of disappeared persons is much higher.⁷³ In Balochistan, where the army and paramilitary troops have been fighting Baloch nationalists demanding political and economic autonomy since 2003, at least 650 individuals remain missing in suspected cases of enforced disappearances carried out by the security agencies.⁷⁴ The Commission continues to have limited authority over security agencies. The Commission requests that the agencies produce the “missing person”, but so far, these orders have never been respected. The agencies are not held to account for non-compliance of the Commission’s orders.

⁶⁴ On 20 January 2017, prominent human rights defender Jibran Nasir filed a complaint with the Pakistan Media Regulatory Authority alleging how the allegations of blasphemy against him on the media programme, “*Aisay Nahi Chalay Ga*”, had triggered death threats against him. “Jibran Nasir moves PEMRA against Amir Liaquat over blasphemy allegations”, *The Express Tribune*, 21 January 2017. Available: <https://tribune.com.pk/story/1302735/jibran-nasir-moves-pemra-amir-liaquat-blasphemy-allegations/>. On 1 March 2017, Amnesty wrote an open letter to Pakistan’s Minister of Interior, urging him to take action to protect journalists and human rights defenders who had been on the receiving end of a “smear campaigns” and accusations of blasphemy. See, Amnesty International, *Pakistan: Open Letter Calling for Greater Protection of Human Rights Defenders* (Index: ASA 33/5792/2017). Available: <https://www.amnesty.org/en/documents/asa33/5792/2017/en/>

⁶⁵ List of issues para 9.

⁶⁶ UN General Assembly, “Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Pakistan”, 26 February 2013. UN Doc. A/HRC/22/45/Add.2, paras 41-42.

⁶⁷ “Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Pakistan”, paras 89(a) and para 90.

⁶⁸ UN General Assembly, Report of the Working Group on Enforced or Involuntary Disappearances”, 28 July 2016. UN Doc. A/HRC/33/51, para 97.

⁶⁹ UN General Assembly, “Report of the Working Group on Enforced or Involuntary Disappearances. Addendum: Follow-up report to the recommendations made by the Working Group”, 13 September 2016. UN Doc. A/HRC/33/51/Add.7, para 24.

⁷⁰ “Report of the Working Group on Enforced or Involuntary Disappearances. Addendum: Follow-up report to the recommendations made by the Working Group”, para 25.

⁷¹ International Commission of Jurists, “Enforced Disappearances in Pakistan: UN Statement”, 15 September 2016. Available: <https://www.icj.org/enforced-disappearances-in-pakistan-un-statement/>

⁷² Commission of Inquiry on Enforced Disappearances, “Monthly Summary on Cases of Alleged Disappearances”. Available: <http://coioed.pk/>

⁷³ International Commission of Jurists, “Enforced Disappearances in Pakistan: UN Statement”, 15 September 2016. Available: <https://www.icj.org/enforced-disappearances-in-pakistan-un-statement/>

⁷⁴ Amnesty International’s interviews with key informants, February-March 2017. See also, Maqbool Ahmed, “Road to the Future: Hopes and fears as China comes to Gawadar”, *Herald*, February 2017.

Often, when the agencies deny that a “missing person” is in their custody, the Commission takes the denial on face value, rather than conducting a proper investigation.⁷⁵

Amnesty International welcomes the proposed Right to Information Bill, adopted by a Senate Select Committee in February 2017, which obligates all state institutions to provide information about missing persons within three days of a request for information being filed.⁷⁶

Amnesty International recommends that the State party:

- Ratify or accede to the International Convention for the Protection of All Persons from Enforced Disappearance without making any reservation or declaration amounting to reservations and implement it fully under national law;⁷⁷
- Recognize the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims or other states parties;
- Constitute an independent inquiry into all suspected cases of enforced disappearances of political workers, human rights defenders and others, and investigate all those suspected to be responsible in fair trials before ordinary civilian courts;
- Enact the Right to Information Bill approved by the Senate Select Committee.

5. FREEDOM OF EXPRESSION AND PRIVACY (ARTICLES 17, 18, 19)

Pakistan continues to be a dangerous place for media persons and human rights defenders to work. Both, state and non-state actors have attempted to silence critical voices through threats, intimidation, abduction and killing.⁷⁸ According to the International Federation of Journalists, five journalists were killed in Pakistan in 2016.⁷⁹ On 8 May 2016, Khurram Zaki, a noted human rights defender and editor of the website “Let us Build Pakistan”, was gunned down in Karachi. Zaki had campaigned against Maulana Abdul Aziz, the Imam of the Lal Masjid (Red Mosque) in Islamabad, known for his anti-Shia rhetoric and support for the armed group described as the so-called Islamic State (IS).

⁷⁵ “Report of the Working Group on Enforced or Involuntary Disappearances. Addendum: Follow-up report to the recommendations made by the Working Group”, p 107.

⁷⁶ “Senate Select Committee passes RTI bill”, *Dawn*, 15 February 2017. Available: <https://www.dawn.com/news/1314872>

⁷⁷ ‘See Amnesty International ‘Checklist for effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance’ (IOR 51/006/2011).

⁷⁸ Amnesty International, “*A Bullet Has Been Chosen for You*”: *Attacks on Journalists in Pakistan* (Index: ASA 33/005/2014). p 8.

⁷⁹ International Federation of Journalists, “IFJ list of journalists and media staff killed in 2016”. Available: http://www.ifj.org/fileadmin/documents/Killed_List_2016.pdf

In an overwhelming majority of cases investigated by Amnesty International, the Pakistani authorities failed to carry out prompt, impartial, independent and thorough investigations into human rights abuses against journalists, or to bring those responsible to justice.⁸⁰ In April 2014, Hamid Mir, host of *Capital Talk*, a popular TV show aired on the privately-owned Geo News channel, was shot and wounded in an attack in Karachi. Prior to the attack, Hamid Mir had reported on the military in critical terms, including its role in enforced disappearances in Balochistan. Mir and his colleagues accused high-ranking officials within the ISI (the Inter-Service Intelligence) of instigating the attack. When Geo TV aired these accusations, it was taken off air. The channel remained unavailable in parts of the country for weeks.⁸¹ Soon after the attack, the Prime Minister instituted a high-level judicial commission to “ascertain facts, identify culprits and fix responsibility for the incident”.⁸² Though the commission submitted its report on 18 December 2015, the government did not make it public. However, leaked copies of the report appeared on social media in April 2016. The commission was unable to reach a conclusion regarding the identity of the culprits or fixing responsibility for the incident on any individual, group or organization.⁸³ However, the report did point out that “there was complete failure on the part of all the law enforcing agencies in the performance of their duty to properly investigate the instant case”.⁸⁴ The report also endorsed the recommendations proposed by a Special Working Group of Pakistan Coalition on Media Safety (PCOMS) “to investigate attacks against media persons, namely, provision for appointment of a special prosecutor, legal aid unit, family counselling unit and primary case investigation unit are also worth consideration at the appropriate level”.⁸⁵ The government has yet to implement the recommendations.

Pakistan’s Constitution, while guaranteeing the right to freedom of expression and freedom of the press, subjects those freedoms to a range of vaguely-worded restrictions. These include those which go beyond the permissible restrictions on freedom of expression under international human rights law, such as “reasonable restrictions imposed by law in the interest of the glory of Islam”, “the integrity, security or defence of Pakistan or any part thereof” and “friendly relations with foreign States”.⁸⁶ This last example was used following media coverage of Pakistan’s response to the intervention of Saudi Arabia in Yemen in May 2015, and the stampede in September 2015 at the annual Hajj pilgrimage in Mecca where more than 2,000 pilgrims died.⁸⁷ The state-run Pakistan Electronic Media Regulatory Authority (PEMRA) issued warnings to the media against airing reports deemed critical of Saudi Arabia. A similar notice was issued in January 2016 at a time of political tensions between Saudi Arabia and Iran.⁸⁸ For each of these, PEMRA invoked Article 19 of the Constitution.

The enforced disappearance of five human rights defenders in January 2017 (see Section 4) has had a chilling effect, with many bloggers and journalists practising self-censorship.⁸⁹ Attempts by sections of the media and some religious groups to link human rights defenders with “blasphemous” online content represent a new and a particularly dangerous tool to counter political dissent (see Section 6 below).⁹⁰

The authorities are silencing critics, including academics, by framing fabricated charges. On 8 April 2017, the Rangers, a paramilitary force deployed in Karachi, arrested Riaz Ahmed, a trade unionist and an associate professor at Karachi University. On that day, Ahmed was on his way to address a press conference to demand the release of Hassan Zafar Arif, a fellow academic belonging to the political party Muttahida Qaumi Movement (MQM), who was held in prison from 22 October 2016 to 18 April 2017 without access to necessary medical treatment.⁹¹ A Rangers official is reported to have said that he “personally knew Ahmed for his efforts in creating momentum for the release of bloggers accused of committing blasphemy”.⁹²

⁸⁰ Amnesty International, “A Bullet Has Been Chosen for You”: Attacks on Journalists in Pakistan (Index: ASA 33/005/2014). p 7; “List of issues”, para 24.

⁸¹ Hein G. Kiessling, *The ISIS of Pakistan* (C. Hurst & Co., Noida 2016) 243-4. See also, report para 9.

⁸² “Report of the Commission of Inquiry to inquire into the incident of firing at Mr. Hamid Mir presented to the Government of Pakistan on 18 December 2015”, para 1. Available: <http://mediamatterspakistan.org/wp-content/uploads/2016/04/HMCR.pdf>

⁸³ “Report of the Commission of Inquiry”, paras 32-3.

⁸⁴ “Report of the Commission of Inquiry”, para 36.

⁸⁵ “Report of the Commission of Inquiry”, para 39.

⁸⁶ Article 19, the Constitution of the Islamic Republic of Pakistan, 1973.

⁸⁷ <https://www.dawn.com/news/1210153>

⁸⁸ “PEMRA advises TV channels to display ‘caution’ on Saudi-Iran conflict”, *Dawn*, 6 January 2016, Available: <https://www.dawn.com/news/1231171>

⁸⁹ Amnesty International’s interview with key informants, including journalists. February-March 2017.

⁹⁰ Amnesty International, *Pakistan: Open Letter Calling for Greater Protection of Human Rights Defenders* (Index: ASA 33/5792/2017). Available: <https://www.amnesty.org/en/documents/asa33/5792/2017/en/>

⁹¹ “Dr Riaz remanded in judicial custody amid protest for release”, *Dawn*, 3 April 2017. Available: <https://www.dawn.com/news/1324423/dr-riaz-remanded-in-judicial-custody-amid-protest-for-release>

See also, Amnesty International, *Urgent Action: Detained 70-year-old professor’s health at risk* (Index ASA 33/5413/2016 Pakistan).

⁹² “Dr Riaz Ahmed’s Detention - Editorial”, *Dawn*, 4 April 2017. Available: <https://www.dawn.com/news/1324723/dr-riaz-ahmeds-detention>

Though Riaz Ahmed was remanded in judicial custody on suspicion of carrying a firearm, many believe that the real reason for the arrest were his left-wing politics.⁹³ He was released on bail after five days in detention.

Many journalists and human rights defenders allege that their phones are regularly tapped by the authorities.⁹⁴ In 2015, the officials of the ISI admitted before the Supreme Court that they were regularly tapping over 6,000 phones.⁹⁵ The Pakistan Electronic Crimes Act, 2016, which is aimed at preventing and facilitating the investigation of crime committed online, in Article 32 vests Pakistan Telecommunications Authority (PTA) with powers to retain all traffic data for a minimum of one year, placing all website traffic under surveillance. Under Section 42 of the Act, the authorities can share data relating to people in Pakistani with foreign governments and agencies. There is no requirement for the authorities to seek authorization from a judicial or other independent authority to carry out surveillance of web traffic, or share data with foreign governments and agencies, or other safeguards to ensure that the measures meet the tests of necessity and proportionality for a legitimate purpose; and these provisions and measures accordingly amount to violations of the right to privacy.

The Pakistan Electronic Crimes Act, 2016 also curtails the exercise online of the right to freedom of expression. It vests in the PTA the power to shut down any website deemed to be propagating “anti-State” or “anti-Islam” views.⁹⁶ These terms are overly broad and vague, and can enable violations of the right to freedom of expression. Despite repeated urgings by media campaigners, the parliament has not created any exception for journalistic expression in the law, thus potentially criminalizing the disclosing of information in the public interest to journalists.⁹⁷

Amnesty International recommends that the State party:

- Set up an office of a public prosecutor at the federal and provincial levels to investigate and prosecute attacks against journalists;
- Initiate investigations into the Directorate for Inter-Services Intelligence and all other state institutions and officials implicated in human rights violations and abuses against journalists, particularly ensuring that superior officers are held accountable for violations ordered by them, or if they knew or should have known that abuses or violations by their subordinates were being committed and they did not take all measures in their power to take action against them;
- Amend the Prevention of Electronic Crimes Act, 2016, particularly, Sections 31, 32, 36, 37, and 42, to remove overbroad powers for monitoring and retaining data and shutting down websites based on vague criteria, and to include effective judicial and other independent oversight and other safeguards to ensure that any restrictions on the right to freedom of expression are only what is necessary and proportionate for legitimate aims recognized under international human rights law, and in particular with regard to restrictions which may impact on the work of journalists.

⁹³ Ammar Ali Jan, “Who’s afraid of Dr Riaz”, *The News*, 4 April 2017. Available: <https://www.thenews.com.pk/print/196317-Whos-afraid-of-Dr-Riaz>

See also, “Don’t respect disrespect teachers”, *Daily Times*, 5 April 2017. Available: <http://dailytimes.com.pk/editorial/03-Apr-17/dont-disrespect-teachers>

⁹⁴ Amnesty International’s interviews with key informants. February-March, 2017.

⁹⁵ “Nearly 7,000 phones tapped in May, ISI tells SC”, *Dawn*, 4 June 2015. Available: <https://www.dawn.com/news/1186013/nearly-7000-phones-tapped-in-may-isi-tells-sc>

⁹⁶ The Prevention of Electronic Crimes Act, 2016. Sections 31, 32, and 37. See also, List of Issues, para 3

⁹⁷ <http://mediamatters.pk/?p=1007>

6. BLASPHEMY LAWS (ARTICLES 6, 14, 17, 18)

Pakistan's blasphemy laws are a combination of "offences against religion," inherited from the British colonial system, and provisions introduced under the government of General Zia-ul-Haq (1977-88).⁹⁸ Section 295 of the 1860 Penal Code criminalizes desecration or defiling of "any place of worship or any object held sacred by any class of person with the intention of thereby insulting the religion of any class". The offence is punishable by a prison term that may extend to up to two years. A new provision (Section 295-A) added in 1927 makes it an offence to deliberately and maliciously "outrage religious feelings of any class by insulting its religion or religious beliefs". Section 298, another provision which dates from the era of British rule, makes it an offence to utter words or make any sound or gesture or to place any object in the sight of a person "with the deliberate intention of wounding the religious feelings of any person". These provisions are open to abuse, with vague and subjective terms, such as "insulting" and "wounding religious feelings", but are not specific to any religion. Under the military government of Zia-ul-Haq during the 1980s provisions were inserted into the Penal Code, which criminalized behaviour which was specifically blasphemous to Islam.⁹⁹ Section 295-B (defiling the Quran) is punishable with life imprisonment.¹⁰⁰ Section 295-C (defiling the name of Prophet Muhammad) carries a mandatory death penalty.¹⁰¹

Amnesty International considers that Section 295-C is not compatible with the stipulation in Article 6(2) that "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes". The offence of blasphemy falls outside this narrow category.¹⁰² Although no executions have been carried out under this provision, several individuals are on death row pending appeals to superior courts.¹⁰³ The blasphemy laws threaten the right to life in other ways too. Mob violence and vigilante justice are common in cases of alleged blasphemy. Ahmadis and Christians have been attacked and killed following a mere allegation of blasphemy.¹⁰⁴ In May 2014, Rashid Rehman, lawyer and a regional coordinator for the Human Rights Commission of Pakistan, was gunned down for taking on the case of Junaid Hafeez, a university lecturer who had been accused of insulting Prophet Muhammad on social media.¹⁰⁵

The blasphemy laws, particularly, Section 295-A, 295-B, and 295-C, are frequently abused by individuals and sectarian groups to settle personal scores or target religious minorities.¹⁰⁶ The Supreme Court of Pakistan echoed this concern in a 2015 judgment where it stated: "The majority of blasphemy cases are

⁹⁸ See Chapter XV of the Pakistan Penal Code, 1860.

⁹⁹ "List of Issues", para 21.

¹⁰⁰ Inserted by P.P.C. (Amendment) Ordinance, I of 1982.

¹⁰¹ Inserted by the Criminal Law (Amendment) Act, III of 1986.

¹⁰² Amnesty International, "As Good as Dead": *The Impact of Blasphemy Laws in Pakistan* (Index: ASA 33/5136/2016). p. 57. (The present submission updates that report which sets out some of these issues in more detail than is possible here.)

¹⁰³ According to the Human Rights Watch, at least 19 people convicted under the Blasphemy laws are currently under the death row. See Human Rights Watch, *World Report 2017*. 470. Available: <https://www.hrw.org/world-report/2017>

¹⁰⁴ Amnesty International, "As Good as Dead". pp 43-51. Ahmadis are followers of Mirza Ghulam Ahmad who founded the Ahmadiyya movement in Punjab in 1889. Ahmadis identify themselves as Muslims, but unlike others Muslim sects, believe in Mirza Ghulam Ahmad as the promised Messiah. This belief distinguishes them from the mainstream Muslims who hold to the view that prophethood ceased with Prophet Muhammad. In 1974, Pakistani parliament declared Ahmadis non-Muslims.

¹⁰⁵ "Rights advocate Rashid Rehman Khan gunned down in Multan", *Dawn*, 8 May 2014. Available: <https://www.dawn.com/news/1104788>

¹⁰⁶ ICJ, On Trial: The Implementation of Pakistan's Blasphemy Laws", November 2015. p. 6.

based on false accusations stemming from property issues or other personal or family vendettas rather than genuine instances of blasphemy and they inevitably lead to mob violence against the entire community".¹⁰⁷

Asia Noreen, also known as Asia Bibi, was convicted and sentenced to death in 2010 following allegations of blasphemy against the Prophet Muhammad. The high court upheld her conviction and death sentence in 2014. On 13 October 2016, the Supreme Court was scheduled to hear her case in the ultimate stage of her appeal process. On the day, the Supreme Court adjourned the appeal hearing indefinitely. Earlier, on 22 July 2015, the Supreme Court suspended Asia Bibi's death sentence for the duration of the appeals process. At the time of writing, Asia Bibi remains imprisoned in Sheikhupura, and her appeal remains pending in the Supreme Court.¹⁰⁸ Hamza Javed (pseudonym) was arrested in 2012 and is currently under trial in Punjab following allegations that he posted blasphemous material on Facebook. The police obtained a religious edict as part of their investigation that stated the allegations against him amounted to blasphemy, enabling them to have a pretext for his prosecution. One of the lawyers who represented Hamza Javed was physically attacked by religious clerics in court after which he withdrew from the case.¹⁰⁹ In April and May 2017, in four separate incidents, blasphemy accusations have been used to intimidate, threaten, and kill people. On 13 April 2017, Mashal Khan, a journalism student of Mardan University, was stripped naked, beaten, and killed by a lynch mob in his hostel for alleged blasphemy online. On 19 April 2017, three women entered the home of a faith healer in Sialkot, a city in the Punjab province, and shot him dead – allegedly because he had been accused of blasphemy in 2004.¹¹⁰ On 21 April 2017, a mob in Chitral attacked a man who was accused of blasphemy, and injured six police officers who intervened to protect him.¹¹¹ On 4 May, a 10 year old boy was killed and five other people injured when a mob tried to attack a Hindu man charged with blasphemy in Balochistan.¹¹²

Amnesty International and other human rights groups have documented how the accused in blasphemy proceedings are denied the guarantees of equality before law, the presumption of innocence, the right to legal counsel, and fair trial standards embodied in Article 14 of the Covenant.¹¹³ Abuses occur at every stage of the proceedings, from case registration to police investigation to trials and appeals.¹¹⁴ Sections 295B and 295C are cognizable offences, which means that a police officer can arrest an accused without a warrant. The provisions do not require proof of intent, which makes them susceptible to abuse. Religious clerics and their supporters, especially in the Punjab province, file complaints of blasphemy based on false or flimsy allegations. Despite weak evidence, police officers, prosecutors and trial courts tend to be reluctant to throw out such cases because of public pressure from religious groups, such as *Tehrik-e-Tahafuz-e-Khatm-e-Nabuwat*.¹¹⁵ A 2011 amendment to the Code of Criminal Procedure provides individuals facing blasphemy charges with a statutory right to bail if their trials or appeals do not conclude within a specific timeframe.¹¹⁶ Despite this, the accused can spend years in prison before their bail applications are granted. Additionally, those imprisoned in relation to blasphemy charges often choose not to apply for bail, fearing attacks by vigilantes outside the prison. They also face threats to their lives in prison. In 2014, a prison guard, inside Rawalpindi's Adiala jail, shot and wounded a 71-year-old British Pakistani man accused of blasphemy.¹¹⁷ Those accused of blasphemy are often kept in solitary confinement to avoid incidents like this.¹¹⁸

The blasphemy laws violate other Covenant rights, including the right to freedom of religion (Art 18), and the right to freedom of expression (Art 19), especially among religious minorities.¹¹⁹ Since the beginning of 2017, the authorities have started a crackdown on "blasphemous" content on social media. As mentioned earlier, the programme, *Aisa Nahi Chalay Ga* aired on BOL TV channel in January and February 2017, linked the five "missing" bloggers with allegedly "blasphemous" pages on the Internet without any evidence to support

¹⁰⁷ *Malik Muhammad Mumtaz Qadri v. the State*, Criminal Appeals No. 210 and 211 of 2015, at page 26.

¹⁰⁸ Amnesty International, "As Good as Dead". pp 10.

¹⁰⁹ Amnesty International, "As Good as Dead". pp 11-12

¹¹⁰ <https://www.dawn.com/news/1328114>

¹¹¹ <http://www.aljazeera.com/news/2017/04/mob-attacks-man-accused-blasphemy-north-pakistan-170421205005634.html>

¹¹² <https://www.theguardian.com/world/2017/may/04/10-year-old-boy-killed-attempted-blasphemy-lynching-pakistan>

¹¹³ See, for example, Amnesty International, "As Good as Dead"; ICJ, "On Trial: The Implementation of Pakistan's Blasphemy Laws", November 2015.

¹¹⁴ Amnesty International, "As Good as Dead". pp 26.

¹¹⁵ Amnesty International, "As Good as Dead". pp 11-12. *Tehrik-e-Tahfuz-Nabuwat* or the "Movement for the Finality of Prophethood" is a religious group that campaigns actively for the continuation of blasphemy laws in Pakistan. Its leaders and members frequently act as private complainants in blasphemy cases.

¹¹⁶ Act No. VIII of 2011: An Act further to amend the Code of Criminal Procedure 1898, No. F.9(43)/2010-Legis (18 April 2011), as cited in The Gazette of Pakistan (2011), paras 2-3. Available at www.ilo.org/dyn/natlex/docs/ELECTRONIC/88339/100962/F442580907/PAK88339.pdf [accessed 8 March 2017]

¹¹⁷ "Prison guard shoots blasphemy accused inside Adiala Jail", *Dawn*, 26 September 2014. Available:

<https://www.dawn.com/news/1134414/prison-guard-shoots-blasphemy-accused-inside-adiala-jail>

¹¹⁸ Amnesty International's interviews with key informants. 15-30 March 2017.

¹¹⁹ For a comprehensive account, see Ujala Akram, "Freedom of Speech, Freedom of Religion and Islam: A Review of Laws Regarding 'Offences Relating to Religion' in Pakistan from a Domestic and International Law Perspective", 16 *European Journal of Legal Reform*, 353, 2014. Also see: Amnesty International, "As Good as Dead": The Impact of Blasphemy Laws in Pakistan (Index: ASA 33/5136/2016).

the allegation of that link. Many people have told Amnesty that they believe the real goal was silencing political dissent online, including criticism of the military.¹²⁰ In February and March 2017, the Islamabad High Court ordered blasphemous content to be removed from social media and directed the government to initiate legal proceedings against those who had uploaded such material.¹²¹ In response to the court orders, the authorities began blocking internet pages deemed blasphemous and arrested at least three individuals.¹²² Human rights defenders fear that the court judgment will open floodgates of blasphemy accusations in the digital space.¹²³

Amnesty International recommends that the State party:

- Repeal Sections 295-A, 295-B and 295-C of the Pakistan Penal Code;

Pending the repeal:

- Commute all death sentences imposed under Section 295-C of the Penal Code;
- Ensure adequate protection of judges, defence counsel, and defence witnesses involved in all blasphemy cases;
- Declare Section 295-B and 295-C non-cognizable offences to ensure that the police do not arrest accused or investigate allegations of blasphemy without a judicial warrant;
- Ensure that allegations of blasphemy are not used to target political dissent in the digital space and legitimate criticism of state institutions and other bodies.

¹²⁰ Amnesty International's interviews with key informants. February-March, 2017.

¹²¹ "Those uploading blasphemous material on social media are terrorists: Justice Shaukat Aziz", *Daily Times*, 17 March 2017. Available: <http://dailytimes.com.pk/pakistan/07-Mar-17/those-uploading-blasphemous-material-on-social-media-are-terrorists-justice-shaukat-aziz>

¹²² <https://www.dawn.com/news/1322531>

¹²³ Amnesty International's interviews with key informants. 25-30 March 2017.

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info@amnesty.org



+44 (0)20 7413 5500

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PAKISTAN

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE,
120TH SESSION, 3-28 JULY 2017

This submission outlines Amnesty International's main concerns ahead of the review of Pakistan's initial report on the implementation of the International Covenant on Civil and Political Rights (hereinafter "the Covenant"), during the 120th session of the United Nations (UN) Human Rights Committee (hereinafter "the Committee") in July 2017. It also takes into account the "list of issues in relation to Pakistan" adopted by the Committee at its 118th session in November 2016.

The submission provides information about some of the violations of several substantive rights set out in the Covenant with reference to the use of the death penalty, including by military courts, enforced disappearances, the blasphemy law, and the growing restrictions on the right to freedom of expression. The human rights violations that the submission draws attention to are interconnected, and linked to ongoing armed conflicts, political violence, and Pakistan's National Action Plan to counter-terrorism. In many cases, both state and non-state actors suspected of criminal responsibility have not been held to account for human rights violations or abuses. Human rights defenders have increasingly experienced threats, harassment and other abuses from security forces and armed groups.