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REFORMING PAKISTAN'S PRISON SYSTEM

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WORKING TO PREVENT CONFLICT WORLDWIDE

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International Crisis Group
WORKING TO PREVENT CONFLICT WORLDWIDE

Asia Program Report N°212 **12 October 2011**

REFORMING PAKISTAN'S PRISON SYSTEM

EXECUTIVE SUMMARY AND RECOMMENDATIONS

A corrupt and dysfunctional prison system has contributed to – and is a manifestation of – the breakdown of the rule of law in Pakistan. Heavily overpopulated, understaffed and poorly managed, the prisons have become a fertile breeding ground for criminality and militancy, with prisoners more likely to return to crime than to abandon it. The system must be examined in the context of a deteriorating criminal justice sector that fails to prevent or prosecute crime, and protects the powerful while victimising the underprivileged. Yet, while domestic and international actors alike are devoting more resources to improve policing and prosecution, prisons continue to be largely neglected. The Pakistan Peoples Party (PPP)-led government at the centre and the four provincial governments, as well as the country's international partners, should make penal reform a central component of a criminal justice reform agenda.

Pakistan lacks a systematic program for the capacity building of prison staff, while existing regulations on postings, transfers and promotions are frequently breached because of nepotism and political interference. Given weak accountability mechanisms for warders and prison superintendents, torture and other brutal treatment are rampant and rarely checked. Moreover, with out-dated laws and procedures, bad practices and poor oversight, the criminal justice system is characterised by long detentions without trial. As a result, prisons remain massively overcrowded, with nearly 33,000 more prisoners than the authorised capacity. The large majority of the total prison population – around 50,000 out of 78,000 – are remand prisoners awaiting or on trial. With more than two dozen capital offences, including many discriminatory provisions that carry a mandatory death penalty, the death-row population is the largest in the world, though the current government has placed an informal moratorium on executions.

Circumventing the justice system, the military has detained thousands of people, ostensibly suspected of terrorism but including thousands of political dissidents and others opposed to the military's policies, especially in Balochistan, Khyber Pakhtunkhwa (KPK) and the Federally Administered Tribal Areas (FATA). Its methods include torture, collective justice and extrajudicial killings. By swelling public resentment, such practices are more likely to create terrorists than counter them. Instead of establishing parallel, unaccountable and illegal structures, countering militancy requires the reform of a dysfunctional criminal justice system. The separation of low-level offenders and suspects, particularly impressionable youth, from the criminal hardcore is particularly urgent.

In violation of the Juvenile Justice System Ordinance (JJSO), children continue to be arrested for petty offences and illegally detained for days and even months; in the absence of adequate facilities, their exposure to hardened criminals, including jihadis, makes them more likely to embrace crime, including militancy, after they are released than before they were imprisoned.

Yet, with jails overflowing, it is nearly impossible to isolate hardened criminals, including militants, from remand prisoners, juveniles and low-level or first-time offenders. Provincial governments are trying to reduce overcrowding by constructing more prisons and barracks. This strategy is not sustainable. The problem is not simply one of inadequate infrastructure. The prison population will continue to increase so long as bail rights are rarely granted, and accused persons are seldom brought to court on their trial dates. Recent legislation under the current government that makes it easier to obtain bail is a step in the right direction, but only if consistently applied by the courts.

There is, however, an acute shortage of probation and parole officers and no systematic programs to rehabilitate released prisoners. In addition to improving police and judicial functioning, the national and provincial governments should invest in establishing an effective probation regime; creating alternatives to imprisonment for petty crimes, such as fines, community service, community confinement and mental health and drug treatment; and providing free legal aid to those who cannot afford it, including by fully resourcing public defenders' offices. Strong action should also be taken against police and prison officials for often failing to get prisoners to court on their trial dates, or often only doing so after bribes have been paid.

Like the police and courts, the prison system is a major contact point between citizen and state, reflecting the

public's access to justice. Major reforms are necessary to restore public confidence in the government's ability to enforce the rule of law while protecting the rights of all citizens. Having ratified the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in June 2010, the government should allocate the necessary human and financial resources and meet its obligations under these international treaties, so as to ensure that torture and other ill-treatment of detainees are stopped and that officials and institutions responsible for such practises are held accountable. If Pakistan's prison system remains brutal, opaque and unaccountable, it will continue to aggravate rather than help resolve the country's major internal security challenges.

RECOMMENDATIONS

To the Federal Government of Pakistan and Provincial Governments:

1. Repeal the Actions (in Aid of Civil Power) Regulation 2011 for the Federally Administered Tribal Areas and Provincially Administered Tribal Areas, and replace the Frontier Crimes Regulations (FCR) 1901, with an updated Penal Code, Criminal Procedure Code and Evidence Act, in accordance with Article 8 of the constitution and internationally accepted human rights standards.
2. Commit to the abolition of torture and other ill-treatment of detainees in all places of detention, and with the necessary financial and human resources take tangible steps to implement international conventions that Pakistan has ratified, including the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).
3. Address overcrowding in prisons by:
    a) enforcing existing bail laws, and urging the high judiciary to hold trial court judges accountable for failing to grant bail according to the law;
    b) passing a new law requiring judges to allow bail unless there are reasonable grounds to believe the prisoner would abscond or commit further offences; and
    c) reforming the sentencing structure for non-violent petty crimes and first-time offenders to include alternatives to imprisonment, such as fines, probation, community service and psychological and drug treatment.
4. Implement the federal Public Defender and Legal Aid Office Act and pass and implement provincial equivalents without delay; and fund and support NGOs providing free legal aid to prisoners until such offices are established.
5. Improve the quality of prison staff by:
    a) making the inspectorate of prisons an autonomous organisation instead of an attached department of the provincial home ministry;
    b) raising salaries, and linking salaries and privileges to those of the police;
    c) ensuring recruitment on merit and streamlining promotion mechanisms to allow the most deserving to be rewarded with career advancement opportunities;
    d) building a training institution in each of the four provinces; and
    e) improving the quality of instruction provided to prison staff through the introduction of modern curricula, based on international standards.
6. Crack down on criminality and improve prison security by:
    a) taking action against prison officials for failing to enforce security-related regulations;
    b) preventing access to mobile phones; taking steps to reduce substance abuse and other criminal activity within prisons; and taking action against prison staff responsible for providing prohibited material to inmates;
    c) training prison staff to more effectively quell riots and repel attacks by prisoners and providing the staff with adequate equipment; and
    d) installing jamming devices and CCTVs in all major prisons.
7. Improve conditions for prisoners and ensure that they are consistent with legal requirements by:
    a) constituting criminal justice coordination committees at the national, provincial and district levels, as mandated by Police Order (2002), and authorising them to regularly visit prisons to examine conditions, determine prison administrators' adherence to law and raise prison-related issues with responsible government officials and policymakers;
    b) constituting public safety commissions at the national, provincial and district levels, as mandated by Police Order (2002), and extending their authority to hold prison officials accountable for failure to uphold prisoners' rights and to maintain required standards in prison administration;

c) ending the practice of putting condemned prisoners in death row cells while their appeals are still pending, shifting them instead to general barracks;

d) investing in better medical care for inmates by allocating more resources and engaging with philanthropists and NGOs to provide better facilities;

e) building separate detention facilities for women prisoners and ending the practice of housing them in separate barracks within male prisons;

f) eliminating the practice of keeping juveniles in regular prisons, including by establishing functional borstal institutions in each province; and

g) amending the Anti-Terrorism Act (ATA), 1997, to require juveniles charged under it to be tried in juvenile courts.

8. Take steps toward the reintegration and rehabilitation of released prisoners by:

a) investing in education services and vocational training for inmates, particularly youth and women, to inculcate skills needed to re-enter the workforce;

b) improving the functioning of probation and reclamation departments by developing specialised training and curriculums for probation officers and prison staff in the National Academy for Prisons Administration (NAPA), the Punjab Prisons Staff Training Institute and other training institutes;

c) directing each provincial home ministry to assess the number of probation and parole officers required by existing and expected caseloads and to increase their numbers accordingly, while providing them with proper offices and adequate facilities, including transport; and

d) engaging with probationers' family members and encouraging community involvement in their rehabilitation and reintegration.

9. End military-devised "de-radicalisation" programs, developing instead a holistic policy aimed at preventing jihadi recruitment, including separating juveniles and other minor and first-time offenders from the adult prison population; making bail the norm rather than the exception; and establishing an effective probation and rehabilitation regime along the lines suggested above.

To the International Community, in particular the U.S.:

10. Support the government's reform agenda, allocating a substantial portion of civilian law enforcement assistance to prison reform, with a focus on:

a) improving training programs for prison staff based on revised curriculums that bring existing prison procedures in line with international standards;

b) supporting the computerisation of prison and probation records;

c) working with training institutes to improve training for probation personnel and with reclamation officials/departments to rehabilitate and reintegrate released prisoners into society and the workforce; and

d) supporting NGOs that provide legal aid, education, and vocational training to prisoners, particularly juveniles.

11. Urge the Pakistan military to provide international and domestic humanitarian agencies, including the International Committee of the Red Cross (ICRC), complete access to the estimated thousands of detainees, including juveniles, under its custody, including that of its intelligence agencies, in Balochistan, Khyber Pakhtunkhwa and FATA.

12. Condition military assistance on the Pakistani military immediately ending practices that violate international conventions and basic international legal standards, including illegal detention, collective justice, torture, and extrajudicial killings; and scrutinise the military's actions when reporting on Pakistan's compliance with the ICCPR, UNCAT and other treaties.

Islamabad/Brussels, 12 October 2011

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WORKING TO PREVENT CONFLICT WORLDWIDE

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REFORMING PAKISTAN'S PRISON SYSTEM

I. INTRODUCTION

Pakistan's prison system, like the rest of its criminal justice sector,[1] is incapable of keeping pace with rising crime and other critical security challenges, particularly the spread of violent extremism countrywide.[2] Although the current democratic transition has seen the government and its international partners take some major steps to strengthen the capacity of civilian law enforcement agencies, prisons[3] – and their enormous population – are too often neglected in justice-related reforms.

All four provinces have significantly more prisoners than their sanctioned capacity. A number of factors are responsible for the overburdening, including the failure of prison authorities to convey prisoners to hearings on schedule; inadequate legal aid for those who cannot afford to pay for it; too few properly trained trial lawyers; the increasing reluctance of the judiciary to accord bail for even petty offences; and the inability of many prisoners to post bail even when it is available.[4] The largest province, Punjab, has over 53,000 inmates against a total authorised capacity of 21,527.[5] In Sindh, the prison population has been reduced considerably since 2009, from over 20,000 to 13,282, but remains well above the authorised capacity of 10,450. In Khyber Pakhtunkhwa (KPK), there are 8,450 prisoners against a total capacity of 8,000, while in Balochistan, there are 2,643 against a capacity of 2,481.[6] The vast majority of prisoners are on remand.[7]

Prisons are grossly understaffed and are poorly equipped. With only one training institution for prison staff countrywide, the National Academy for Prisons Administration (NAPA) in Lahore (formerly the Central Jail Staff Training Institute), prison personnel generally lack the skills as well as the resources to manage prison populations.

Living conditions for prisoners are abysmal, with inadequate funding resulting in prisons often lacking health care facilities and sufficient medical personnel. The prevalence of HIV/AIDS and other diseases is rising in the absence of proper screening and/or vaccination of detainees for communicable diseases.[8] The acute shortage of properly trained, disciplined and well-paid staff has also caused a spike in crime within prison premises, including of substance abuse and violence. The overcrowded facilities make it difficult to isolate hardened criminals, including militants, from remand prisoners (known as under-trial prisoners in Pakistan), minor and first-time offenders and juveniles. Further, using easily available mobile phones, and at times with staff connivance, prisoners have planned and helped to execute terror attacks and other criminal operations, including kidnappings.

Prison reform is, therefore, central to curbing rising crime and militancy, fixing a deteriorating criminal justice system and enforcing the rule of law. This report is based on

[1] See Crisis Group Asia Reports N°196, *Reforming Pakistan's Criminal Justice System*, 6 December 2010; N°160, *Reforming the Judiciary in Pakistan*, 16 October 2008; and N°157, *Reforming Pakistan's Police*, 14 July 2008.

[2] For detailed analysis on these challenges, see Crisis Group Asia Reports N°164, *Pakistan: The Militant Jihadi Challenge*, 13 March 2009; and N°95, *The State of Sectarianism in Pakistan*, 18 April 2005.

[3] For the purposes of this report, the term "prison" is used to designate all places of detention for prisoners under judicial custody, under trail or convicted. Where the term "jail" is used, it forms part of the official name of an institution, office or document. Other facilities include police lock-ups and military detention centres.

[4] See Crisis Group Report, *Reforming Pakistan's Criminal Justice System*, op. cit.

[5] "Overcrowded prisons: No separate jail for militants, Senate panel informed", *The Express Tribune*, 17 May 2011.

[6] Figures obtained from Sindh prisons officials in Karachi and for Balochistan from the provincial prisons department, Quetta. The numbers for KPK and Balochistan do not include suspected militants and political dissidents illegally detained by the military and its intelligence agencies.

[7] In 2011, Punjab had 34,069 remand prisoners and Sindh had 10,210. Crisis Group interviews, Punjab prisons officials, Lahore, 15 March 2011; and Ghulam Qadir Thebo, inspector general of prisons, Sindh, Karachi, 20 April 2011. The most recent available statistics show that as of 2010, Pakistan had 40 prisoners per 100,000 of the population. By way of comparison, in 2009, the statistic for the U.S. was 743 per 100,000. See "World Prison Brief", International Centre for Prison Studies, www.prisonstudies.org/info/worldbrief/wpb_country.php?country=107.

[8] "Jails, prisoners and disappearances", State of Human Rights in Pakistan, 2010, Human Rights Commission of Pakistan (HRCP), Lahore, April 2011.

extensive interviews with prison officials and police, lawyers, NGO staff and human rights activists in Islamabad, Lahore, Karachi and Quetta in order to identify the flaws in the system. It recommends reforms to modernise the prison administration and to protect the rights of prisoners, including the un-convicted. It also identifies measures to transform the prison system's current ethos of detention and punishment to one focused on providing justice and enabling the rehabilitation and reintegration of prisoners. It follows from earlier Crisis Group work on justice sector reform, forming part of a series of reports that, since 2004, have analysed the functioning of judicial institutions, the police force, prosecution services and bodies of law, recommending policies and reforms to make governments more capable of tackling internal and external security threats, enforcing the state's writ and, since February 2008, entrenching democratic rule.

II. IMPRISONMENT AND FLAWED JUSTICE

A. DETERIORATING STANDARDS OF JUSTICE

The conditions of Pakistan's prisons should be examined in the context of a criminal justice system that protects the powerful, victimises politically and economically marginalised citizens and has a declining writ over large parts of the country. The Pakistan Penal Code (PPC), Evidence Act and Criminal Procedure Code (CrPC) form the foundation of that system. All three codes are outdated. There are also numerous special laws such as the Anti-Terrorism Act (ATA), 1997 and the National Accountability Ordinance, 1999.

Moreover, parallel legal systems prevail in large parts of the country. The Frontier Crimes Regulations (FCR) of 1901, an oppressive colonial-era legal framework, governs the Federally Administered Tribal Areas (FATA).[9] Khyber Pakhtunkhwa's (KPK) Provincially Administered Tribal Areas (PATA)[10] is governed by Sharia (Islamic law) under the Nizam-e-Adl (2009).[11] While the regular system has failed, these parallel systems are instruments of brutal and discriminatory justice, leaving thousands of detainees with little, if any, recourse to challenge their imprisonment.

Religious laws have also warped the penal system, both swelling prison populations by encouraging false cases and vigilante justice and enabling criminals to evade justice by, for example, allowing murder to be settled out of court.[12] Sentencing, too, has increasingly deviated from international norms and constitutional protections. For instance, the Hudood Ordinances, promulgated by General Zia-ul-Haq in 1979, prescribe punishments according to ultra-orthodox Islamic law for theft, highway robbery, intoxication, blasphemy, rape, adultery and extra-marital sex that include amputation of limbs, flogging, stoning to death and other forms of capital punishment. The blas-

[9] The Federally Administered Tribal Areas (FATA) include seven administrative districts or agencies: Bajaur, Orakzai, Mohmand, Khyber, Kurram, North Waziristan and South Waziristan; as well as the Tribal Areas adjoining Bannu district, Peshawar district, Kohat district and Dera Ismail Khan district.

[10] The Provincially Administered Tribal Areas (PATA) comprise the districts of Buner, Chitral, Lower Dir, Upper Dir, Malakand, Shangla and Swat, as well as the Tribal Area adjoining Mansehra district and the former state of Amb, administered since 1975 under a separate civil and criminal code from the rest of Khyber Pakhtunkhwa.

[11] See Crisis Group Report, *Reforming Pakistan's Criminal Justice System*, op. cit.

[12] The *Qisas* (retribution) and *Diyat* (blood money) law allows the relatives of a murder victim to pardon the killer in return for monetary compensation.

phemy and anti-Ahmadi laws carry a mandatory death penalty.[13] In 1996, Benazir Bhutto's second government repealed the Execution of the Punishment of Whipping Ordinance, 1979, which mandated the whipping of convicts, but the punishment still applies to Hudood cases. While the harshest penalties like stoning and amputation have never been carried out, they remain on the books.

The Zia regime also altered the Evidence Act in 1984. Under the Qanun-e-Shahadat (the Evidence Act), for offences such as rape, which became punishable under Islamic jurisprudence, building cases against alleged offenders now requires far stricter and more discriminatory levels of evidence. In Hudood cases, the testimony of two women witnesses is required and is considered equal to that of one man. Women need four witnesses to prove rape; until the Women Protection Act of 2006 separated rape and extra-marital sex, returning the former offence to the Penal Code, the failure to prove the accusation had regularly resulted in a charge of engaging in extra-marital sex, which could be punishable by death.

Similarly, the blasphemy law's vague language in effect delegates authority to private citizens and public officials to enforce social biases, including by easily bringing false cases against religious and sectarian minorities. In 2010, at least 64 persons were charged under the law. Three men accused under the law – a Muslim in Sindh and two Christian brothers in Punjab – were killed by extremists while still in police custody.[14] The higher judiciary has repeatedly failed to strike down laws that violate fundamental constitutional rights by discriminating on the basis of gender, sect and religion.

Constitutional protections are further limited in the provincially and federally administered tribal areas. Under the Nizam-e-Adl regulation, Sharia is enforced in PATA by *qazi* (Sharia) courts run by government-appointed judicial officers trained in Islamic law. The framework excludes many national laws, including ones that provide legal protections to women.[15] The regulation also calls for the creation of a separate appellate court system: the Dar-ul-Qaza, at the level of the High Court, and a final appellate court, the Dar-ul-Dar-ul-Qaza, at the level of the Supreme Court. In May 2011, the chief justice of the Peshawar High Court formally inaugurated the Dar-ul-Qaza in Mingora, where 125 cases have already been directly instituted. Around 3,000 cases relating to the Malakand area, filed before the Peshawar High Court, will now be transferred to Mingora's Dar-ul-Qaza.[16]

Under FATA's arbitrary justice system, including the FCR's collective punishment and preventive detention clauses, thousands are incarcerated outside the regular prison system and beyond the jurisdiction of the country's judiciary.[17] In August 2011, President Asif Ali Zardari signed the Amendments in FCR (2011),[18] under which an accused now has the right to bail and must be produced before the concerned authority within 24 hours of arrest.[19] Women, children under the age of sixteen and people over the age of 65 can no longer be detained under the collective responsibility clause. Provisions have been made for regular prison inspections by the newly constituted FATA Tribunal and Appellate Authority, as well as by the political agent (the senior civil servant in the agency). The FATA Tribunal enjoys powers of revision against orders passed by the appellate authority similar to those of a high court under Article 199 of the constitution.[20]

While these amendments to the FCR are significant steps toward incorporating the region within the country's constitutional and legal framework, much more needs to done. Collective punishment, for example, will continue (for males between the ages of sixteen and 65, the primary target of this provision), under a phased system whereby, in the first instance, the immediate family of an accused will be held responsible, followed by members of the sub-

[13] The Ahmadi are a minority Sunni sect, declared non-Muslim by the second constitutional amendment.
[14] "Freedom of thought, conscience, and religion", State of Human Rights in Pakistan, 2010, op. cit., p. 131.
[15] See Crisis Group Report, *Reforming Pakistan's Criminal Justice System*, op. cit.
[16] "Chief Justice hears cases to launch *Dar-ul-Qaza* in Mingora", *Dawn*, 11 May 2011.
[17] Under the FCR, a federally appointed political agent (PA), the senior civil bureaucrat in an agency, exercised extensive executive, judicial and revenue powers. Under a preventive clause that provides for "security and surveillance for the prevention of murder or culpable homicide or the dissemination of sedition", the PA could require an individual who is believed to pose such a threat to provide a bond or surety "for good behaviour or for keeping the peace". Rejecting the bond, the PA could impose a three-year jail term. Other clauses empowered the PA to punish an entire tribe for crimes committed on its territory through fines, arrests, property seizures and blockades. These decisions could not be appealed in court. With the August 2011 reforms, these powers are now more limited.
[18] The president also signed the Extension of the Political Parties Order 2002 to FATA, allowing for political parties to operate in the tribal belt.
[19] Maqbool Malik, "New political era dawns in FATA", *The Nation*, 13 August 2011.
[20] The FATA Tribunal will be headed by a chairman and two other members, one of whom shall be a person who has been a senior civil servant with experience of tribal administration and the other a person qualified to be a judge of a high court. The appellate authority, consisting of a commissioner and additional commissioner appointed by the provincial governor, will hear appeals against actions taken by the PA.

tribe and finally other sections of the main tribe.[21] The jurisdiction of Pakistan's superior courts has yet to be extended to FATA, and the region's inhabitants continue to be denied basic rights and political representation at the provincial level. Rule of law challenges in FATA are aggravated by the military's heavy-handed operations against some militant groups, including widespread arbitrary detention and extrajudicial killings.[22]

The Frontier Corps, a paramilitary force nominally under the federal interior ministry but headed by regular army officers, detains suspected militants illegally according to a three-tier colour-coded system: *White*: minor criminals who are returned to their districts, where their individual tribes assume responsibility for their conduct; *Grey*: foot soldiers and facilitators of militant groups, but not their leaders and planners, who are given seven to fourteen years imprisonment; and *Black*: suspected terrorists and planners, including those with links to international networks, who are handed over to the military's intelligence agencies; they are not processed through the justice system.[23]

Responding to the military's need for legal cover for its actions in FATA and PATA, the civilian government has resorted to a shortcut that subverts constitutional protections and undermines the rule of law. It could also likely swell the number of people detained by the armed forces, who will remain outside the reach of the normal judicial system. In June 2011, President Zardari promulgated almost identical regulations, the Actions (in Aid of Civil Power) Regulation 2011 for FATA and the Actions (in Aid of Civil Power) Regulation 2011 for PATA. Retroactively applicable to 1 February 2008, they provide legal cover to the military's gross human rights and other abuses, including illegal detention of hundreds of suspects, and give it virtually unlimited powers to continue the same practices.

The regulations define "actions in aid of civil power"[24] as measures undertaken by the military at the federal government's request, within a "defined area" of operation,[25] which could include but is not limited to armed action and may continue until terminated formally by the federal government. They also provide the federal and provincial governments or "any person" authorised by them with sweeping, including indefinite, powers of detention.[26]

The military now has legal sanction to detain any person in the notified area on grounds as vague as obstructing actions in aid of civil power "in any manner whatsoever"; strengthening the "miscreants" ability to resist the armed forces or "any law enforcement agency"; undertaking "any action or attempt" that "may cause a threat to the solidarity, integrity or security of Pakistan"; and committing or being "likely to commit any offence under the regulation so that the said person shall not be able to commit or plan to commit any offence during the actions in aid of civil power".[27] Contravening the Evidence Act, the regulations provide that a deposition or statement by any member of the armed forces, or any other officer authorised on their behalf, shall be sufficient to convict an accused.

The FATA and PATA regulations provide for an oversight board to be established, respectively, by the governor of KPK[28] and its provincial government, empowered to review cases within 120 days of a detainee's arrest and to prepare a report for consideration by the governor or the provincial government. There is, however, no limit on the duration of detention: it can extend for as long as the "action in aid of civil power" continues.

By not requiring a magistrate's approval for detention beyond 24 hours of arrest, the regulations violate Article 10(2) of the constitution. Under Article 10(4), no law can authorise preventive detention beyond three months without authorisation from a review board appointed by the chief justice of the Supreme Court or, in the case of a provincial law, by the chief justice of the concerned High Court. After reviewing the case, including hearing the detainee's appeal, the board can extend the period of detention for a total of eight months in the case of a person held for acting in a manner prejudicial to public order, and twelve months in any other case.

The constitution also requires that the review board for a law on preventive detention consist of a chairman and two additional members, each of whom is or has been a judge of the Supreme Court or a High Court. The oversight boards under the FATA and PATA regulations will, however, consist of two civilians and two military officers, authorised to notify internment centres and to review cases. While the misuse of force during actions in aid of civil power has been prohibited, the regulations have left it to

[21] Maqbool Malik, "New political era dawns in FATA", op. cit.
[22] For more detail, see Crisis Group Asia Report N°178, *Pakistan: Countering Militancy in FATA*, 21 October 2009.
[23] See Crisis Group Report, *Reforming Pakistan's Criminal Justice System*, op. cit.
[24] According to Article 245 (1) of the constitution, the "Armed Forces shall … subject to law, act in aid of civil power when called upon to do so".
[25] "Defined area" means "the area notified by the federal government, in the case of FATA, and the provincial government, in the case of PATA, in which action in aid of civil power is being conducted in order to secure the territory or ensure peace in any place where armed forces have been requisitioned". See Waseem Ahmed Shah, "New regulations give legal cover to detentions in tribal areas', *Dawn*, 13 July 2011.
[26] Ibid.
[27] Ibid.
[28] Governors of the federal units represent the federation.

the military's discretion to identify and punish violators within its ranks.[29]

Rather than further legally isolate the tribal belt, the civilian government should immediately extend the jurisdiction of the Supreme Court to FATA, invoking Article 247 of the constitution, replacing the FCR 1901 with the Pakistan Penal Code, Criminal Procedure Code and Evidence Act.[30] Moreover, although the Supreme Court's jurisdiction does not currently extend to FATA, it can and should declare the regulations in PATA as unconstitutional. Indeed, the judiciary has struck down previous attempts by governments to extend unchecked policing and judicial powers to the military in 1977, 1998 and 2008. The June 2011 ordinance is no different. The Supreme Court should similarly declare the parallel, discriminatory legal system of the Nizam-e-Adl, 2009, unconstitutional.

B. CIRCUMVENTING THE LAW: ILLEGAL CUSTODY

The military and its intelligence agencies also encroach on prison affairs, particularly regarding militant/terrorist suspects. For example, on 29 May 2010, the Inter-Services Intelligence directorate (ISI) took illegal custody of eleven prisoners from the Adiala Jail in Rawalpindi after they had been acquitted by the trial court of involvement in various terrorism related offences.[31] In a Supreme Court hearing on a petition against the army chief and the ISI's director general for these prisoners' disappearance, an ISI representative admitted that they were in joint ISI-Military Intelligence (MI) custody and would be tried under the Army Act (1952) for attacks on army personnel and installations.[32]

In a missing persons hearing in the Peshawar High Court in September 2010, the federal attorney general claimed that the military's intelligence agencies had detained about 6,000 suspected militants in KPK alone, well before the presidential order granting the military powers of arrest and detention, discussed above, was in place to provide legal cover.[33]

Security officials argue that such detentions, although not sanctioned by law, often become a "practical necessity" in a country where courts and prosecutors are not only incapable but also increasingly reluctant to try and convict militants, for fear of violent retribution.[34] A 2010 U.S. State Department review of Pakistan's anti-terrorism rulings found an acquittal rate of 75 per cent and concluded that the legal system was "almost incapable of prosecuting suspected terrorists".[35] Anti-terrorism courts are indeed dysfunctional, and the Anti-Terrorism Act of 1997 does not provide special protection to judges, prosecutors and witnesses.[36] Yet, the military's justification wears thin given that many of the disappeared, particularly in Balochistan, are political activists, journalists and other civilian opponents of the military.[37]

A 2011 Human Rights Watch report on enforced disappearances in Balochistan found that on many occasions Baloch political activists suspected of aiding or sympathising with the insurgents were abducted, illegally detained for months at a time, released and abducted again. It examined 45 cases in detail, most from 2009 and 2010. In only seven cases were suspects transferred to police custody and charged with crimes.[38] Three involved children, the youngest aged twelve at the time of his disappearance. In sixteen cases, the abductions were "carried out by, in the presence of, or with the assistance of uniformed personnel of the Frontier Corps".[39] In March 2011, the government informed a three-member panel of the Supreme Court that it had constituted an inquiry commission to handle investigations into the disappearances in Balochistan.[40] It has, however, yet to appoint a chairman to the

[29] According to Section 5(1), "[i]f any abuse or misuse of the use of force during action in aid of civil power is alleged or attributed to any member of the armed forces, the same shall be investigated within the hierarchy of the armed forces".
[30] Under Article 247 (7), parliament can pass a law extending the jurisdiction of the Supreme Court or a High Court to FATA.
[31] "LHC seeks trial status of 11 detained men", *Dawn*, 21 April 2011.
[32] Azhar Masood, "ISI admits taking away 11 inmates from jail", *Arab News*, 10 December 2010. The Army Act of 1952 allows military tribunals to try civilians for such attacks. Under Section 60 of the Army Act, persons convicted by courts martial of offences listed in the Act can be given the death penalty, life imprisonment or rigorous imprisonment for up to fourteen years.
[33] Akhtar Amin, "PHC puts military officers on notice in missing persons case", *Daily Times*, 28 September 2010.
[34] Crisis Group interviews, Lahore and Islamabad, August-September 2011.
[35] "Country Reports on Terrorism 2010", Office of the Coordinator for Counter-terrorism, U.S. Department of State, 18 August 2010.
[36] For more detail, see Crisis Group Report, *Reforming Pakistan's Criminal Justice System*, op. cit.
[37] The military is conducting operations in the province, where a low-level Baloch insurgency is fuelled by the denial of political and economic rights. For more detail, see Crisis Group Asia Briefing N°69, *Pakistan: The Forgotten Conflict in Balochistan*, 22 October 2007; and Crisis Group Asia Report N°119, *Pakistan: The Worsening Conflict in Balochistan*, 14 September 2006.
[38] '"We can Torture, Kill, or Keep you for Years', Enforced Disappearances by Pakistan Security Forces in Balochistan", Human Rights Watch, 2011.
[39] Ibid.
[40] Terrence J. Sigamony, "Govt. sets up new commission", *The Nation*, 30 March 2011.

commission. It must urgently do so, ensuring at the same time that all Baloch detainees are transferred to civilian custody and have access to legal representation.

In KPK and FATA, as in Balochistan, the Pakistani authorities have barred the International Committee of the Red Cross (ICRC) from monitoring the plight of several hundred detainees. After the anti-Taliban operation Raah-i-Raast (Path of Righteousness) in KPK's Malakand region in 2009, the military reportedly arrested thousands of people and kept them in five detention centres. ICRC officials were last allowed into detention facilities in Balochistan in July 2008 and into detention facilities in KPK in October 2009. The ICRC continues to press for authorisation to return to places of detention in both provinces.

Even as it continues to conduct operations against militant groups in FATA and KPK, the military maintains that these target criminal and anti-social elements, so are not traditional "armed conflict", subject to Article 3 of the Geneva Conventions. The civilian government and the military must understand that every illegal detention and action undermines the rule of law and, by exacerbating local grievances, further alienates the Baloch, while creating a fertile ground for militant recruitment in the insurgency-hit KPK.

III. PRISONS: STRUCTURE, ORGANISATION AND PERSONNEL

A. LEGAL FRAMEWORK AND CATEGORIES

The legal structure regulating the establishment and management of prisons and the incarceration, treatment and transfer of prisoners is based on several colonial-era statutes. The Prisons Act of 1894 continues to serve as the primary legislative instrument governing prison administration. It regulates the maintenance of prisons and officers' conduct; duties of prison staff; admission, removal and discharge of prisoners; and treatment and provision of services/supplies to civil and remand prisoners. It also regulates convicted prisoners' discipline, assigning work, punishing offences within prison premises and controlling other areas such as health services and visits.

The Prisoner's Act of 1900 covers areas such as executing sentences; transferring prisoners from one prison to another; appointing places for confinement; discharging prisoners; and ensuring their attendance in court. The Punjab Borstal Act of 1926 provides for the establishment and regulation of institutions in Punjab for the detention, training and reformation of adolescent offenders. The Good Conduct Prisoners Probational Release Act of 1926 provides for early release of prisoners on the basis of a track record and good conduct that suggest they were likely to "abstain from crime and lead a useful and industrious life".[41]

The day-to-day superintendence and management of prisons is governed by the Pakistan Prison Rules, 1978, more commonly known as the Jail Manual, a vast compendium of regulations comprising 50 chapters and 1,250 rules. Other post-independence laws include the Sindh Borstal Schools Act, 1955, which provides for the creation of borstal institutions for juvenile offenders in that province; the West Pakistan Maintenance of Public Order Ordinance (MPO), 1960, permitting preventive detention and control of persons and publications "for reasons connected with public safety, public interest and the maintenance of public order",[42] the Probation of Offenders Ordinance, 1960, allowing for release on probation in some cases; the Juvenile Justice System Ordinance, 2000, providing for the "protection of children involved in criminal litigation", their "rehabilitation in society" and the "reorganisation of juvenile courts";[43] and the Mental Health Ordinance, 2001, regulating the inspection of "mentally disordered" prisoners.[44]

[41] Rules 4-9 of the Jail Manual.
[42] Preamble, Maintenance of Public Order Ordinance, 1960.
[43] Preamble, Juvenile Justice System Ordinance, 2000.
[44] Chapter IX of the Mental Health Ordinance, 2001.

Like policing, prisons are a provincial subject, with each of the four provincial governments responsible for their establishment, maintenance and improvement, recruitment and salaries of prison staff, and prison-related legislation. There are four kinds of prisons in each province:[45]

Central prisons: Each division[46] in a province has a central prison, which accommodates more than 1,000 prisoners, irrespective of the length of sentence. The provincial government has discretionary authority to redesignate any special prison or district prison as a central prison.[47]

Special prisons: These include women's prisons, open prisons, borstal institutions and juvenile training centres. The provincial government can establish a special prison at a time and place of its choosing or can declare any existing prison a special prison.[48]

District prisons: Other than central prisons or special prisons, all prisons are designated as district prisons, which, in turn, are divided into three classes: first class, capable of accommodating 500 prisoners or more, sentenced up to five years; second class, capable of accommodating between 300 and 500, sentenced up to three years; and third class, capable of accommodating less than 300, sentenced up to one year.

Sub-jails: These are smaller facilities where criminal suspects may be detained on remand. A provincial government can declare any place "by general or special order" a "subsidiary jail".[49]

B. PERSONNEL

A provincially-appointed inspector general of prisons heads the prisons establishment, exercising overall control and supervision of all prisons in the province.[50] One or more deputy inspectors general (DIG) may be appointed. Under Rule 890 of the Jail Manual, an inspector general is generally appointed by promoting the DIG. If none is available, the provincial government appoints to the position a superintendent of prisons with at least five years' experience and "due regard to ability, integrity and seniority".[51] The DIG post is filled in the same way.

Subject to provincial budgetary provisions, the inspector general exercises control over all expenditure related to maintenance and all matters relating to prison administration.[52] He is required to visit and inspect every facility under his jurisdiction at least once a year to ensure conformity to the Prisons Act, 1894, and all other relevant rules and regulations, and to ensure that "the management of such prison is in all respects efficient and satisfactory".[53] In the first week of October each year, the inspector general has to submit a report on the administration of prisons to the provincial government, along with statistical and other information "in such form as the government may from time to time prescribe".[54]

The District Coordination Officer (DCO), the senior bureaucrat in a district's administration, also has the authority to visit and inspect all prisons in that district to "satisfy himself that the provisions of the Prisons Act, 1894, and all rules, regulations issued hereunder applicable to such prison are duly observed and enforced".[55] The DCO can issue orders regarding prison maintenance, provided they are consistent with the provisions of the Prisons Act.[56] The DCO is also authorised to appoint honorary teachers, specialising in religious and "moral" education, to deliver lectures to prisoners once a week.[57]

A superintendent is in charge of the day-to-day functioning of an individual prison, assisted by one or more deputy and assistant superintendents. These officials are recruited through a competitive examination held by the provincial public service commission and are appointed by the provincial government. The superintendent's duties include maintenance, care, custody and control of all prisoners; maintaining order and discipline among the prisoners, as well as among subordinate officers; controlling all prison-related expenditure; and inquiring into, adjudicating and prescribing punishment for all prison offences and breaches of discipline.[58] He is required to visit the prison at least once every working day. The superintendent of a district prison must, "as far as is practicable", observe every prisoner in his charge every day; superintendents of central prisons must do so once every two days.[59] Superintendents are directed to visit prisons at unannounced times to determine compliance to rules and orders and also to inspect the food every day.[60]

Medical care is entrusted to a senior medical officer from the provincial health department. Such officers work full-time in central prisons and first-class district prisons and part-time in other prisons. They are responsible for all as-

[45] Rule 4, Jail Manual.
[46] A division is an administrative grouping of several districts.
[47] Rule 5(i) and 5(ii), Jail Manual.
[48] Ibid, Rule 6(i) and 6(iii).
[49] Section 3(1)(c) of the Prisons Act, 1894.
[50] Ibid, Section 5.
[51] Rule 890, Jail Manual.
[52] Ibid, Rule 893.
[53] Ibid, Rules 897 and 898.
[54] Ibid, Rule 900.
[55] Ibid, Rule 907(i).
[56] Ibid, Rule 908.
[57] Ibid, Rule 912.
[58] Ibid, Rule 940(ii)(a-d).
[59] Ibid, Rule 943.
[60] Ibid, Rules 944, 945.

pects of the physical and mental health of the prisoners under their care, as well as general hygiene on the premises, and at least once every week must inspect every part of the prison to guarantee "nothing exists therein which is likely to be injurious to the health of the prisoners".[61] This includes examining drainage and water supply arrangements and ensuring that adequate precautions have been taken against overcrowding in cells and barracks.[62] Other responsibilities include examining prisoners complaining of sickness, directing that they are admitted to hospital if necessary and visiting sick prisoners in the hospital every day. Every prison also has one or more full-time junior medical officers, whose appointment, transfer and discipline[63] is the responsibility of the Executive District Officer (Health), the district health department's administrative head.[64]

Subordinate prison staff, constituting the rank and file of the prisons service, include chief warders, head warders and warders. The warder establishment in each province involves the grouping of prisons into one or more "circles" based on the total number of prisons in the province. Each circle is headed by a superintendent, headquarters prison[65] who manages the appointment, transfer and promotion of warders in the grouping. The inspector general of prisons can at any time transfer any prison from one circle to another or create additional circles.[66] Similarly, the inspector general determines the permanent strength of the warder establishment in each prison and may revise it when necessary.[67]

Warders are mostly recruited from pensioned or discharged military personnel, with a secondary school certificate being the minimum requirement.[68] A committee consisting of the superintendent of the headquarters prison and a senior superintendent of the same circle(s) is responsible for selecting warders, with the relevant police department verifying the character and "antecedents" of all candidates.[69] Newly appointed warders are placed on probation for two years, with the appointment confirmed by the superintendent of the headquarters prison.

Warders can be assigned to any prison in the province, with the proviso that they not be posted either in their home district or one in which they have long been resident. Warders are also not ordinarily allowed to remain at a central prison for more than three years or for more than two years at other prisons. Promotions to head warder and to chief warder are determined by the superintendent of the headquarters prison, subject to the "general control" of the inspector general. Such promotions, to be made on merit, can only take place upon a candidate's successful completion of the relevant promotion course, organised by the NAPA.[70] Aside from promotion-related training, each warder is given four months training upon induction into service. Each is also required, "from time to time", to "undergo instruction and practice in the nature of military training necessary to acquaint him with squad and company drill and to render him thoroughly efficient in the use of arms prescribed for warders".[71]

Some key responsibilities of the chief warder in central and first-class district prisons include posting and assigning warders their duties; assisting the deputy superintendent in unlocking, counting and locking up prisoners; and ensuring the perimeter boundaries, as well as all entrances leading to enclosures and barracks are secured, and sentries are present and alert.[72] Every head warder is required to supervise the conduct of all warders under his charge; open the cells and barracks each morning to count the prisoners; issue all necessary tools, materials and other items required for prisoners' vocational activities; and check prisoners at each change of guard.[73]

Each warder has specific duties assigned by the superintendent or deputy superintendent, such as transferring prisoners from one barrack to another, holding workshops or supervision of a party of prisoners inside or outside the prison. Posts and duties are normally changed on the first day of every month, or more often if necessary to prevent warders from establishing relations with individual prisoners.[74] More important tasks are assigned to senior and more experienced warders but, in general, all warders are required to know the number of prisoners in their charge and count them frequently during hours of duty; to search the prisoners as well as their place of confinement at the time of receiving or relinquishing charge; to report every prisoner considered to have committed a prison offence; and to keep arms and ammunition clean and ready for immediate use.

Each women prison has a female assistant superintendent who runs its affairs subject to the overall control of the

[61] Ibid, Rule 983.
[62] While senior medical officers can identify instances of overcrowding and suggest remedial action, the responsibility for implementing such suggestions rests with the provincial home ministry.
[63] For example, the executive district officer (health) can suspend the medical officer for dereliction of duty.
[64] Rules 981, 1048, Jail Manual.
[65] A headquarters prison is the main prison in each circle.
[66] Ibid, Rules 1110, 1110(iii).
[67] Ibid, Rule 1112.
[68] Ibid, Rules 1113 (iii), 1113(iv).
[69] Ibid, Rules 1114 (ii), 1116(ii).
[70] Ibid, Rules 112 (i), 1121(ii).
[71] Ibid, Rule 1129.
[72] For a detailed list of the chief warder's duties, see ibid, Rule 1138.
[73] See ibid, Rule 1139.
[74] Ibid, Rule 1146(i).

superintendent of the local male prison.[75] All rules and regulations applying to male assistant superintendents in general prisons apply equally to female assistant superintendents of women prisons. A team of female warders assists the female assistant superintendent, with the same duties as male warders. No male employed in any capacity or connected in any way with the women prison is allowed to enter any part of that prison other than when called to do so by the female assistant superintendent, and only when accompanied by the female assistant superintendent or a female warder.[76]

C. HUMAN RESOURCE MANAGEMENT

Despite these detailed rules and regulations, according to senior officials, opaque and politicised postings, transfers and promotions, combined with the absence of a "systematic program" for capacity building of personnel, undermine professionalism.[77] Since inspectorates of prisons are an attached department of the provincial home ministry, serving officials emphasise they lack autonomy and independent decision-making authority. "All my proposals get dumped in the home ministry", said a serving inspector general of prisons. "The professional input of senior prisons personnel keeps being ignored by bureaucrats who know next to nothing about running prisons".[78] Prison officials believe that converting the inspectorate into an autonomous department under the law and justice ministry would help redress the many flaws in the system.[79]

This lack of autonomy is exacerbated by political interference in prison affairs. For instance, given the high incidence of political prisoners, including senior party leaders, during periods of military rule, senior prison officials have often granted preferential treatment in the hope of political backing once a leader is released and is in a position of influence. Even during democratic transitions, as now, superiors have found it hard to take action against prison officials misusing their office and authority with political backing. "During the Musharraf regime, there was a lot of pressure on jail staff to go easy on prisoners with links to political parties and other influential groups, with the result that discipline has become very lax", said a senior prison official in Karachi.[80] If the prison system is to be effective, it is essential that senior officials are allowed to take action against erring personnel.

As with virtually every other department of Pakistan's civil bureaucracy, postings, transfers and promotions in the prisons service are often based on nepotism, patronage and individual whim rather than merit. Nor is there a clearly defined framework for career progression.[81] In October 2010, for instance, the Punjab home ministry indicated that it would take action against the inspector general of prisons for overstepping his authority in transfers, postings and promotions of several officials in violation of the Punjab Civil Services Act, 1974, and the Punjab Prison Rules, 2010.[82] Yet, no proceedings have taken place to date, and he remains in office. Similar allegations had been levelled earlier against the same officer, with no action taken.

The failure to follow regulations for promotions, with top posts often given to the police, certainly acts as a disincentive for reform. Although Rule 890 of the Jail Manual specifies that the inspector general of prisons is appointed either through promotion of the DIG or a prison superintendent, police rather than prison officials are often appointed to senior positions in the prisons hierarchy, including the top post. According to a senior prisons official, "this rule has been frequently flouted over the last few decades, particularly in Punjab, where several police officers have served as inspector general of prisons".[83] Yet, prison officials' salaries are low, not even matching those of the police. A senior prison official commented: "Promotions are slow, and salaries, although recently raised", are still "far too low to provide a disincentive for corruption", which remains rampant.[84] Many prison officials argue that raising salaries at least to par with the police would improve the quality of prison staff, while raising their status vis-à-vis their police counterparts.[85]

The lack of specialised training centres for prison personnel, moreover, has resulted, in the use of police training schools. Prison officials contend that this is largely responsible for the failure to enforce the Jail Manual's rules, particularly with regard to the rampant abuse in prisons.[86] According to senior officials, the curriculum of such schools produces police who are brutal and "anti-suspect", and in prison personnel results in the failure to inculcate respect for and humane treatment of their charges, leading to cus-

[75] Ibid, Rule 1180(i).
[76] Ibid, Rule 1183(i).
[77] Crisis Group interview, senior prisons officials, Quetta, 18 May 2011.
[78] Crisis Group interview, March 2011.
[79] Crisis Group interviews, Islamabad, Karachi, Lahore and Quetta, March-June 2011.
[80] Crisis Group interview, prisons official, Karachi, 21 April 2011.
[81] For more on postings, transfers and promotion policies and practices in the civil bureaucracy, see Crisis Group Asia Report N°185, *Reforming Pakistan's Civil Service*, 16 February 2010.
[82] Anwer Sumra, "Prisons chief seen as exceeding authority", *The Express Tribune*, 21 October 2011.
[83] Crisis Group interview, Lahore, 16 March 2011.
[84] Crisis Group interview, senior prisons official, Lahore, 14 March 2011.
[85] Crisis Group interview, senior prisons officials, Lahore, March 2011.
[86] For more detail on such abuse, see "Jails, prisoners and disappearances", HRCP, 2010, op. cit.

todial torture and maltreatment.[87] However, police officers insist that prison personnel "need no lessons in brutality" from them and are "eminently capable of managing on their own".[88] A senior police officer, who had also served as inspector general of prisons said, "in spite of my best efforts to lessen the hardships faced by prisoners, I was obstructed at every step of the way by the prison staff, who were callous, corrupt, inefficient and poorly trained".[89]

Although the high incidence of prisoner abuse is a consequence of a general permissive environment in the justice system, characterised by a disregard for human rights and the failure to hold officials accountable, appropriate training would help to create a far more professional force. The Lahore-based NAPA, the only national non-police training facility for prison staff, falls under the federal interior ministry. It has been upgraded to the status of an academy and claims to "fulfil the requirements of the UN Geneva Convention known as the Standard Minimum Rules for Treatment of Prisoners, 1955", by providing "technico-professional training from warders to superintendents".[90]

NAPA's stated objectives include specialised training of prison and probation staff, including human rights; physical training; orientation programs for officers from other departments relevant to prison administration; research in prison management; computer training; and maintaining a comprehensive database on all information regarding prisons and other related fields to assist national and provincial policy planning. Future goals include the career development of prisons staff; pre-service certification courses to guarantee the quality of fresh inductees; and affiliation of the academy with universities to provide degree-level courses.

There is a pressing need for training institutes in all four provinces, not least because, as a senior prisons officer in Quetta pointed out, "the NAPA is under the federal government which, as per the constitution, should not be encroaching upon provincial areas of jurisdiction".[91] The Punjab Prisons Staff Training Institute, also in Lahore and the single other training institute specifically for prisons personnel, only caters to Punjab's prison staff. Even this is inadequate for the needs of Pakistan's largest province. All four provincial governments must urgently establish functional training institutes for prison personnel if their prison systems are to deter, rather than facilitate, criminality and militancy. Prison reform, however, also requires the overhaul of a dysfunctional criminal justice system, which, if left unreformed, will continue to overburden prisons, undermining the capacity and capability of even the best trained and disciplined personnel.

[87] Aayan Ali, "Training of jail staff at police centres major reason for torture", *Daily Times*, 10 November 2005.
[88] Crisis Group interview, police official, Lahore, 14 March 2011.
[89] Crisis Group interview, former inspector general of prisons, Lahore, March 2011.
[90] National Academy for Prisons Administration website, www.cjsti.gov.pk/about.htm.
[91] Crisis Group interview, Quetta, 18 May 2011.

IV. PRISON MANAGEMENT

A. JUSTICE DENIED

As of August 2011, there were 927,438 cases pending in Punjab's lower courts, 99,981 in Sindh's, 99,511 in KPK's and 7,383 in Balochistan's.[92] Civil cases can take anywhere between ten to twenty years before a judgment, while criminal cases can take more than five years. With an ever-increasing caseload, and the accused rarely brought to court on time, under-trial prisoners form the vast majority of Pakistan's prisoners.[93]

Successive government law commissions have recommended a substantial increase in the number of judicial officers, courts and other facilities, only to have their recommendations ignored. Yet, while hiring new judges and providing better training to subordinate judicial personnel is vital, the government should also review and reform an outdated Penal Code, Evidence Act and Criminal Procedure Code. It is equally important to address other flaws in the criminal justice system, particularly in investigation and prosecution, which produce a low conviction rate – at best 10 per cent – while nevertheless leaving the majority in prison on remand, their cases largely left unheard. These weaknesses have perpetuated a system that victimises particularly the vast majority without access to proper legal defence. Most under-trial prisoners, lacking money and/or political connections, can remain in prison on remand for months, even years, while hardcore criminals, including terrorists, continue to evade justice because of faulty prosecutions. Judges, fearful of the consequences of conviction, rely on legal flaws to free such offenders.[94]

Under Article 10(2) of the constitution, a person in custody must be brought before a magistrate within 24 hours of arrest. The magistrate can then extend the duration of detention if there are sufficient grounds for the case. The law prohibits the police from detaining a person for longer than fourteen days, after which the individual must be sent to a prison that will be responsible for ensuring the prisoner's presence in court. A trial, however, can commence only after a case brief (*challan*), has been prepared, a process that can take up to two years. Police negligence and incompetence can even result in *challans* not being issued at all. "Non-submission of *challans* is one of the primary causes of delay in the disposal of cases", said a criminal lawyer in Lahore, recommending that "criminal cases should be registered against investigation officers found guilty of such negligence".[95]

Even when a case begins, the police, responsible for transporting and guarding prisoners, more often than not fail to bring them to court on trial dates. While prisons officials frequently complain of a lack of cooperation on the part of the police, the latter maintain that their already scarce resources can seldom be spared for prison-related duties.[96] However, corruption is also responsible for such delays, with prison staff (or police) seeking bribes from prisoners to ensure access to a judge, adding to already prohibitive costs of litigation, while those without means are often denied their day in court. "Corruption among the prison staff is endemic and widespread, with everyone protecting each other", said a former inspector general of prisons in Punjab.[97] A senior prisons official in Quetta added: "With salaries being low, discipline often lax and training inadequate, it is hardly surprising that staff are susceptible to bribery and other corrupt practices".[98]

A dysfunctional police service has also obstructed attempts at criminal justice reform, including penal reform. Decades of manipulation by military and civilian governments alike have reduced the police to what a senior police officer referred to as the "hatchet men of whoever is in power".[99] While the PPP government pledged to transform the police into a "superior service" with "operational autonomy, free from all financial and administrative pressures",[100] it has yet to translate this into action.[101]

Police corruption has aggravated overcrowding in prisons. "The police, particularly in rural areas, are often willing to register false cases for money or on the insistence of a local influential who wants to victimise his opponents", said a criminal lawyer. "As a result, people are thrown into prison for crimes that never occurred".[102] Another lawyer said that people often try to implicate not only the main

[92] Masood Rehman, "Backlog of over 1.35m cases 'haunts' the judiciary", *Pakistan Today*, 8 August 2011.
[93] See Crisis Group Reports, *Reforming Pakistan's Criminal Justice System*, op. cit.; and *Reforming the Judiciary in Pakistan*, op. cit.
[94] Crisis Group interview, legal aid lawyer, Lahore, January 2011.
[95] Crisis Group interview, Khawaja Latif, Lahore, 29 August 2011.
[96] Crisis Group interviews, prisons and police officials, countrywide, March-May 2011.
[97] Crisis Group interview, Lahore, 14 March 2011.
[98] Crisis Group interview, Quetta, 18 May 2011.
[99] Crisis Group interview, Lahore, 30 August 2011.
[100] Crisis Group Report, *Reforming Pakistan's Police*, op. cit., p. 21.
[101] For example, in January 2011, conceding to demands by its coalition ally the Muttahida Qaumi Movement (MQM) on appointments of 650 officials at the constable level, the PPP-led government allowed appointments of over 100 who were wanted in 341 cases, including murder, attempted murder, robbery and the possession of illegal weapons. Imdad Soomro and Aftab Channa, "107 police constables are most-wanted criminals", *Pakistan Today*, 16 July 2011.
[102] Crisis Group interview, Khawaja Latif, Lahore, 29 August 2011.

accused but also other members of the family, frequently on baseless grounds, and the police, "either because they are corrupt or simply because they have neither the time nor the resources to conduct a thorough investigation, put them all behind bars".[103]

Such abuses could have been checked through the accountability institutions envisaged by the Police Order of 2002, for example public safety commissions at the national, provincial and district levels; criminal justice coordination committees in each district; and police complaints authorities and citizen police liaison committees at various levels. These mechanisms could have made the police accountable, including for bringing false cases and failing to submit *challans* or to bring remand prisoners to court. Yet, these bodies were either not constituted, or if they were formed, were never fully authorised.

In 2004, Musharraf amended the Police Order through an ordinance that among other provisions tilted the balance of the commissions in favour of the ruling party. This ordinance was required to be re-promulgated every four months, but this has not been done since November 2009, thus bringing the original Police Order back into force. Since policing is a provincial subject, each province should amend the Police Order, as should the National Assembly. All these legislatures should review the original legislation, building on its constructive provisions while scrapping those that undermine police functioning. Among the changes they should consider are expanding the authority of the public safety commissions to include oversight of prison conditions and guaranteeing adherence to the law by prison administration, staff and officials.

A 1993 Supreme Court ruling held that equal access to justice for all, enshrined under Article 9, which protects the right of every person from being deprived of life or liberty "save in accordance with the law", included appropriate notice of proceedings, impartial courts and sufficient opportunity to mount a defence.[104] Yet, judges in subordinate courts, along with prison staff and police, also seek bribes to fix an early hearing. Fearing indefinite detention, many detainees feel compelled to pay off prison officials or even plead guilty to obtain lower sentences rather than seek justice through the court system.

While independent oversight bodies, as well as national and provincial parliamentary committees, should be the primary checks on the abuse of power by prison or police personnel, the subordinate judiciary's effectiveness depends largely on the leadership of the higher judiciary, which has ultimate responsibility for the rule of law. While it has prioritised clearing the enormous backlog of cases in lower and higher courts, it has largely failed to hold the lower courts, or police and prison officials, accountable. As a result, an unreformed justice sector, in which neither the government nor the higher judiciary have appeared ready to hold lower courts or prison staff and police accountable, continues to deny prisoners timely and impartial justice.

In May 2011, the National Judicial Policy Making Committee (NJPMC), the country's top legal policymaking body, headed by the Supreme Court chief justice, admitted the deterioration in the quality of investigations and observed that issues regarding non-submission of *challans*, defective investigations and non-production of remand prisoners were continuing to impede justice.[105] It did not, however, discuss how to hold subordinate court judges accountable for unfair trials and convictions. "A drastic surgical operation is required to clean up the criminal justice system, but neither the government nor the judiciary has the will to do so", said a former chief justice of the Lahore High Court.[106]

B. THE CRISIS OF OVERCROWDING

According to the 2010 annual report of the Human Rights Commission of Pakistan (HRCP), the number of prisoners in 55 of the country's 91 prisons far exceeded their sanctioned capacity; 27 prisons had more than twice the number of prisoners authorised.[107] In 2011, Karachi's central jail had 3,536 against a capacity of 1,691 while the district jail in Malir, in Karachi's suburbs, housed 2,296 prisoners against a capacity of 893;[108] 29 of Punjab's 32 prisons, five of twelve in Balochistan, ten of 22 in Khyber Pakhtunkhwa and eleven of 25 in Sindh are markedly overcrowded.

Remand prisoners, as earlier noted, account for most of the prison population, around 50,000 of 78,000. In Punjab province alone, Gujranwala's central jail, with a sanctioned capacity of 913 prisoners, has 3,333, of whom 2,436 (73 per cent), are on remand. Sahiwal's central jail accommodates 3,828 prisoners, against a sanctioned capacity of 1,750, of whom 2,350 are on remand. Punjab's provincial capital, Lahore's district jail has the largest number of prisoners of any Pakistani prison – 3,930 in barracks and cells

[103] Crisis Group interview, Lahore, 30 August 2011.
[104] See Crisis Group Report, *Reforming Pakistan's Criminal Justice System*, op. cit.

[105] "NJPMC takes exception to faulty investigations", *The Nation*, 16 May 2011.
[106] Crisis Group interview, Lahore, 29 August 2011.
[107] "Jails, prisoners and disappearances", HRCP, 2010, op. cit., p. 93.
[108] Figures provided by Inspector General of Prisons Sindh Ghulam Qadir Thebo. Crisis Group interview, Karachi, 20 April 2011.

meant to accommodate only 1,050 – and also the largest number of those on remand: 3,683, roughly 94 per cent.[109]

The prison population is composed of those convicted of crimes or on remand for criminal charges, as well as civil prisoners[110] and any person "ordered to be detained in prison without trial under any law relating to the detention of such person".[111] Convicted prisoners are classified into "casuals" (first offenders) and "habituals" (repeat offenders),[112] and further classified into juveniles (under the age of eighteen), adolescents (over eighteen and under 21), and adults (over 21).[113] The rules also distinguish between those undergoing rigorous imprisonment (hard labour) and those undergoing simple imprisonment.[114] Remand prisoners are classified into those facing the district and sessions court[115] and those committed to other courts. Women prisoners are similarly classified.

Rule 231 of the Jail Manual establishes the standards for the separation of prisoners:

i) In a prison containing men as well as women prisoners, the women shall be imprisoned in a separate prison, or separate part of the same prison in such manner as to prevent their seeing, conversing or holding any communication with the male prisoners.

ii) Juveniles shall be kept separate from all other prisoners.

iii) Remand prisoners shall be kept separate from convicted prisoners.

iv) Civil prisoners shall be kept separate from criminal prisoners.

v) Political prisoners shall be kept separate from all other prisoners.

More specifically, under Rule 232:

Remand prisoners who have been committed to sessions courts shall be kept separate from remand prisoners who have not, and those who have been previously convicted shall be kept separate from those who have not.

i) Casual convicted prisoners shall be kept separate from habitual convicted prisoners.

ii) Simple imprisonment prisoners shall be kept separate from rigorous imprisonment prisoners.

iii) Convicted prisoners who are under sixteen shall be kept separate from convicted prisoners who are over this age.

iv) Every habitual criminal shall, as far as possible, be confined in a special prison in which only habitual criminals are kept. The inspector general may, however, sanction the transfer to such special prison of any prisoner not being a habitual prisoner whom, for reasons to be recorded, the superintendent of the prison believes to be of so vicious and depraved a character as to make his association with other casual prisoners undesirable. Prisoners so transferred shall not otherwise be subjected to the special rules affecting the habitual criminals.

v) Political prisoners may be kept separate from each other if deemed necessary.

Yet, given the massive overcrowding, segregating prisoners of different categories as mandated by law, is virtually impossible. According to a prison official, "overflowing jails, inadequate resources and the interminable delays characteristic of Pakistan's criminal justice system often make it difficult if not impossible to ensure complete segregation as required".[116] A former chief justice of the Lahore High Court revealed that during an inspection of one prison, he found nine inmates to a cell, some sleeping with their feet on others' chests.[117] "Overcrowding is so great in some prisons that they lie in their cells on top of each other", said a retired inspector general of prisons.[118] This failure to follow explicit rules for segregation, as noted later, bears grave security consequences, putting many on the path of criminality and militancy.

Overcrowding is also responsible for institutional and infrastructure decay. Starved of resources, prison authorities cannot renovate cells or add additional facilities like toilets, dining rooms and recreational areas. Moreover, staff resources in a sector starved of resources have not kept pace with the increase in prisoners. This overcrowding and a widening staff-inmate ratio that adversely affects the ability to run prisons are partly responsible for increased

[109] Figures provided by Inspector General of Prisons Punjab Kokab Nadeem Warraich. Crisis Group interview, Lahore, 15 March 2011.
[110] Unlike in many other countries, civil trials can result in imprisonment. For example, under Section 51(c) of the Code of Civil Procedure, 1908, a civil court can order the arrest and detention of a debtor, provided the latter has had an opportunity for defence.
[111] Rule 224, Jail Manual.
[112] Ibid, Rule 226.
[113] Ibid, Rule 227.
[114] Ibid, Rule 228.
[115] There is a district and sessions court, the court of first instance, with jurisdiction over both civil and criminal cases, in each district. It is known as the district court when it hears civil cases and the sessions court when it hears criminal cases.
[116] Crisis Group interview, Salahuddin Niazi, Lahore, 14 March 2011.
[117] Crisis Group interview, former Lahore High Court chief justice, Lahore, 29 August 2011.
[118] Crisis Group interview, Lahore, March 2011.

violence, both among the prisoners and between inmates and prison personnel. Insufficient staff also translates into significantly less monitoring and screening of prisoners and their activities. The failure to identify, monitor, segregate and provide the appropriate health services to those with special needs, particularly the mentally ill, also has consequences for the prison population at large. Such neglect, for instance, not only leads to deteriorating conditions for mentally ill prisoners but has also has an adverse psychological impact on other prisoners with whom they share cells and interact.

V. PRISON CONDITIONS

A. LIVING CONDITIONS

Most prison facilities are poorly constructed, and the vast majority have no capacity, despite the searing heat of Pakistan's summers, to control indoor temperatures. In its 2010 report, the U.S. State Department found that "provisions for sanitation, ventilation, temperature, lighting, and access to potable water were inadequate" in many facilities.[119] The average expenditure on food for prisoners is a meagre 50 to 100 rupees ($0.58 to $1.15) a day.[120] Inadequate food and medical care lead to chronic health problems and malnutrition for those unable to supplement their diet with the help of family and friends.

The 2010 annual report of the HRCP found that adequate medical care was lacking in almost all prisons. There were, for instance, only three doctors for nearly 2,200 prisoners in Karachi's Malir Jail. At least 50 inmates at the prison had HIV/AIDS, while some 400 had scabies.[121] Across Punjab, there were 255 prisoners suffering from HIV/AIDS; 1,979 from Hepatitis B; 5,223 from Hepatitis C; and 483 from tuberculosis. From October to December 2010, eleven detainees reportedly died in Punjab's Jhang district jail due to the absence of adequate medical facilities.[122] In January 2011, Sindh's inspector general of prisons disclosed that 34 doctor and eleven dispenser posts in the province's prisons were vacant.[123] While a system does exist for basic and emergency medical care, it often fails in practice. Prisoners sometimes have to pay bribes to obtain medicines or a bed in hospital, while cumbersome bureaucratic procedures also obstruct access to medical care.

Foreign prisoners, imprisoned for illegal entry or sentenced for crimes, often remain behind bars long after completing their sentences because they cannot pay their fare home.[124] Prisoners from minority communities, particularly Chris-

[119] "2010 Country Reports on Human Rights Practices: Pakistan", U.S. Department of State, 8 April 2011.
[120] Nasir Iqbal, "Inmates allowed to maintain contacts with spouses", *Dawn*, 29 August 2009.
[121] "Jails, prisoners and disappearances", HRCP, 2010, op. cit., pp. 94-95.
[122] Ibid.
[123] Imdad Soomro, "Sindh prisons without doctors", *Pakistan Today*, 15 January 2011.
[124] Section 14C of the Foreigners Act, 1946, states: "A foreigner having no permission to stay in Pakistan, who has been convicted and sentenced to imprisonment under this Act, shall not be released on the expiry of the sentence and shall continue to remain in custody for a period not exceeding three months to enable arrangements for his deportation to be finalised". Foreigners who enter illegally can be imprisoned for up to ten years. Following the termination of their sentence, they have to be deported.

tians and Ahmadis, are generally afforded poorer facilities, are often violently attacked by Muslim inmates and can also be subjected to brutal treatment by prison staff.

Prisoner abuse, including torture, by jail staff is rampant. For instance, in 2010, staff at Punjab's Toba Tek Singh district prison stripped three prisoners, taped their genitals to prevent them from urinating and forced each to drink three or four litres of water. The tape was removed four hours later, by which time all three had developed renal ailments.[125] An inquiry by a senior police officer cleared the accused prison officials of any wrongdoing, apparently on their own testimony. Prison authorities rejected requests by HRCP for access to the prisoners, indicating that such internal practices were at the very least tolerated, if not actively encouraged.[126]

Accountability mechanisms for checking prisoner abuse, corruption and other malpractices on the part of prisons staff are almost non-existent. "What goes on within the premises of a prison after office hours is at the exclusive discretion of the superintendent", said a former inspector general of prisons.[127] A Lahore-based criminal lawyer added: "The superintendent is the virtual king of his domain and can confer all sorts of favours upon those prisoners who can bribe him, from allowing food from their homes to supplying them with drugs, liquor and prostitutes".[128]

Although the inspectors general of prisons, district coordination officers and district and sessions judges are mandated by law to conduct regular inspections of prisons, such visits are infrequent and at best cursory, while officials found guilty of dereliction of duty are rarely punished.[129] Provincial assembly members (MPAs) are also ex-officio visitors/observers of every prison in their constituencies but "there are hardly any who ever take time out to perform their supervisory role", said a former inspector general of prisons.[130] MPAs should indeed take this role seriously, given the impact on the lives of their constituents.

Prisoners very seldom raise issues of abuse, fearing that the prison authorities would punish them physically. Moreover, they are fearful of being separated from their families and friends, often their only support network in prison. For instance, the provincial government[131] and the inspector general[132] can order the transfer of prisoners from one prison to another within the province without providing any justification; prisoners have no legal recourse against such arbitrary transfers.[133] As a result, "most prisoners are too scared to lodge complaints against their jailers, because they are afraid of being sent far away from their own districts, or even outside their home province".[134] Not only should prisoners and their families have the legal right to appeal against transfers, but the provincial government's and the inspector general's arbitrary powers should be revoked.

At present, there is no institutionalised mechanism to act as a check on prison authorities or the powerful civil bureaucracy. For instance, non-official visitors[135] are allowed to conduct prison inspections, but a selection board headed by the district coordination officer appoints them.[136] Such non-official visitors, moreover, are not authorised to inspect prison records.[137] Several criminal lawyers and civil society activists working on prisoners' rights recommend that independent accountability institutions, such as the criminal justice coordination committees constituted according to the Police Order of 2002, should approve the transfers of prisoners out of their home district and also act as a check on prison staff and other officials, including the district administration.[138]

B. VIOLENCE, CRIME AND MILITANCY

In its 2010 report, the U.S. State Department rightly argued that Pakistan's prisons could "not be classified as correctional institutions", because their conditions were "so inhumane that criminals often leave more hardened than before their arrest".[139] Massive overcrowding, corrupt, brutal and poorly trained staff and abysmal living conditions have made prisons a hotbed of violence, drug abuse, criminality and militant activity. Rioting occurs on a regular basis, with prisoners at times using firearms, smuggled in with the connivance of corrupt staff against

[125] "HRCP condemns brutal torture", *The Express Tribune*, 12 October 2010.
[126] Crisis Group telephone interview, research officer, HRCP, Islamabad, 9 September 2011.
[127] Crisis Group interview, Lahore, March 2011.
[128] Crisis Group interview, Lahore, 29 August 2011.
[129] Crisis Group interviews, prisons officials, Islamabad, Lahore, Karachi and Quetta, March-June 2011.
[130] Crisis Group interview, Lahore, 30 August 2011.
[131] Section 29 of the Prisoners Act, 1900.
[132] Rule 147, Jail Manual.
[133] During the Musharraf regime, political prisoners were often transferred from their home districts to remote locations as a means of pressuring them and their families.
[134] Crisis Group interview, probations officer, Lahore, 14 June 2011. Rule 150 of the Jail Manual authorises the transfer of prisoners on administrative grounds from one province to another, arranged by the respective inspectors-general of the two provinces, on a reciprocal basis
[135] These include individuals who occupy no official position and generally include civil society activists and social workers, philanthropists, doctors and psychologists.
[136] Rule 917 of the Jail Manual.
[137] Ibid, Rule 919(ii).
[138] Crisis Group interviews, Lahore and Islamabad, August-September 2011.
[139] "2010 Country Reports on Human Rights Practices", op. cit.

prison personnel who have limited weapons, ammunition and training in preventing or repelling such attacks.

In January 2010, for instance, alleged torture by the prison superintendent provoked a riot in Faisalabad's central jail in which two prisoners were killed.[140] In March 2011, a major riot in Hyderabad's central jail, where over 1,700 prisoners were housed against a capacity of 1,527, resulted in the death of seven prisoners and injuries to over twenty prisoners and staff. A subsequent search operation recovered six pistols, one rifle, hundreds of mobile phones and a large quantity of locally made liquor from the cells.[141] Inmates who appeared before a judicial commission investigating the riot maintained that mobile phones, liquor and drugs were sold to prisoners with the connivance of the prison authorities: a 2,000-rupee ($23) mobile phone was sold for 8,000 rupees ($93), while a pint of liquor was available for 500 rupees ($6); prisoners claimed that cannabis was cultivated inside the prison.[142]

Sindh's inspector general of prisons, Ghulam Qadir Thebo, claimed that with the exception of Larkana's central jail, all the province's prisons had undergone clean-up operations during 2009-2011, aimed at confiscating mobile phones, drugs and weapons. However, given insufficient staff and resources, it has been difficult to sustain such efforts; for instance, the supply of mobile phones to prisoners continues unhindered.[143]

A police officer who had also served as a senior prisons official referred to jails as "the hatcheries of terrorists, militants and other species of criminals".[144] The head of Sindh's Hyderabad district police admitted that hardened criminals in the district's central prison were planning and coordinating illegal activities, including kidnapping for ransom, from within prison walls.[145] These pose a far greater threat to law and order and internal stability than if they were isolated activities, given that hardcore criminality – kidnappings for ransom in particular – is increasingly linked to and coordinated with militant networks in ungoverned areas such as FATA. Criminal gangs responsible for such kidnappings, part of extensive criminal syndicates, regularly transfer victims abducted in urban centres and elsewhere to FATA-based extremist groups that rely on ransoms as a critical source of financing.[146]

Prisons and police officials admit that the easy access to mobile phones and the generally permissive environment in the jails, including connivance of staff, allow prisoners, including militants, to preside over extensive criminal networks while in detention. "Discipline in jails with weak superintendents is lax. Undertrained and underpaid prison officials are inevitably vulnerable to bribery and corruption, to the extent of smuggling in cellular phones to even hardened militant inmates", admitted a senior prisons officer.[147]

Some prison personnel have also aided militant inmates because of ideological sympathies. According to a former prisons official in Lahore, "we do not have a proper monitoring or vetting system for our warders and even officers, which increases the likelihood of connivance between religiously-driven militants and staff who support the same ideology".[148] Prison officials in Quetta disclosed that the banned Lashkar-e-Jhangvi, a Sunni extremist organisation,[149] maintained contact with detained members through sympathetic prison staff and was also recruiting other inmates.

The failure of prison authorities to prevent the proliferation of mobile phones is a major obstacle to discipline and preventing criminals, including militants, from planning and overseeing operations from within prison walls. Intelligence agencies have frequently intercepted mobile phone calls from jailed militants to their associates outside. For instance, several such calls were made in late 2010 from a jail in Timergara, in KPK's Lower Dir district, that at the time housed over 300 suspected militants.[150] Prison authorities in Quetta admitted that some of their staff were suspended after an inquiry found them to be supplying mobile phones to militants.[151] According to one such official, imprisoned militants have even made threatening calls to judges hearing their cases. In 2010, courts in Lahore and Karachi reportedly exonerated several hardcore militants after judges and witnesses received such

[140] "Faisalabad jail riots leave two dead", *The Nation*, 31 January 2010.
[141] Mohammad Hussain Khan, "Jail riots claim lives of seven inmates", *Dawn*, 15 March 2011.
[142] Mohammad Hussain Khan, "Jail officials behind sale of phones, liquor, say inmates", *Dawn*, 18 March 2011.
[143] Crisis Group interview, Ghulam Qadir Thebo, Karachi, 20 April 2011.
[144] Crisis Group interview, Lahore, 14 March 2011.
[145] Khan, "Jail officials behind sale of phones", op. cit.
[146] See Crisis Group Reports, *Reforming Pakistan's Criminal Justice System*; and *Pakistan: The Militant Jihadi Challenge*, both op. cit.
[147] Crisis Group interview, Quetta, 18 May 2011.
[148] Crisis Group interview, Lahore, 17 March 2011.
[149] The Lashkar-e-Jhangvi is responsible for scores of terrorist, including suicide, attacks against Shias, Sunnis from more moderate sects and even state officials. For more detail on it and other sectarian extremist groups, see Crisis Group Reports, *The Militant Jihadi Challenge*; and *The State of Sectarianism in Pakistan*, both op. cit.
[150] Qaiser Butt, "'Terrorist nurseries': Jails breeding 'militants'", *The Express Tribune*, 22 January 2011.
[151] Crisis Group interviews, Quetta, 18 May 2011.

calls from the incarcerated defendants and their associates.[152] Said a prison official in Karachi, "prisoners have become more powerful than the jailers".[153]

Prison authorities have sought to install jamming devices to block cellular communication but have been prevented from doing so by the Pakistan Telecommunication Authority (PTA). In May 2011, inspectors general of prisons of all four provinces informed a Senate committee on human rights that the PTA was resisting their efforts to install additional jamming devices; it has also ordered tenders floated for that purpose to be recalled and for jamming devices already installed in Karachi's central jail to be removed.[154] "One wonders whose side the PTA is on, ours or the prisoners?", said a senior prison official.[155] Nor do prisons have the ability to monitor the activity of prisoners through closed circuit TV. While funds have been earmarked in all four provinces for the installation of CCTV cameras, the technology has yet to be extended to most prisons, or even to all central jails.[156] A prison official recommended that, besides CCTV cameras, each prison should have public telephones, and every call should be monitored and recorded.[157]

The failure by overstretched prison staff to identify and separate hardened criminals and prisoners with jihadi sympathies and connections from the general population remains a major factor that facilitates such individuals to conduct their activities unsuspected.[158] Nor, despite major domestic security threats and hundreds of terrorist attacks claiming thousands of lives, does Pakistan have even one high-security prison for suspected terrorists. In May 2011, KPK's inspector general of prisons told a meeting of the Senate human rights committee that the absence of such a prison – in a province especially affected by terrorist violence – has forced him to house suspected and convicted terrorists with other prisoners in general barracks.[159] "In the absence of high-security prisons anywhere or even separate zones within existing prisons for terror suspects, we have no option but to keep them in the general barracks", said another senior prisons official, who admitted: "By doing so, we are paving the way for the indoctrination [by militants] of other prisoners".[160]

Since the spread of crime and militancy within prisons is escalating into a major crisis, the provincial governments and legislatures, particularly the relevant parliamentary standing committees, should hold the home secretaries, inspectors general of prisons and other prison officials to account, particularly for the widespread use of mobile phones and the generally permissive environment. The PPP government and its parliamentary opposition should also revisit the Anti-Terrorism Act, 1997, to develop a more specific definition of terrorism that would preclude people from being charged under the act for other kinds of crimes.[161]

It is particularly vital that terrorist leaders and their foot soldiers are completely separated from the larger prison population, which remains a major potential recruitment pool. At the very least, those convicted of terrorist acts should be imprisoned in separate, high-security sections of existing prisons, and those under trial for terrorist acts should be kept separate from a prison's general population, particularly juvenile prisoners. According to a retired inspector general of prisons, "juveniles often perforce must rub shoulders with hardened criminals and militants simply because the state does not see the infrastructural reform of prisons as a major priority".[162] This exposure of impressionable juvenile prisoners to jihadi and other criminal elements contravenes all rules and regulations governing the imprisonment of young offenders.

C. JUVENILE PRISONERS

Juvenile prisoners fall under the ambit of the Juvenile Justice System Ordinance (JJSO), 2000, and subordinate rules that apply to all four provinces but not to FATA or KPK's PATA. Prior to the JJSO's promulgation by the Musharraf government, only Punjab and Sindh had separate juvenile justice legislation.[163] It is undeniably an improvement on earlier laws regulating juvenile justice, and while the protections it provides are unevenly implemented, it has led to a reduction of juvenile prisoners. For instance, in 2002, two years after it was promulgated, there

[152] Butt, op. cit.
[153] Crisis Group interview, prisons official, Karachi, 21 April 2011.
[154] "Overcrowded prisons: No separate jail for militants, Senate panel informed", *The Express Tribune*, 17 May 2011.
[155] Crisis Group interview, Quetta, 18 May 2011.
[156] Crisis Group interviews, prison officials, Lahore, Karachi and Quetta, March-June 2011.
[157] Crisis Group interview, Karachi, 21 April 2011.
[158] Crisis Group interviews, prisons officials, lawyers and NGO activists, Islamabad, Lahore and Karachi, May-August 2011.
[159] Three prisons in KPK's Battagram, Mansehra and Kohistan districts have yet to be rebuilt after being destroyed by the devastating July-August 2010 floods. "Overcrowded prisons: No separate jail for militants", op. cit.
[160] Crisis Group interview, senior prison official, Karachi, 21 April 2011.
[161] The ATA's current definition of terrorism includes "violence against a person" or property that "create[s] a sense of fear or insecurity in society". A vast range of criminal cases, from public disorder to acid attacks, to assault and murder, are frequently tried under the act. For more detail, see Crisis Group Report, *Reforming Pakistan's Criminal Justice System*, op. cit.
[162] Crisis Group interview, Lahore, March 2011.
[163] The Punjab Youthful Offenders Act, 1952, and the Sindh Children's Act, 1955.

were 4,979 children in prison, but by the end of 2010 that number had been reduced by more than half.[164] In 2011, there were 1,225 juvenile prisoners, of whom 1,074 were on remand and the rest convicted.[165] These figures do not include children in judicial lock-ups or military detention centres.[166]

The JJSO extends juvenile justice safeguards to all those accused or sentenced before the age of eighteen; under earlier provincial laws, the age limit had been sixteen. The minimum age for criminal responsibility under the Penal Code is seven years, although children between seven and twelve can only be held criminally responsible if the court determines they were mature enough to understand the consequences of their actions.

The law also contains important provisions regarding bail for juveniles and their pre-trial detention. Children arrested for a non-bailable offence must be produced before the juvenile court within 24 hours of arrest.[167] A child arrested for a bailable offence should be released on bail, with or without surety, unless there are "reasonable grounds" for believing that a release would "bring him into association with any criminal or expose the child to any danger".[168] Under such circumstances, the court must place the child in the custody of a probation officer or a suitable person or institution but explicitly not in a police station or prison. If bail is not immediately granted, the court must direct that the child's guardian be traced and, upon the latter's presence, the child must immediately be granted bail. For children under fifteen, the definition of a bailable offence was extended to include all offences punishable with imprisonment for less than ten years.[169]

The JJSO limits the length of time a child may be detained before the trial's completion, depending on the gravity of the charges. A detained child must be released on bail for offences punishable by death if the trial is not completed within one year; for offences punishable by life imprisonment if the trial is not completed within six months; and for any other offence, if the trial is not completed within four months. Notwithstanding these provisions, however, bail can be refused if the accused is over fifteen and commits an offence which is "serious, heinous, gruesome, brutal, sensational in character or shocking to public morality", or has been previously convicted for an offence punishable by death or life imprisonment.[170]

To protect the privacy of accused children, the JJSO allows only members and officers of the juvenile court, parties to the case and persons directly concerned with the proceedings, and the child's guardian to be present during hearings.[171] Other prohibitions include

- no child can be given the death penalty or rigorous imprisonment during the time spent in a borstal or any other institution;
- juveniles cannot be handcuffed, put in fetters or given any corporal punishment at any time in custody, with the proviso that handcuffs can be used if there is a danger of the child escaping;[172] and
- no child can be charged or tried with an adult.

An accused child has the right to be represented at the state's expense by a lawyer with at least five years' experience in the relevant provincial bar.[173] As yet, no province has passed a budgetary allocation for such legal aid, although Punjab and KPK have notified five and seven panels of lawyers respectively for the purpose.[174]

Currently, Punjab and Sindh have two[175] and four[176] borstal institutions respectively (known in the latter as Youthful Offender Industrial School, YOIS); all have fewer inmates than the authorised capacity. However, KPK's sole borstal institution, in Bannu, is non-functional while Balochistan does not have a single juvenile detention facility. In both provinces, juveniles are housed in regular prisons alongside hardened criminals, including militants. Even in Sindh and Punjab, while juveniles are largely kept in separate barracks, at some stage of their imprisonment they are often mixed with the general population, making them vulnerable to jihadi recruitment and to abuse, rape and torture from adult prisoners and prison staff.

Moreover, while each of the four provinces has framed rules under the JJSO that, at least theoretically, aim to improve the living conditions of imprisoned children, the state has yet to fulfil JJSO's basic objective: "protection of children involved in criminal litigation, their rehabilitation in society, reorganisation of Juvenile Courts and matters connected therewith …"[177] This non-implementation stems at times from ignorance of the law by police and even judges, as well as wilful neglect. "The JJSO has still not been made part of the curriculum in judicial and po-

[164] "The State of Pakistan's Children 2010", Society for the Protection of the Rights of the Child (SPARC).
[165] Ibid, p. 70.
[166] Crisis Group interview, Abdullah Khoso, national program manager, SPARC, Islamabad, 27 April 2011.
[167] Section 10(2), JJSO 2000.
[168] Ibid, Section 10(3).
[169] Ibid, Sections 10(4), 10(5).
[170] Ibid, Section 10(7).
[171] Ibid, Section 6(3).
[172] Ibid, Section 12.
[173] Ibid, Section 3,
[174] Crisis Group interview, Abdullah Khoso, national program manager, SPARC, Islamabad, 27 April 2011.
[175] The two borstals are in Bahawalpur and Faisalabad.
[176] The four borstals are in Karachi, Hyderabad, Larkana and Sukkur.
[177] Preamble to the JJSO 2000.

lice academies, which demonstrates how low a priority it enjoys in official circles", said a child rights activist.[178]

In 2004, the Lahore High Court declared the law "unreasonable, unconstitutional and impracticable". According to the court, it unduly privileges juveniles; existing laws are sufficient, thereby making the JJSO redundant; and it is impractical to enforce.[179] While the Supreme Court suspended the judgement, it has yet to deliver a final ruling, so the JJSO remains in force. Yet, it is blatantly violated. Children continue to be arrested for petty offences; illegally detained for days and even months; kept alongside adult prisoners, including hardened criminals and militants; raped and tortured by police, prison staff and adult inmates; brought to court in fetters; sentenced to rigorous imprisonment; and even sentenced to death.[180]

The legal complexities of a warped legal system also undercut the JJSO's legal protections. For instance, the Hudood Ordinances override both the Pakistan Penal Code and the JJSO, including provisions relating to minimum age requirements. The definition of a child accused of a crime under the Hudood Ordinances is a person who has not attained puberty, making even a twelve-year-old potentially vulnerable to trial and punishment, including the death penalty. Similarly, the blasphemy and anti-Ahmadi laws, which carry a mandatory death penalty, also apply to juveniles. In January 2011, a seventeen-year-old student in Karachi was charged and sent to a juvenile prison under the blasphemy law for allegedly including derogatory remarks about Prophet Muhammad in a written school exam.[181] The police issued a charge sheet in March 2011, committing him to trial. If convicted, he will face the death penalty, regardless of his status as a juvenile when charged.[182]

Children are also regularly tried under the Anti-Terrorism Act of 1997 in Anti-Terrorism Courts (ATCs), despite the JJSO's requirement that the trials of juveniles should be conducted by specially constituted juvenile courts. While the JJSO abolished the death sentence for those under eighteen, the ATA mandates death or life imprisonment, irrespective of age and gender.[183] Overriding the JJSO in February 2006, a full bench of the Sindh High Court declared that juveniles charged under the ATA would be tried by ATCs, not by juvenile courts.[184] Children are sometimes produced in ATCs in handcuffs, contravening the JJSO bar on handcuffs and fetters. As of December 2010, some 40 juveniles were in KPK's prisons charged under the ATA, and more than 200 juveniles were detained in newly declared sub-jails in Fiazaghat, Pahtam and Malakand.[185] Imprisoning children alongside hardened criminals, including militants, in the insurgency-hit province that lacks even a single functioning juvenile facility, is not merely unjust; it is also extremely unwise.

D. WOMEN PRISONERS

There are over 900 women prisoners in various prisons across the country, the vast majority in separate barracks within male prisons. Three of Sindh's 25 prisons are for women, one each in Karachi, Hyderabad and Larkana, accommodating around 113 prisoners. In 2011, there were 82 remand female prisoners in Sindh, 30 convicted and one condemned.[186] Punjab, with 670, has the largest population of female prisoners in the country but only one prison for them, in Multan.[187] KPK and Balochistan, with 121 and 21 female prisoners respectively, do not have any separate prisons for women.[188] Because the female prison population is low, overcrowding is not a problem. In Karachi, for instance, the women prison, with an authorised capacity of 250, has only 74 inmates, while similar prisons in Hyderabad and Larkana also are well below capacity in

[178] Crisis Group interview, Abdullah Khoso, National Program Manager, SPARC, Islamabad, 27 April 2011.
[179] For a more detailed account of the Lahore High Court's ruling, and counter-arguments, see "Pakistan: Amnesty International's comments on the Lahore High Court Judgment of December 2004 revoking the Juvenile Justice System Ordinance", Amnesty International, 30 September 2005.
[180] See "The State of Pakistan's Children 2010", op. cit.
[181] "Pakistan: Drop Blasphemy Charges Against 17-Year Old", Human Rights Watch, 2 February 2011.
[182] Ishaq Tanoli, "Blasphemy suspect's trial to start on 29th", *Dawn*, 20 March 2011. Pakistan has applied the blasphemy law to children before, most prominently in 1995 when Salamat Masih, a Christian aged fourteen, was sentenced to death for blasphemy by a lower court in Lahore for allegedly writing derogatory remarks about the Prophet Muhammad on the wall of a mosque. He was also sentenced to two years at hard labour and fined. Masih was ultimately acquitted because the court found that he was illiterate. Justice Arif Iqbal Bhatti, who acquitted Masih, was assassinated in his chambers at the Lahore High Court in 1997, with the assassin admitting to committing the act because of the acquittal. See "Pakistan: Drop Blasphemy Charges Against 17-Year Old", op. cit.
[183] Crisis Group Report, *Reforming Pakistan's Criminal Justice System*, op. cit., p. 22.
[184] "Trying children for terror", *Dawn*, 21 August 2010.
[185] "The State of Pakistan's Children 2010", op. cit., p. 90.
[186] Figures provided by Inspector General of Prisons Sindh Ghulam Qadir Thebo. Crisis Group interview, Karachi, 20 April 2011.
[187] Punjab has 412 remand female prisoners, 239 convicted and nineteen on death row. Figures provided by Inspector General of Prisons Punjab, Kokab Nadeem Warraich. Crisis Group interview, Lahore, 15 March 2011.
[188] "Jails, prisoners and disappearances", HRCP, 2010, op. cit., p. 96.

2011.[189] Living conditions for female prisoners, however, are as abysmal as those for men.

A 2011 situation and needs assessment of female inmates in nine prisons across the country carried out by the UN Office on Drugs and Crime (UNODC), found unhygienic conditions in most.[190] The availability of washrooms varied from three to four to as many as 60 prisoners per washroom in some of the larger prisons.[191] Only one prison provided safe drinking water, the rest only unfiltered tap water, resulting in water-borne diseases. While female prisoners can keep their children up to the age of six with them,[192] it is common to find children even up to the age of twelve.

UNODC found that no prison surveyed had childcare facilities or provisions for children's education and recreation.[193] Women with reproductive health needs have little or no access to healthcare. In October 2010, the Punjab prisons minister told the Punjab Assembly that none of the province's 32 prisons provided obstetric surgery for women, and not a single gynaecologist was available.[194] Those with psychological problems had no counselling, except in three prisons where NGOs provided psychologists. There were few or no institutional arrangements for basic education or vocational training.[195]

Although Pakistan has among the lowest percentage of female prisoners in the world, women, like religious and sectarian minorities, are victims of the discriminatory legal system, particularly resulting from the Hudood Ordinances. Until parliament passed the Protection of Women Act (PWA) in 2006, rape victims who failed to prove their case according to Islamic evidentiary standards, including those who were impregnated by their assaulters but lacked four witnesses, were charged and convicted of unlawful sexual intercourse.

While not repealing the Hudood Ordinances, the PWA, as noted above, restored the offence of rape to the Penal Code, thus separating *zina* (extra-marital sex) from *zina-bil-jabr* (rape). This has reduced false accusations against rape victims and meant fewer women imprisoned for alleged *zina*.[196] In 2010, assessing the PWA's impact through interviews with police officials, prisons personnel, sessions judges and lawyers, the National Commission on the Status of Women (NCSW) determined that there had been a radical drop in *zina* charges against women.[197] While the PWA also repealed the punishment of whipping, inhumane sentences such as amputation and death by stoning remain on the books.

E. PRISONERS ON DEATH ROW

According to Amnesty International, as of 2010, Pakistan's death row population – around 8,000 – was the largest in the world, indeed close to half the global total.[198] The criminal laws make as many as 27 offences punishable by death, ranging from the possession of 100 or more grams of narcotics, such as heroin, to blasphemy and extra-marital sex under the Hudood Ordinances.

In November 2008, the federal interior minister, Rehman Malik, informed the National Assembly that the PPP-led government was considering legislation to abolish the death penalty[199] and intended, until legislation passed, to commute death sentences. The Supreme Court, then headed by Hameed Dogar, blocked the move to commute death sentences on the grounds that this violated Islamic provisions.[200] The repeal legislation has yet to be introduced and could also be blocked by the judiciary.

In March 2010, the federal law minister directed his ministry to submit a draft law within two weeks to remove the death penalty for offences under the Control of Narcotics Substances Act, 1997, but again, according to HRCP, "no concrete measures to amend the provision were visible".[201] While the government has informally imposed a moratorium on the death sentence since 2009, courts sentenced 356 people, including seven women, to death in 2010,

[189] Figures provided by Inspector General of Prisons Sindh Ghulam Qadir Thebo. Crisis Group interview, Karachi, 20 April 2011. The women prison in Hyderabad had 22 prisoners against a capacity of 150; the women prison in Larkana had no prisoners at all against a capacity of 110.
[190] "Females behind Bars: Situation and Needs Assessment in Female Prisons and Barracks", UNODC Country Office, Pakistan, 2011, at www.unodc.org/documents/pakistan//female_behind_bars_complete_final.pdf.
[191] Ibid, p. 25.
[192] Vide Notification No.3/23-SO-Prs-II-HD/87, Government of the Punjab, 18 July 1988.
[193] "Females behind Bars", op. cit., p. 25.
[194] "Jails, prisoners and disappearances", HRCP, 2010, op. cit.
[195] "Females behind Bars", op. cit.
[196] See Crisis Group Report, *Reforming the Judiciary in Pakistan*, op. cit.
[197] "Study to Assess Implementation Status of Women Protection Act 2006", National Commission on the Status of Women, Islamabad, www.ncsw.gov.pk/apanel/upload_file/StudyonWomenProtectionAct2006.pdf, pp. 11-13.
[198] See "Death Sentences and Executions 2010", Amnesty International, 2011.
[199] Tahir Niaz, "Govt. considering abolition of death sentence, NA told", *Daily Times*, 22 November 2008.
[200] All decisions by that Supreme Court bench, headed by Hameed Dogar, were deemed void in a 31 July 2009 decision, following the restoration of the judges deposed during Musharraf's 2007 emergency rule.
[201] "Jails, prisoners and disappearances", HRCP, 2010, op. cit.

since capital punishment has not been abolished. As a result, the death row population continues to increase.[202]

Because of lengthy delays in the dispensation of justice, condemned prisoners often remain in death row cells for years – some for over a decade – as their appeals "make their painstaking way through Pakistan's labyrinthine judicial system".[203] The conditions under which they are imprisoned are even worse than for other detainees. There are usually nine to ten prisoners in each nine-by-twelve foot cell, meant to accommodate no more than three or four. In 2009, the Supreme Court's National Judicial Policy Making Committee recommended that all prisoners whose appeals against the death penalty were pending before a high court should be kept, with adequate security arrangements, in regular barracks instead of death row cells.[204] On paper, all provinces have complied.[205] Punjab's government, for instance, amending Rule 330 of the Jail Manual, has made it mandatory for the prison superintendent to ensure that a condemned prisoner is not kept in a death row cell until the sentence is upheld by a High Court.[206] KPK has acted similarly.

Yet, despite these legal reforms, the old practice continues. In February 2011, for instance, in violation of the law, there were still 157 prisoners in death row cells in three main central prisons in KPK.[207] According to prison officials, unless separate barracks are built, condemned prisoners cannot be shifted to regular barracks in already grossly overpopulated prisons while also keeping them separate from remand prisoners.[208] To keep prisoners on death row while their appeals are still pending, however, as many Pakistani lawyers argue, is inhumane and a basic violation of human rights. The provincial governments must invest the required capital to implement their new laws on death row cells without exception, while the government should move on its resolve to end capital punishment.

[202] Ibid, p. 100.
[203] Crisis Group interview, senior police official, Lahore, 15 June 2011.
[204] "National Judicial Policy, 2009", Supreme Court of Pakistan, www.supremecourt.gov.pk/web/user_files/File/ NJP2009.pdf.
[205] Sindh was already doing so at the time of the policy's pronouncement.
[206] Anwer Hussain Sumra, "Moving condemned prisoners to ordinary barracks not feasible", *Daily Times*, 16 September 2009.
[207] Akhtar Amin, "Condemned prisoners being kept in death cells in violation of rules", *The News*, 22 February 2011.
[208] Crisis Group interviews, Lahore, Karachi and Quetta, March-June 2011.

VI. REFORMING THE PRISON SYSTEM

A. REDUCING OVERCROWDING

Some efforts are being made to address the problem of overcrowding and the conditions of under-trial prisoners but much more needs to be done. The provincial governments have sought to reduce overcrowding through the construction of more prisons and barracks. In Punjab, fourteen new prisons are being built at a cost of about 8.58 billion rupees (around $100 million).[209] In Sindh, barracks and cells under construction in Karachi, Khairpur, Mirpurkhas and Thatta are due for completion by December 2011.[210] But, given the country's strained fiscal resources, as the prison population continues to increase, building more prisons is not necessarily the answer to a dysfunctional criminal justice system; nor does it address the rights of detainees, particularly under-trial prisoners and juveniles.

The national and provincial governments should ensure that the rights of remand prisoners are respected, that they are not treated as convicts and that those who cannot afford it receive legal aid. The police must be given the necessary resources to transport prisoners to court on the day of their hearings. The judiciary should ensure that cases are processed through the courts according to constitutional provisions and, most importantly, the granting of bail should become the norm.

In 1972, Zulfikar Ali Bhutto's government passed a reform package aimed at improving justice delivery and providing relief for prisoners, including through the provision of bail. Under Section 426 (I-A) of the Criminal Procedure Code (CrPC):

An appellate court shall, unless for reasons to be recorded in writing it otherwise directs, order a convicted person to be released on bail who has been sentenced to:

a) imprisonment for a period not exceeding three years and whose appeal has not been decided within a period of six months of his conviction;

b) imprisonment for a period exceeding three years but not exceeding seven years and whose appeal has not been decided within a period of one year of his conviction;

c) imprisonment for life or imprisonment exceeding seven years and whose appeal has not been decided within a period of two years of his conviction.

[209] Crisis Group interview, Kokab Nadeem Warraich, Inspector General of Prisons Punjab, 15 March 2011.
[210] Crisis Group interview, Ghulam Qadir Thebo, Inspector General of Prisons Sindh, 20 April 2011.

The law also targeted remand prisoners, under Section 497:

Provided further that the court shall, except where it is of opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf, direct that any person shall be released on bail:

a) who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year and whose trial for such offence has not concluded; or

b) who, being accused of an offence punishable with death, has been detained for such offence for a continuous period exceeding two years and whose trial for such offence has not concluded.

This reform was steadily eroded, as the judiciary negated the concept of bail, and military governments added several non-bailable offences.[211]

The current national and provincial assemblies have taken some steps to provide relief to prisoners, including through bail, particularly for women prisoners. In April 2011, the National Assembly passed the Code of Criminal Procedure (Amendment) Act, 2008, revising Section 426 (1-A). While an appellate court can deny bail, giving reasons in writing, it shall order the release of a convicted person on bail who meets the terms of sub-sections (a), (b) and (c) of Section 426 (1-A). A similar proviso was added to Section 497 (1) that:

Provided further that the Court shall, except where it is of opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf, direct that any person shall be released on bail:

a) who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year or in case of a woman exceeding six months and whose trial for such offence has not concluded; or

b) who, being accused of an offence punishable with death, has been detained for such offence for a continuous period exceeding two years and in case of a woman exceeding one year and whose trial for such offence has not concluded.

Abiding by this new law, judges should only deny bail if there are grounds to believe that the defendant would abscond or commit further offences while on bail; and the authorities must allocate the necessary resources to maintain a basic infrastructure for bail.

Police in some stations have experimented with alternative dispute resolution mechanisms for lesser offences to reduce the burden on the courts, but these have been ad hoc, lacked legal sanction and removed the role of the judge. Rather than formalising such mechanisms, as many have called for, the government should reform existing sentencing structures for non-violent petty crimes and include alternatives to imprisonment such as fines, probation and community confinement, community service, and drug and psychological treatment.

In addition to these measures, many prisons and probation officials recommend open jails as a way of reducing overcrowding. "Open prisons can be used to house low-risk prisoners who can leave for work and meet their families during the day and return at night", said Rana Manzoor, vice principal of the Punjab Prison Staff Training Institute. Such prisons existed prior to Pakistan's creation, he said, when the government had allotted land to each prisoner that he could tend and where he could remain with his family.[212] "In case inspiration is required for open prisons, one need look only as far as neighbouring India", said a senior prisons official, "where there are over 30 open prisons in operation today".[213]

B. PROBATION AND REHABILITATION

In each province, the department of reclamation and probation manages the release of prisoners on probation. The following legal instruments govern this: the Good Conduct Prisoners' Probational Release Act, 1926; the Good Conduct Prisoners' Probational Rules, 1927; the Probation of Offenders Ordinance (XLV of 1960); and the West Pakistan Probation of Offenders Rules, 1961. Where the provincial government is satisfied that a prisoner's track record or good conduct behind bars suggests that he or she would likely abstain from crime and lead a "useful and industrious life", it may grant a licence of release on condition that the prisoner remains under the supervision of a probation officer or a "secular institution or of a person or society professing the same religion as the prisoner". The licence remains valid, unless revoked sooner, until the date when the person would have otherwise been discharged.[214] Escaping the supervision of the probation officer or institution is punishable by up to two years imprisonment.[215]

[211] See Crisis Group report, *Reforming Pakistan's Criminal Justice System*, op. cit.

[212] Crisis Group interview, Rana Manzoor, Lahore, 15 March 2011.
[213] Crisis Group interview, Lahore, 15 June 2011.
[214] Sections 2 and 3 of the Good Conduct Prisoners Probational Release Act, 1926.
[215] Ibid, Section 7(1).

A director heads the provincial department of reclamation and probation, with an assistant director, a chief probation officer and probation officers. The latter must meet every probationer under their charge at least fortnightly, help probationers find suitable employment and bring violations of bond to the attention of the authorities.[216] However, these duties are rarely performed, largely because of an acute shortage of trained and qualified probation officers and of the resources they need.

"Provincial governments are simply not interested in non-custodial measures, and it is this lack of political support that explains the failure of probation and reclamation departments to achieve their primary objective of rehabilitation and reintegration of offenders in society", said an analyst, who held the judiciary equally responsible for the "sporadic use" of probation services.[217] However, since 2009, under directives of the National Judicial Policymaking Committee, courts have become somewhat more lenient in granting probation: 2,244 prisoners have been released in KPK, 1,960 in Punjab, 1,388 in Sindh and 24 in Balochistan.[218]

There have also been some efforts, albeit limited, to improve the effectiveness of the probation and reclamation departments. In Balochistan, for instance, where there were only four probation officers in 2009, eleven new posts (nine for males, two for females), were created and filled in November 2010. The Balochistan government is also constructing a separate building for the probation department and purchasing vehicles for newly recruited probation officers.[219] In KPK, which has 22 probation officers, including six women, five new positions have been advertised. Punjab, with the largest prison population, has 61 probation officers, of which only four are women.[220] In Sindh, which had only three probation officers,[221] the provincial public service commission announced sixteen new positions in April 2010, but the written test was not held for almost a year. In the absence of sufficient numbers of probation officers, three assistant directors and two head clerks have been performing their duties.[222]

Yet, even with the additional posts, the probation and reclamation departments in all four provinces remain understaffed, under-equipped and under-resourced. The KPK department's director, for instance, admits that his officers are overburdened and lack basic facilities like telephones and transportation to provide adequate support for some 1,700 probationers convicted of minor crimes.[223] The departments have been allocated more resources by the provinces. For instance, Punjab increased its reclamation and probation department's budget from 35 million rupees (almost $412,000) in 2008-2009 to 67 million rupees (just over $788,000) in 2010-2011.[224] In Sindh, this figure rose from around 19 million rupees (about $223,500) for 2009-2010 to 25 million rupees (about $294,000) in 2010-2011.[225] But substantial budget increases must be backed by better policy and targeting.

Under Rule 16 of the West Pakistan Probation of Offenders Rules, 1961, each district has a case committee comprising the district magistrate as chairman, all first class magistrates in the district and a representative of the provincial probation department responsible for that district. The committee functions as an advisory body on the casework within its area of jurisdiction; it is meant to receive and consider verbal or written reports presented by probation officers and to make recommendations concerning the status of probationers. While these committees are supposed to meet once every three months, according to a probation officer, this is "routinely flouted".[226] Not only should they meet regularly as mandated, but the federal and provincial governments should ensure that they are properly equipped with a computerised case management system that prompts action and identifies irregularities in casework or court procedures in each probationer's case.

In addition to the pressing need for increased staff, proper offices and better facilities, probation personnel, prison staff and penal reform activists have called on the government to adopt a holistic program of probation and community-based rehabilitation that "does not merely release an offender but also serves to fully resettle and reintegrate 'the individual' into society".[227] Provincial governments and legislatures should, through administrative and legal measures, ensure that the probation and rehabilitation pro-

[216] Section 10 (b), (c) and (e) of the West Pakistan Probation of Offenders Rules, 1961.
[217] Crisis Group interview, Arshad Mahmood, executive director, SPARC, Islamabad, 27 April 2011.
[218] "NJPMC takes exception to faulty investigations", *The Nation*, op. cit.
[219] "The State of Pakistan's Children 2010", op. cit., pp. 66-67.
[220] Ibid.
[221] "Sindh making do with three probation officer", *Dawn*, 7 January 2011.
[222] "The State of Pakistan's Children 2010", op. cit., p. 68.
[223] "1,700 convicts of minor crimes on probation in KP", *The News*, 9 February 2011.
[224] See "Annual Budget Statement for 2010-2011", finance department, Government of the Punjab, www.pndpunjab.gov.pk/user_files/File/1AnnualBudgetStatement2010-11.pdf.
[225] See "Budgetary Allocation of Home Department during Current Financial Year 2009-2010", Sindh Home Department, www.sindh.gov.pk/dpt/Home/BUDGET%20NEW.html; and "Organs of State (Excl. Law Dept. And Other) Budget Estimates 2010-2011", finance department Sindh, www.fdsindh.gov.pk/site/userfiles/1.%20Organs%20of%20State% 20%28Excl.%20Law%20Dept%20&%20Order%29.pdf.
[226] Crisis Group interview, Islamabad, 19 September 2011.
[227] Crisis Group interviews, Lahore, June 2011.

cess manages, to the extent possible, to reintegrate and rehabilitate offenders.

At present, according to prisons and probation personnel, there are virtually no rehabilitation programs to help released prisoners reintegrate into society and gain employment. Such programs are critical to preventing repeat offences. According to a probation officer, "we are only trained to see that the probationer does not violate the terms of his release; there is no training in the latest best international practices in post-release rehabilitation". The rehabilitation of female prisoners is particularly difficult, since "the social stigma associated with being a prison inmate makes their families reluctant to take them back".[228] Vocational training for both female prisoners and probationers should be a major priority, since gainful employment would arguably be the most effective way to counter such marginalisation.

Existing educational and vocational training programs inside prisons are generally under-resourced and consequently unable to provide prisoners the knowledge and skills they need to later enter the workforce. Every prison, or at the very least every central prison, should be equipped with a library, facilities for academic instruction in a wide range of courses, a computer lab and technical training facilities, with training courses informed by local employment patterns and skills shortages.

While probation and reclamation departments should educate probation officers on international best practices through the provision of materials as well as training, they should also engage with probationers' family members and encourage community involvement in their rehabilitation and reintegration. According to a probation officer, "community service in lieu of imprisonment or even prolonged probation can be an effective way of rehabilitating offenders in society by inculcating in them a sense of discipline and service to others".[229] Aside from court-appointed hours of community service, for example, at hospitals or with non-profit organisations, provincial governments should create new or support existing programs in which offenders can learn vocational skills and be assisted in finding suitable employment.

By making the rehabilitation of released prisoners a major component of any criminal justice reform agenda, provincial governments could prevent offenders from either becoming a burden on society or once again relying on crime to make a living. Efforts should be made, as far as possible within the state's financial constraints, and with the help of NGOs, charitable organisations and philanthropists, to assist prisoners, probationers and released convicts to acquire employable skills.

C. REHABILITATION: THE MILITARY APPROACH

The military has established four "de-radicalisation centres" in Swat – two for men, one for women and one for adolescents[230] – to turn militants away from extremism, through three-month courses that include intensive psychiatric treatment and religious instruction by ostensibly moderate clerics. In the case of youth (aged twelve to seventeen) associated with militant groups, the centres aim at providing reverse indoctrination through instruction in Pakistani nationalism and history, on being "good Muslims" and on the role of the "founding fathers", along with community rooms with television and games, libraries and computer laboratories. Soldiers visit those released under the program periodically to assess and monitor their reintegration into society.[231] The military has been pressuring the government to replicate this program nationwide, based on Saudi, Yemeni and other models,[232] and the government has reportedly agreed.[233]

While it is early to judge the military's success in rehabilitating militants, such programs are undermined by widespread reports of heavy-handed methods to combat terrorism in KPK's Swat and neighbouring districts. Extrajudicial killings, torture, illegal detentions and collective justice provoke exactly the kind of public resentment that militant networks exploit for recruitment. Furthermore, by creating a parallel system without the sanction of law, the army's de-radicalisation program is neither accountable nor transparent. Absent civilian oversight, it is next to impossible, and arguably even implausible, to gauge whether, after a mere three-month course, militants would accept responsibility for their crimes and sincerely renounce violence and the concept of armed jihad once released.

Such de-radicalisation efforts are, as in other countries, "likely to founder unless incorporated into a broader program of prison reform".[234] A rehabilitation program fo-

[228] Crisis Group interview, probation officer, Lahore, 14 June 2011.
[229] Crisis Group interview, Lahore, 14 June 2011.

[230] See Ikram Sehgal, "De-radicalisation", *The News*, 2 July 2011.
[231] See Hasnain Kazim "Pen and paper jihad: Pakistan efforts to resocialise former Taliban", *Der Spiegel*, 5 May 2011 (in German).
[232] See Baqqar Sajjad Syed, "'De-radicalisation' plan under study", *Dawn*, 18 August 2011.
[233] On 1 September 2011, Interior Minister Rehman Malik announced that Pakistan would implement the same de-radicalisation policy as Saudi Arabia. See "Saudi de-radicalisation policy to be followed: Rehman Malik", *The Nation*, 1 September 2011.
[234] See Crisis Group Asia Report N°142, *"Deradicalisation" and Indonesian Prisons*, 19 November 2007.

cused on captured militants also fails to address the very real threat of ordinary inmates, including minor criminals and first-time offenders, being recruited by militants in regular prisons. In 2009, for instance, an ISI dossier disclosed that a 24-year-old madrasa student, arrested as a first-time offender for being part of a minor militant group, later joined the Pakistani Taliban after being recruited by militants in prison.[235] If left ignored, abysmal conditions, prisoner abuse, lax rules, and rampant corruption within Pakistan's prisons can be expected to allow criminal and terrorist networks to thrive and recruit from a large pool of vulnerable and aggrieved people.

D. LEGAL ASSISTANCE

Pakistan's overcrowded prisons owe much to the absence of a proper and effective system of legal representation for prisoners who have little knowledge of their legal rights and cannot afford legal fees or raise enough money to post bail or pay fines. Persons charged even with minor offences but without legal representation are detained until their hearing, trial or conviction. There are very few well-trained lawyers or paralegals to represent the accused at each level of the criminal justice process – from police stations to courts to prisons, particularly in remote rural areas. "Accused persons who are indigent and/or belong to minority communities and other disadvantaged groups often do not have recourse to effective legal representation and end up languishing in jail, when they could very easily remain outside until their trial or appeal for an alternative to imprisonment upon conviction", said a human rights activist.[236]

In January 2010, the National Assembly passed the Public Defender and Legal Aid Office Act (PDLAOA), 2009, which aims to "promote justice throughout Pakistan by providing quality and free legal services, protecting individual rights, and advocating for effective defender services and a fair justice system; and to ensure equal protection of law to such persons through free legal assistance, advice and representation in the Courts or outside".[237] The law calls for the creation of a chief public defender's office, assisted by additional chief public defenders, district public defenders and public defenders, all to be appointed by and accountable to the federal government.[238] The government can direct the chief public defender and his associates to represent any needy person in court, or provide the person free legal assistance or advice.[239] This authority also extends to any court of law.[240]

The chief public defender, serving a fixed three-year term, allocates work to subordinates, monitors and evaluates their performance and keeps the government informed about all activities and outcomes.[241] A district public defender, an advocate with at least ten years' experience in a High Court who is appointed for each district, has, in addition to assisting the chief public defender and additional chief public defenders, the authority to visit and identify needy prisoners, including to visit facilities where prisoners are kept in districts with no prisons.[242] A public defender is similarly appointed and empowered in each *tehsil* (sub-district), with responsibilities that include assisting the district public defender.[243]

A poor person who seeks free legal advice or representation in court may apply to the government or any of the functionaries mentioned above. If the person is in prison, the application is to be submitted through the superintendent. Where the accused is under eighteen, insane or otherwise unable to make an application, any other person may do so on his or her behalf.[244] Each application must be accompanied by an affidavit confirming the applicant is indigent, together with details of all income sources.

Although passed nearly two years ago, the PDLAOA has yet to be implemented, and no appointments have been made to any of the newly created positions. Similarly, the Punjab Public Defender Service Act, 2007, a provincial equivalent to the PDLAOA, has yet to be implemented. In April 2011, a writ petition was filed in the Lahore High Court complaining that the law was buried in "the dead files of the bureaucracy" and pleading with the court to direct the Punjab government to implement it in the public interest.[245] If they are to be seen as genuine champions of people's rights, the national and provincial governments should turn rhetoric into action by establishing and fully resourcing public defender offices without delay, with com-

[235] Huma Yusuf, "Militancy in Prison", *Dawn*, 27 September 2009.
[236] Crisis Group interview, research officer, Human Rights Commission of Pakistan, Lahore, 16 June 2011.
[237] Public Defender and Legal Aid Office Act (PDLAOA), 2009, Preamble.
[238] Ibid, Section 4(1).
[239] Ibid, Section 4(6).
[240] Ibid, Section 4(7). The act stipulates that the chief public defender must have been an advocate before the Supreme Court or High Court for at least fifteen years, must not be less than 40 and must be "professionally competent", with "integrity … beyond doubt". Additional chief public defenders must be advocates with at least ten years standing at the Supreme Court or High Court to assist the chief public defender and to submit a monthly performance report to him. Ibid, Sections 6, 8 and 9.
[241] Ibid, Section 7.
[242] Ibid, Section 11(1)(b).
[243] Ibid, Sections 13(a) and (b). Public defenders must have been practicing advocates for five years. Ibid, Section 12(2).
[244] Ibid, Sections 14(10); 14(3); 14(4).
[245] "Court moved for implementation of Punjab Public Defender Service Act, 2007", *Daily Times*, 16 April 2011.

petitive salaries to attract skilled and committed candidates who would otherwise opt for private practice.

In the absence of effective public legal aid provision, private actors have emerged to fill the breach. In Lahore, Punjab's capital, Asma Gulrukh Hina Shahla (AGHS),[246] the legal aid cell run by prominent human rights activists Asma Jahangir[247] and Hina Jilani,[248] has been providing legal assistance, primarily to women, children and minorities, since 1980. Help is given in cases where there are violations of human rights by state or non-state actors; to female, juvenile and "other victims of the abuse of due process" inside prisons; and to those charged under the blasphemy law or suffering from "unjust persecution due to other discriminatory laws".[249]

In Sindh's capital, Karachi, Lawyers for Human Rights and Legal Aid (LHRLA) provide free legal assistance to prisoners and work to increase their awareness of their basic rights. The organisation distributes pamphlets in Karachi's central jail to inform prisoners on how to write their bail and appeals applications without a lawyer. "The success of this program", said LHRLA President Zia Awan, "can be measured by the fact that several women actually managed to secure their release by consulting our publications". In addition, the organisation has distributed other literature to prisoners, including on methods and processes of criminal procedure rules and a simplified version of the Jail Manual. However the "education behind bars" program, which lasted from 1996 to 2004, had to be wound up because "the government of the time (Musharraf's regime) refused to take ownership of the project". [250]

Some provincial governments have responded proactively to such NGO-initiated projects. The Sindh provincial government, for instance, is collaborating with the legal aid service for women and juvenile prisoners run by the former Supreme Court judge and former chief justice of the Sindh High Court, Nasir Aslam Zahid. He set up an NGO in 2004, the Women Prisoners Welfare Society, to provide legal assistance to female prisoners. Supporting the program, the Sindh government formed the Committee for the Welfare of Women Prisoners, headed by Zahid, which was later expanded to include juveniles.

The committee formed a Legal Aid Office (LAO) that opened its first branch in Karachi in 2004. Offices were set up inside the Special Prison for Women and the Youthful Offenders Industrial School. Zahid said, "statistics show that prior to the LAO's inception, women and underage offenders would remain in jail for long periods with no assistance from the government".[251] Since the LAO's founding, however, 652 juveniles cases were resolved (up to October 2010), while in the first four years after the centre was established, the population in Karachi's women prison fell from 237 to 108. "Women and juvenile detainees are the most vulnerable segments of any prison population and are particularly deserving of all the help they can get", said Zahid.[252] In addition to representing prisoners in court, the LAO arranges surety for prisoners' bail. In 2008, over 150 women and 100 juveniles were released on bail, with surety provided by the LAO, which has also repatriated over 150 foreign women prisoners after the conclusion of their prison sentences.

In February 2010, the Sindh government tasked Zahid's committee to also give legal aid to male adult prisoners in various jails in the province; the LAO's first such office was opened in Karachi's central jail in June 2010. Since then, it has opened legal aid offices in eight district jails and plans to extend its work to the remaining seventeen by mid-2012.[253] According to Sindh's inspector general of prisons, the provincial government has allocated 120 million rupees (around $1.5 million) to the committee, which, he said, "deserves great credit for its work in reducing the population in Sindh's jails; it has set an example that other provinces would be well-advised to follow", he said.[254]

E. International Assistance and Prison Reform

Several key donors have acknowledged that the international community can play a critical role in strengthening Pakistan's criminal justice sector, and this is reflected through new programming. Although reform of the prison system should be an integral component of such efforts, prisons have thus far been mostly neglected in internationally-funded programs. For example, the Asian Development Bank's $350-million Access to Justice Program (AJP), concluded in mid-2008, focused on caseload management, justice administration, legal empowerment and police, prosecution and judicial reforms, including fiscal reforms, but ignored prisons.

[246] AGHS is an acronym based on the first letters of the first names of its four founders: Asma Jahangir, Gulrukh Rahman, Hina Jilani and Shahla Zia.
[247] Currently the president of the Supreme Court Bar Association, Asma Jahangir is a Crisis Group Board member.
[248] Jilani is a former Special Representative of the UN Secretary-General on Human Rights Defenders.
[249] AGHS Legal Aid Cell at http://aghsblog.wordpress.com/.
[250] Crisis Group telephone interview, Zia Awan, 22 September 2011.
[251] Crisis Group telephone interview, Nasir Aslam Zahid, 3 March 2011.
[252] "This is because most inmates who are detained in the women prison and the YOIS are unable to afford even the most trivial surety amount", said Zahid, ibid.
[253] Ibid.
[254] Crisis Group interview, Karachi, 20 April 2011.

The U.S. committed $51 million for police and rule-of-law assistance in 2009 and $66.6 million in 2010, including tactical training for KPK's law-enforcement agencies. In March 2010, the European Union launched an €11.5 million Civilian Capacity Building for Law Enforcement (CCBLE) program to support the government's counter-terrorism efforts by strengthening the National Counter Terrorism Authority (NACTA). That program also aims at building the capacity of the KPK and Punjab police to handle criminal investigations by improving investigation standards and prosecution functions.[255]

While such programs are important, donors should also prioritise prison reform, particularly given the links between a dysfunctional and brutal system and criminality and militancy. Such assistance should, of course, focus on formal places of detention, not illegal facilities. But assistance to the Pakistan military should be made conditional on that institution immediately ending practices that violate international conventions and basic international legal standards, including illegal detention, torture and disappearances.

Collaborating with organisations like UNODC) and the ICRC that have proven track records in Pakistan, donors should earmark a significant portion of future rule-of-law assistance to penal reform. While infrastructure development, including building more prisons, should be a component of any such effort, the international community must not replicate the AJP's lopsided focus on infrastructure at the cost of other long-term and structural reform. Donors should, for instance, allocate a sufficient proportion of funds to improving the lives of prisoners both during incarceration and upon release, whether on probation or expiration of sentence. This should include funds for legal aid NGOs such as Justice Zahid's and Zia Awan's in Sindh, as well as organisations providing health care and education to prisoners.

Pakistan's international partners should also work closely with prison training academies to improve the curriculum for prison and probation administrators and develop training programs focused on best international practices in prison administration and prisoners' rights, as well as tackling criminality and violence in prison. Technical assistance for computerising prison and probation records, as well as training in maintaining and managing the data, would merit support.

The ICRC and UNODC are the two main international organisations working within the prison system. The ICRC visits prisons in Sindh, Azad Jammu, Kashmir and Gilgit-Baltistan to assess conditions of detention and treatment. It has helped improve water and sanitation facilities in several Sindh prisons, including construction of a water supply and distribution system for a 50-bed hospital in Karachi's central jail.[256] Arguing that vital penal reforms are missing from national and provincial government policies for the criminal justice sector, it also aims to enhance the capacity of prison authorities in day-to-day prison management.

The ICRC likewise facilitates contact between detainees and their families, including those detained in Pakistan as well as Pakistanis detained abroad. Between March and May 2011, it visited seven places of detention in Sindh holding some 5,400 detainees, including juveniles, and distributed 89 messages, mostly between detainees and their families.[257] However, it is denied access to the other provinces, particularly Balochistan, where the military is conducting operations against political dissidents, as well as KPK, where militancy is rampant. "Resistance can come from multiple quarters", said an informed observer: "It is not confined to the military alone. Provincial ministers, bureaucrats and prisons officials do not want to run the risk of letting militants be interviewed".[258]

UNODC has previously run a $491,000 drug abuse and HIV/AIDS prevention program in Pakistani prisons. Starting in 2006, this consisted of a pilot project in four selected prisons aimed at interventions that would enable inmates to make better-informed decisions about life in detention, including harm reduction. The program also provided literacy and vocational training to improve the chances of some 2,000 prisoners to find jobs after release. "Upon completion, the project was meant to serve as a model for further extension to prisons across the country, but that has not materialised", said a senior prisons official.[259]

As part of a sub-program of its Pakistan mission, UNODC focuses on "fundamental components of the processes that obtain and implement justice, including law enforcement agencies, prosecution and prison services".[260] The organisation aims to raise Pakistan's prison management to international standards through enhancing legislative, regulatory and policy frameworks; upgrading the knowledge and skills of prison staff; and improving and expanding prison monitoring systems. It is also developing prisoner rehabilitation programs, including improving and extending probation and parole systems. The Danish government, in collaboration with UNODC, has pledged $1.7 million for criminal justice reform in 2011, part of which will go

[255] For more details on these programs, see Crisis Group Report, *Reforming Pakistan's Criminal Justice System*, op. cit.

[256] "Pakistan: Grappling with the many challenges caused by insecurity", ICRC Operational Update, 27 May 2011.
[257] Ibid.
[258] Crisis Group interview, Islamabad, 5 September 2011.
[259] Crisis Group interview, Karachi, 20 April 2011.
[260] "Criminal Justice", UNODC Pakistan, undated, at www.unodc.org/pakistan/en/criminal-justice.html.

to prisons, rightly described by Jeremy Douglas, the in-country UNODC head, as a "critical component of the criminal justice sector in Pakistan".[261]

In September 2010, Congressman William Delahunt sponsored a bill in the U.S. House of Representatives (the Foreign Prison Conditions Improvement Act of 2010) to authorise "appropriations of United States assistance to help eliminate conditions in foreign prisons and other detention facilities that do not meet minimum humane standards of health, sanitation and safety …" Among other provisions, it would have required the secretary of state to submit an annual report to congressional committees describing the conditions in prisons and other detention facilities in countries receiving U.S. aid. Countries failing or "not making significant efforts to comply" with the prescribed minimum standards for eliminating inhumane conditions could have their aid restructured, reprogrammed or reduced.[262] However, the bill was referred to committee, then cleared from the books at the end of the Congressional session.[263]

While the U.S. should not impose conditions on civilian assistance to Pakistan, given the urgent need to strengthen civilian institutions in a fragile democratic transition, it should nevertheless emphasise the principles of Delahunt's bill and leverage its expanding rule-of-law assistance to press for comprehensive reforms to the prison system. The EU should do the same.

The international community should also urge Pakistan to fulfil all international human rights covenants to which it is a signatory. In June 2010, Islamabad ratified both the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). In the context of prisoners' rights, the ICCPR, among other provisions, explicitly prohibits arbitrary arrest or detention;[264] provides for the right of those arrested on criminal charges to be brought to trial "within a reasonable time" or else released[265] and the a right to compensation for those arrested or detained unlawfully.[266] It also mandates that the penal systems of signatory states "shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation".[267]

The UNCAT requires signatories to ensure that "education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment".[268] Prohibition on torture is also mandatory in all rules and instructions issued on duties and functions of these individuals and offices.[269] In addition to Pakistani civilian authorities fully implementing the ICCRP and UNCAT, reporting on Pakistan's compliance with the ICCRP and UNCAT should also scrutinise the military's role with regard to illegal detention, torture and other human rights abuses.

The international community should also press Pakistan to fulfil all obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). At the time it ratified the ICCPR and UNCAT in 2010, Pakistan included reservations regarding eight of the ICCPR's 27 articles, and seven of the UNCAT's sixteen.[270] An Amnesty International assessment of the reservations found them "incompatible with the object and purpose of the treaties because of their scope, generality and the restrictions they impose on key rights, including … freedom from torture and other cruel, inhuman or degrading treatment or punishment".[271] Islamabad withdrew most of its reservations in June 2011, after the European Union declared Pakistani exports ineligible for preferential tariffs as long as they remained.[272]

[261] "Denmark extends support to enhance effectiveness of criminal justice systems in Pakistan in cooperation with the UNODC", press release, UNODC, 24 February 2011.
[262] "H.R. 6153: Foreign Prison Conditions Improvement Act of 2010", 16 September 2010.
[263] Congressman Delahunt subsequently retired.
[264] Article 9(1), International Covenant on Civil and Political Rights.
[265] Ibid, Article 9(2).
[266] Ibid, Article 9(5).
[267] Ibid, Article 10(3).
[268] Article 10 (1), UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
[269] Ibid, Article 10 (2).
[270] For more detail, see "Pakistan's Reservations: A Challenge to the Integrity of the United Nations Human Rights Treaty System", Amnesty International, 23 June 2011.
[271] Ibid.
[272] Farakh Shahzad, "Pakistan vying to win GSP plus status", *Pakistan Today*, 26 July 2011.

VII. CONCLUSION

Prison reform should be a prominent part of any process to overhaul Pakistan's criminal justice system. Overcrowded prisons, particularly the high proportion of remand prisoners, are a reflection of a dysfunctional justice system, as well as of the state's failure to both prevent and prosecute crimes and protect the rights of prisoners. Policymakers should acknowledge that what happens within prisons is not isolated from what happens on the outside. The treatment and conditions of prisoners is a key yardstick for the state's willingness to uphold the rule of law, improve the public's access to justice and protect citizens, a test Pakistan has thus far failed.

Long-term remedies cannot, however, pivot on the construction of more places of detention; what is needed instead is a basic shift in the state's policy on confinement. Like the police, prisons operate on colonial-era compulsions to maintain order, keeping potential as well as real threats to public safety in detention for indefinite periods and then releasing them in an equally disorganised manner. Under existing conditions and practices, prisoners are more likely to embrace crime, including violent extremism, once they leave jail than before they went in.

Prisons have become the breeding ground for a full spectrum of criminals, from drug pushers to kidnappers to terrorists. Improving conditions within them, and separating hardened criminals and militants from minor and first-time offenders, juveniles and remand prisoners, therefore, is vital. Provincial home ministries should also invest in building high-security facilities, cracking down on the use of mobile phones by prisoners, installing jamming devices and CCTVs in all prisons and taking strong action against officials found to aid crime by prisoners.

Moreover, the government must acknowledge that programs focusing uniquely on rehabilitating captured criminals in isolation from broader prison reforms are likely to fail. It should aim instead at reducing the prison population through reforms of the existing system for bail and urgently devise and implement a more effective and holistic approach towards probation and rehabilitation.

Ultimately, improving prison administration, conditions and policies must be part of a broader shift to reinforce civilian law enforcement and expand the writ of government, which has steadily shrunk as the military has assumed greater control over policing, through both official and unofficial means. Arbitrary detentions, disappearances and extrajudicial killings are only fuelling, not containing militancy. President Zardari's decision in June 2011 to provide retroactive legal cover for the military's violation of constitutional rights and to extend to the armed forces virtually unlimited powers of arrest and detention set a dangerous precedent and should immediately be revoked. Rather than abdicate more authority, the federal and provincial governments should invest the necessary political and economic capital to build an effective criminal justice system, with full jurisdiction over every part of the country. This is the only way for the civilian leadership to be deemed an effective guardian of internal stability, the rule of law and the Pakistani citizen.

Islamabad/Brussels, 12 October 2011

APPENDIX A

MAP OF PAKISTAN

APPENDIX B

GLOSSARY

Ahmadis	A minority Sunni sect, declared non-Muslim by the second constitutional amendment.
ATA	Anti-Terrorism Act.
ATC	Anti-Terrorism Court.
AJP	Access to Justice Program, run by the Asian Development Bank.
CCBLE	Civilian Capacity Building for Law Enforcement, run by the European Union.
Challan	Case brief.
CrPC	Criminal Procedure Code.
DCO	District Coordination Officer, the administrative head of each district.
FATA	Federally Administered Tribal Areas, comprising seven administrative districts, or Agencies: Bajaur, Orakzai, Mohmand, Khyber, Kurram, North Waziristan and South Waziristan; as well as the Tribal Areas adjoining Bannu district, Peshawar district, Kohat district and Dera Ismail Khan district.
FCR	Frontier Crimes Regulations (FCR) 1901, an oppressive colonial-era legal framework providing the legal framework for the Federally Administered Tribal Areas.
HRCP	Independent Human Rights Commission of Pakistan.
Hudood Ordinances	A set of four Ordinances passed by Zia-ul-Haq's military regime in 1979, prescribing punishments in accordance with orthodox Islamic law, including amputation of limbs, flogging, stoning and other forms of the death penalty for crimes ranging from theft, adultery and fornication to consumption of liquor. This body of law remains in force.
IG	Prisons Inspector General of Prisons, the highest ranking prisons official in a province.
ISI	Inter-Services Intelligence Directorate, the military's main intelligence body.
Jail Manual	Compendium of rules and regulations governing all aspects of prison administration.
JJSO	Juvenile Justice System Ordinance.
KPK	Khyber Pakhtunkhwa, formerly the Northwest Frontier Province (NWFP).
LHRLA	Lawyers for Human Rights and Legal Aid.
NAPA	National Academy for Prisons Administration, Pakistan's sole national body.
NCSW	National Commission on the Status of Women.
Nizam-e-Adl	Regulation Act passed by parliament in April 2009 to establish Sharia (Islamic Law) in PATA.
PATA	Provincially Administered Tribal Areas, comprising the districts of Buner, Chitral, Lower Dir, Upper Dir, Malakand, Shangla and Swat, as well as the Tribal Area adjoining Mansehra district and the former state of Amb, administered since 1975 under a separate civil and criminal code from the rest of Khyber Pakhtunkhwa.
PDLAOA	Public Defender and Legal Aid Office Act.
PPC	Pakistan Penal Code.
PPP	The Pakistan Peoples Party, founded by Zulfikar Ali Bhutto in 1967 with a socialist, egalitarian agenda. Since Benazir Bhutto's assassination in December 2007, they party is headed by her widower, President Asif Ali Zardari, and currently heads the coalition government in the centre.
PTA	Pakistan Telecommunication Authority.
PWA	Protection of Women Act.
Qanun-e-Shahadat	The Evidence Act, as amended by General Zia-ul-Haq's military regime in 1984, whose amendments remain in force. Commonly still referred to as the Evidence Act.
Qazi court	Sharia (Islamic law) court.
YOIS	Youthful Offender Industrial School.
Zina	Unlawful sexual intercourse.
Zina-bil-jabr	Rape.

APPENDIX C

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Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

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October 2011

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