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**Civil Society Submission in Advance of Pakistan's State Review at the 142nd Session of the  
Human Rights Committee**

**Submitted by The Advocates for Human Rights**

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

**The World Coalition Against the Death Penalty**

**Harm Reduction International**

and

**Justice Project Pakistan**

**Submitted 16 September 2024**

**Justice Project Pakistan** (JPP) is a legal action non-governmental organisation dedicated to representing the most vulnerable Pakistani prisoners facing the harshest punishments. JPP investigates, advocates, educates, and litigates, building public and political support as well as legal precedents that will lead to systemic reform of the criminal justice system in Pakistan. Our work combines strategic litigation, fierce domestic and international public and policy advocacy campaigns, and building the capacity of stakeholders who can improve the representation and treatment of individuals facing capital punishment in Pakistan and abroad.

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

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

**Harm Reduction International** (HRI) is a leading non-governmental organisation that envisions a world in which drug policies uphold dignity, health and rights. We use data and advocacy to promote harm reduction and drug policy reforms. We show how rights-based, evidence-informed responses to drugs contribute to healthier, safer societies, and why investing in harm reduction makes sense. HRI is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

## A. Applicability of the Covenant

1. The 1973 Constitution of Pakistan includes civil and political rights but doesn't fully encompass those under the ICCPR, nor does it specify penalties or remedies for violations. Although courts are increasingly applying Covenant rights, this remains discretionary. There is a need for direct incorporation of international human rights protections, particularly for those facing capital punishment, including reforms to the Anti-Terrorism Act, mercy petition procedures, juvenile age-determination protocols, and safeguards for defendants with psychosocial disabilities.
2. Pakistan's Reply to the List of Issues, issued in 2024,<sup>1</sup> lists a range of legislative measures taken to translate Covenant rights into domestic law. However, implementation of these laws is often stifled after their passage, largely because the Government does not draft operationalising rules to carry into effect the provisions of the Act. Furthermore, there is a need to revive the draft Criminal Law and Justice Reforms Bill 2022, which aimed to bring major changes to Pakistan's criminal laws and align them with key Covenant obligations. Reforms included better safeguards during arrest, enhanced mercy petition procedures, and protections for individuals with psychosocial disabilities. However, the Bill stalled after the ousting of Prime Minister Imran Khan in April 2022, leaving a strong need to revive this important law.
3. Pakistan's judiciary has traditionally distinguished between national and international law, requiring the latter to be implemented through domestic legislation. As a result, courts often treat international human rights treaties as guidelines rather than binding obligations. Recently, there has been an increasing trend of superior court judgements that directly read from international law and human rights treaties ratified by Pakistan. However, this precedent is unfortunately not translating into the practice of the lower judiciary, which leads to a delay in access to remedies for defendants.

### a. Suggested Recommendations

- Take all measures necessary to ensure that ICCPR rights are given full effect in the domestic legal order, and ensure that Covenant rights are applied by domestic courts at all levels, including through enhancing training of judges, prosecutors, lawyers and public officials in relation to the Covenant.

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<sup>1</sup> Human Rights Committee, *Replies of Pakistan to the list of issues in relation to its second periodic report* (May 17, 2024), UN Doc, CCPR/C/PAK/RQ/2. <https://documents.un.org/doc/undoc/gen/g24/083/66/pdf/g2408366.pdf>



## **B. Right to Life (Article 6)**

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

#### **a. Prior Recommendations**

5. In its 2017 Concluding Observations, the Committee expressed its concern that “the death penalty is applied to crimes other than the ‘most serious crimes’ within the meaning of article 6(2) of the Covenant, such as drug trafficking and blasphemy.”<sup>2</sup> Accordingly, the Committee urged Pakistan to “take all measures necessary to ensure that the death penalty is provided only for the ‘most serious crimes’ involving intentional killing.”<sup>3</sup>
6. The List of Issues (LOI) framed by the Human Rights Committee asked if the Government plans to reinstate the death penalty moratorium from 2008 to 2014, and what measures are in place to ensure lower courts limit death sentences to lethal crimes, as per Supreme Court rulings. It also sought data on death row prisoners, including those sentenced for crimes committed under the age 18, the number of stays of execution for minors, current death row inmates for drug offences, and cases where pardons or commutations were granted.

#### **b. Current State Policy or Practice**

7. Pakistan has voted against the resolutions on a moratorium on the use of death penalty in the UNGA in 2018, 2020<sup>4</sup> and 2022.<sup>5</sup>
8. In October 2023, Pakistan voted against a UN Human Rights Council resolution that sought to uphold procedural safeguards in capital punishment and expressed opposition to the death penalty for drug offences. Despite being the only country in 2023 to eliminate the death penalty for drug offences, Pakistan's mission to the UN in Geneva

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<sup>2</sup> Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120<sup>th</sup> session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), 18.

<https://www.ohchr.org/en/documents/concluding-observations/ccprpakco1-human-rights-committee-concluding-observations>

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

<https://www.ohchr.org/en/documents/concluding-observations/ccprpakco1-human-rights-committee-concluding-observations>

<sup>4</sup> World Coalition Against the Death Penalty, ‘*Statement on the Adoption of the 8th UN General Assembly Resolution for a Moratorium on the Use of the Death Penalty*,’

<https://worldcoalition.org/2020/12/17/statement-on-the-adoption-of-the-8th-un-general-assembly-resolution-for-a-moratorium-on-the-use-of-the-death-penalty/>

<sup>5</sup> World Coalition Against the Death Penalty, ‘*9th resolution for a moratorium on the use of the death penalty: the trend is growing*,’ (Dec. 20, 2022),

<https://worldcoalition.org/2022/12/20/9th-resolution-for-a-moratorium-on-the-death-penalty-the-trend-is-growing/>

sided with nations like Singapore and Saudi Arabia in their defence of the death penalty for drug offences as a necessary tool against trafficking and substance use.<sup>6</sup>

9. On December 17, 2014, Pakistan lifted a seven-year moratorium on the death penalty and subsequently executed 300+ persons on death row within a year followed by 325 in 2015, 88 in 2016, 66 in 2017, 15 in 2018, and 10 in 2019.<sup>7</sup> In total, the state has executed 516 people, while 6,039 are currently on death row.<sup>8</sup> Following this period of executions from 2014 to 2019, however, **there have been no executions in Pakistan since December 2019.**<sup>9</sup>
10. Pakistan's capital crimes do not meet the "most serious crimes" standard laid out by the Human Rights Committee in General Comment No. 36, restricted to crimes of intentional killing.<sup>10</sup> Further, Pakistan continues to refute this standard by saying that there is no international consensus on the "most serious crimes", in both its State Report<sup>11</sup> and its Reply to the LOI.<sup>12</sup> Moreover, Pakistan's application of the death penalty does not comply with Constitutional safeguards including the right to a fair trial, the right to dignity, and the right to freedom from torture.<sup>13</sup>
11. In 2018, the Ministry of Human Rights began reviewing offences punishable by death, aiming to limit the death penalty to serious crimes and impose alternative punishments for less serious ones. As a result, Pakistan passed two amendments: in November 2022, it removed the death penalty for railway sabotage,<sup>14</sup> and in July 2023, for narcotics offences.<sup>15</sup>

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<sup>6</sup> UNHRC 54<sup>th</sup> Session 2023 *Resolution on the question of the death penalty*  
<https://documents.un.org/doc/undoc/gen/g23/217/23/pdf/g2321723.pdf>

<sup>7</sup> Justice Project Pakistan, *Death Penalty Database*, Library • Justice Project Pakistan - Death Penalty Database  
<https://data.jpp.org.pk/>

<sup>8</sup> Justice Project Pakistan, *Death Penalty Database*, Library • Justice Project Pakistan - Death Penalty Database  
<https://data.jpp.org.pk/>

<sup>9</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Pakistan*, U.N. Doc A/HRC/53/13 (Mar. 31, 2023), 15. <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session53/list-reports>

<sup>10</sup> UN Human Rights Committee (HRC), *General comment no. 36, Article 6 (Right to Life)*, 3 September 2019, CCPR/C/GC/35, available at: <https://www.refworld.org/docid/5e5e75e04.html>

<sup>11</sup> Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2. <https://www.ecoi.net/en/document/2084794.html>

<sup>12</sup> Human Rights Committee, *Replies of Pakistan to the list of issues in relation to its second periodic report* (May 17 2024), UN Doc, CCPR/C/PAK/RQ/2. <https://documents.un.org/doc/undoc/gen/g24/083/66/pdf/g2408366.pdf>

<sup>13</sup> Justice Project Pakistan, *Pakistan's Compliance with Article 6: The Right to Life (ICCPR)* (June, 2023)  
<https://jpp.org.pk/pakistans-compliance-with-article-6-the-right-to-life-iccpr/>

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

<sup>15</sup> Pakistan Today, *Pakistan ends capital punishment for drug trafficking convicts* (July 2023), <https://www.pakistantoday.com.pk/2023/07/26/pakistan-ends-capital-punishment-for-drug-trafficking-convicts/>

12. Pakistan currently has the death penalty for 31 offences, many of which do not meet the “most serious crimes” threshold.<sup>16</sup> The following crimes are eligible for the death penalty: murder;<sup>17</sup> robbery resulting in death;<sup>18</sup> terrorism;<sup>19</sup> kidnapping or abduction of a minor;<sup>20</sup> kidnapping for ransom or extortion;<sup>21</sup> abduction to subject someone to unnatural lust;<sup>22</sup> blasphemy;<sup>23</sup> adultery;<sup>24</sup> stripping a woman’s clothes;<sup>25</sup> gang rape;<sup>26</sup> harabaha (robbery, rape or terrorism) with murder;<sup>27</sup> sexual abuse;<sup>28</sup> unnatural offences;<sup>29</sup> mutiny and insubordination;<sup>30</sup> abetment of mutiny;<sup>31</sup> disclosure of parole, watchword, or countersign;<sup>32</sup> giving or fabricating false evidence with intent to procure conviction of a capital offence;<sup>33</sup> high treason;<sup>34</sup> offences against the state;<sup>35</sup> offences in relation to the

<sup>16</sup> Amnesty International, *Death Sentences and Executions: 2022* 12, 26, available at <https://www.amnesty.org/en/documents/act50/6548/2023/en>

<sup>17</sup> Pakistan Penal Code 1860 (PPC) sec 301, 302.

<https://www.refworld.org/legal/legislation/natlegbod/1860/en/41422>

<sup>18</sup> PPC sec. 396. <https://www.refworld.org/legal/legislation/natlegbod/1860/en/41422>

<sup>19</sup> Anti-Terrorism Act 1997 sec. 7. <https://nacta.gov.pk/wp-content/uploads/2023/01/1-Anti-Terrorism-Act.pdf>

<sup>20</sup> PPC sec. 364-A. <https://www.refworld.org/legal/legislation/natlegbod/1860/en/41422>

<sup>21</sup> PPC sec.365-A. <https://www.refworld.org/legal/legislation/natlegbod/1860/en/41422>

<sup>22</sup> The Offence of Zina (Enforcement of Hudood) Ordinance 1979, sec. 12; The Pakistan Capital Punishment Study 42.

[https://www.federalshariatcourt.gov.pk/wp-content/uploads/2021/01/Laws/Acts%20&%20Ordinance/Offence%20of%20Zina%20\(Enforcement%20of%20Hudood\)%20Ordinance.%201979.pdf](https://www.federalshariatcourt.gov.pk/wp-content/uploads/2021/01/Laws/Acts%20&%20Ordinance/Offence%20of%20Zina%20(Enforcement%20of%20Hudood)%20Ordinance.%201979.pdf)

<sup>23</sup> PPC sec.295-C. PPC sec. 295-C describes blasphemy, in part, as the use of derogatory remarks, etc. in respect of the Holy Prophet. PPC sec. 295-C states, “Whoever by words, either spoken or written, or by visible representation or by imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished by death, or imprisonment for life, and shall also be liable to fine.” PPC sec. 295-C. <https://www.refworld.org/legal/legislation/natlegbod/1860/en/41422>

<sup>24</sup> The Offence of Zina (Enforcement of Hudood) Ordinance 1979, sections 10(4), 5 & 6.

[https://www.federalshariatcourt.gov.pk/wp-content/uploads/2021/01/Laws/Acts%20&%20Ordinance/Offence%20of%20Zina%20\(Enforcement%20of%20Hudood\)%20Ordinance.%201979.pdf](https://www.federalshariatcourt.gov.pk/wp-content/uploads/2021/01/Laws/Acts%20&%20Ordinance/Offence%20of%20Zina%20(Enforcement%20of%20Hudood)%20Ordinance.%201979.pdf)

<sup>25</sup> PPC sec. 354-A. rape; PPC sections 375 & 376.

<https://www.refworld.org/legal/legislation/natlegbod/1860/en/41422>

<sup>26</sup> PPC sec. 376(2). <https://www.refworld.org/legal/legislation/natlegbod/1860/en/41422>

<sup>27</sup> Offences Against Property (Enforcement of Hudood) Ordinance 1979 sections 15 & 17.

[https://www.federalshariatcourt.gov.pk/wp-content/uploads/2021/01/Laws/Acts%20&%20Ordinance/Offences%20Against%20Property%20\(Enforcement%20of%20Hudood\)%20Ordinance.%201979.pdf](https://www.federalshariatcourt.gov.pk/wp-content/uploads/2021/01/Laws/Acts%20&%20Ordinance/Offences%20Against%20Property%20(Enforcement%20of%20Hudood)%20Ordinance.%201979.pdf)

<sup>28</sup> PPC sections 377B & 376(1A). <https://www.refworld.org/legal/legislation/natlegbod/1860/en/41422>

<sup>29</sup> PPC sections 377 & 376(1A). The term “unnatural offences” criminalizes “whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal” and rape. PPC sections 377 & 376(1A).

<sup>30</sup> Pakistan Army Act 1952 sec. 31. [64cccf751ff43\\_927.pdf](https://na.gov.pk/uploads/documents/64cccf751ff43_927.pdf)

<sup>31</sup> PPC sec. 132. <https://www.refworld.org/legal/legislation/natlegbod/1860/en/41422>

<sup>32</sup> Pakistan Army Act 1952 sec. 26. The crime of disclosure of parole or watchword encompasses the following acts under the Pakistan Army Act: treacherously making known the parole, watchword or countersign to any person not entitled to receive it, or treacherously giving a parole, watchword, or countersign different from what one received. If an individual commits these acts when on active service, that individual could be sentenced to death. Pakistan Army Act 1952 sec. 26(a)-(b). [https://na.gov.pk/uploads/documents/64cccf751ff43\\_927.pdf](https://na.gov.pk/uploads/documents/64cccf751ff43_927.pdf)

<sup>33</sup> PPC sec. 194. <https://www.refworld.org/legal/legislation/natlegbod/1860/en/41422>

<sup>34</sup> High Treason Act 1973 sec. 2. <https://www.fia.gov.pk/files/act/14.pdf>

<sup>35</sup> PPC sec. 121. <https://www.refworld.org/legal/legislation/natlegbod/1860/en/41422>

enemy;<sup>36</sup> arms trading;<sup>37</sup> and hijacking and harbouring hijacking.<sup>38</sup> Pakistan does not have a mandatory death sentence.<sup>39</sup>

13. Pakistan's lower courts continue to impose death sentences for less serious crimes.<sup>40</sup> However, the Supreme Court upholds death sentences only for crimes that end in death and involve exacerbating circumstances: murder; murder and terrorism; and murder, kidnapping and terrorism.<sup>41</sup> Supreme Court precedent also states that only in the most exceptionally aggravated offences is "the infliction of the death penalty" justified.<sup>42</sup> While Pakistan's Provincial High Courts are required to automatically review death sentences, an overburdened judiciary significantly slows down the appeals process.<sup>43</sup> This often results in extended periods of incarceration on death row for defendants who have appealed their sentences.
14. Despite the removal of the death penalty for drug offences, sentencing for drug offences still remains a matter of concern. Worryingly, since the amendment in 2023 struck off the death penalty, there have been at least 2 reported cases of persons being sentenced to death for drug offences.<sup>44</sup> 93 persons remain on death row for drug offences across the country; 84 of these individuals are in Balochistan and 9 are in Punjab. There is a need to devise a resentencing policy, whereby these individuals are granted a lesser sentence for their convictions, to reflect the change in law that took place last year.
15. The provinces of Khyber Pakhtunkhwa (KPK) and Sindh have their own provincial legislation on drug offences, with a separate set of penalties and quantity thresholds. These laws still carry the death penalty, and while the 2023 amendment to the federal Control of Narcotics Substances Act 1997 (CNSA) takes primacy, there is a need to both

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<sup>36</sup> Pakistan Army Act 1952 sec. 24. [64cccf751ff43\\_927.pdf](https://www.fmu.gov.pk/docs/laws/pakistan_army_act_1952_sec_24.pdf)

<sup>37</sup> Pakistan Arms (Amendment) Ordinance 1996 sec. 13-A.

[https://www.fmu.gov.pk/docs/laws/pakistan\\_army\\_act\\_1952\\_sec\\_24.pdf](https://www.fmu.gov.pk/docs/laws/pakistan_army_act_1952_sec_24.pdf)

<sup>38</sup> PPC sections 402B & 402C. <https://www.refworld.org/legal/legislation/natlegbod/1860/en/41422>

<sup>39</sup> Justice Project Pakistan (JPP) *Follow-up report on Pakistan* Para. 18, CCPR/C/PAK/CO/1, 120<sup>th</sup> Session of Human Rights Committee (Sept. 2019).

<sup>40</sup> Foundation for Fundamental Human Rights & Reprieve, *The Pakistan Capital Punishment Study* (2019).

<https://reprieve.org/wp-content/uploads/sites/2/2019/04/Pakistan-Capital-Punishment-Study.pdf>

<sup>41</sup> Foundation for Fundamental Human Rights & Reprieve, *The Pakistan Capital Punishment Study* (2019).

<https://reprieve.org/wp-content/uploads/sites/2/2019/04/Pakistan-Capital-Punishment-Study.pdf>

<sup>42</sup> *Muhammad Sharif v. the State* (2009 PLD 709) (confirming *Ifrikhar Ahmed Khan v. Asghar Khan & another* (2009 SCMR 502)).

[https://www.capitaldefencemanualpk.com/case/muhammad-sharif-v-state-pld-2009-sc-709/#:~:text=State%20\(PLD%202009%20SC%20709\).-Home%20%20Cases%20%20Muhammad&text=The%20infliction%20of%20the%20death,any%20extenuating%20or%20mitigating%20circumstances.](https://www.capitaldefencemanualpk.com/case/muhammad-sharif-v-state-pld-2009-sc-709/#:~:text=State%20(PLD%202009%20SC%20709).-Home%20%20Cases%20%20Muhammad&text=The%20infliction%20of%20the%20death,any%20extenuating%20or%20mitigating%20circumstances.)

<sup>43</sup> Justice Project Pakistan, and International Human Rights Clinic: Yale Law School, *A "Most Serious Crime": Pakistan's Unlawful Use of the Death Penalty* (Sept., 2016),

[https://law.yale.edu/sites/default/files/area/center/schell/2016\\_09\\_23\\_pub\\_dp\\_report.pdf](https://law.yale.edu/sites/default/files/area/center/schell/2016_09_23_pub_dp_report.pdf)

<sup>44</sup> Dawn News, *Man gets death sentence in heroin smuggling case* (Jan 18, 2024)

<https://www.dawn.com/news/1806773>; Daily Pakistan, *Drug recovery case, convict sentenced to death, fined one lakh*, (Jan 16, 2024) <https://dailypakistan.com.pk/16-Jan-2024/1669615>

spread awareness in KPK and Sindh, as well as to amend the provincial laws to reflect the state's position on capital punishment for drug offences.

16. In the absence of a concrete policy articulating the Government's decision to halt executions, the President's office rejected seven mercy petitions of death row prisoners and the first executions were scheduled for October 13<sup>th</sup> 2022.<sup>45</sup> Nevertheless, not only did the Government of Pakistan spring into action to stop these executions, it also noted in official communication that in light of international obligations, the use of the death penalty should remain on hold until further notice.
17. In August 2023, an execution warrant was issued for a prisoner in Mirpur Jail, Azad Jammu & Kashmir (AJK). His mercy petition was rejected by the office of the President of AJK on erroneous grounds (that only the victim's heirs had the power to pardon, even though the President of AJK has a Constitutional power to pardon). The Federal Government intervened before his execution, impressing upon the AJK government that the current policy of no executions was to remain in place.
18. In November 2023, the Supreme Court of Pakistan issued a judgement that referred extensively to Article 6 of the ICCPR and the 1984/50 ECOSOC Resolution on Safeguards Guaranteeing Protection of Rights of Those Facing the Death Penalty. This landmark judgement, titled *Muhammad Yasin vs. The State*, upheld the international law standard of only applying the death penalty for the most serious crimes, referencing General Comment No. 36 of the Human Rights Committee.<sup>46</sup> The judgement further affirmed that in light of Pakistan's withdrawal of its reservations to Article 6, the provisions of this article were applicable to the State in full force. As such, the Supreme Court commuted the death sentence of a defendant on the grounds that the prosecution was unable to establish a motive for the alleged crime of first-degree murder.
19. In February 2024, the Senate of Pakistan rejected a bill seeking public executions for rape and child sexual abuse.<sup>47</sup>
20. In July 2024, an Anti-Terrorism Court (ATC) sentenced a Christian youth to death for allegedly sharing blasphemous content on social media which led to the violent Jaranwala riots of 2023, which saw dozens of Christian homes and churches burned down by

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<sup>45</sup> Dawn News, *Mercy petitions of five death row prisoners rejected*, (October 6, 2022), <https://www.dawn.com/news/1713716>

<sup>46</sup> *Muhammad Yasin and Mudassar vs. The State*, [https://www.supremecourt.gov.pk/downloads\\_judgements/crl.p.\\_476\\_1\\_2018.pdf](https://www.supremecourt.gov.pk/downloads_judgements/crl.p._476_1_2018.pdf)

<sup>47</sup> The Express Tribune, *Senate shoots down public hanging bill*. (February 20, 2024). <https://tribune.com.pk/story/2457022/senate-shoots-down-public-hanging-bill>



mobs.<sup>48</sup> Of the 135 actual persons arrested for actually perpetrating the violence, allegedly only 12 are facing charges.

21. In August 2024, while hearing a criminal appeal filed by condemned prisoner Ghulam Shabbir, Supreme Court Justice Jamal Khan Mandokhail highlighted the inhumane conditions and interminably long periods of time spent on death row.<sup>49</sup> Ghulam Shabbir had spent 34 years in jail, including 24 years in a death cell. The judgement stated that having already served a life sentence, Shabbir could not be executed for the same offence or this would count as double punishment, and as such he was to be released. The judgement referenced the Nelson Mandela Rules and urged the Federal and Provincial Governments to minimise time spent on death row by aligning prison laws and rules with international standards, improving conditions for death row prisoners, and amending the procedure through which mercy petitions are filed before the President of Pakistan in line with international standards.

### **c. Suggested Recommendations**

- The State Party should consider formalising the policy of no executions, and enact legislation and relevant policy measures incorporating “safeguards guaranteeing the protection of those facing the death penalty” (ECOSOC Safeguards) into domestic law and practice
- Enact legislation removing death penalty for all crimes that do not fall within the scope of the “most serious crimes” and commute the death sentences for all those convicted for these crimes
- Formulate and notify guidelines directing all relevant authorities to commute death sentences for all prisoners facing the death penalty for drug offences
- Formulate sentencing guidelines to impose the death penalty only for the most serious and aggravated crimes, in line with the superior judiciary's practice in Muhammad Yasin vs. The State and international standards.

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

### **a. Prior Recommendations**

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<sup>48</sup> Dawn News, “Christian man on death row for ‘sparking’ riots in Jaranwala” (July 1, 2024) <https://www.dawn.com/news/1843074/christian-man-on-death-row-for-sparking-riots-in-jaranwala>

<sup>49</sup> Ghulam Shabbir and another vs. The State, [https://www.supremecourt.gov.pk/downloads\\_judgements/crl.r.p.\\_103\\_2017.pdf](https://www.supremecourt.gov.pk/downloads_judgements/crl.r.p._103_2017.pdf)

22. The Committee expressed concern that Pakistan sentences individuals to death for crimes committed under the age of 18. It recommended Pakistan ensure no person under 18 is sentenced to death and that those already charged with capital offences have access to an independent age determination process. The Committee also urged the State to treat individuals as children if there is any doubt about their age at the time of the crime.<sup>50</sup>
23. In the 2023 LOI, the Committee requested Pakistan to provide information on the number of persons on death row for crimes committed while they were under the age of 18, and the number of stays of execution issued for those under 18 years of age when sentenced to death.

#### **b. Current State Policy or Practice**

24. In its Second Periodic Report, Pakistan stated that no individuals under 18 have been sentenced to death, in line with the Juvenile Justice System Ordinance 2000 (JJSO). The report also highlighted the implementation of the Juvenile Justice System Act 2018 (JSSA), which the United Nations viewed as an effort to close legal loopholes in the JJSO that had previously allowed juvenile executions and denied their rights as children.<sup>51</sup>
25. Pakistan's Reply to the LOI reaffirmed this stance, stating that the death penalty "cannot be awarded" to those under 18.<sup>52</sup> Despite these assertions, it is unclear whether these legal measures have reduced the number of juveniles in Pakistan being sentenced to death. There are reports that the Government executed at least six children between 2014 and 2019.<sup>53</sup>
26. While the intent behind the JJSA was to introduce age determination protocols that prevent juveniles from being wrongfully tried as adults in capital cases, the Act has failed to achieve this goal.<sup>54</sup> This failure can be attributed to the fact that the Government has yet to pass rules under the JJSA, outlining the procedural framework through which the provisions of the Act will be implemented, including age determination protocols and

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

<https://www.ohchr.org/en/documents/concluding-observations/ccprcpakco1-human-rights-committee-concluding-observations>

<sup>51</sup> Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2. <https://www.ecoi.net/en/document/2084794.html>

<sup>52</sup> Human Rights Committee, *Replies of Pakistan to the list of issues in relation to its second periodic report* (May 17 2024), UN Doc. CCPR/C/PAK/RQ/2. <https://documents.un.org/doc/undoc/gen/g24/083/66/pdf/g2408366.pdf>

<sup>53</sup> Dawn, *Children on death row: Why Pakistan must stop hanging juvenile offenders* (July 19 2019) <https://www.dawn.com/news/1493244>

<sup>54</sup> International Federation for Human Rights, *Pakistan: Poor and marginalised suffer disproportionately from capital punishment*, (Oct. 2019) <https://www.fidh.org/en/issues/death-penalty/pakistan-poor-and-marginalized-suffer-disproportionately-from-capital>

safeguards for juveniles in the criminal justice system.<sup>55</sup> Despite limited sensitisation of law enforcement and the judiciary, the goal has not been reached because there is no detailed written procedure for criminal justice stakeholders to refer to on how to determine the age of a child.<sup>56</sup>

27. The JJSA makes the court the final authority in determining the age of a defendant, but does not afford the benefit of the doubt to the child in case of conflicting or inconclusive evidence. Considering that well over the majority of children in Pakistan are not registered at birth, these gaps in the justice system can result in courts wrongfully tried as adults in capital cases.
28. In 2021, while reviewing the death sentence of Muhammad Iqbal, the Lahore High Court explicitly recognized Pakistan's obligations as a signatory of the UN Convention on the Rights of Child and the ICCPR, whereby imposing the death penalty on minors is prohibited. Iqbal's sentence was thereby commuted and he was released after spending 22 years on death row.
29. In May 2024, while interpreting constitutional safeguards pertaining to juveniles, the incoming Chief Justice of the Supreme Court of Pakistan, Justice Mansoor Ali Shah, noted that as a signatory to the CRC, Pakistan is under an international obligation to take special measures for the protection and rehabilitation of juveniles who come into conflict with the law and that this obligation forms the impetus behind the country's juvenile justice system.<sup>57</sup>
30. Muhammad Azam was arrested on 11<sup>th</sup> October 1998 and sentenced to death by an Anti-Terrorism Court in 1999. His appeals were dismissed by the High Court in 1999, the Supreme Court in 2001, and his Review Petition in 2002. Birth and jail records show Azam was a juvenile at the time of commission of the offence, born in 1981. Despite a 2001 Presidential Notification commuting death sentences of juveniles, a request to review his age was rejected by the court, citing no plea of minority raised during the trial. In 2008, the heirs of the deceased pardoned Azam, but the Supreme Court ruled he could not be acquitted due to his conviction under Section 7 ATA. In 2016, Azam's lawyers contacted the Sindh Home Department to address his juvenility, but no response has been received to date, and he has continued to languish on death row for 25 years.<sup>58</sup>

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<sup>55</sup> Justice Project Pakistan, Valerie Khan, *Pakistan's Compliance with the Convention on the Rights of the Child* (2022) <https://jpp.org.pk/gspplusweek/>

<sup>56</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Pakistan*, U.N. Doc A/HRC/53/13 (Mar. 31, 2023), <https://documents.un.org/doc/undoc/gen/g23/036/54/pdf/g2303654.pdf>

<sup>57</sup> *Mehran Vs Ubaid Ullah, etc.* CrI.P.L.A.80-P/2024, [https://www.supremecourt.gov.pk/downloads\\_judgements/crl.p.80\\_p.2024.pdf](https://www.supremecourt.gov.pk/downloads_judgements/crl.p.80_p.2024.pdf)

<sup>58</sup> Justice Project Pakistan, *Trial and Terror: The Overreach of Pakistan's Anti-Terrorism Act* (2017), [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Terrorism/JusticeProjectPakistan\\_2.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Terrorism/JusticeProjectPakistan_2.pdf)



### **c. Suggested Recommendations**

- Amend the Juvenile Justice Systems Act, 2018 to provide the benefit of doubt to the accused in cases of inconclusive or conflicting evidence pertaining to juvenility.
- Formulate and notify judicial guidelines incorporating international safeguards pertaining to determination of age for those charged with capital offences.
- Formulate detailed enabling rules under the JJSA 2018.

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

### **a. Prior Recommendations**

31. In its 2017 Concluding Observations, the Committee raised concerns about Pakistan sentencing and executing individuals with psychosocial and intellectual disabilities. It recommended halting such sentences and establishing an independent review mechanism for cases involving credible evidence of these disabilities.<sup>59</sup> In its 2020 follow-up, the Committee expressed regret that no updates had been provided on actions to prevent executions of persons with serious intellectual or psychosocial disabilities.<sup>60</sup>

### **b. Current State Policy or Practice**

32. In February 2021, the Supreme Court delivered a landmark ruling titled *Safia Bano v. Home Department*. Referencing the ICCPR, the Court barred the execution of individuals with severe psychosocial disabilities who are “unable to comprehend the rationale behind their execution”<sup>61</sup> and commuted the death sentences of Kanizan Bibi and Imdad Ali to life imprisonment. The judgement established key safeguards for defendants with psychosocial disabilities on death row, and reiterated and upheld protections that must be afforded to such persons at every stage in the criminal justice system: at the time of arrest, during investigation and at trial and sentencing, to ensure due process.

33. The Court issued directions to the Federal and Provincial Governments to establish forensic mental health facilities for the assessment, treatment and rehabilitation of under trial prisoners and convicts with psychosocial disabilities. It also added that the federal and the provincial judicial academies shall arrange courses for judges, prosecutors,

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<sup>59</sup> Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120th session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), 18.

<https://www.ohchr.org/en/documents/concluding-observations/ccprcpakco1-human-rights-committee-concluding-observations>

<sup>60</sup> Human Rights Committee, *Report on follow-up to the concluding observations of the Human Rights Committee*, UN Doc. CCPR/C/127/2/Add.2.

<sup>61</sup> Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant*, due in 2020 (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2, 65. <https://www.ecoi.net/en/document/2084794.html>

lawyers and court staff on mental illness including forensic mental health assessment. There have been no indications and/or reports that these facilities have been established.<sup>62</sup> Although some civil society-led trainings have taken place, the Federal and Provincial Governments have yet to follow the Supreme Court's directions in this matter.<sup>63</sup>

34. The Supreme Court also directed authorities to amend the Prison Rules to ensure that the manuals pertaining to prisons of all provinces are in harmony. The Draft Punjab Prison Rules 2020 and the revised Punjab Prison Rules 2022, which provide increased protections for prisoners with psychosocial disabilities, as well as an improved framework for their access to adequate care in line with the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), have yet to be passed by the Punjab Government and there have been no attempts to incorporate these revisions to the Pakistan Prison Rules 1978 at the federal level.
35. Pakistan's State Report says that since 2019, 31 mental health professionals have been posted in Punjab prisons to support death row inmates. However, these professionals are employed by Punjab Prisons, violating international standards that require clinical independence.<sup>64</sup> Under domestic law, medical staff should be deputed from provincial health departments, not recruited by prison authorities. As their roles are undefined in the Prison Rules, their independence is compromised by their subordination to prison management.
36. In their 2024 Reply to the List of Issues, Pakistan has stated that "The *Safia Bano* Case (2021) prohibits death penalty for the mentally challenged accused," but made no further reference to any efforts being made to implement the judgement.
37. In April 2024, JPP's client, Sheraz Butt died in custody. These deaths highlight the gross negligence of the prison authorities and the lack of implementation of the directions issued in *Safia Bano* by the Executive. Sheraz was violently strangled to death in Central Jail, Lahore by another prisoner who also had severe psychosocial disabilities. His appeal against his death sentence in the Supreme Court was met with strong resistance by the judges and remained pending for eight years until his death, despite ample evidence of his serious mental illness repeatedly presented before the court.<sup>65</sup>

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<sup>62</sup> Justice Project Pakistan, *Pakistan's Compliance with Article 6: The Right to Life (ICCPR)* (June, 2023) <https://jpp.org.pk/pakistans-compliance-with-article-6-the-right-to-life-iccpr/>

<sup>63</sup> Justice Project Pakistan, *Pakistan's Compliance with Article 6: The Right to Life (ICCPR)* (June, 2023) <https://jpp.org.pk/pakistans-compliance-with-article-6-the-right-to-life-iccpr/>

<sup>64</sup> UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly*, 8 January 2016, A/RES/70/175, Rule 25(2), 30-34. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-book.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-book.pdf)

<sup>65</sup> According to Sheraz's medical records from his treatment at the psychiatric cell of the Jail Hospital, he was visited seven times by psychiatrists from Punjab Institute of Mental Health (PIMH). The series of medical diagnosis and

38. In May 2024, Ghulam Abbas, a petitioner in the *Safia Bano* judgement, died at the Punjab Institute of Mental Health. Ghulam had been suffering from heart problems, and despite the doctors being aware of his severe cardiac issues, he did not receive adequate medical care and was sent back to his cell. He died from another heart attack in his cell at midnight, still in shackles. Despite the Supreme Court's directive, a fresh mercy petition filed in 2021 to highlight his mental illness was left pending before the President. Ghulam Abbas's death underscores the failure of both Federal and Provincial governments to implement the *Safia Bano* judgement's protections for death row prisoners with psychosocial disabilities.
39. Mohammad Saleem Ahmad, a prisoner, has been on death row for 16 years. Arrested for murder in 2001, despite the investigation officer's testimony about his mental illness and the trial court's acknowledgment of his insanity and disorientation, he was sentenced to death in 2004. In 2013, he was officially diagnosed with a psychiatric illness and put on strong antipsychotic drugs. His execution, scheduled for 7<sup>th</sup> November 2017, was cancelled three days before it took place. A medical board in 2018 confirmed his psychosocial disability and recommended his transfer to a forensic psychiatric facility, but he remains confined in the hospital cell of Central Jail, Lahore. His health is rapidly declining, and despite his deteriorating mental and physical condition, judicial and executive authorities have ignored pleas for his transfer to a mental health facility.
40. Ismail Parvez, a death row prisoner with a documented history of severe psychosocial disability and more than one suicide attempt in prison, has had his mercy petition pending before the President since 2020.<sup>66</sup> An Anti-Terrorism Court convicted Parvez under the Anti-Terrorism Act 1997 for killing two individuals in 2014.<sup>67</sup> Since 2007, Parvez has been held in prison, instead of a mental health facility where his illness can be accommodated, despite ample evidence and documentation.<sup>68</sup> Furthermore, Ismail's detention, trial and incarceration have not adequately taken his psychosocial disability into account, nor were his rights upheld in a way that accommodated said psychosocial disability.<sup>69</sup>
41. Without codifying the directions of the *Safia Bano* ruling into legislation, persons with psychosocial disabilities will continue to fall through the cracks of the justice system and

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examinations carried out between the years 2013 and 2017 consistently pointed to Sheraz's mental health as a classical representation of a patient suffering from schizophrenia.

<sup>66</sup> Aoláin, Devandas-Aguilar, Callamard, Puras, and Melzer, *Public Comment on Case of Mr. Ismail Parvez*, UN Submission (Jun. 4, 2020), UA PAK 9/2020.

<sup>67</sup> Aoláin, Devandas-Aguilar, Callamard, Puras, and Melzer, *Public Comment on Case of Mr. Ismail Parvez*, UN Submission (Jun. 4, 2020), UA PAK 9/2020.

<sup>68</sup> Aoláin, Devandas-Aguilar, Callamard, Puras, and Melzer, *Public Comment on Case of Mr. Ismail Parvez*, UN Submission (Jun. 4, 2020), UA PAK 9/2020.

<sup>69</sup> Justice Project Pakistan, *Trapped Inside: Mental Illness and Incarceration* (2022), <https://jpp.org.pk/report/trapped-inside-mental-illness-incarceration/>

run the risk of facing execution and harsh sentences without adequate treatment and care. The Criminal Law and Justice Reforms (Amendment) Bill, drafted in January 2022 by the Ministry of Law and Justice, revised the Criminal Procedure Code to include key safeguards and standards from the *Safia Bano* judgement, including the use of more sensitive language on mental health, the establishment of Medical Boards to assess defendants at various stages, and expanding criteria to prove unsoundness of mind. However, the Bill was never tabled due to the ouster of the PTI-led government in April 2022 and was not part of the new government's legislative agenda.

### **c. Suggested Recommendations**

- Enact legislation prohibiting the executions of all prisoners suffering from psychosocial disabilities, incorporating international safeguards and providing for the commutation of all applicable death sentences.
- Implement the *Safia Bano* judgement by establishing independent medical boards in all provinces to assess claims of psychosocial disability, ensuring that affected defendants or prisoners receive appropriate accommodations during judicial proceedings and in detention, and training judges, prosecutors, lawyers, and court staff on the protections and forensic mental health assessments established in the judgement.
- Assign mental health professionals, employed under the provincial health departments rather than the prison services to provide mental health services to death row inmates in all provinces.
- Amend the Prison Rules for all provinces to describe the functions and responsibilities for mental health professionals assigned to provide mental health services to prisoners on death row.
- Order a complete inquiry into the deaths of Ghulam Abbas and Sheraz Butt, including a post-mortem examination, led by the National Commission for Human Rights.

## **IV. Execution Protocol**

### **a. Prior Recommendations**

42. The Committee, in its 2017 Concluding Observations, recommended that Pakistan bring its execution protocol in line with international standards, and in cases where executions must take place, they should do so in accordance with the established protocol.
43. The LOI issued by the Committee in November 2023 asked Pakistan to provide information on the steps taken to bring its execution protocol into line with international

human rights standards and to ensure that executions are carried out in accordance with the established protocol.

#### **b. Current State Policy or Practice**

44. Pakistan's Reply to the LOI does not address their execution protocol, and only admits that there has been no change to the extant law and procedure since Pakistan underwent its first review by the Committee.
45. The current law calls for execution of condemned prisoners 3-8 days after their execution warrant has been issued by a judge, under the Pakistan Prison Rules 1978. The original and long-standing rule, which was revised in the aftermath of the moratorium being lifted in December 2014, required a period of 14-21 days between the issuance of an execution warrant by the judge and the date of execution.<sup>70</sup> As such, legal counsel are left with a significantly reduced time period within which they may effectively represent and challenge an execution warrant.
46. On 10<sup>th</sup> October 2022, the mercy petitions of seven prisoners in Punjab were rejected, and execution warrants for two of these prisoners were issued under the above-mentioned procedure, scheduling their hangings for the 13th of October 2022.
47. The protocols for execution outlined in Pakistan Prison Rules 1978 are outdated, and are seldom followed in practice. Rule 357 provides for compensation of Rs. 10 (\$0.035) for the executioner, who is often untrained and belongs to a minority community. Furthermore, Rule 355 outlines the procedure for testing execution equipment (rope, sandbag to simulate the condemned prisoner), but in practice these tests often do not take place, resulting in botched executions and unnecessary suffering for prisoners already being deprived of their lives.
48. Rule 353 of the Pakistan Prison Rules 1978 calls for any mishaps or departure from the rules to be reported to the Inspector General of Prisons. However, it is unclear whether this information is recorded, and has not been provided to the Committee.
49. The lack of an explicit legislative provision in the Pakistan Prison Rules 1978 that bars execution of all death row prisoners in the absence of clearance by a Medical Board, and a ban on execution of prisoners with psychosocial disabilities, is in direct contravention of the 2021 *Safia Bano* judgement by the Supreme Court of Pakistan.

#### **c. Suggested Recommendations**

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<sup>70</sup> Justice Project Pakistan (JPP), *Follow-up report on Pakistan Under Para. 18*, CCPR/C/PAK/CO/1, 120<sup>th</sup> Session of Human Rights Committee (Sept. 2019).

- Amend the Prison Rules to align them with international standards regarding the execution protocol.
- Revise the timeframe between issuance of execution warrants and execution dates, to adequately accommodate efforts by counsel to initiate proceedings for the stay of execution and/or pardon in light of extenuating circumstances.
- Provide data on botched executions and mishaps in prisons across the country.
- Amend the Prison Rules to codify the Supreme Court’s *Safia Bano* judgement barring execution of condemned prisoners without clearance by a Medical Board.

## **V. Executions of Overseas Pakistanis in violation of international law**

### **a. Prior Recommendations**

50. In its 2017 Concluding Observations, the Human Rights Committee noted with concern the large number of Pakistani migrant workers who have been sentenced to death and executed overseas. The Committee highlighted the need to provide adequate consular and legal protections to these migrant Pakistanis throughout their proceedings in foreign countries.
51. In its 2020 report on the follow-up to the 2017 Concluding Observations, the Committee regretted that Pakistan has not provided any information on Pakistani migrant workers sentenced to death overseas.
52. While the 2023 LOI did not frame any questions on migrant Pakistanis being sentenced to death abroad, there has been an alarming increase in the number of Pakistanis being executed overseas, particularly in Saudi Arabia.<sup>71</sup>

### **b. Current State Policy or Practice**

53. Pakistan has made no reference to migrant Pakistanis facing execution overseas in its Second Periodic Report, nor in its Reply to the LOI.
54. Statistics presented in the lower house of parliament by the Ministry of Foreign Affairs (MOFA) in July 2023 revealed that 12,080 Pakistani citizens are languishing in foreign

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<sup>71</sup> Two Pakistani nationals were executed for drug trafficking on the 10<sup>th</sup> of November 2022, followed by the beheading of another Pakistani for the same crime five days later. Then, in 2023, the Kingdom executed four Pakistanis on 19<sup>th</sup> March, on 11<sup>th</sup> May, on 24<sup>th</sup> August and on 3<sup>rd</sup> October. In March 2024, the Kingdom executed five Pakistanis in one day, and in July 2024, carried out the executions of two more Pakistani nationals. See: Saudi Press Agency, <https://www.spa.gov.sa/viewfullstory.php?lang=ar&newsid=2399880> and <https://www.spa.gov.sa/b8fe665072y>; Dawn News, “7 Pakistanis among 100 Executed by Saudi Arabia in 2024” (July 18, 2024), <https://www.dawn.com/news/1846462>

prisons.<sup>72</sup> In a little under a year, this number soared to 23,506, according to information presented before the Senate Standing Committee on Human Rights in February 2024.<sup>73</sup> In September 2024, the Parliamentary Secretary for Ministry of Overseas Pakistanis and Human Resource Development reported before the National Assembly that 20,000 Pakistanis are imprisoned abroad, 68 of whom are on death row.<sup>74</sup>

55. Pakistanis imprisoned abroad are at the mercy of local courts without access to lawyers, impartial translators or adequate consular assistance from the Pakistani diplomatic missions. These destitute Pakistanis face the harshest punishments because of a lack of understanding of the legal process, ability to communicate directly with the court and the difficulty of producing evidence from Pakistan in their defence.<sup>75</sup>
56. In 2017, the Lahore High Court directed the MOFA to draft a consular protection policy for Pakistanis who are imprisoned and/or facing execution abroad.<sup>76</sup>
57. In February 2024, the Senate Standing Committee on Human Rights summoned representatives of the MOFA, directing them to provide data on overseas Pakistani prisoners, make public all Prisoner Transfer Agreements (PTA) entered into by Pakistan, and provide updates on the implementation of a consular protection policy under the directions of the Lahore High Court. It was revealed that MOFA has yet to draft a policy ensuring missions fulfil their responsibilities to Pakistani citizens detained abroad, despite being directed to do so seven years ago. MOFA was given a 90-day deadline to create and implement the policy, but progress remains unclear.
58. The number of Pakistani prisoners in the Kingdom of Saudi Arabia increased from 3,248 in 2020, to an alarmingly high 12,156 in February 2024<sup>77</sup>. In February 2022, Pakistan and Saudi Arabia finalised an agreement for the transfer of offenders, but its implementation has remained limited, a fact made all the more troubling given the high number of Pakistani nationals imprisoned in the country.

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<sup>72</sup> Dawn News, “Over 12,000 Pakistanis Languishing in Foreign Jails” (July 23, 2023), <https://www.dawn.com/news/1766262>

<sup>73</sup> Justice Project Pakistan, *Pakistani Prisoners Abroad*, (February 2024) <https://jpp.org.pk/overseaspakprisoners/>

<sup>74</sup> ARY News, “20,000 Pakistanis imprisoned in foreign jails, NA told”, (September 4, 2024), <https://arynews.tv/20000-pakistanis-imprisoned-in-foreign-jails-na-told/>

<sup>75</sup> Justice Project Pakistan, ‘*Caught in a Web: Treatment of Pakistanis in the Saudi Criminal Justice System*’, (March 2018) <https://www.jpp.org.pk/wp-content/uploads/2018/03/CAUGHT-IN-A-WEB.pdf>

<sup>76</sup> *Asma Shafi etc Versus the Federation of Pakistan etc* (W.P No 32288/214). Order date: 02.06.2017

<sup>77</sup> Justice Project Pakistan, *Pakistani Prisoners Abroad*, (February, 2024) <https://jpp.org.pk/overseaspakprisoners/>



59. After a period of 3 years with no execution of Pakistanis, Saudi Arabia has executed 14 Pakistani nationals for either murder or drug trafficking since November 2022.<sup>78</sup> This is despite the Saudi Commission for Human Rights having announced a moratorium on executions for drug-related crimes in January 2021.<sup>79</sup>

60. Despite entering into several bilateral PTAs with other countries, the MOFA does not make these documents public, and state-led efforts to implement these agreements are sparse. This hinders repatriation efforts by overseas prisoners, their families, and attorneys, who cannot pursue legal or advocacy actions towards repatriation without access to the agreements' provisions and requirements.

### **c. Suggested Recommendations**

- Formulate and implement a consular protection policy for Pakistanis detained abroad, with special emphasis on protections for those facing the death penalty.
- Negotiate and make public prisoner transfer agreements with the governments of countries that detain a large number of Pakistani prisoners, allowing them to serve the remainder of their sentences in their home country.

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

### **I. Torture by police and law enforcement**

#### **a. Prior Recommendations**

61. The Committee raised concerns that Pakistan has neither defined nor criminalized torture according to international standards. In its 2017 Concluding Observations, it recommended that Pakistan amend its laws to align with Article 7 of the ICCPR, ensure accountability and impartial prosecution of offenders, ban coerced confessions, and implement training for the judiciary, prosecutors, law enforcement, and the military to prevent torture.<sup>80</sup>

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<sup>78</sup> Two Pakistani nationals were executed for drug trafficking on the 10<sup>th</sup> of November 2022, followed by the beheading of another Pakistani for the same crime five days later. Then, in 2023, the Kingdom executed four Pakistanis on 19<sup>th</sup> March, on 11<sup>th</sup> May, on 24<sup>th</sup> August and on 3<sup>rd</sup> October. In March 2024, the Kingdom executed five Pakistanis in one day, and in July 2024, carried out the executions of two more Pakistani nationals. Saudi Press Agency, <https://www.spa.gov.sa/viewfullstory.php?lang=ar&newsid=2399880> , <https://www.spa.gov.sa/b8fe665072y>

<sup>79</sup> ECDHR, “*The Politics of Death: The Use of the Death Penalty in Saudi Arabia*” (April 17, 2023), <https://www.ecdhr.org/the-politics-of-death-the-use-of-the-death-penalty-in-saudi-arabia/#:~:text=In%20January%202021%2C%20the%20Saudi,executions%20for%20drug%2Drelated%20crimes>

<sup>80</sup> Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120<sup>th</sup> session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017). <https://www.ohchr.org/en/documents/concluding-observations/ccprpakco1-human-rights-committee-concluding-observations>



62. The 2023 LOI requested details on the Torture and Custodial Death (Prevention and Punishment) Act 2022 and other measures to combat torture, including human rights training for judges, prosecutors, police, and the military. The Committee also inquired about reports of torture and custodial killings by law enforcement and asked about accountability mechanisms for investigating and punishing offenders. Lastly, it sought information on remedies for victims, including data on complaints, investigations, prosecutions, convictions, and compensation provided during the reporting period.

#### **b. Current State Policy or Practice**

63. Pakistan's Reply to the LOI states that the Act defines torture in line with international definitions. The Reply further states that the Government has instituted comprehensive training programmes on torture for educating judges, prosecutors, police, and military/security forces, and outlines the investigation and oversight mechanisms established under the Act.

64. The Reply also claims an unrealistically low number of torture complaints being filed, reporting only 10 complaints in 2021. This number is inconsistent with the Government's second periodic report on the ICCPR, which reports that in Punjab alone in 2021, 624 police officials were "punished for offences of torture or misbehaviour". This discrepancy underscores the incongruent and fragmented approach towards addressing complaints of torture that persists to this day.

65. In November 2022, the Government of Pakistan passed the Torture and Custodial Death (Prevention and Punishment) Act, which defines and criminalizes torture, and imposes sanctions and punishment for public servants who employ torture. However, there remain key aspects in which the Act falls short of meeting the international norms on torture prohibition.

66. The most significant shortcoming is the omission of psychological pain and suffering from the definition of torture. Other issues include unclear complaint and investigation procedures, inconsistencies with international law in medical examinations, absence of non-refoulement provisions, no *suo moto* investigations, lack of compensation, and inadequate penalties. The FIA, responsible for handling torture complaints, lacks a dedicated wing and an online complaint mechanism.<sup>81</sup> The FIA, tasked with receiving and investigating torture complaints under the Act, lacks a dedicated wing for this purpose and an online complaint mechanism on its official website. Lastly, the National Commission for Human Rights, which is tasked with investigative oversight, requires

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<sup>81</sup> For a detailed analysis, see: Justice Project Pakistan and National Commission for Human Rights, *Gap Analysis: Torture and Custodial Death (Prevention and Punishment) Act 2022* (June 2024), <https://jpp.org.pk/report/gap-analysis-torture-and-custodial-death-prevention-and-punishment-act-2022/>

more resources and a more clearly defined role in ensuring independent and impartial investigation.

67. There persists a notable lack of public and stakeholder awareness regarding the rights and procedures enshrined within the ambit of this significant legislation.
68. In the two years since the Act was passed, JPP's information shows that only two complaints have resulted in prosecutions being initiated under the Act.<sup>82</sup>
69. Media reports over the past two years show that torture and ill-treatment by law enforcement remain widespread. The discrepancy between these reports and the few complaints filed, investigated, or prosecuted under the Act can be attributed to several factors: lack of operational rules for handling complaints, limited awareness among justice stakeholders about torture being a distinct offence, and insufficient training for government institutions on accountability procedures.
70. In May 2024, the Lahore High Court in *Sarriya Bibi v. RPO Sheikhpura*<sup>83</sup> highlighted the lack of implementation of the Act and directed its immediate and complete enforcement, emphasising the roles of the FIA and NCHR. The judgement mandated awareness and sensitization training for public officials to ensure effective implementation of the Act.
71. To effectively reduce torture in Pakistan, specialised legislative action and capacity building are needed. This includes creating rules to define stakeholder duties, ensure accountability, and raise public awareness of their rights under the Act. Additionally, the State must collect and publish disaggregated data on torture to identify systemic issues and guide future policy changes.

### **c. Suggested Recommendations**

- Amend the definition of torture under the Torture and Custodial Death (Prevention and Punishment) Act, 2022 to include instances of psychological torture.
- Frame enabling rules and regulations under the Act which reflect the principles established in the Mandela Rules, Istanbul Protocol, Mendez Principles and Minnesota Protocol.
- Amend the Act to provide for an independent redressal mechanism for victims of torture along with provisions for pecuniary compensation and rehabilitation in line with international safeguards.

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<sup>82</sup> In 2024, the Prosecutor General Punjab invoked the Act to prosecute a complaint of torture submitted by a member of the transgender community; in another instance, a Magistrate referred a case to the FIA for investigation under Section 6 of the Act.

<sup>83</sup> *Mst. Sarriya Bibi vs. RPO Sheikhpura etc.* <https://sys.lhc.gov.pk/appjudgments/2024LHC2550.pdf>

- Amend the Act to increase the investigative powers and adequately resource the National Commission of Human Rights to independently investigate and prosecute cases of torture, punish perpetrators and provide redress to victims.

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

### **II. Detention conditions in Pakistan violate national and international standards.**

#### **a. Prior Recommendations**

72. The Committee expressed concern over overcrowding and inadequate detention conditions in Pakistani prisons, as well as the high proportion of persons held in prolonged pre-trial detention.<sup>84</sup> It recommended that Pakistan “intensify its efforts to reduce prison overcrowding and improve the conditions of detention, particularly health care and hygiene” and use pretrial detention only in exceptional cases and not for long periods of time.<sup>85</sup>
73. In November 2023, the List of Issues framed by the Human Rights Committee acknowledged efforts to reduce overcrowding in detention facilities, particularly through the Punjab Probation and Parole Services Act 2019, but requested updated information on its impact. They also expressed concerns about the poor conditions in many detention facilities, including inadequate access to basic needs and the prolonged solitary confinement of individuals accused of blasphemy. The Committee sought data on the capacity and monitoring of detention facilities, measures to reduce pretrial detention, the use of non-custodial alternatives, and safeguards against arbitrary detention.

#### **b. Current State Policy or Practice**

74. Pakistan’s response to the List of Issues reports 103,175 prisoners nationwide (excluding Azad Jammu & Kashmir and Gilgit-Baltistan), with 77,338 still under trial. Measures to address overcrowding include establishing a parole and probation service in Punjab, a new Offender Management System, and building new jails. Four new jails in Punjab, with a total capacity of 2,268, are planned by 2024, but Punjab currently holds 63,619 prisoners with a capacity of only 37,217. As such, it is unlikely that reactionary measures such as building more jails will do much to stem the ever-increasing tide of prisoners in Pakistan..

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<sup>84</sup> Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120<sup>th</sup> session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), 27.

<https://www.ohchr.org/en/documents/concluding-observations/ccprpakco1-human-rights-committee-concluding-observations>

<sup>85</sup> Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120<sup>th</sup> session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), 28.

<https://www.ohchr.org/en/documents/concluding-observations/ccprpakco1-human-rights-committee-concluding-observations>

75. The levels of overcrowding in Pakistani prisons and detention centres is life threatening. Recent estimates of Pakistan's prison population place the number of people deprived of their liberty at 100,366 inmates, housed across 127 prisons.<sup>86</sup> In total, these prisons have an estimated capacity of around 66,000 inmates, which places Pakistani prisons over capacity by 52% (152% overcrowded).<sup>87</sup> On a small scale, this means that prison cells designed for a maximum of three people may hold up to 15 people.<sup>88</sup> This degree of overcrowding directly impacts prisoners' due process rights.
76. 73% of the prison population across the country are under-trial prisoners, who are still awaiting the conclusion of their trial proceedings.<sup>89</sup>
77. High rates of pre-trial detention, delayed trial proceedings, the difficulty of obtaining bail, the expansive power of police to arrest and detain suspects, limited state-provided legal aid, and a "reluctance of judges to impose non-custodial sentences" also contribute to overcrowding.<sup>90</sup>
78. A major reason behind the significant jump in Pakistan's prison population, from 88,687 in 2022 to over 100,000 in 2023, is the passage of a 2022 Amendment to the Control of Narcotics Substances Act 1997 (CNSA). This amendment introduced stricter penalties at wider quantity thresholds, resulting in increasingly harsh sentences being meted out to persons charged with drug offences. Importantly, the amendment stripped away the possibility of parole, probation or remission for anyone (excluding women and juveniles) sentenced under the CNSA. The Inspector General of Punjab Prisons said he had witnessed a 12,000 person spike in the prison population in the three months after the Amendment was passed.<sup>91</sup> Currently, 19,636 people, making up 20% of the national prison population, are currently imprisoned under the Control of Narcotics Substances Act (1997), significantly contributing to prison overcrowding.<sup>92</sup>
79. The judiciary of Pakistan does not adhere to any uniform sentencing standards for drug offences, with wildly varying and discretionary sentences being observed for the same offence and quantity of narcotics across the country. The 2009 *Ghulam Murtaza*

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<sup>86</sup> Justice Project Pakistan, *Data Dashboards: Prison Population of Pakistan* (2023).

<https://jpp.org.pk/report/data-dashboards-prison-population-of-pakistan-2023/>, <http://jppprisonreforms.com/>

<sup>87</sup> Justice Project Pakistan, *Factsheet 2023: Prison Population of Pakistan* (2023),

<https://jpp.org.pk/report/fact-sheet-2023-prison-population-of-pakistan/>

<sup>88</sup> Human Rights Watch, *'A Nightmare for Everyone': The Health Crisis in Pakistan's Prisons*, (Mar. 29, 2023),

<https://www.hrw.org/report/2023/03/29/nightmare-everyone/health-crisis-pakistans-prisons>.

<sup>89</sup> Justice Project Pakistan, *Factsheet 2023: Prison Population of Pakistan* (2023),

<https://jpp.org.pk/report/fact-sheet-2023-prison-population-of-pakistan/>

<sup>90</sup> Human Rights Watch, *'A Nightmare for Everyone': The Health Crisis in Pakistan's Prisons*, (Mar. 29, 2023),

<https://www.hrw.org/report/2023/03/29/nightmare-everyone/health-crisis-pakistans-prisons>.

<sup>91</sup> Justice Project Pakistan, *Post Event Report: Reimagining Justice: Public Health and Human Rights Policy* (Apr.

2024), <https://jpp.org.pk/reimagining-justice-public-health-human-rights-centered-drug-policy/>

<sup>92</sup> Justice Project Pakistan, *Narcotics Offences Dataset* (2024),

<https://jpp.org.pk/wp-content/uploads/2024/04/Narcotics-Offences-Dataset.pdf>

sentencing guidelines for drug offences, introduced by the Lahore High Court and reaffirmed by the Supreme Court in 2019, lay out progressive standards for sentencing of persons charged with drug offences.<sup>93</sup> Unfortunately, these have not been uniformly adhered to by the lower judiciary.

80. Prisoners often lack access to healthy food and clean water, relying on family support or buying food from the commissary. Many prisons lack clean drinking water, giving rise to severe health issues.<sup>94</sup> Pakistan's prisons are "notoriously unsanitary," with the 2020 *Khadim Hussain v. Secretary, Ministry of Human Rights* judgement by Islamabad High Court highlighting the "grave conditions" and overcrowding, and observing that such conditions were tantamount to cruel and inhuman treatment.<sup>95</sup>
81. Additionally, there are persistent reports of torture in Pakistan's prisons. In September 2022, the NCHR's inquiry into the *Imtiaz Bibi* case revealed numerous instances of torture in Central Jail, Rawalpindi. Of 35 prisoners interviewed, 26 (74%) reported being tortured, with methods ranging from beatings with rubber tires to solitary confinement. Additionally, all prisoners mentioned financial extortion for basic necessities.<sup>96</sup> While the passage of the Torture and Custodial Death (Prevention and Punishment) Act in November 2022 was a concrete step towards addressing torture in Pakistan's jails, it is a matter of concern that there are no independent and accessible accountability mechanisms for prisoners to submit complaints of torture and abuse in any of Pakistan's jails.
82. Prisons continue to operate without separate barracks for transgender persons as mandated in the Transgender Persons (Protection of Rights) Act.<sup>97</sup> In 2021, the Sindh High Court noted the lack of these barracks in Sindh prisons was a direct violation of both the Transgender Persons Act, the Sindh Prison Rules and the Sindh Prisons and Corrections Services Act 2019.<sup>98</sup>

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<sup>93</sup> *Ghulam Murtaza and another v. The State* (PLD 2009 LAH 362), <http://sindhmemons.blogspot.com/2017/04/p-l-d-2009-lahore-362.html>

<sup>94</sup> Human Rights Watch, 'A Nightmare for Everyone': The Health Crisis in Pakistan's Prisons, (Mar. 29, 2023), <https://www.hrw.org/report/2023/03/29/nightmare-everyone/health-crisis-pakistans-prisons>.

<sup>95</sup> *Khadim Hussain v. Secretary, Ministry of Human Rights* (IHC Prison Reforms case), Writ Petition No. 4037 of 2019, Islamabad High Court, per Chief Justice Athar Minallah, Mar. 14, 2020, [http://mis.ihc.gov.pk/attachments/judgements/WP-4037-2019\\_637216920356707546.pdf](http://mis.ihc.gov.pk/attachments/judgements/WP-4037-2019_637216920356707546.pdf)

<sup>96</sup> *Khadim Hussain v. Secretary, Ministry of Human Rights* (IHC Prison Reforms case), Writ Petition No. 4037 of 2019, Islamabad High Court, per Chief Justice Athar Minallah, Mar. 14, 2020, [http://mis.ihc.gov.pk/attachments/judgements/WP-4037-2019\\_637216920356707546.pdf](http://mis.ihc.gov.pk/attachments/judgements/WP-4037-2019_637216920356707546.pdf); see also Human Rights Watch, 'A Nightmare for Everyone': The Health Crisis in Pakistan's Prisons, (Mar. 29, 2023), <https://www.hrw.org/report/2023/03/29/nightmare-everyone/health-crisis-pakistans-prisons>

<sup>97</sup> United States Department of State, "2022 Country Reports on Human Rights Practices: Pakistan" (December 7, 2023), <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/pakistan/>

<sup>98</sup> Dawn News, "SHC Seeks Report about Separate Barracks in Prisons for Transgender Inmates" (March 7, 2021), <https://www.dawn.com/news/1611039>



83. Extended time on death row can also amount to cruel, inhuman or degrading treatment or punishment.<sup>99</sup> As mentioned, Pakistan maintains one of the largest death rows in the world and hundreds of prisoners have been added to death row since 2014.<sup>100</sup> Detention conditions on death row are also egregious, with prisoners incarcerated in incredibly small and overcrowded cells.<sup>101</sup>
84. Police often subject individuals on death row to torture to illicit confessions.<sup>102</sup> Courts also rely on these forced confessions in determining an individual's guilt and in sentencing.<sup>103</sup> It remains to be seen how this issue will be resolved in light of the new Torture and Custodial Death (Prevention and Punishment) Act 2022 which prohibits the admissibility of evidence extracted through coercion.
85. Despite being home to 59.1% of Pakistan's incarcerated population, with around 58,534 prisoners spread across 44 correctional facilities,<sup>104</sup> Punjab, the nation's most populous province, has retained unchanged prison rules since 1978 which considerably fall behind UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). Two separate committees for prison reform were notified in 2020 and 2022, but ultimately could not pass the draft Punjab Prison Rules 2020, which amended over 1200 sections of the Prison Rules 1978 in line with international standards.<sup>105</sup> The inability of the Government of Punjab to revise their rules constitutes a gross violation of the fundamental rights of prisoners in Punjab.

### c. Suggested Recommendations

<sup>99</sup> International Federation for Human Rights & Human Rights Commission of Pakistan, '*Pakistan: Briefing note on the death penalty*' – 10 October 2022 (Oct. 10, 2022), <https://www.fidh.org/en/region/asia/pakistan/World-Day-Against-Death-Penalty-capital-punishment-Pakistan> (citing *Case of Soering v. the United Kingdom* (Application no. 14038/88), European Court of Human Rights (Jul. 7, 1989), available at:

<https://hudoc.echr.coe.int/fre#%7B%22fulltext%22%3A%22soering%22%22%22documentcollectionid%22%3A%22GRANDCHAMBER%22%22CHAMBER%22%22itemid%22%3A%22001-57619%22%7D%7D>).

<sup>100</sup> Justice Project Pakistan - Death Penalty Database, <https://data.jpp.org.pk/>.

<sup>101</sup> International Federation for Human Rights & Human Rights Commission of Pakistan, '*Pakistan: Briefing note on the death penalty*' – 10 October 2022 (Oct. 10, 2022).

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

<sup>102</sup> See generally, Justice Project Pakistan & Allard K. Lowenstein International Human Rights Clinic, Yale Law School, *Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan* (Jun. 2014). <https://www.jpp.org.pk/wp-content/uploads/2018/08/policing-as-torture.pdf>

<sup>103</sup> Asad Hashim, '*Pakistani academic Junaid Hafeez sentenced to death for blasphemy*', Al Jazeera (Dec. 21, 2019), <https://www.aljazeera.com/news/2019/12/21/pakistani-academic-junaid-hafeez-sentenced-to-death-for-blasphemy>.

<sup>104</sup> Justice Project Pakistan, *Data Dashboards: Prison Population of Pakistan* (2022). <http://jppprisonreforms.com/>

<sup>105</sup> These standards included provisions related to humane and dignified treatment, such as banning the practice of whipping, fetters etc, as well as provisions pertaining to conditions of confinement such as food, healthcare, ventilation, transfer of prisoners to outside hospitals for treatment, and contact with the outside world.

- Revise Punjab Prison Rules in order to incorporate the UN Standard Minimum Rules for the Treatment of Prisoners, specifically the provisions addressing food, sanitation, and protections for transgender individuals, in accordance with international standards.
- Implement measures to eliminate torture in prisons, and establish a confidential, impartial, and effective complaint mechanism for prisoners to report abuse, violence, and harsh treatment.
- Enhance the capacity of the probation and parole department, implement non-carceral measures aligned with international standards, and reform the pre-trial detention and bail structures to effectively reduce prison overcrowding.

## **E. Right to Fair Trial (Article 14)**

### **I. Lack of meaningful consideration of mercy petitions**

#### **a. Prior Recommendations**

86. In Pakistan’s State Review in 2017, the Committee noted with concern that Pakistan has a policy of “blanket refusal of clemency applications in place” and that “no clemency applications have been granted.”<sup>106</sup> As a result, the Committee recommended that pardon and commutation of death sentences be available in all cases, regardless of the crime committed.<sup>107</sup>

87. In the LOI, the Committee asked Pakistan to provide information that demonstrates that pardon or commutation of sentence are available in all cases, and to report the number of cases in which pardon or commutation of sentence was granted.<sup>108</sup>

#### **b. Current State Policy or Practice**

88. In its Second Periodic Report submitted in 2022, Pakistan affirmed that every person accused and sentenced to death has the “constitutional right to get pardon, reprieve and respite, and to have such sentence remitted, suspended or commuted.”<sup>109</sup>

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<sup>106</sup> Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120<sup>th</sup> session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), 17.

<https://www.ohchr.org/en/documents/concluding-observations/ccprpakco1-human-rights-committee-concluding-observations>

<sup>107</sup> Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120<sup>th</sup> session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), 18(a).

<https://www.ohchr.org/en/documents/concluding-observations/ccprpakco1-human-rights-committee-concluding-observations>

<sup>108</sup> Human Rights Committee, *List of issues in relation to the second periodic report of Pakistan* (Nov 29, 2023) UN Doc. CCPR/C/PAK/Q/2.

<sup>109</sup> Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2. <https://www.ecoi.net/en/document/2084794.html>

89. Pakistan's 2024 Reply to the LOI states that 103 mercy petitions were forwarded to the Presidency between 2018-2023, but fails to highlight a single case where pardon or commutation was granted. As such, any claim that prisoners are afforded the right to meaningfully seek pardon remains spurious in light of the fact that since the moratorium was lifted in 2014, the President's office has never accepted a plea for clemency from a death row prisoner.<sup>110</sup> In 2016, Pakistan's Ministry of Interior stated that the President's office had rejected all 513 mercy petitions filed by condemned prisoners during the previous five years.<sup>111</sup>
90. In 2019, the Federal Ministry of Human Rights received approval to reform the mercy petitions procedure.<sup>112</sup> In October of 2019, the Ministry of the Interior issued new Standard Operating Procedures (SOPs) for mercy petitions to streamline the process by which they are drafted, submitted and decided.<sup>113</sup> However, these SOPs fail to meet Pakistan's obligations under international law and were never implemented uniformly. Thereafter, mercy petitions with strong evidence of humanitarian abuses and violations continue to be wrongfully rejected by the provincial committees as they lack any direction for review under the SOPs.
91. The Criminal Law and Justice Reforms Bill 2022, drafted by the previous Ministry of Law and Justice, contained a significant set of proposed amendments that aimed to revamp the procedure through which mercy petitions are reviewed in Pakistan in line with the recommendations of the UN Human Rights Committee.<sup>114</sup> However, owing to a continued failure to reintroduce this Bill, these reforms remain absent to the mercy petitions procedure.
92. Abdul Basit, a prisoner in Central Jail Faisalabad, has been on death row since 2009. Harsh, unsanitary prison conditions led to Basit contracting TB meningitis in 2010. The subsequent neglect and inadequate provision of healthcare caused his spine to atrophy, paralysing him from the waist down. Despite being paralysed, his execution has been scheduled on 4 separate occasions. Each time, the execution was stayed by either the judicial or executive authorities. In 2015 and 2016, the OHCHR Special Procedures issued a communication deeming Basit's execution a violation of "acceptable standards

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<sup>110</sup> Justice Project Pakistan, Yale Law School, *No Mercy – A Report on clemency for death row prisoners in Pakistan* (Apr. 2018), [https://www.jpp.org.pk/wp-content/uploads/2018/04/No-Mercy\\_Final-Report1.pdf](https://www.jpp.org.pk/wp-content/uploads/2018/04/No-Mercy_Final-Report1.pdf)

<sup>111</sup> Justice Project Pakistan, Yale Law School, *No Mercy – A Report on clemency for death row prisoners in Pakistan* (Apr. 2018), 4, [https://www.jpp.org.pk/wp-content/uploads/2018/04/No-Mercy\\_Final-Report1.pdf](https://www.jpp.org.pk/wp-content/uploads/2018/04/No-Mercy_Final-Report1.pdf)

<sup>112</sup> Human Rights Committee, *Concluding observations on the initial report of Pakistan, Addendum, Information received from Pakistan on follow-up to the concluding observations* (May 29, 2019), UN Doc. CCPR/C/PAK/CO/1/Add.1.

<sup>113</sup> Justice Project Pakistan, *Submission for the United Nations Secretary General's Report on the Question of the Death Penalty* (Mar. 2022), <https://www.ochr.org/sites/default/files/2022-6/DP-HRC51-JPP.pdf>

<sup>114</sup> Justice Project Pakistan, *Submission for the United Nations Secretary General's Report on the Question of the Death Penalty* (Mar. 2022), <https://www.ochr.org/sites/default/files/2022-6/DP-HRC51-JPP.pdf>



of international human rights law”, and called for immediate commutation of his sentence.<sup>115</sup> His latest mercy petition, filed by JPP in 2023, remains pending before the President while Basit has languished on death row for 15 years. His case is ideal for commutation, given that the authorities cannot legally carry out his execution without violating the ICCPR, UNCAT and CRPD.

### **c. Suggested Recommendations**

- Make available information on the number of commutations granted by the President to death row prisoners over the reporting period
- Develop comprehensive rules for submitting and reviewing mercy petitions that align with international standards, ensuring transparency, certainty, due process, and objectivity. The Ministry of Law and Justice should adapt the vetted framework from the lapsed Criminal Law Reforms Bill 2022. to legally establish the mercy petitions procedure.
- Urge the President’s office to accept mercy petitions from death row prisoners particularly in cases where there are outstanding questions regarding factors such as health, age, disability, or abuse, with priority given to cases like Abdul Basit's where health issues preclude execution.

## **III. Overbroad use of the Anti-Terrorism Act (ATA).**

### **a. Prior Recommendations**

93. The Committee has expressed concern about Pakistan’s overuse of the ATA.<sup>116</sup> Acknowledging that Pakistan seeks to combat terrorism, the Committee recommended Pakistan to narrow its definition of “terrorism” to align with international standards.<sup>117</sup> In addition, the Committee has expressed concern with “the extensive jurisdiction of antiterrorism courts and the huge backlog of cases, as well as the absence of procedural safeguards in court proceedings.”<sup>118</sup>

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<sup>115</sup> Devandas-Aguilar, Puras, Heyns & Mendez (2015) *Joint Urgent Appeal on behalf of Abdul Basit*, JUA PAK/5 2015, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=20965>; Devandas-Aguilar, Puras, Heyns & Mendez (2016) *Joint Urgent Appeal on behalf of Abdul Basit*, JUA PAK/3 2016, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18350>

<sup>116</sup> Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120<sup>th</sup> session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), <https://www.ohchr.org/en/documents/concluding-observations/ccprpakco1-human-rights-committee-concluding-observations>

<sup>117</sup> Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120<sup>th</sup> session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017), <https://www.ohchr.org/en/documents/concluding-observations/ccprpakco1-human-rights-committee-concluding-observations>

<sup>118</sup> Human Rights Committee, *Concluding observations on the initial report of Pakistan*, adopted by the Committee at its 120<sup>th</sup> session, UN Doc. CCPR/C/PAK/CO/1 (Aug. 23, 2017),

94. In November 2023, the Human Rights Committee's List of Issues expressed concerns about Pakistan's failure to implement the Supreme Court's judgement in *Ghulam Hussain*. The Committee questioned Pakistan about steps taken to remove juvenile jurisdiction under the ATA, repeal Section 21-H which permits confessions made in police custody, and better align the ATA with ICCPR's fair trial and due process standards.

#### **b. Current State Policy or Practice**

95. Following a school massacre in Peshawar in 2014, the Government of Pakistan lifted its moratorium on the death penalty.<sup>119</sup> Since then, the Government has increasingly designated civilians as “terrorists,”<sup>120</sup> meaning they must be tried in specialised terrorism courts known as Anti-Terrorism Courts (ATCs).<sup>121</sup>

96. To try individuals as ‘terrorists,’ Pakistan has relied on the broad definition of “terrorism” under the Anti-Terrorism Act of 1997 (ATA) which “overrides all other legal provisions and applies to the entire country.”<sup>122</sup> The ATA defines “terrorism” as use or threats of action that are designed to - among other things - intimidate the Government or the public, advance a religious purpose, or damage public installations.<sup>123</sup>

97. In the four years that followed the Peshawar school massacre, the Government executed 516 civilians that it had designated as “terrorists.”<sup>124</sup> More than 86% of the death sentences that ATCs have issued were for ordinary criminal offences in which the accused had no indication of terrorist intent.<sup>125</sup>

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<https://www.ohchr.org/en/documents/concluding-observations/ccprpakcol-human-rights-committee-concluding-observations>

<sup>119</sup> A picture of the interior ministry’s internal memorandum lifting the death penalty moratorium can be viewed here: BBC News, “*Pakistan Ends Death Penalty Suspension after Seven Years*” (BBC News, March 10, 2015)

<https://www.bbc.com/news/world-asia-31812177>

<sup>120</sup> Justice Project Pakistan & Reprieve, *Terror on Death Row: The abuse and overuse of Pakistan’s anti-terrorism legislation* (Dec. 2014)

<https://reprieve.org/uk/2015/01/09/terror-on-death-row-the-abuse-and-overuse-of-pakistans-anti-terrorism-legislation/>

<sup>121</sup> Justice Project Pakistan & Reprieve, *Terror on Death Row: The abuse and overuse of Pakistan’s anti-terrorism legislation* (Dec. 2014).

<https://reprieve.org/uk/2015/01/09/terror-on-death-row-the-abuse-and-overuse-of-pakistans-anti-terrorism-legislation/>

<sup>122</sup> Justice Project Pakistan, *Reforming the Anti-Terrorism Act, 1997*

[https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Terrorism/JusticeProjectPakistan\\_3.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Terrorism/JusticeProjectPakistan_3.pdf); Justice Project Pakistan (JPP) *Follow-up report on Pakistan Under Para. 18, CCPR/C/PAK/CO/1, 120<sup>th</sup> Session of Human Rights Committee* (Sept. 2019)

<sup>123</sup> Anti-Terrorism Act, 1997.

<sup>124</sup> Justice Project Pakistan - *Death Penalty Database*, available at <https://data.jpp.org.pk/>

<sup>125</sup> Justice Project Pakistan, *Reforming the Anti-Terrorism Act, 1997*.

[https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Terrorism/JusticeProjectPakistan\\_3.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Terrorism/JusticeProjectPakistan_3.pdf)

98. The ATA curtails multiple due process rights, including allowing police to search and arrest without a warrant, admitting confessions made in detention, which increases the risk of police torture, enforcing short investigation and trial deadlines, and making offences non-compoundable. The arbitrary application of the ATA to non-terrorism cases raises concerns about the violation of fundamental rights and misdirects resources away from addressing genuine acts of terrorism<sup>126</sup>
99. The Government of Pakistan's State Report notes that the 2019 Supreme Court decision in *Ghulam Hussain vs. the State* lays down a conclusive and narrow scope of the definition of terrorism and its application with respect to criminal cases, thereby preventing misuse of anti-terrorism law. The State Report mentions the directions of the Supreme Court to the legislature to limit the scope of the ATA by amending its preamble to only include acts of terrorism, and by removing Schedule III from the Act.<sup>127</sup> However, this judgement has not been codified and there has been no change in the scope of the definition of the ATA.
100. The 2019 case of *Ghulam Hussain vs. the State* by the Supreme Court narrowed the scope of "terrorism."<sup>128</sup> setting a new precedent within Pakistani courts, and establishing that acts of revenge, disputes, or physical harm to the victim alone was not enough to classify an act as terrorism. The Supreme Court further recommended that the Parliament bring changes to limit the application of the term "terrorism" which is currently too wide and to bring it in line with the international perspective of the term. However, this judgement has not been codified and there has been no change in the scope of the definition of the ATA.
101. In March 2024, Pakistan's Response to the LOI stated that the Anti-Terrorism (Amendment) Act 2005 protects the civil and political rights of the people under the Covenant, and prevents the misuse of the law, but did not explain how this amendment addressed the structural flaws of the ATA which have been well-documented since the amendment was passed. The response further stated that in 2023, in *Saeed Ullah vs Lal Sher and State*, the Peshawar High Court ruled that Juvenile Courts established under the JJSA shall hear the trial of juvenile offenders accused of terrorism. However, there is a need to amend the ATA to reflect this judgement, or ATCs will continue to exercise their jurisdiction over juveniles.

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<sup>126</sup> Justice Project Pakistan, *Trial and Terror: The Overreach of Pakistan's Anti-Terrorism Act* (Nov. 2017). <https://jpp.org.pk/report/trial-and-terror-the-overreach-of-pakistans-anti-terrorism-act/>

<sup>127</sup> Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2. <https://www.ecoi.net/en/document/2084794.html>

<sup>128</sup> Human Rights Committee, *Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020* (Dec. 7, 2022), UN Doc. CCPR/C/PAK/2. <https://www.ecoi.net/en/document/2084794.html>

102. Pakistan's response to the admissibility of confessions made in police custody under Section 21-H of the ATA clarified that this clause is not mandatory and noted that the Torture and Custodial Death (Prevention and Punishment) Act 2022 renders confessions obtained through torture inadmissible. However, without eliminating this provision from the ATA, the risk of police torture in ATA cases continues to be significant. Moreover, as previously discussed in the section on torture, without implementing operational rules for the Act, the widespread practice of extracting confessions through torture remains largely unaddressed.

### **c. Suggested Recommendations**

- Amend the ATA to reduce the scope of its application to crimes committed by organised militant groups.
- Initiate an inquiry into all cases wherein the defendant has been sentenced to death under the ATA with a view to commuting the sentences in the event that a misapplication of the law is discovered. During the course of such an inquiry the moratorium on the death penalty should be reinstated.
- Introduce legislative amendment explicitly barring the application of the Anti-terrorism Act from juvenile offenders.
- Repeal provisions awarding powers of search and seizure to police without warrants and ensure that procedural safeguards in line with the ICCPR are introduced.
- Repeal Section 21-H of the Act, and introduce provisions barring the admissibility of confessions/statements recorded in the custody of police.
- Initiate judicial trainings on the *Ghulam Hussain* judgement of the Supreme Court to ensure that ATCs only try cases where the offence meets international standards on the definition of terrorism.