

**PAKISTAN**

**28<sup>th</sup> Session of the Working Group on the Universal Periodic Review**

**Human Rights Council**

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**Joint Statement submitted by OMCT, JPP, WCADP and Reprieve**



## (I) REPORTING ORGANISATIONS

- (a) World Organisations Against Torture (OMCT), created in 1985, is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With 311 affiliated organisations in its SOS-Torture Network and many tens of thousands correspondents in every country, OMCT is the most important network of non-governmental organisations working for the protection and the promotion of human rights in the world.
- (b) **Justice Project Pakistan (JPP)**, is a non-profit, human rights law firm based in Pakistan that provides pro-bono legal advice, representation, advocacy and investigative services to the most vulnerable Pakistani prisoners facing the harshest punishments at home and abroad. JPP conducts strategic litigation to challenge unjust laws and to create progressive legal precedents that aim to improve the rights of people with psycho-social disabilities, restrict the application of the death penalty, bring freedom of information to Pakistan, and enforce the fundamental rights of prisoners.
- (c) **World Coalition Against the Death Penalty**, an alliance of more than 150 NGOs, bar associations, local authorities and unions, created in Rome on 13 May 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.
- (d) **Reprieve** An international legal action charity which was founded in 1999. Reprieve provides support to some of the world's most vulnerable people, including people sentenced to death and those victimised by states' abusive counter-terrorism policies. Based in London, but with offices and partners throughout the world, Reprieve is currently working on behalf of hundreds of people facing the death penalty in 16 countries, including Pakistan.

## (II) EXECUTIVE SUMMARY

1. In the four years since the second Universal Periodic Review (UPR) of Pakistan in 2012, there has been a fundamental shift in the landscape on the use of the death penalty. On December 17, 2014, the Government of Pakistan resumed executions after a seven-year moratorium. Whilst originally the moratorium was lifted only for terrorism cases, in March 2015 the Government of Pakistan, without any public justification, extended the resumption of executions to cover all 31 offences carrying the death penalty. Since then nearly 432 prisoners have been executed, including juvenile offenders, persons with psycho-social disabilities, and countless others who did not receive a fair trial in line with international standards and had credible claims of innocence. Our submission is made in this context and is intended to provide a clear backdrop to a government narrative which justifies the implementation of the death penalty as a key part of the counter terrorism National Action Plan. Since 2014, 94% of individuals executed were convicted of non-

terrorism offences.<sup>i</sup> As this joint submission will expound, the continued use of the death penalty in Pakistan infringes numerous international human rights laws and principles.

2. In this third cycle of the country's Universal Periodic Review, it is essential that member states of the Human Rights Council build a strong foundation for the promotion of human rights and respect for rule of law in their recommendations to the government of Pakistan.
3. In the twenty-seven months since the lifting of the moratorium, the Government of Pakistan has carried out an average of 4 executions every week, with the highest number of executions taking place in the province of Punjab. In December 2014, the Ministry of Interior and the Ministry of Law and Justice stated that there were 8,261 prisoners on death row in Pakistan.<sup>ii</sup> However in October 2015, the Government of Pakistan represented that the death row population was 6,016<sup>iii</sup> hence making it extremely difficult to ascertain an accurate figure. Irrespective of these conflicting figures; thousands of prisoners remain at risk of imminent execution.
4. From December 2014 to March 2015, the Government of Pakistan executed a total of 24 people, or an average of 2 per week.<sup>iv</sup> That rate more than doubled in March 2015 to over 5 per week, when executions were also resumed for non-terrorism cases.<sup>v</sup> In the period March 2015 to September 7 2016, the Government has executed an alarming total of 393 people.
5. Pakistan's imposition of the death penalty is, at its core, arbitrary. The death penalty is not limited to the most serious crimes, as required by international law, but instead is imposed for a wide range of offences including common place offences, such as kidnapping and drug-trafficking. Moreover, Pakistan's justice system is ridden with deficiencies and abuses of authority. Police routinely coerce defendants into confessing, often by torture, and courts admit and rely upon such evidence. Poor defendants must rely on attorneys who typically provide only cursory and ineffective representation.
6. Once sentenced, defendants lack effective recourse to post-conviction relief, even in the face of new exonerating evidence. Finally, the Anti-Terrorism Act of 1997 offers even fewer safeguards than the ordinary criminal justice system and has the effect of fast-tracking convictions.
7. Each of these failings separately constitutes a human rights violation and taken together, they reveal an unreliable system that is fundamentally incapable of administering the ultimate and irreversible penalty of death.
8. This is a thematic report centered on the use of the death penalty and incorporating issues relating to torture, the right to a fair trial, and the rights of disadvantaged groups such as juveniles and people with psycho-social disabilities.
9. Given the mandate of the organisations, the focus of this report is on Pakistan having lifted its six-year moratorium on the death penalty and has since become the world's fourth most prolific executing state. As such, we have only addressed the use of the death penalty and incorporated issues relating to torture, the right to a fair trial, and the rights of disadvantaged groups such as juveniles and people with psycho-social disabilities.

### **(III) 2012 UNIVERSAL PERIODIC REVIEW OF PAKISTAN**

10. The 2012 UPR included recommendations relevant to the death penalty in Pakistan; the principal recommendation was for Pakistan to establish a de jure moratorium on the death penalty as a first step towards complete abolition. Pakistan did not accept such

recommendations and commented that this is a matter for Parliament to consider and the executive can only impose an unofficial moratorium, which was in place.

11. Pakistan has regressed in its international commitments and reinstated the death penalty in 2014 and has become one of the most prolific executioners in the world after China, Iran, and Saudi Arabia. This has resulted in systemic and widespread breaches of international law, described in detail below.

**(IV) MOST SERIOUS CRIMES - ARTICLE 6(2) OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

12. The UN Human Rights Committee explained the principle in its General Comment 6 that “the expression “most serious crimes” must be read restrictively to mean that the death penalty should be quite an exceptional measure.”<sup>vi</sup>
13. The use of the death penalty in Pakistan is certainly not an exceptional measure; more than 432 people have been executed in Pakistan since the moratorium of lifted for a wide range of crimes, not only those that can be considered the “most serious crimes.” As many as 31 offences carry the death penalty in Pakistan, including non-lethal offences, such as kidnapping, blasphemy and narcotics offences. Some of the 31 offences, such as blasphemy and adultery apply a mandatory death penalty, which is in contravention of the ‘most serious crimes’ principle.<sup>vii</sup>
14. In view of the broader issues with the 31-death penalty eligible offences, we are taking narcotics offences as an example and delving into more detail on the lack of application of the ‘most serious crimes’ criteria pursuant to Article 6(2) of the International Covenant on Civil and Political Rights (‘ICCPR’).
15. The UN Office on Drugs and Crime,<sup>viii</sup> the Human Rights Council,<sup>ix</sup> the Human Rights Committee<sup>x</sup> and the UN Special Rapporteurs on extrajudicial, summary or arbitrary executions and torture and other cruel, inhuman or degrading treatment or punishment have specified that drug offences do not meet the ICCPR’s threshold of “most serious crimes” and as such should not be subjected to the death penalty under international law.<sup>xi</sup>
16. Despite this, Pakistan retains the death penalty for a large range of non-violent drug-related offences under the Control of Narcotic Substances Act 1997. Pakistani courts continue to hand down death sentences for drug offences, and handed down four death sentences for such crimes in 2016 and five in 2015. Since Pakistan introduced the death penalty for drug offences in 1997, at least 121 individuals have been sentenced to death in Pakistan under the Control of Narcotic Substances Act 1997. When it comes to sentencing, the law does not distinguish between possession and organised trafficking, because in practice cases tried under the law exclusively involve possession, sentencing is based solely on seizure size.
17. In 2016 Reprieve conducted interviews with a prisoner who explained that he and his co-defendants were arrested for being in possession of a large quantity of cannabis and opium products in the car they were driving. Such prisoner’s co-defendants were sitting in the driver and passenger seats and were there given life imprisonment and a five-year term directly dependent on the quantity of drugs they had proximity to in the car. The interviewed prisoner was sitting in the rear of the car and hidden in the cavities behind his seat were 90 kg of cannabis product and 24 kg of opium. On the strength of this coincidental proximity to the largest quantity of drugs in the car, this prisoner was sentenced to death.

**(V) ARTICLE 6(4) OF THE ICCPR: MERCY PETITIONS AND DENIAL OF DISCRETION**

17. All persons sentenced to death, pursuant to Article 6(4) of the ICCPR, have the right to consideration, on an individual basis, of their clemency/mercy requests. Prisoners on death row, who have been convicted and sentenced to death have been denied access to a meaningful clemency process because Pakistan exercises a blanket refusal to meaningfully consider mercy applications.<sup>xii</sup> At least 444 people have had their mercy petitions rejected. In March of 2016, the Ministry of Interior informally confirmed that the Government of Pakistan's policy to summarily reject all pleas for mercy will remain in force.<sup>xiii</sup>
18. The scope of the right to seek clemency and a meaningful review has been clarified in jurisprudence and reports of UN bodies and special procedures.<sup>xiv</sup>
19. Abdul Basit is a paraplegic prisoner on death row in Pakistan whose condition is a result of a disease he contracted due to the negligence of jail authorities. A mercy petition submitted on behalf of Basit by his family was refused on the purely administrative basis of a lack of certified copies. Warrants for his execution have been issued at least three times since July 2015. In November 2015, the President of Pakistan promised an inquiry into Basit's condition and issued a stay of execution. This stay expired in January 2016 without any further progress in the resolution of the case of Basit. In April 2016, a further stay was ordered however no decision has been made on the several requests for mercy from Basit's family. It is clear that Basit's execution cannot lawfully proceed. Presently, he remains in legal limbo as even though the Government of Pakistan has suspended his execution, the President continues to avoid deciding his mercy petition.
20. In Pakistan, commutation can be sought in all cases but those for murder, in which it is only possible with the permission of the victim's heirs.<sup>xv</sup> Such exception by its very nature is an example of Pakistan's failure to implement the ICCPR, as Article 6(4) states that "Amnesty, pardon or commutation of the sentence of death may be granted in all cases."

**(VI) ARTICLE 6(5) OF THE ICCPR - EXECUTION OF JUVENILE OFFENDERS**

21. Pakistan has put in place legislation, the Juvenile Justice Systems Ordinance 2000 ('JJSO'), which prohibits the sentencing to death of a juvenile offender. However, since the moratorium was lifted in December 2014, Pakistan has knowingly executed at least 6 prisoners, where there was evidence to suggest that they may have been under 18 at the time of allegedly committing the offence.<sup>xvi</sup>
22. With less than 34% of children under the age of 5 being registered and rates going to less than 1% in Baluchistan and Federally Administered Tribal Areas, lack of birth registration remains a major obstacle to juvenile justice.<sup>xvii</sup> Consequently, when an offender is arrested they lack documentation that can substantiate their age, which results in the juvenile being treated as an adult. Even the police officers who first encounters the juvenile offender fail to adequately consider an individual's age or deliberately register juveniles as adults to avoid the safeguards afforded to underage suspects by the JJSO.<sup>xviii</sup> In the absence of any protocols for the determination of age, there is no mandatory requirement nor prescribed guidelines for the police to investigate the age of the accused at the time of the arrest. Therefore, often the police record the age of the accused on the basis of a cursory visual assessment. In 2015 the Supreme Court of Pakistan commented that this practice is unreliable.<sup>xix</sup> However, in the absence of age determining protocols, the courts continue to rely on such visual assessment.<sup>xx</sup>

23. In the case of Ansar Iqbal, both Mr. Iqbal and his co-accused, Ghulam Shabbir, raised the issue of juvenility at trial. Mr. Iqbal offered a school leaving record while Mr. Shabbir presented a Form-B National Registration document. The police had recorded based on a visual assessment, Mr. Iqbal's age to be 22/23 and Mr. Shabbir's age as 16/17 years old.
24. The Court dismissed Mr. Iqbal's school certificate on the grounds that it was inadmissible, because it was not an original document. The Court accepted the police assessment and held Mr. Iqbal to be an adult for trial. Similarly, Mr. Shabbir's Form-B was dismissed as fake, however since the police had recorded his age as 16/17 years the court accepted his juvenility claim irrespective of the documentation. Ansar Iqbal was executed on 29.09.2015.
25. There are several cases in which children are sentenced to death because their counsel fails to raise the plea of their juvenility at trial, on account of poor communication and/or negligence, despite the fact that raising the plea could have saved such children from the gallows.<sup>xxi</sup> This is additionally problematic since courts in Pakistan have ruled in several cases that a plea of juvenility at the time of investigation and trial and that a delayed claim "must be visited with an adverse inference against [the accused]."<sup>xxii</sup> As a result, courts in Pakistan refuse to admit evidence of juvenility if raised at the appellate stages or during post-conviction reviews thereby leading to wrongful death sentences and executions of juvenile offenders.
26. In the event that a plea of juvenility is raised during legal proceedings, Courts consistently posit the burden of proof on the accused, which is virtually impossible to satisfy given the dismal rate of birth registration. Despite jurisprudence by the UN Committee on the Rights of the Child (CRC) mandating that the child be given every benefit of doubt in the event of uncertainty of age, no such benefit is extended by courts.<sup>xxiii</sup> Even where government documents are presented they are often disbelieved by courts. A study by JPP looked at how courts considered four types of evidence (statement of the accused, medical evidence, birth certificate/Form-B, and school leaving certificate) in 140 cases between 2000-2016 wherein a plea of juvenility was decided. The research showed that there is no consistent precedent followed by courts in determining age and they inevitably rely upon whichever evidence that favours a verdict of their choice.<sup>xxiv</sup>
27. The JJSO was not enacted retroactively. Therefore, in 2001, a Presidential Notification was issued commuting the death sentences for all juvenile offenders issued prior to 2000. <sup>xxv</sup> Under the Notification, all juvenile offenders sentenced to death before 13.12.2001 were to be granted special remission which was to accrue on the basis of an age determination inquiry undertaken by the Sessions Court. Following the Notification the Provincial Government of Punjab issued a letter to the Registrar of the High Court directing the Home Department to forward the pleas of all prisoners claiming the benefit of the Notification to the Sessions Court for an age determination.<sup>xxvi</sup> Attached to the letter was a list of names of juvenile offenders who were to be granted an age determination assessment. However, requests of prisoners and their families, including those whose names were included in the list, have repeatedly been denied by either the Home Department or by the Sessions Court on the basis that such plea was not raised at the trial stage. Even in those rare cases where such an age determination was carried out it was in a cursory manner that fell short of due process.
28. Muhammad Anwar was arrested in 1993 when he was 17 years old, and in 1998 was sentenced to death. After the JJSO came into force in 2000, Mr. Anwar's family made numerous comprehensive attempts, for over a decade and a half, to adduce evidence as to Mr. Anwar's juvenility involving both the Home Secretary and several different courts.

However, the evidence was either rejected or ignored at each attempt. Mr. Anwar remains on death row.

## **(VII) PSYCHO-SOCIAL DISABILITY AND THE DEATH PENALTY**

29. The UN Human Rights Committee has observed that the issuance of a death warrant to a person known to have a psycho-social disability violates Article 7 of the ICCPR.<sup>xxvii</sup>
30. Pakistan has no legislative provision that expressly protects people with psycho-social disabilities from the death penalty. However, Articles 9 and 14 of the Constitution of Pakistan, respectively, enshrine the following principles:

- i. 'No person shall be deprived of life or liberty, save in accordance with law'.
- ii. 'The dignity of man...subject to the law...shall be inviolable.'

The said articles are designed to promote the very same values of respect for human dignity, integrity of person, and freedom from arbitrary execution as Articles 6 and 7 of the ICCPR. Therefore the constitutional provisions can be interpreted as supporting the contention that the execution of people with psycho-social disabilities is contrary to Pakistani law, and prohibiting such executions would bring Pakistani jurisprudence in line with international law and commitments thereunder as a signatory to the ICCPR.

31. In addition to these constitutional provisions, the Pakistan Prison Rules, 1978 also support the position that a prisoner with psycho-social disability should not be executed, specifically rule 107 suggests that where there is evidence of unsound mind, it is a valid ground for commutation of a death sentence. A plea for commutation under the aforementioned rule can be taken at any time, even on the eve of a prisoner's execution.
32. Despite the legal protections in place for 'prisoners with severe psycho-social disabilities', Pakistan has already executed at least one person with severe psycho-social disability, Muneer Hussain. Mr. Hussain's prison medical records showed that he suffered from severe psycho-social disability and there is evidence that his mental state predates his arrest. Nonetheless Mr. Hussain's lawyer failed to raise his psycho-social disability at all during his trial and Mr. Hussain was convicted and sentenced to death for murder in 2001. Despite ongoing litigation relating to his disability, Mr. Hussain was executed on 28 April 2015.<sup>xxviii</sup>
33. Imdad Ali is a death row prisoner with schizophrenia. Initially, the Supreme Court of Pakistan refused to admit an appeal to halt Mr. Ali's execution in light of his severe psycho-social disability and held that schizophrenia is not a mental disorder within the understanding of the Mental Health Ordinance 2001. However, the Government of Pakistan along with Mr. Ali's lawyers filed a review petition urging the Supreme Court to reconsider its earlier decision. The Supreme Court has accepted the review petition and issued instructions to constitute a medical board to review Mr. Ali's mental state.
34. On 27 September, 2016, four UN human rights experts issued a statement calling upon the Government of Pakistan to halt the execution of Mr. Ali and re-try him in accordance with international human rights principles.<sup>xxix</sup> The UN experts termed the imposition of capital punishment on "individuals with a psycho-social disability" as a "violation of death penalty safeguards" and stated that Mr. Ali's execution would be unlawful and could amount to "a form of cruel, inhuman or degrading treatment".

## **(VIII) TORTURE AND CONFESSIONS**

35. Torture and ill-treatment at the hands of the police and other security agencies is endemic and widespread. More than 6 years after Pakistan ratified the ICCPR and CAT, not only is

torture still accepted as an inevitable part of law enforcement, but perpetrators of torture are granted virtual impunity. To date, Pakistan does not have a law, which criminalises torture.

36. Research by JPP into allegations of abuse in Faisalabad from 2006–2012 through review of 1,867 medical-legal certificates (MLC's), which were prepared by a government appointed medical board to conduct medical examinations in response to allegations of torture, found conclusive evidence of abuse in 1,424 cases. In 96 other cases signs of injury were also found that required further investigation.<sup>xxx</sup>
37. The fact that the Pakistani police have traditionally been used by the state to suppress dissent and tame opposition has contributed to an institutional culture in which torture and abuse of power are pervasive and tolerated.<sup>xxxi</sup> Pakistan does not have any independent state-sponsored mechanism for investigating or documenting allegations of torture. Torture at the hands of the police is also used as an instrument for collecting evidence; such practices are widespread and rarely punished.<sup>xxxii</sup> The violence takes many forms including beatings, hanging of victims by their arms or feet for hours and other cruel, inhuman and degrading treatment damaging their basic human dignity.<sup>xxxiii</sup>
38. Pursuant to Article 39 of the Law of Evidence, 1984, Pakistani law provides that if an accused confesses while in police custody and a magistrate is not present, the prosecution may not use that confession as evidence against the accused. However, in practice, police simply tell the accused that if s/he does not repeat the confession when brought before the magistrate, the torture/CIDT will continue.<sup>xxxiv</sup>
39. In the case of Aftab Bahadur, the police tortured him into falsely confessing to a crime and coerced him into creating inculpatory evidence that would later be used against him. Mr. Bahadur claimed that he was taken to the scene of the crime, where the police smeared his hands with oil and forced him to leave fingerprints by wiping his hands all over the scene. He was executed on 10th June 2015.<sup>xxxv</sup>

#### **(IX) BREACH OF THE RIGHT TO FAIR TRIAL**

41. Denial of the right to a fair trial is widespread in Pakistan, resulting in an unacceptably high rate of false conviction. The Ansar Burney Trust has reported that over 60% of individuals on Pakistan's death row may be innocent.<sup>xxxvi</sup> A lack of coordination and inefficiencies of the criminal justice system combined with violations of due process often lead to gross miscarriages of justice. It is, therefore, of little surprise that in October 2016 when the Supreme Court of Pakistan acquitted two brothers on the basis of contradictory evidence, it was discovered that both had been executed a year before despite their right to appeals remaining.<sup>xxxvii</sup>
42. Many death penalty cases are heard by the anti-terrorism courts (ATC) under the Anti-Terrorism Act, 1997 (ATA). These courts explicitly impose multiple curtailments on a defendant's right to a fair trial, many of which are a departure from standard judicial procedure. For example S. 21-H, ATA allows for the admissibility of statements given in police custody therefore creating a heightened risk of 'confessions' extracted through torture. Additionally, given the broad and vague definition of terrorism under the ATA, a significant number of cases (around 88%) tried at the ATCs are concerned with ordinary crimes.<sup>xxxviii</sup>
43. An investigating officer's report plays a central role in criminal trials, the prosecution relies heavily on this report thereby shifting the burden on the accused to prove his or her innocence. Furthermore, Pakistani jurisprudence recognises that false testimony from a



witness does not necessarily mean all evidence of that witness will be excluded; the “real task of a judge” is to extract the truth from the wider evidence, even in the face of “greater and clear falsehood”.<sup>xxxix</sup>

44. A defendant is not given “adequate time and facilities for the preparation of his defense” or adequate opportunity “to communicate with counsel of his own choosing.” The case of Aftab Bahadur, mentioned above in paragraph 39, is an illustrative example of Pakistan’s violation of this right. In this case Mr. Bahadur was convicted in 1993 just 44 days after his arrest under the much-maligned Speedy Trials Act. However, despite the abrogation of the Act in 1994, Bahadur was executed in 2015.
45. In its Initial Report to the Human Rights Committee in 2015 regarding its compliance with the ICCPR, the Government of Pakistan indicated that it was possible for criminal cases to be re-opened pursuant to Article 199 and 187 of the Constitution, coupled with the court’s inherent power to recall an order mistaken passed.<sup>xl</sup> However in practice the Pakistan’s superior courts have consistently refused to use these powers to reconsider previous convictions. In the cases of Shafqat Hussain and Faisal Mahmood, the courts refused to hear evidence as the issue of juvenility was raised too late. Such cases highlight that there remains a clear gulf between the interpretation of these powers suggested by the Government of Pakistan and that adopted by the courts.

#### **(X) RECOMMENDATIONS**

46. We make the following recommendations:
  - a. Request the Government of Pakistan, considering the 2012 UPR representations on the powers of the Executive, to reinstate the moratorium on the Death Penalty.
  - b. Request that the Government of Pakistan initiate’s a legislative process to revise the Pakistan Penal Code, 1860 to limit the Death Penalty to cases in which the accused committed an intentional killing as first steps towards abolition.
  - c. Request Pakistan to provide a judicial remedy for accused persons in whose cases new evidence has been discovered, which could serve as a basis to mitigate his sentence.
  - d. Request Pakistan to remove the death penalty for narcotics offences and provide for more proportionate sentencing which reflects the severity of the offence committed.
  - e. Request Pakistan to direct the National Commission on Human Rights, the country’s National Human Rights Institution, to initiate a review of all cases of detainees on death row.
  - f. Request Pakistan to disclose exact figures on the total number of prisoners on death row, along with details of the crimes for which they were sentenced to death.
  - g. Request Pakistan to limit the scope of crimes that fall within the ambit of terrorism under the Anti-Terrorism Act, 1997.

- h. Request Pakistan to repeal provisions which stipulate that the mandatory imposition of the maximum stipulated penalty.
- i. Request Pakistan to provide the exact number and details of mercy petitions that have been accepted since the lifting of the moratorium.
- j. Request Pakistan to permanently commute the death sentence of Abdul Basit, Khizar Hayat and Imdad Ali through acceptance of their mercy petitions.
- k. Request Pakistan to constitute provincial Executive Boards that will vet mercy petitions through a transparent process and forward those they deem compelling for acceptance by the President.
- l. Urge Pakistan towards the implementation of the recommendations from the Committee on the Rights of the Child regarding the formulations and implementation of age determination protocols in criminal proceedings.
- m. Urge Pakistan to place a positive obligation on arresting officers and first instance judges to inform a suspect of the protections for individuals under the age of 18.
- n. Urge Pakistan to ensure that all juvenile offenders, including Muhammad Anwar, who were sentenced to death prior to the enactment of JJSO, are granted a fair and just inquiry into their age as provided under the Presidential Notification dated 13.12.2001 and accordingly granted remission.
- o. Ask Pakistan to provide adequate resources and authority to the National Commission on Human Rights to independently investigate torture allegations against the police. Such authority should allow such commission to intervene in ongoing proceedings and/or remand cases where torture is alleged for reinvestigation and/or retrials.
- p. Request Pakistan to enact legislation explicitly prohibiting the imposition of the death penalty against persons with severe psycho-social disabilities. Such prohibition should apply even if the disability is diagnosed post-conviction and sentencing.
- q. Direct Pakistan to cease with immediate effect placing prisoners with psycho-social disability in solitary confinement.
- r. Request Pakistan to establish independent medical boards in all provinces to investigate allegations of psycho-social disability and to ensure that a defendant or prisoner with such a disability receives reasonable accommodations in judicial proceedings and in detention.
- s. Request that Pakistan provide information on the steps taken to ensure that all legal proceedings are conducted in full accordance with Article 14 of the ICCPR, including in particular the presumption of innocence and the exclusion of evidence extracted in contravention of Article 7 of the ICCPR and Article 1 of CAT.
- t. Request Pakistan to bar death sentences on the basis of convictions delivered primarily on the basis of confessions and/or other oral testimony.
- u. Urge Pakistan to develop the capacity and independence of its Police and Prosecution Service particularly through training of modern forensics and investigation techniques.

- <sup>i</sup> JPP and Reprieve, '94% of hangings in Pakistan not 'terrorism' cases – new figures' (October 27, 2016) <<http://www.reprieve.org.uk/press/94-hangings-pakistan-not-terrorism-cases-new-figures/>>
- <sup>ii</sup> Zahid Gishkori, '8,261 Prisoners: Hanging in the Balance' *The Express Tribune* (Islamabad, 18 December 2014) <<https://tribune.com.pk/story/808727/6261-prisoners-hanging-in-the-balance/>>
- <sup>iii</sup> Claire Brennan 'What is behind Pakistan's dramatic rise in executions?' *BBC News* (16 December 2015) <<http://www.bbc.co.uk/news/world-asia-33033333>>
- <sup>iv</sup> JPP and Allard K. Lowenstein International Human Rights Clinic 'A most Serious Crime: Pakistan's Unlawful Use of the Death Penalty' (September 2016) (hereinafter 'A Most Serious Crime') Available at [https://law.yale.edu/system/files/area/center/schell/2016\\_09\\_23\\_pub\\_dp\\_report.pdf](https://law.yale.edu/system/files/area/center/schell/2016_09_23_pub_dp_report.pdf), pg3
- <sup>v</sup> Ibid
- <sup>vi</sup> UNCHR 'General comment 6', Sixteenth session (27 July 1982) UN Doc C.N.405.2010.TREATIES-17
- <sup>vii</sup> *Boyce et al v Barbados* (Preliminary Objection, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 169 (20 November 2007), para 55
- <sup>viii</sup> UNODC Executive Director (Commission on Narcotic Drugs), Drug control, crime prevention and criminal justice: A human rights perspective (3 March 2010) (E/CN.7/2010/CRP.6–E/CN.15/2010/CRP.1) <[https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ\\_Sessions/CCPCJ\\_19/E-CN15-2010-CRP1\\_E-CN7-2010-CRP6/E-CN15-2010-CRP1\\_E-CN7-2010-CRP6.pdf](https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_19/E-CN15-2010-CRP1_E-CN7-2010-CRP6/E-CN15-2010-CRP1_E-CN7-2010-CRP6.pdf)> accessed on 3 March 2016
- <sup>ix</sup> Human Rights Council, Question of the Death Penalty, Report of the Secretary General, para 29 <<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Pages/ListReports.aspx>>
- <sup>x</sup> United Nations Human Rights Committee, Concluding observations: Thailand (8 July 2005) (CCPR/CO/84/THA), para 14, United Nations Human Rights Committee, Concluding observations: Sudan (29 August 2007) CCPR/C/SDN/CO/3, para 19
- <sup>xi</sup> United Nations Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (14 January 2009) (A/HRC/10/44), para 66
- <sup>xii</sup> Syed Irfan Raza, 'President rejects mercy appeal of 17 death penalty convicts' *Dawn* (Islamabad, 18 December 2014) <http://www.dawn.com/news/1151758/president-briefed-on-decision-to-end-moratorium>
- <sup>xiii</sup> See Hasnaat Malik, "Over 250 death row prisoners hanged since Dec 2014, govt informs SC" *The Express Tribune* (Islamabad, 22 March 2016).
- <sup>xiv</sup> See generally, Special Rapporteur on extrajudicial, summary or arbitrary executions 'Promotion and Protection of All Human Rights, Civil Political, Economic, Social and Cultural Rights, including the Right to Development' 2 May 2008 <[www2.ohchr.org/english/bodies/hrcouncil/docs/8session/A-HRC-8-3.do](http://www2.ohchr.org/english/bodies/hrcouncil/docs/8session/A-HRC-8-3.do)>
- <sup>xv</sup> See *Hakim Khan v Government of Pakistan* PLD 1992 SC 595 and *Shah Hussain v The State* PLD 2009 SC 460
- <sup>xvi</sup> JPP, 'Death Row's Children Pakistan's Unlawful Executions of Juvenile Offenders' (February 2017) (hereinafter 'Death Row's Children') <<http://www.jpp.org.pk/wp-content/uploads/2017/02/JPP-Final-Edited.pdf>> pg 5
- <sup>xvii</sup> UNICEF, Progress Report 2013-2015: Results for Children in Pakistan: Birth Registration (July 2015) <[https://www.unicef.org/pakistan/Birthregistration\\_LR.pdf](https://www.unicef.org/pakistan/Birthregistration_LR.pdf)> pg 7-8
- <sup>xviii</sup> Death Row's Children, *supra* at 16, pg 6
- <sup>xix</sup> *Muhammad Raheel v The State* PLD 2015 SC 145
- <sup>xx</sup> Death Row's Children, *supra* note 16 at p. 16 - 21
- <sup>xxi</sup> Society for the Protection of Children Rights, *Juvenile Justice* <<http://www.sparcpk.org/sopc2012/chapter5.pdf>>
- <sup>xxii</sup> Supreme Court of Pakistan, Muhammad Raheel v. The State, (PLD 2015 SC 145)
- <sup>xxiii</sup> UN Committee on the Rights of the Child, General comment No 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin (1 September 2005)(CRC/GC/2005/6), para 31
- <sup>xxiv</sup> Death Row's Children, *supra* 16, at p. 25
- <sup>xxv</sup> President of Pakistan, Notification No. F.8/41/2001-Ptns, 13.12.2001
- <sup>xxvi</sup> Government of the Punjab, Home Department, Grant of Special Remission Under Article 45 of the Constitution to Condemned Prisoners, (Aug 19,2003)
- <sup>xxvii</sup> *R.S v. Trinidad and Tobago* (684/96), 2 April 2002.
- <sup>xxviii</sup> Bar Human Rights Committee of England and Wales, 'A Death Day Pakistan's Return to the Death Penalty' (July 2015) <[http://barhumanrights.org.uk/sites/default/files/documents/biblio/bhrc\\_pakistan\\_death\\_penalty\\_report\\_2015\\_0.pdf](http://barhumanrights.org.uk/sites/default/files/documents/biblio/bhrc_pakistan_death_penalty_report_2015_0.pdf)>
- <sup>xxix</sup> UN rights experts urge Pakistan authorities to halt execution of a person with disabilities (Geneva, 27 September 2016) available at <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20593&LangID=E>>
- <sup>xxx</sup> JPP and Allard K. Lowenstein International Human Rights Clinic Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad (March 2014)
- <sup>xxxi</sup> International Crisis Group, Reforming Pakistan's Police (July 2007) <[http://www.genocidewatch.org/images/Pakistan\\_08\\_07\\_14\\_Reforming\\_Pakistan\\_s\\_Police.pdf](http://www.genocidewatch.org/images/Pakistan_08_07_14_Reforming_Pakistan_s_Police.pdf)> pg. 6
- <sup>xxxii</sup> See Policing as Torture *supra* note 30
- <sup>xxxiii</sup> See Human Rights Commission of Pakistan, Revisiting Police Laws (January 2011) <<http://hrqp-web.org/hrqpweb/wp-content/pdf/ff/19.pdf>>
- <sup>xxxiv</sup> Pakistan: Alternative Report to the Human Rights Committee, Justice Project Pakistan, et al., 7 (2016), at 95 available at [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PAK/INT\\_CCPR\\_ICO\\_PAK\\_24479\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PAK/INT_CCPR_ICO_PAK_24479_E.pdf).
- <sup>xxxv</sup> Ibid at pg. 14
- <sup>xxxvi</sup> Ansar Burney Trust, Ansar Burney again urged Pakistan's President and PM to commute death sentences into life <<http://ansarburney.org/ansar-burney-again-urged-pakistans-president-and-pm-to-commute-death-sentences-into-life/>> <sup>xxxvii</sup> Irfan ul Haq, 'Acquittal Verdict' Executed Brothers Kin in Distress'. *DAWN* (Oct. 2016) . Available at <https://www.dawn.com/news/1291711>
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<sup>xl</sup> Human Rights Committee, Initial Report of Pakistan, 19 October 2015, para 137