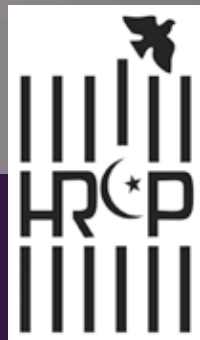




**fidh**



# PUNISHED FOR BEING VULNERABLE

## How Pakistan executes the poorest and the most marginalized in society

Cover photo: Activists from the Human Rights Commission of Pakistan (HRCP) carry placards during a demonstration to mark International Day Against the Death Penalty in Islamabad on 10 October 2015. AAMIR QURESHI / AFP

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## Acronyms

<b>CAT</b>	Convention Against Torture
<b>CIED</b>	Commission of Inquiry on Enforced Disappearances
<b>CRC</b>	Convention on the Rights of the Child
<b>CrPC</b>	Criminal Procedure Code
<b>EU</b>	European Union
<b>FATA</b>	Federally Administered Tribal Areas
<b>FIDH</b>	International Federation for Human Rights
<b>FIR</b>	First Information Report
<b>HRCP</b>	Human Rights Commission of Pakistan
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICCPR-OP2</b>	Second Optional Protocol to the ICCPR
<b>ICJ</b>	International Commission of Jurists
<b>IGP</b>	Inspector-General of Police
<b>ISPR</b>	Inter-Services Public Relations
<b>JJSA</b>	Juvenile Justice System Act, 2018
<b>JJSO</b>	Juvenile Justice System Ordinance, 2008
<b>JPP</b>	Justice Project Pakistan
<b>PPC</b>	Pakistan Penal Code
<b>NGO</b>	Non-government organization
<b>NHRC</b>	National Human Rights Commission of Pakistan
<b>TLP</b>	Tehreek-e-Labbaik
<b>UN</b>	United Nations
<b>UPR</b>	Universal Periodic Review

## Executive summary

Since Pakistan's independence from British India, the list of crimes punishable by death has steadily increased, resulting in a list of 32 offenses, most of which are far removed from the definition of the "most serious crimes" under international law. Even though the number of executions has decreased over the past four years, Pakistan remains one of the world's top executioners. During the period from the end of a moratorium on executions in December 2014 to August 2019, an estimated 1,800 death sentences were imposed across the entire court system and 520 people were executed.

Various amendments to Pakistan's criminal law over the past several decades have contributed to the creation of a system that favors the use of the death penalty for a wide range of offenses. The gradual incorporation of Islamic legal tenets in Pakistan's criminal law has led to an increase in the use of the death penalty and greater public support for capital punishment.

In many cases, death sentences are the result of a combination of deficiencies in the criminal justice system, which have a disproportionate impact on the most vulnerable sectors of society. Flawed investigations, coupled with the absence of a well-trained, accountable, and equipped police force and a weak prosecutorial system, often result in case files that are replete with weak and contradictory statements, forced confessions, and little or no forensic evidence.

The deficiencies of police investigations are normally followed by trials in which weak witness testimonies and confessions obtained under duress are rarely considered critically by judges, who often impose the death penalty as a result. Defendants with no means to secure qualified and motivated legal counsel are left vulnerable to a system that is set against the poorest segments of society.

The flaws of the criminal justice system are unmasked by the excessively high rates of sentences that are overturned or commuted to life imprisonment at the appeal level. However, due to a backlog of thousands of cases at the Supreme Court, cases can drag on for years, even decades, while prisoners languish on death row, in prisons notorious for their overcrowding and deplorable conditions.

The families of those who are most likely to be convicted suffer from the tremendous social and economic impacts of their relatives' incarceration, which include the expenses for lawyers and prison visits and the societal long-term stigma the families endure.

Addressing and reforming the procedural and systemic issues within the criminal justice system, which result in the high rates of convictions in capital cases and the ensuing high rates of executions, must be one of Pakistan's priorities in order to decrease the application of the death penalty in the country.

# 1. Introduction

## 1.1 History of the death penalty in Pakistan

Despite recent statistics that indicate that Pakistan's death row population and annual number of executions have decreased since the end of an unofficial moratorium on the use of capital punishment in late 2014, the country remains one of the world's top executioners. The country still punishes 32 offenses - covering a wide range of criminal conduct - by death [see *Annex I*].<sup>1</sup> Executions are common and death sentences are frequently imposed by judges. HRCP estimates that from January 2004 to August 2019, 5,084 death sentences were imposed across the entire court system. This includes about 1,800 death sentences and 520 executions from December 2014 to August 2019.

The government claims that the death penalty is supported by large segments of society, who see it as an effective deterrent to crime.<sup>2</sup> Yet, as this report will demonstrate, the use of capital punishment in Pakistan has turned into a form of legal discrimination. As four United Nations (UN) human rights experts argued in 2017, the death penalty is a "class-based form of discrimination in most countries, thus making it the equivalent of an arbitrary killing."<sup>3</sup> In Pakistan, the current state of the criminal justice system – from police investigations, to prosecutions, to the way trials are conducted – results in the most vulnerable segments of society being much more likely to confess to crimes under duress, prosecuted in unfair trials, and sentenced to death.

When the country became independent in 1947, two crimes were punishable by death: homicide and treason. That number quickly rose over the next several decades, particularly under the rule of General Muhammad Zia-ul-Haq from 1977 to 1988.

Zia-ul-Haq's government was also responsible for record numbers of executions, as his administration modified legislation to incorporate tenets of Islamic law, to include the passage of the Hudood Ordinances in 1979. The Hudood Ordinances amended parts of the British colonial-era Pakistan Penal Code (PPC) and added new criminal offenses, such as adultery and fornication, and new punishments, such as whipping, amputation, and stoning to death. Although some of these elements were revised or removed in 2006 with the passage of the Women's Protection Bill, these ordinances significantly altered the character of Pakistani criminal law, bringing it closer to Islamic legal tenets and thus contributing to broader public support for the use of capital punishment by justifying the death penalty as a permissible punishment under Islamic law.

This growing public support for the death penalty in Pakistan and widespread belief that capital punishment is an intrinsic part of Islamic law were reinforced by the introduction of the Qisas and Diyat Ordinance in 1990. This Ordinance incorporated into the PPC additional punishments for offenses under the PPC, including those based on Islamic law.

The increase in executions slowed in 2008, when then-President Asif Ali Zardari declared an unofficial moratorium on executions on 9 September 2008. The moratorium was established as a result of the ruling party's decision to 'review' the death penalty,<sup>4</sup> seemingly in response to the death sentence imposed on the party's founder, former Prime Minister Zulfikar Ali Bhutto, by a military government in 1979, following what many jurists considered a sham trial. The late Benazir Bhutto, daughter of Zulfikar Ali Bhutto and former Prime Minister, commuted 1,889 death sentences when she first came to power in 1988 and President Zardari was inclined to continue this policy.

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1. Some of the offenses, a full list of which can be found in Annex I, include several distinct criminal acts.

2. Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, UN Doc A/HRC/37/13, 29 December 2017.

3. *Death penalty disproportionately affects the poor, UN rights experts warn*, 10 October 2017, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22208&LangID=E>.

4. It is worth noting that the President does not have the power to impose a moratorium as such. Instead, the President can pardon a death sentence under Article 45 of the Constitution, but only in individual cases in which such power to pardon is specifically invoked.

However, the method in which this policy was implemented was informal. President Zardari simply ceased reviewing and deciding on clemency petitions, which were submitted in almost all cases, effectively resulting in a stay of executions.<sup>5</sup> Courts also continued to impose death sentences during this period.

This moratorium was short-lived. A December 2014 terrorist attack on a school in Peshawar, in which 132 children were killed, provided the political momentum and public support for a resumption of executions. The following day, then-Prime Minister Nawaz Sharif lifted the moratorium for terrorism-related cases. As a result, executions were scheduled shortly thereafter for the approximately 800 people who were on death row for terrorism-related convictions, and some were carried within the next several months. Some of them had been sentenced to death during the moratorium. Although the moratorium was initially lifted only for terrorism-related offenses, it was lifted for all crime on 10 March 2015, and executions resumed for all crimes.<sup>6</sup>

## 1.2 Objectives

FIDH and HRCP have a long history of working on the death penalty and related issues, both in Pakistan and worldwide. In January 2007, the two organizations, following a mission conducted in 2006, released a joint report, "Slow march to the gallows: Death penalty in Pakistan,"<sup>7</sup> which provided a comprehensive overview of the legal framework governing the death penalty in Pakistan at the time. The report also detailed the numerous ways in which both the legislative framework and the judicial system contributed to severe violations of human rights and Pakistan's international legal obligations. Since then, the two organizations have continued to advocate for a reduction in the use of capital punishment as a key step toward its complete abolition.

The present report, which is the outcome of another mission conducted jointly by FIDH and HRCP in November 2018, aims to provide an update on the 2007 report, bearing in mind the significant changes that have taken place in Pakistan under various governments since then, including the 2008 unofficial moratorium and the resumption of executions in 2014. The mission aimed at exploring specific issues within the theme of the death penalty, including detention conditions on death row, the use of capital punishment for minors, and the impact of the death penalty on families of death row inmates, particularly their children. However, a recurring theme emerged in discussions about each of these sub-issues: a strong systemic bias against the poor and marginalized.

While both FIDH and HRCP believe that Pakistan, as well as other retentionist countries, should immediately abolish the death penalty for all crimes, we are also aware of the difficulties in achieving this goal rapidly. As such, the objective of the report is to, ultimately, present concrete recommendations to the Pakistani government and its international partners that would drastically reduce the number of death sentences and executions as first steps toward full abolition. This would also contribute to creating a criminal justice system that does not disproportionately target and impact lower economic classes and vulnerable communities, such as religious minorities.

## 1.3 Methodology

In November 2018, FIDH and HRCP conducted a joint mission to Lahore and Islamabad, Pakistan. Mission delegates included two representatives of FIDH and three staff members of HRCP. Early on, a decision was taken to focus the field research on Punjab Province, due to the province accounting for a significant majority of death sentences and executions, particularly in regular criminal courts

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5. The only exception occurred in 2012, when a soldier convicted of murder was hanged. A court martial had sentenced him to death in 2008 and his mercy petition was rejected by the President in 2011. See <https://www.hrw.org/news/2012/11/20/pakistan-execution-ends-moratorium-death-penalty>.

6. See FIDH & HRCP, *Pakistan: death penalty moratorium completely lifted*, 11 March 2015, <https://www.fidh.org/en/region/asia/pakistan/pakistan-death-penalty-moratorium-completely-lifted>; FIDH & HRCP, *Pakistan: Unprecedented wave of executions underway, including of juvenile offenders*, 18 March 2015, <https://www.fidh.org/en/region/asia/pakistan/pakistan-unprecedented-wave-of-executions-underway-including-of>.

7. Available at: <https://www.fidh.org/IMG/pdf/Pakistan464angconjointpdm.pdf>.

[see *Annex II: Statistics*]. Nevertheless, issues that are applicable to the entire country, as well as issues specific to other provinces (such as the former Federally Administered Tribal Areas – FATA) and to other types of courts, were also raised by interlocutors with whom the mission delegates met, and are reflected to some extent in this report.

Meetings were held with a broad range of individuals: 15 civil society representatives in Lahore and Islamabad, a majority of whom work specifically on issues related to the death penalty in Pakistan; five criminal lawyers; an Additional Sessions Judge at the Lahore trial court; a Judge on the Lahore High Court; a former Inspector General of Police; commissioners from the National Human Rights Commission; two former Senators; and four members of the media who cover death penalty cases and criminal justice issues. Mission delegates also met with family members of seven individuals previously or currently on death row, and three individuals who had previously been incarcerated on death row and were subsequently released after being exonerated or pardoned.

Since some individuals were not available to meet when the FIDH delegation was in Pakistan in November 2018, additional research and interviews were conducted in 2019 by staff members of HRCP, including visits to two prisons (the District Jail and Central Jail) in Lahore, a meeting with the Inspector General of Police in Punjab Province, and an interview with a psychologist who specializes in the rights of mentally ill persons in prison.

Most of the people interviewed for this report spoke on condition of anonymity, either for reasons of personal security or in order to be able to speak freely. Names and identifying information have thus been made anonymous throughout this report.

Finally, a significant amount of desk research was conducted, including a review of previous reports by other non-governmental organizations (NGOs) and academic research on the issue of the death penalty, both in Pakistan and in other retentionist countries, and a review of applicable and relevant international and domestic legislation.



## 2. Context

The following chapter provides a brief overview of the context in which NGOs and other stakeholders working for the abolition of the death penalty operate in Pakistan. The chapter also outlines Pakistan's relevant domestic and international legislation and key aspects of the country's criminal justice system, focusing on the police and judicial institutions.

### 2.1 Civil society under pressure

The disregard of fair trial rights, the procedural errors, and all the other shortcomings evidenced at every level of the criminal justice system occur in a context of increasingly restricted civic space and limited freedom of expression. Civil society organizations – particularly those working on human rights – and activists are regularly targeted by the authorities, face increasingly harsh registration procedures, and are threatened by extremist groups.

Human rights defenders, journalists, and lawyers interviewed by FIDH and HRCP reported that this environment made it increasingly difficult to publicly discuss the death penalty in Pakistan and particularly to express the opinion that the use of capital punishment should be reviewed or that a moratorium on executions should be reinstated. "People who speak out against the death penalty are labelled pro-terrorists, pro-child abuser," a Pakistani human rights defender told FIDH and HRCP.<sup>8</sup>

### 2.2 Pakistan's criminal justice system

Pakistan's criminal justice system comprises the following: law enforcement agencies; criminal courts set up under the 1898 Criminal Procedure Code (CrPC); special (civilian) courts such as the anti-terrorism courts established under the 1997 Anti-Terrorism Act; military courts; and corrections departments organized at the provincial level. Statistics regarding the number of death sentences passed by each type of courts is available in Annex II.

Although the following chapters of this report deal primarily with procedural issues noted in the criminal court system [see *Methodology*], there are significant concerns regarding due process and the application of the death penalty by military courts and anti-terrorism courts in Pakistan, which are also briefly mentioned here.

#### 2.2.1 Law enforcement agencies

Law enforcement in Pakistan is composed of both federal and provincial police services. At the federal level, specialized law enforcement agencies include the Federal Investigation Agency, the Intelligence Bureau, the Anti-Narcotics Force, the National Counter Terrorism Authority, and the Railways Police.

General policing and law enforcement is undertaken primarily at the provincial level. Each of the four provinces – Balochistan, Khyber Pakhtunkhwa, Punjab, and Sindh – and the Islamabad Capital Territory have their own police service. The semi-autonomous regions of Azad Kashmir and Gilgit-Baltistan have their own police services, the Azad Kashmir Police and the Gilgit-Baltistan Police, respectively.

Each provincial police service is run by a Commissioner of Police, who is appointed to serve as the Inspector-General of Police (IGP) and acts as the head of police for that province. The IGP for each province as well as the IGP for the Islamabad Capital Territory report to the Ministry of Interior.

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8. Civil society roundtable in Islamabad, Pakistan, 23 November 2018.

## 2.2.2 Criminal courts

Criminal cases start in First Instance Courts, which include District, Magistrates, and Sessions Courts, and which are present at the district level in each province. Cases concerning offenses that are punishable by death can only be tried in Sessions Courts, and adjudicated by Sessions Judges. Cases dealing with offenses not punishable by death are tried in Magistrate Courts and civil cases in District Courts (for which Sessions Courts then act as appellate courts).

Death sentences must be reviewed by a High Court judge (Section 338D of the PPC). A first round of appeals in criminal cases can be filed at the High Courts, of which there are five: one for each of the four provinces (the Balochistan High Court for Balochistan Province; the Peshawar High Court for Khyber Pakhtunkhwa Province; the Lahore High Court for Punjab Province; and the Sindh High Court for Sindh Province) and one for the Islamabad Capital Territory (Islamabad High Court). Final appeals can be filed at the Supreme Court, which sits in Islamabad. In addition, the Federal Shariat Court hears appeals in cases relating to the Hudood Ordinances [see below, *Section 2.3.1*].<sup>9</sup>

## 2.2.3 Anti-terrorism courts

The anti-terrorism courts, established under the 1997 Anti-Terrorism Act, are special civilian courts that have jurisdiction over certain offenses under the PPC in connection with alleged acts of terrorism.<sup>10</sup> Over the years, repeated amendments to the Anti-Terrorism Act have gradually increased the number of offenses over which anti-terrorism courts have jurisdiction, such as arms trafficking, kidnapping, extortion, sectarian violence, and targeted political killings. The expansion of the application of the Anti-Terrorism Act has contributed to a significant backlog in cases before these courts. Every conviction and sentence passed by an anti-terrorism court must be heard on appeal by a bench of two judges of the High Court.

Between January 2015 and August 2019, the anti-terrorism courts imposed 250 death sentences, and there were 70 reported executions as a result of death sentences imposed by these courts [see below, *Annex II: Statistics*].<sup>11</sup>

Anti-terrorism courts hold some trials in secret, raising significant concerns with regard to guarantees to the right to a fair trial. The laws that govern the anti-terrorism courts also raise several important concerns. For example, under Section 21(h) of the 1997 Anti-Terrorism Act, confessions made in police custody are admissible as evidence before anti-terrorism courts. Under Section 3 of the 2002 Anti-Terrorism (Second Amendment) Ordinance, authorities are granted discretion to detain those listed on the government's "terrorism list" for up to one year without charges. In addition, under Section 19-A of the Anti-Terrorism Act, ordinary protections afforded to the accused for the purpose of searches and seizures under the CrPC are not applicable if the police decide to treat the matter as a case of terrorism (the case is then adjudicated by an anti-terrorism court).

The procedural loopholes in the laws that govern anti-terrorism courts amplify existing concerns that defendants with little resources and/or from marginalized groups are significantly more vulnerable to abuses, including torture in custody, due to their inability to secure qualified legal counsel [see below, *Section 3.1*].

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9. It should be noted that the autonomous regions of Gilgit Baltistan and Azad Kashmir fall outside this structure and have their own judicial system with their own High and Supreme Courts. The former Federally Administered Tribal Areas (FATA) were recently merged with Khyber Pakhtunkhwa Province and, under the 25<sup>th</sup> Amendment to the Constitution, the jurisdiction of the Peshawar High Court now extends to the former FATA. In March 2019, thousands of pending cases were reportedly transferred to newly installed civil courts in former FATA.

10. Under the Anti-Terrorism Act, the definition of "terrorism" is overly broad and includes committing acts such as "civil commotion." The full definition is available under Section 6 of the Act, available at <http://www.molaw.gov.pk/molaw/userfiles1/file/Anti-Terrorism%20Act.pdf>.

11. HRC Database.

## 2.2.4 Military courts

In January 2015, the jurisdiction of military courts was extended to try civilians suspected of terrorism-related offenses through the 21<sup>st</sup> Amendment to the Constitution and by amendments to the 1952 Pakistan Army Act. This jurisdiction was permitted for a period of two years, ostensibly due to the backlog of cases in the anti-terrorism courts [see above, *Section 2.2.3*], and was renewed for two more years through the 23<sup>rd</sup> Amendment. It expired on 6 January 2019 and was subsequently not renewed.<sup>12</sup>

According to the Inter-Services Public Relations (ISPR), the public relations arm of the Pakistan Army, from January 2015 to December 2018, the federal government recommended cases concerning 717 defendants for trial in the military courts. Of these 717 cases, 546 were concluded by 16 December 2018 and 310 defendants received death sentences. Out of the 310 defendants sentenced to death, 56 were executed. As of 16 December 2018, the remaining 254 defendants were awaiting execution.<sup>13</sup> According to statistics gathered by HRCP, between December 2018 and 6 January 2019 when the military courts' jurisdiction over civilians ended, military courts sentenced at least 31 more people to death.<sup>14</sup>

Trials of civilians before military courts were held in secret. Defendants were not given an effective right to be afforded legal counsel or to appeal their cases before civilian courts.<sup>15</sup> The charges and evidence against them were not made public and written judgments, including the court's findings and legal reasoning, were not disclosed.<sup>16</sup>

Suspects tried by military courts were often detained in undisclosed locations and without access to their families or a lawyer, which increased the risk of torture.<sup>17</sup> It is estimated that 95% of convictions of civilians by military courts were based on confessions.<sup>18</sup> During the third Universal Periodic Review (UPR) of Pakistan in November 2017, the government refused to accept two recommendations that called for an end of the use of military courts for trials of civilians.

The 1952 Pakistan Army Act also allows for children to be tried by military courts, notwithstanding the 2018 Juvenile Justice System Act [see below, *Section 2.3.1*], which gives juvenile courts exclusive jurisdiction over minors and prohibits courts from imposing death sentences on juvenile offenders.

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12. The 21<sup>st</sup> Amendment (to allow military courts jurisdiction to try alleged terrorists) was given assent by the President on 7 January 2015. It expired on 6 January 2017 (as the sunset clause prescribed a two-year period). The 23<sup>rd</sup> Amendment, which renewed and extended the military courts' jurisdiction, was given assent by the President on 30 March 2017 for two years, but it was deemed to have been in force since 7 January 2017 and thus expired on 6 January 2019.

13. <https://www.ispr.gov.pk/press-release-detail.php?id=5096>.

14. HCRP Database.

15. See International Commission of Jurists (ICJ) and HRCP, *Joint Submission to the Committee on Torture on the first periodic report of Pakistan*, March 2017, paras 25 and 32; ICJ, *Military Injustice in Pakistan: Questions and Answers*, December 2016, question 4. See also, ICJ, *Military Injustice in Pakistan: A Briefing Paper*, June 2016.

16. ICJ and HRCP, *Joint Submission to the Committee on Torture on the first periodic report of Pakistan*, March 2017, para 32; ICJ, *Military Injustice in Pakistan: Questions and Answers*, December 2016, question 4. See also ICJ, *Military Injustice in Pakistan: A Briefing Paper*, June 2016.

17. ICJ and HRCP, *Joint Submission to the Committee on Torture on the first periodic report of Pakistan*, March 2017, para 25.

18. ICJ and HRCP, *Joint Submission to the Committee on Torture on the first periodic report of Pakistan*, March 2017, para 24.

## **The nexus between enforced disappearances and capital punishment in Pakistan**

Pakistan continues to record extremely high levels of enforced disappearances by, or with the acquiescence of, state agencies. Since its inception in March 2011 until 30 June 2019, the government-appointed Commission of Inquiry on Enforced Disappearances (CIED) received 6,156 cases and, as of the end of June 2019, had 2,218 cases pending.<sup>19</sup> Although official statistics are not available, many of the individuals who were subjected to enforced disappearances later appeared in military courts and were sentenced to death following secret trials.

Existing legislation, such as the 2011 Actions (in Aid of Civil Powers) Regulations, increases the risk of enforced disappearance, because it allows the Pakistan Army to detain suspects indefinitely, without a warrant, judicial supervision, or due process, in internment centers that are effectively run by the army. It also provides a cloak of secrecy over trials on serious charges, many of which carry the death penalty. The only records accessible to the public are those concerning executions that have already been carried out.

Military courts still have jurisdiction over a number of offenses that are punishable by death, including the crimes of mutiny, treason, misconduct in action, obstruction of operations, and corresponding or serving with the enemy [see *Annex I* for full list of offenses].

## **2.3 Legislative framework**

The use of the death penalty in Pakistan derives from several pieces of domestic legislation and the selective interpretation of the international treaties to which the country is a state party. At the time of publication of this report, 32 offenses are punishable by death across 11 distinct pieces of legislation, including 14 offenses under the PPC. A full list of offenses is available in *Annex I*.

### **2.3.1 Domestic laws**

Pakistan's criminal law, which takes its roots in the criminal laws in place in British India at the time of partition in 1947, consists of several pieces of legislation, including the Constitution, the PPC, the CrPC, and the Juvenile Justice System Act.

The 1973 Constitution guarantees the right to a fair trial (Article 10A), protects against retroactive punishment (Article 12), double jeopardy and self-incrimination (Article 13), prohibits torture "for the purpose of extracting evidence" (Article 14(2)),<sup>20</sup> and guarantees equality before the law (Article 25(1)). The Constitution also provides for the appellate jurisdiction of the Supreme Court (Article 185).

The 1860 PPC, which was most recently amended in 2012, includes 14 offenses that are punishable by death. Section 53 of the PPC provides 10 categories of punishments, including punishments based on Islamic law that were incorporated in 1990 [see below, *Islamic [Shari'a] law in Pakistan*], that may be imposed for offenses under the PPC: *qisas*; *diyat*, *arsh*, and *daman*; *ta'zir*;<sup>21</sup> death;

19. Data available at: [http://coioed.pk/press\\_release/](http://coioed.pk/press_release/).

20. Recent attempts to pass a bill specifically on the prohibition of torture, which would provide a comprehensive definition of torture, have not been successful. In its Concluding Observations on the initial report of Pakistan in June 2017, the UN Committee Against Torture noted concerns that the "State party's legislation fails to provide a specific definition of torture that incorporates its various elements, as defined in article 1 of the Convention [Against Torture], and fails to explicitly criminalize it as required under articles 2(1) and 4 of the Convention." See UN Doc. CAT/C/PAK/CO/1.

21. *Qisas*, *diyat* and *ta'zir* are forms of punishment in traditional Islamic criminal jurisprudence. The doctrine of *qisas* provides for retributory punishment (e.g. 'eye for an eye') analogous to the crime against a convicted perpetrator of murder or intentional bodily injury. The victim or victim's heirs have the right to demand punishment or to forgive it. An alternative punishment to *qisas* is *diyat* under which financial compensation is paid to the victim or heirs of a victim in cases of murder, bodily harm, or damage to ability. *Ta'zir* refers to punishments applied to other offenses for which no punishment is specified in the Qur'an or the Hadith and which are at the discretion of the judge or ruler of the state.

imprisonment for life (capped at 25 years in Section 57 of the PPC);<sup>22</sup> simple imprisonment or imprisonment with hard labor; forfeiture of property; and fines.

### **Islamic [Shari'a] law in Pakistan**

There have been several attempts over the past decades to incorporate an increasing number of elements of Islamic law into Pakistan's criminal legislative framework.

This began primarily with the introduction of the 1979 Hudood Ordinances, which comprise six separate laws (the Offense of Zina Ordinance, the Offense of Qazf Ordinance, the Prohibition Order, the Offense Against Property Ordinance, the Execution of Punishment of Whipping Ordinance, and an ordinance amending the CrCP), and the creation in 1980 of the Federal Shariat Court. The impact of these developments was that the penalties imposed under the justice system became increasingly inhumane. As the number of offenses that carried the death penalty grew, so did public expectations of state-sanctioned punishments.

In September 1990, Sections 299 to 338 of the PPC that addressed offenses of murder and manslaughter were amended to incorporate the provisions of the Qisas and Diyat Ordinance. The amendment was related, in part, to a July 1989 ruling by the Federal Shariat Court that the existing provisions relating to murder and bodily injury were contrary to Islamic law because they did not allow for offenses to be excusable by pardon by the victim(s) (or the heirs of the victims) or by payment of *diyat*.<sup>23</sup> The Ordinance introduced the definition of *qisas* as "punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed *qatl-i-amd* [intentional killing], in exercise of the right of the victim or a *wali* [heir of the victim]." The types of "hurt" are further defined in the Ordinance.

This has had significant implications for criminal justice in Pakistan. Firstly, heinous crimes are now considered less as offenses against the state than as disputes between individuals or families. Secondly, rulings by the Federal Shariat Court and the Supreme Court have limited the possibilities of pardon by the President, despite Constitutional provisions, which still stand, granting that power. The Federal Shariat Court has ruled that, according to Islamic law, the legal heirs of a murder victim are the sole persons entitled to grant mercy to the perpetrator.

Prior to these changes, murder was not a compoundable offense.<sup>24</sup> Though out-of-court settlements between the aggrieved party and the offending party would sometimes occur, parties now have the legal option to settle murders between themselves, over which the courts have no say except to mark a stamp of approval. Once the parties reach an out-of-court settlement, it is rare that the court does not grant permission to drop charges, which results in acquittal. This is directly due to the Qisas and Diyat Ordinance, which allows the offending party to pay monetary compensation for the killing at the prescribed rate (which is revised periodically) under the law.

The Qisas and Diyat Ordinance has, in other words, promoted a private process in which neither the state nor the courts have any say. One of the negative consequences is that wealthy, powerful, and socially influential offenders can pressure the victim's legal heirs to accept an out-of-court settlement, either based on monetary compensation or without,

22. Section 57 of the PPC specifically states: "in calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty-five years." However, in 2004, the Supreme Court ruled that this Section only stipulated the calculation of the term of imprisonment, which was necessary because certain offenses were a fraction of the term of imprisonment prescribed for other offenses. The Jail Manual, on the other hand, provides for at least 14 years for life imprisonment. In June 2019, the current Chief Justice announced that he would be constituting a panel to examine the question of the length of life imprisonment, which has been a source of debate in recent years. Some argue that 25 years are not sufficient to reflect the gravity of heinous crimes for which it is prescribed or to be a true deterrent and thus increasing the necessity of judges to hand down death sentences.

23. PLD 1989 SC 633 Federation of Pakistan v. Gul Hasan Khan.

24. Compoundable offenses are those where the complainant (or victim) can enter into a compromise or settlement with the defendant in exchange for the charges being dropped.

depending on the power the offending party can wield. The overall impact of the continued application of the Qisas and Diyat Ordinance is that wealthy suspects can get away with committing a crime without any fear of being prosecuted.

In addition, the Islamization of the criminal justice system has had an adverse impact on the use of the death penalty as a result of a key ruling by the Federal Shariat Court. In 1990, the Federal Shariat Court ruled in favor of a petition asking that the death penalty be mandatory in cases of blasphemy (under Section 295-C of the PPC), arguing that “alternate punishment of life imprisonment as provided in section 295-C [...] is repugnant to the Injunctions of Islam.” This ruling is binding on all courts in Pakistan.<sup>25</sup>

The 1898 CrPC, most recently amended in 1997, contains a number of articles relevant to the use of the death penalty, including: procedures for trials held before Sessions Courts and the role of prosecutors in these trials (Section 265); procedures for the confirmation, alteration or annulment of death sentences by the High Court (Sections 374-376); procedures for issuing execution warrants (Section 381); restrictions on executing pregnant women (Section 382); and powers to Provincial Governments and the President to commute sentences (Sections 401-402).

In addition, the treatment of juveniles in criminal proceedings is governed by the 2018 Juvenile Justice System Act (JJSA),<sup>26</sup> which replaced the 2000 Juvenile Justice System Ordinance (JJSO).<sup>27</sup> Section 16 of the JJSA specifically prohibits the death penalty for individuals who were juveniles (defined as under 18 years of age in Section 2 of the JJSA) at the time of the commission of the offense. In addition to maintaining key provisions of the JJSO that provided for legal aid for juveniles (Section 3), special procedures for the arrest (Section 5) and investigation (Section 7) of juveniles, and the establishment of Juvenile Court (Section 4), among others, the JJSA introduced provisions that provided for special procedures for the investigation and detention of female juveniles (Section 17), the establishment of juvenile rehabilitation centers and observations homes (Section 20), and the formation of a Juvenile Justice Committee in each sessions division with the authority to administer justice through alternatives to formal judicial proceedings (Sections 9 and 10).

Other laws that list the death penalty as an applicable punishment are: the 1884 Explosives Act; the 1890 Railways Act; the 1952 Pakistan Army Act; the 1953 Pakistan Air Force Act; the 1961 Pakistan Navy Ordinance; the 1965 Pakistan Arms Ordinance; the 1973 High Treason (Punishment) Act; the 1997 Control of Narcotics Substances Act; and the 1997 Anti-Terrorism Act.

As the following chapters show, many of the legal safeguard contained in the laws detailed above are often ignored in practice and result in systemic violations of due process and fair trial rights.

### 2.3.2 International legal obligations

Pakistan’s continued use of the death penalty is in contravention of its international legal obligations, in particular under the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC).

Article 6 of the ICCPR, to which Pakistan became a state party in 2010,<sup>28</sup> states that a “sentence of death may be imposed only for the most serious crimes.” The UN Human Rights Committee, which monitors implementation of the ICCPR by its state parties, has ruled that the expression “most serious crime” is to be “read restrictively and appertain only to crimes of extreme gravity, involving intentional killing. Crimes not resulting directly and intentionally in death, such as attempted murder,

25. See ICJ, *On Trial: The Implementation of Pakistan’s Blasphemy Laws*, November 2015, <https://www.refworld.org/pdfid/565da4824.pdf>.

26. Available at: [http://www.na.gov.pk/uploads/documents/1519296948\\_886.pdf](http://www.na.gov.pk/uploads/documents/1519296948_886.pdf).

27. Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81784/88955/F1964251258/PAK81784.pdf>.

28. Pakistan ratified the ICCPR with reservations on Articles 3, 6, 7, 12, 13, 18, 19, 25 and 40, stating that “The Islamic Republic of Pakistan declares that the provisions of Articles 3, 6, 7, 18 and 19 shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan and the Sharia laws.”

corruption [...] although serious in nature, can never serve as the basis, within the framework of article 6, for the imposition of the death penalty.”<sup>29</sup>

Pakistan’s continued use of the death penalty for crimes such as blasphemy is therefore in violation of its obligations under ICCPR, as these crimes [see *Annex I*] do not meet the threshold of the “most serious crimes.”

In 1990, Pakistan became a state party to the CRC. Article 37 of the CRC specifically prohibits the use of the death penalty for juveniles and provides protections for their fair trial rights. In July 2016, in its review of Pakistan’s fifth periodic report under Article 44 of the CRC, the UN Committee on the Rights of the Child expressed particular concerns regarding reports of convictions of minors (or individuals who were minors at the time the offense was allegedly committed) and regarding the lack of opportunities for defendants to challenge sentences on the basis of their age.<sup>30</sup>

During its 2017 UPR, the Pakistani government did not accept all 34 recommendations it received concerning the death penalty. These included 22 recommendations that called for the reinstatement of the moratorium on capital punishment, eight that called for the ratification of the Second Optional Protocol to the ICCPR (ICCPR-OP2), and four that urged an end to the imposition of the death penalty on juveniles and their executions.<sup>31</sup>

Lastly, Article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Pakistan became a state party in 2010, specifies that the term “torture” includes “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtained from him or a third person information or a confession [...]”<sup>32</sup> Article 15 further specifies that “any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings [...]” Yet, in many cases in Pakistan, death sentences are imposed following trials in which defendants are found guilty because of evidence gathered using torture to obtain confessions [see *Section 3.1 – Reliance on questionable evidence*].

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29. UN Human Rights Committee, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, 30 October 2018, UN Doc. CCPR/C/GC/36, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf).

30. UN Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of Pakistan*, 11 July 2016, UN Doc. CRC/C/PAK/CO/5.

31. FIDH & HRCF, *Government’s lack of commitment at UN rights review a missed opportunity*, 15 March 2018, <https://www.fidh.org/en/region/asia/pakistan/government-s-lack-of-commitment-at-un-rights-review-a-missed>.

32. Pakistan became a state party to the CAT with reservations concerning Article 28 of the treaty. Pakistan stated that “the Government of the Islamic Republic of Pakistan hereby declares that it does not recognize the competence of the Committee provided for in Article 20,” which gives the UN Committee Against Torture a mandate to conduct inquiries into allegations of torture.

### 3. Inadequate police investigations

***“The system is responsible for convicting an innocent person. It took only two hours for the police to file an FIR [First Information Report] [against me]. My only crime was being at the wrong place at the wrong time.”*** – Exonerated death row inmate.<sup>33</sup>

The high number of capital cases that are brought to trial in Pakistan is, in large part, due to insufficient resources and weak procedures at the police level for investigating crimes and building cases against suspected perpetrators. Cases are built predominantly on witness testimonies and confessions, which are often obtained as a result of torture. The presence of exculpatory evidence rarely prevents prosecutors from bringing a case to trial. Prosecutors rarely question the strength of a case or work with police officers to strengthen the evidence before bringing the case to court. The high rates of convictions, particularly in murder cases during a defendant’s initial trial, do little to incentivize prosecutors to address the recurrent weakness of evidence presented in capital cases.

#### 3.1 Reliance on questionable evidence

Criminal cases in Pakistan are built almost exclusively on witness testimonies and defendants’ confessions. This type of evidence is often collected by investigators through coercive means. By contrast, analysis and use of forensic evidence remain a rarity in the country. Although efforts have been made in recent years to develop the police’s ability to collect, preserve, and analyze forensic evidence, including through the development of some forensic labs, the use of such procedures remains sporadic, and has not yet replaced testimonies as the preferred type of evidence, even in murder cases.<sup>34</sup>

Witness testimonies are often manipulated by the police, who pick and choose testimonies that fit a pre-established narrative of the way in which the crime supposedly occurred. Moreover, alleged witnesses often come forth, particularly in cases of blasphemy, for personal reasons.<sup>35</sup>

In addition, the way in which confessions are obtained raises significant concerns. Because the lack of forensic evidence in criminal cases means that confessions are often central to securing convictions, torture is a common tool used by the police to obtain such confessions. In its review of Pakistan’s initial report under Article 19 of the CAT, in June 2017 the UN Committee Against Torture said it was “deeply concerned at consistent reports that the use of torture by the police with a view to obtaining confessions from persons in custody is widespread throughout the territory of the State Party.”<sup>36</sup> Research by Justice Project Pakistan (JPP) into allegations of systematic brutality and torture by police in Faisalabad, Punjab Province, found evidence of violence “so severe that it constituted torture” and documented abuse in at least 1,424 cases over a span of six years, including severe beatings, suspension, stretching and crushing, witnessing torture of others, solitary confinement, sleep and light deprivation, humiliation, and sexual violence.<sup>37</sup>

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33. Interview conducted in Lahore, Pakistan, 21 November 2018.

34. Interviews conducted with defense lawyers in Lahore, Pakistan, 21 November 2018; interview conducted with former Inspector General of Police, Islamabad, Pakistan, 24 November 2018.

35. Civil society roundtable, Lahore, Pakistan, 19 November 2018; interviews with journalists, Lahore, Pakistan, 20 November 2018; civil society roundtable, Islamabad, Pakistan, 23 November 2018.

36. UN Committee against Torture, 60<sup>th</sup> session, *Concluding observations on the initial report of Pakistan*, 1 June 2017, UN Doc. CAT/C/PAK/CO/1, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=PAK&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=PAK&Lang=EN).

37. Justice Project Pakistan (JPP), *Policing as Torture: A Report on Systematic Brutality And Torture by the Police in Faisalabad, Pakistan* (2015), [www.jpp.org.pk/report/policing-as-torture/](http://www.jpp.org.pk/report/policing-as-torture/). See also: JPP & World Organisation Against Torture (OMCT), *Submission to the United Nations Committee against Torture, Alternative Follow-up Report to the Concluding Observations of the Committee Against Torture on the Initial Report of Pakistan* (2018), [http://www.omct.org/files/2018/08/25118/ngo\\_follow\\_up\\_report\\_pakistan\\_jpp\\_omct.pdf](http://www.omct.org/files/2018/08/25118/ngo_follow_up_report_pakistan_jpp_omct.pdf).



***“Torture is endemic in the way investigations work. This is especially true for murder cases, because there is pressure to close the case quickly.”***- Pakistani journalist.<sup>38</sup>

Because of widespread corruption in Pakistan, including within the criminal justice system,<sup>39</sup> people who can afford to bribe police officers and other officials can avoid being tortured. This results in people who cannot afford to pay bribes (or who are not able to secure legal aid— see below, *Inadequate public defense system*) being more likely to confess to, and being convicted of, the crimes of which they are accused than defendants who can afford to pay bribes. The system’s over-reliance on confessions as evidence thus creates an inherent bias, whereby the poor are significantly more likely to be charged, convicted, and, in the case of capital offenses, given death sentences.

### **Inadequate public defense system**

The lack of an adequate, accessible, and institutionalized public defense mechanism in Pakistan is partly to blame for the violations of fair trial rights. In the absence of well-trained, accountable, and motivated public defenders, there is, in a majority of cases, no one to uphold the rights of defendants from impoverished or marginalized backgrounds.

Although statistics are not available, anecdotal evidence indicates that either a significant number of defendants are never afforded legal aid, or that this legal aid comes too late, including for juveniles. During a visit to a juvenile prison in 2019 in the province of Punjab, nine of the 22 (40%) inmates present during the visit told HRCP staff that they had not been provided legal aid.

It is common for defendants to not have had access to legal counsel until they make their first court appearance.<sup>40</sup> In these cases, judges appoint public defenders, who can be the first lawyer they see in the courtroom, regardless of their existing caseload or their qualifications to take on that particular case.<sup>41</sup> Even in cases where defense lawyers are motivated and well-intentioned, their heavy caseload and insufficient remuneration means that they have little time to devote to each client, and virtually no time or financial resources to prepare a proper defense. This results in a system in which poor defendants are much more likely to be afforded inadequate legal assistance than individuals who can afford to pay for counsel.

These issues are amplified for individuals accused of blasphemy, who struggle to find lawyers to represent them, even for a fee. In blasphemy cases, public defenders often withdraw from cases and are not replaced, or do not actively pursue their client’s interest. Relatives of one prisoner on death row for blasphemy, with whom FIDH and HRCP spoke, referred to the lawyer assigned to the case as a “silent lawyer” due to the fact that he was too scared of the consequences to pursue the case actively. While there are several organizations in Pakistan providing pro-bono legal aid services to indigent defendants and to those charged with blasphemy, the needs remain enormous.

Finally, the reliance of the justice system on witness testimony is particularly problematic in cases of blasphemy. In these cases, where material evidence is almost never available due to the nature of the alleged crime, investigations are wholly reliant on witnesses, whose testimonies are rarely fact-checked by investigators or dismissed for being incoherent, contradictory, or potentially motivated by personal reasons.

38. Interview conducted in Islamabad, Pakistan, 23 November 2018.

39. See HRCP, *State of Human Rights 2018*, April 2019, <http://hrcp-web.org/hrcpweb/wp-content/uploads/2019/04/State-of-Human-Rights-in-2018-English-1.pdf>.

40. The 2013 United Nations Principles and Guidelines on Access to Legal in Criminal Justice Systems clearly states that the “right to legal aid of suspects arises before questioning, when they become aware that they are the subject of investigation, and when they are under threat of abuse and intimidation, e.g., in custodial setting.” Principle 10, footnote #10. Available at: [https://www.unodc.org/documents/justice-and-prison-reform/UN\\_principles\\_and\\_guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf).

41. These lawyers are not dedicated public defenders – they are private defense lawyers, who take on cases as public defenders involuntarily.

The relatives of a man on death row explained to FIDH and HRCP how their uncle had been working in the fisheries department when he tried to report people who were engaged in illegal fishing. He was first transferred to another department and, shortly thereafter, his salary was no longer being paid. He eventually found himself facing blasphemy charges because - his family believes - he tried to go after "powerful people," who used the blasphemy charges as an effective way to silence him.<sup>42</sup>

### 3.2 Lack of specialized training

The lack of forensic evidence in criminal cases in Pakistan is due to a number of factors, which include police officers' lack of training on evidence collection, chain of custody procedures, and a lack of opportunities for them to specialize, and be trained in, specific fields of criminal justice (i.e. heinous crimes, anti-terrorism).

Lack of awareness by police officers of the criminal procedures to follow is also a factor. For example, special police and judicial procedures exist for juveniles in Pakistan, through the JJSA (and previously the JJSO; see above, *Section 2.3.1*). However, it appears that police officers are, by and large, unaware of these procedures and their responsibilities to minors under them. The majority of First Information Reports (FIRs) concerning young offenders use the term "*Nojawan-ul-Omar*" or "*nojawan*," meaning young man. Police officers normally make no efforts to confirm the age of the suspected offender because they are unaware of their responsibility in this matter, and mistakenly believe that age determination falls under the purview of the courts.<sup>43</sup> Even if the offender is later determined to be a juvenile at the trial stage, which is not always the case [see below, *Chapter 4*], this places juveniles at grave risk of seeing their rights denied throughout the police investigation phase and while awaiting trial, including being placed in preventive detention and not having a legal guardian present during interrogations.

#### Age determination procedures

Several methods, generally referred to as "age determinations" or "age determination procedures," can be used – and are available in Pakistan – to determine the age of individuals suspected of being minors but who do not have the necessary paperwork to prove their age.<sup>44</sup> These include a series of steps that law enforcement and other mandated authorities can undertake to determine the age of an individual, including, but not limited to: medical history checks and external physical examinations; and scientific tests, such as wrist x-rays (often referred to as ossification tests in Pakistan) and dental tests.

Some legal professionals, including judges interviewed by FIDH and HRCP, argued that age determination procedures, and particularly the scientific tests noted above, provide incontrovertible proof of an individual's age and recommended they should be utilized systematically in Pakistan.

It is extremely important to note that age determination tests are not exact and only provide an estimation of an individual's age, typically within a two-year range (i.e. 16–18 years old).<sup>45</sup>

42. FIDH & HRCP interview, 20 November 2018.

43. Society for the Protection of the Rights of the Child, *The State of Pakistan's Children 2017*, <https://www.sparcpk.org/SOPC%20-%202017.html>.

44. Many children, particularly those from poor, marginalized and/or rural backgrounds, are born without birth certificates and can wait for many years without being provided official paperwork stating the date of birth. Statistics from 2012 indicate that as little as 34% of children under five had their births registered; <https://data.unicef.org/country/pak/>. School inscriptions and certificates may sometimes be used to determine an individual's age, but not all children have such records, and many youths under the age of 18 obtain ID cards that state they are older so that they can seek employment.

45. The UK Royal College of Paediatrics and Child Health, in its "The Health of Refugee Children – Guidelines of Paediatricians," states that the margin error of age determination procedures may be as high as five years on either side. It should further be noted that, given the inexactitude of the tests and their intrusive nature, many medical organizations advocate against the use of medical examinations to determine the age of an individual. A 2015 Médecins du Monde review of available existing tests and jurisprudence from European Union member states concluded that "bone testing cannot be considered as assessing the chronological age of an individual with rigor and preciseness." Médecins du Monde, *Age Assessment for Unaccompanied Minors*, 28 August 2015, p.8, <https://mdmeuroblog.files.wordpress.com/2014/01/age-determination-def.pdf>.

In such cases, under international law it is incumbent upon judicial authorities to err on the side of caution and hence assume that the individual is on the lower end of the range – in other words, if the range straddles the line between juvenile and adult, it should be assumed that the individual is a minor and he or she should be tried and sentenced according to the provisions of the JJSA.<sup>46</sup>

### 3.3 Weak prosecutorial system

Prosecutors in Pakistan are empowered to make final decisions on whether cases should be brought to court, based on the strength of the evidence collected by investigative services, including the police. However, in practice, it appears that prosecutors rarely refuse to pursue a case despite the poor quality and strength of the evidence, instead bringing forth all cases forwarded by the police.

As explained by a defense lawyer interviewed by FIDH and HRCP, “prosecutors take case files from the police and don’t really criticize the evidence, unless there is a major procedural gap. They don’t render any substantive opinion regarding the possibility of success of prosecution.”<sup>47</sup>

Furthermore, it appears that there is negligible communication and coordination between public prosecutors and the police investigation teams, even when case files include contradictory witness testimonies or, in the rare cases where it is included, inconclusive forensic evidence. This is traditionally due to police investigation officers having power under the law to conduct the entire investigation and to hand over the outcome report to a magistrate,<sup>48</sup> leaving the whole process in the police’s remit. Although in recent years, this has been rectified in legislation specific to certain provinces,<sup>49</sup> past practices have become entrenched and police investigation teams continue to cooperate very sparingly with public prosecutors and rarely ask for their advice when building cases.

In addition to overburdening the lower courts, as too many cases make it to trial, this system fails to place incentives on police officers to build stronger cases and to gather forensic evidence that could supplement weak eyewitness testimony or reduce the need for confessions. The deficiencies of the prosecutorial system in Pakistan are particularly problematic in cases of blasphemy, which by nature rely in large part on witness testimonies.

Moreover, prosecutors in Pakistan rarely question whether evidence, particularly confessions, was obtained lawfully, despite international guidelines that provide for a particular role in that regard. The UN Guidelines on the Role of Prosecutors specifically state that “When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods [...] especially involving torture [...] they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.”<sup>50</sup>

The weakness of the prosecutorial system in Pakistan also impedes prosecutors from playing a role in preventing and remedying torture in custody in accordance with international standards, such as those set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”).<sup>51</sup>

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46. This is in accordance with recommendations of the UN Committee on the Rights of the Child; UNCRC General Comment No. 6.

47. Interview held in Lahore, Pakistan, 21 November 2018.

48. The Prosecution’s role is not defined in the 1898 Code of Criminal Procedure. Section 173(1) mentions Prosecutors but limits their role to that of a thoroughfare between the police department and the magistrate.

49. Such as the 2006 Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act; available at: <http://punjablaws.gov.pk/laws/483.html>.

50. Available at : <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx>.

51. Available at : <https://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

### 3.4 Societal pressures

Much like judges [see below, *Chapter 4*], police officials investigating capital cases are often placed under tremendous pressure by community members and, sometimes, even family members of the alleged victims, to arrest suspected individuals, ensure that the cases go to trial, and that convictions are secured. This is particularly true for cases that either provoke high levels of public uproar and emotion, such as in cases of brutal rapes or murders, particularly of children, or in those that are politically sensitive, such as blasphemy cases.

This rush to investigate and arrest is in part due to concerns that the community may resort to their own means to punish the alleged perpetrators. These fears are not unfounded. Since 1990 to August 2018, almost 70 people have been lynched after having been accused of committing blasphemy.<sup>52</sup>



Pakistani policemen stand guard outside the Supreme Court building in Islamabad on 31 October 2018. © AAMIR QURESHI / AFP

***“Public demands to enhance the severity of punishment for offenses such as blasphemy have not decreased the incidence of mob justice. This can be traced to the historical increase in the propensity for state-sanctioned violence, which has gone hand in hand with greater acceptance for impunity.”***

- Lawyer interviewed by HRCP.

This rush results in even greater pressure on police officers to extract confessions from suspects. The pressure to quickly and definitively identify suspects results in situations where due process is ignored or rushed through, and where vulnerable defendants are less likely to understand their rights under the law.

52. HRCP, *State of Human Rights in 2018*, pg. 120, <http://hrcp-web.org/hrcpweb/wp-content/uploads/2019/04/State-of-Human-Rights-in-2018-English-1.pdf>.

## 4. Unfair trials

***“The whole system is geared towards summary hearings and summary trials”***

Pakistani criminal defense lawyer.<sup>53</sup>

Statistics on the death penalty indicate that some 85% of death sentences imposed by the lower courts from December 2014 to October 2018 were subsequently commuted to prison terms or overturned by the Supreme Court.<sup>54</sup> This situation suggests that there are wide inconsistencies in the application of fair trial standards between lower courts and higher courts. This leads to the conclusion that lower courts do not render fair judgments, as a result of systemic issues within the judiciary. This chapter highlights the main systemic issues that directly contribute to high numbers of death sentences in Pakistan and how these issues disproportionately impact the poor and marginalized.

### 4.1 Evaluation of the facts of the case

One of the key challenges remains the lack of objective consideration of the evidence presented by the prosecution in the courtroom. While this problem begins with prosecutors, who generally do not evaluate whether the case built by police is sufficiently strong to merit being brought to court, it is then perpetuated by lower court judges, who similarly do not question the strength of the evidence or the methods by which the evidence was obtained, including cases in which confessions might have been obtained through the use of torture and thus should not be admissible as evidence.

This is particularly the case for juveniles, whose age, once inscribed in a case file, is rarely questioned, including by judges. According to a defense lawyer working on death penalty cases in Pakistan interviewed by FIDH and HRC, when it comes to issues of juvenile justice, “judges assume that someone who is being presented to them is an adult. They don’t challenge police evidence.”<sup>55</sup>

Some judges are willing to question a defendant’s age, but this is often linked to a strong defense counsel. A defendant’s juvenile status is much more likely to be questioned and reevaluated at the trial stage if the defendant is accompanied by a good defense lawyer, well-versed in the JJSA and other relevant domestic and international laws – an occurrence that is rare [see box below – *Lack of adequate legal representation*].

Under the JJSA, juvenile courts have the “exclusive jurisdiction to try cases in which a juvenile is accused of commission of an offense” (Article 4). These courts are to follow specific procedures detailed in Article 11 of the JJSA, which include restrictions on people attending court hearings, and measures to protect the identity of the defendant (Article 13). However, in practice, these procedures are rarely followed, and specific juvenile courts are still insufficient. Lawyers interviewed by FIDH and HRC argue that the system continues to lack the infrastructure and training needed to make juvenile cases a separate ‘stream’. The lack of training at the level of the police, prosecutors, and judges means that the courts have no specific repository of expertise in trying juveniles, especially in cases where one FIR may involve both adults and minors, often leading to trials in which both defendants’ cases are adjudicated by the same judge.

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53. Roundtable with defense lawyers, Lahore, Pakistan, 21 November 2018.

54. Justice Project Pakistan, *Counting the condemned*, October 2018, <https://www.jpp.org.pk/report/counting-the-condemned/>.

55. Interview conducted in Lahore, Pakistan, 21 November 2018.

### **Lack of adequate legal representation**

The lack of adequate legal representation for many defendants in Pakistan is, in part, due to the absence of a systematized public defense system [see above, *Chapter 3, Inadequate public defense system*]. It is also due to the fact that defense lawyers are generally ill-prepared to handle cases, and particularly criminal cases. This includes insufficient knowledge of procedures, including evidentiary rules and procedures, which, in turn, leads to a lack of questioning of the evidence brought forth by the prosecution in court.

These issues are particularly grave for juveniles. As one NGO report noted, “the failure of so many lawyers to ask a client’s age – one of the most basic of factual questions – can be seen as a symptom of wider systemic failures in Pakistan’s justice system, in which adequate legal representation is so often lacking.”<sup>56</sup>

Restrictions on lawyers accessing their clients once they are remanded to custody makes it particularly difficult for defense lawyers to build strong cases that reflect their client’s wishes. Defense lawyers interviewed by FIDH and HRCP explained how they could only meet their clients in the cells under the supervision of a guard – resulting in a complete absence of privacy. In exceptional circumstances, lawyers are sometimes allowed to meet with their clients in the prison superintendent’s office but, again, under the supervision of a guard. Efforts by lawyers to report this to prison authorities have been fruitless. The answer is that there is no space or that they cannot be left alone for security reasons, and judges have generally not stepped in to direct prison authorities to provide space for lawyers to meet with their clients in private.

Stakeholders interviewed for this report also noted that lawyers are often unable to meet their client in prison and only meet them in the courtroom immediately before a hearing starts. This is due, on the one hand, to a lack of resources and time to travel to the prison to meet clients and, on the other, an underestimation of the importance of meeting with clients beforehand. As one lawyer told FIDH and HRCP, “the idea of providing legal aid in Pakistan is that it happens in the courtroom.”

#### **4.1.1 Evaluation of witness testimonies**

Criminal cases in Pakistan systematically rely on witness testimonies and confessions by the defendants. Yet, similar to other types of evidence, witness testimonies are rarely scrutinized by judges, even when various testimonies contradict each other.

FIDH and HRCP interlocutors attributed this phenomenon, in part, to lengthy trials and unreasonable delays, combined with high caseloads and trials that are held over multiple hearings. Defense lawyers interviewed by FIDH and HRCP reported that Sessions judges typically hold hearings in up to five or six cases a day. Moreover, it is fairly common for the prosecution to call numerous witnesses to testify, but because it can be difficult for people to appear in court hearings due to difficulties in traveling to the courts or a lack of resources, witness examinations are often prolonged over multiple hearings, which can be scheduled months apart. As a result, it can be challenging for judges – and defense counsel – to adequately examine and cross-examine witnesses, as inconsistencies between various witnesses can be hard to identify.

#### **4.2 Pressure on judges**

External pressure – from victims’ families, to communities, and to the general public in certain cases – is a significant contributing factor to the high numbers of convictions and death sentences handed down by judges in the lower courts. Significant public pressure is placed on judges to convict defendants. This is considered by large sections of the population as the only “justice”

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56. Justice Project Pakistan and Reprieve, *Juveniles on Pakistan’s death row*, March 2015, [https://reprieve.org.uk/wp-content/uploads/2015/03/2015\\_03\\_17\\_PUB-Juveniles-on-Pakistans-Death-Row.pdf](https://reprieve.org.uk/wp-content/uploads/2015/03/2015_03_17_PUB-Juveniles-on-Pakistans-Death-Row.pdf)

available, including death sentences, especially in murder and blasphemy cases. In particularly high-profile cases, it is not unusual for mobs to be present outside the courtroom, resulting in judges fearing for their own safety should they acquit the defendants, even when the weakness of the evidence merits an acquittal.



Pakistani civil society activists light candles on the anniversary of the death of the governor of Punjab province Salmaan Taseer in Lahore on January 4, 2016. © Arif Ali / AFP

The fear of physical violence is not unfounded. In early 2011, Punjab Governor Salmaan Taseer was assassinated in broad daylight by his own security guard only a few weeks after he made a prison visit to Asia Bibi, a Christian woman who was convicted of blasphemy in 2010 and sentenced to death.<sup>57</sup> The security guard, who was subsequently convicted, sentenced to death, and executed in 2016, told the police when he was arrested that he had no regrets and that it was his “religious duty” to kill a “blasphemer.” The judge who convicted the security guard and sentenced him to death, subsequently fled Pakistan after having his office ransacked by Islamist lawyers and receiving repeated death threats for “undermining blasphemy laws.”<sup>58</sup>

***“At the investigation stage, the police have already decided that it is their religious duty and part of the faith, to convict that person [accused of blasphemy]. The prosecutor thinks the same, and even the attitude of the judge is biased – the thought is, if we convict this person we will go to paradise” - Pakistani defense lawyer specialized in defending blasphemy cases.***<sup>59</sup>

### 4.3 Lack of use of jurisprudence and case law

In cases in which the High Court and the Supreme Court overturned or commuted death sentences imposed by the courts of first instance, the Supreme Court has repeatedly highlighted severe flaws at the level of first instance courts. Despite the high level of sentences overturned by the High Court and the Supreme Court, the courts of first instance continue to ignore the issues raised by the higher courts’ decisions.

57. Her conviction was overturned by the Supreme Court in October 2018. See Chapter 5, Case Study on Page 26.

58. BBC, *Pakistan judge Pervez Ali Shah ‘flees death threats,’* 25 October 2011, <https://www.bbc.com/news/world-south-asia-15445317>; DW, *Pakistani judge flees country after receiving death threats,* 26 October 2011, <https://www.dw.com/en/pakistani-judge-flees-country-after-receiving-death-threats/a-6646576>.

59. Interview conducted in Lahore, Pakistan, 21 November 2018.

An Additional Sessions judge with whom FIDH and HRCP met, attributed this phenomenon to a lack of access to libraries and researchers, and decried that this systematic lack of resources directly resulted in a limited knowledge of jurisprudence and case law, which in turn leads to judgments that were inconsistent with jurisprudence passed by the higher courts.

According to some interlocutors met during the mission, the lack of quality legal education may also contribute to lower court judges' lack of understanding of the importance of jurisprudence and the need to incorporate such jurisprudence in their own decision-making processes and judgments.<sup>60</sup>

### **Judicial performance evaluations**

Some members of the judiciary with whom FIDH and HRCP talked, noted that a key impediment to reducing the high number of death penalty sentences that are overturned on appeal lies in the lack of evaluation mechanisms for judges concerning their judicial performance. They argued that such a mechanism should include the development of set standards for performance, which enable systematic and objective evaluations of judges.<sup>61</sup> Criteria for evaluation of a judicial performance may include legal ability (including legal reasoning ability, knowledge of substantive law, knowledge of rules of procedures and evidence, and keeping current on developments in law, procedures, and evidence collection); integrity and impartiality; communication skills; professionalism and temperament; and administrative capacity.<sup>62</sup>

## **4.4 Harsh sentencing procedures**

Pakistan's judicial system does not provide for the holding of a separate sentencing hearing after an individual is convicted of a crime. Sentencing is done by the trial judge as part of the delivery of the judgment. Defense lawyers decry this practice, which they say makes it impossible for counsel to argue mitigating circumstances once guilt has been established.

### **Bifurcated trials**

In common law, bifurcated trials entail dividing a trial into two parts, allowing judges to rule on sets of legal issues individually. In criminal cases, this usually means one part that looks at the specific issue of the defendant's culpability, and a second part, stemming from having ascertained the defendant's culpability, which determines the punishment. Of particular relevance to trials for offenses that are punishable by death, is the fact that bifurcated trials allow defense attorneys to argue a not-guilty plea in the first stage and mitigating circumstances during the second stage.

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60. Interviews conducted with lawyers in Lahore, Pakistan, 21 November 2018; interview conducted with Lahore High Court Judge, 19 November 2018; interview conducted with Lahore Additional Sessions Judge, 20 November 2018.

61. See OSCE Office for Democratic Institutions and Human Rights, *Assessment of the Performance Evaluation of Judges in Moldova*, 27 June 2014, <https://www.osce.org/odihr/120213?download=true>.

62. American Bar Association, *Black Letter Guidelines for the Evaluation of Judicial Performance*, February 2005, [https://www.americanbar.org/content/dam/aba/publications/judicial\\_division/jpec\\_final.pdf](https://www.americanbar.org/content/dam/aba/publications/judicial_division/jpec_final.pdf).



Furthermore, judges are reported to not have taken into consideration in their sentences mitigating circumstances that may have emerged during the trial – such as, for example, an act of self-defense. In some cases, this is because lower court judges are not aware that mitigating circumstances can be argued during the trial.<sup>63</sup>

As a result, judges often award the maximum sentence provided under the law in cases involving capital offenses, regardless of the particular circumstances of the case.<sup>64</sup> This is due to multiple factors: pressure from the public to award the harshest sentence; a belief that it is “better to be safe than be sorry”; and a misconception that it is the exclusive role of the higher court judges to consider mitigating circumstances and to act as a check on lower courts. “Lower court judges don’t want to take it upon themselves to give a lesser sentence,” a civil society member told FIDH and HRCP during a roundtable in Lahore.<sup>65</sup>

The issue of the length of life imprisonment under Pakistan’s penal law has also been raised as a concern and a contributing factor to judges’ reluctance to award lesser sentences than the death penalty. Life imprisonment in Pakistan is capped at 25 years and some believe that this sentence is not sufficient for crimes that are considered particularly heinous.

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63. Interviews conducted with lawyers in Lahore, Pakistan, 21 November 2018.

64. Since trial courts are effectively decentralized and come under the purview of provincial authorities, there are no national-level statistics regarding sentencing decisions for each offense.

65. Civil society roundtable discussion, Lahore, Pakistan, 19 November 2018.

## 5. Appeals: A late remedy

***"In the eyes of the community, they will be forever considered as convicts – they often have to move villages, or sometimes are hunted down and killed. This is in part due to a lack of education about rule of law and the criminal justice system."*** – Pakistani defense lawyer.<sup>66</sup>

Since the resumption of executions in late 2014 to October 2018, the Supreme Court overturned 85% of death sentences, primarily because it found that the convictions had been based on faulty investigations and evidence.<sup>67</sup> The high percentage of death sentences that are either commuted into life imprisonment or of defendants who are exonerated altogether by the higher courts give an indication that the procedural flaws outlined in the preceding chapters are both widespread and systematic. However, such flaws are somewhat mitigated at the appellate level, where the standards of proof are noticeably higher. The higher courts include the High Courts in each province, which has appellate jurisdiction over lower courts, and the Supreme Court in Islamabad, which has appellate jurisdiction over High Court rulings.

### 5.1 Appeals at the High Court and the Supreme Court

Some of the procedural issues that characterize the system, both at the High Court and Supreme Court level, stem from the police and the prosecution's overreliance on witness testimonies rather than on forensic evidence during trial in lower courts. Both the High Courts and the Supreme Court instead rely on the case files, which may be abridged versions of the originals. If the collection of forensic documentation was sufficiently meticulous, the higher courts should have access to the complete facts of the case when adjudicating, which would allow them to identify procedural defects that a lower may not have.

However, the ability to recreate a picture of the trial in front of the High Court or Supreme Court is hampered not only by the lack of meticulous documentation, but also by the broader challenges that affect the criminal justice system: inadequate training of law enforcement personnel, trial lawyers, and members of the judiciary; a shortage of judges; and an enormous case load.

Although rates of exoneration are higher at the Supreme Court, many capital cases heard on appeal at the High Court result in death sentences being commuted into life sentences. This is due, in part, to judges at the High Court reviewing case files of the evidence presented during trial and determining that the facts of the case and the evidence presented did not warrant a death sentence. As one High Court judge told FIDH and HRCP when discussing the implications of his judgments resulting in the commutation of death sentences to life imprisonment, "I am making law for the lower courts to follow."

#### **Case Study: The Peshawar High Court judgment**

In October 2018, the Peshawar High Court issued a historic judgment in which it overturned the death and life imprisonment sentences that had been imposed by military courts against 74 convicts in several terrorism cases. The two-member bench argued that the military courts had failed to establish guilt beyond reasonable doubt.<sup>68</sup> Given the power and influence of the military in Pakistan, and the judicial discretion typically enjoyed by military courts [see above, *Chapter 2*], this judgment has been described as particularly significant. The government appealed against the Peshawar High Court's judgment and the appeal is pending at the Supreme Court at the time of publication of this report.

66. Roundtable discussion with legal professionals, Lahore, Pakistan, 21 November 2018.

67. Justice Project Pakistan, *Counting the condemned*, October 2018, <https://www.jpp.org.pk/report/counting-the-condemned/>.

68. Dawn, *Peshawar High Court sets aside sentences of 74 convicted by military court*, 18 October 2018, <https://www.dawn.com/news/1439823>.

Nevertheless, the High Courts continue to uphold many death sentences and convictions, resulting in many cases being appealed to the Supreme Court, which continues to deal with an enormous backlog of cases [see below, *Section 5.2*].

### Case study: The Asia Bibi judgment

The Supreme Court's judgment<sup>69</sup> in the Asia Bibi case provides an interesting example of a ruling in which the Supreme Court judges overturned a verdict after finding that the evidence presented was insufficient to warrant a guilty verdict.<sup>70</sup>

In October 2018, the Supreme Court acquitted Asia Bibi, a Christian woman who had been arrested on charges of blasphemy in 2009 and sentenced to death in 2010. Her conviction and death sentence were upheld by the Lahore High Court in 2014.<sup>71</sup>

In the Asia Bibi case, the Supreme Court judges found that the witness testimonies – which formed the backbone of the prosecution's case – were inconsistent and contradictory, and that the prosecution had "categorically failed to prove its case beyond a reasonable doubt."<sup>72</sup>



In this photograph taken on 27 September 2016, Ashiq Masih, husband of Asia Bibi, points to a poster bearing an image of his wife Asia at a living area in Lahore.  
© ARIF ALI / AFP

What is notable about Supreme Court judgment is the condemnation of the prosecution's behavior and of the lower courts' rulings. In his concurring opinion concerning the Asia Bibi case, Supreme Court Judge Asif Saeed Khan Khosa noted: "*The glaring and stark contradictions in the evidence produced by the prosecution in respect of every factual aspect of this case [...] lead to an irresistible and unfortunate impression that all those concerned in the case with providing evidence and conducting investigation had taken upon themselves not to speak the truth or at least not to divulge the whole truth. It is equally disturbing to note that the courts below had also, conveniently or otherwise, failed to advert to such contradictions and some downright falsehood.*"<sup>73</sup>

The public outcry in reaction to the Supreme Court's judgment give some indication as to the sensibilities of such cases in Pakistan and to the pressure that is put on judges to convict alleged perpetrators [see above, *Section 4.2*]. In response to the judgment, widespread protests erupted. Main roads in Lahore, Islamabad, and Karachi were blocked, cars and buses were set on fire, and police officers came under attack. The government chose not to block a petition to review the judgment, and barred Asia Bibi from leaving the country. The Tehreek-e-Labbaik (TLP) political party and its leader Khadim Hussain Rizvi issued death threats against the Supreme Court judges who had ruled in the Asia Bibi case and called for civil disorder and violence.

69. Criminal Appeal No.39-L of 2015, [http://www.supremecourt.gov.pk/web/user\\_files/File/CrI.A.\\_39\\_L\\_2015.pdf](http://www.supremecourt.gov.pk/web/user_files/File/CrI.A._39_L_2015.pdf).

70. For a detailed analysis of Supreme Court judgments in capital cases, see Foundation for Fundamental Rights and Reprieve, *The Pakistan Capital Punishment Study: A Study of the Capital Jurisprudence of the Supreme Court of Pakistan*, March 2019, <https://reprieve.org.uk/wp-content/uploads/2019/04/Pakistan-Capital-Punishment-Study.pdf>.

71. After Asia Bibi was sentenced, the possibility arose for her to be granted a presidential pardon, but the Lahore High Court granted a stay against such option.

72. Criminal Appeal No.39-L of 2015, para. 48.

73. Criminal Appeal No.39-L of 2015, para. 20 of the separate concurring opinion.

Although the Supreme Court has exonerated many defendants who were initially sentenced to death by the lower courts, sometimes it has also upheld judgments issued by lower courts. For example, it has routinely refused to allow new evidence that could potentially prove a defendant's innocence.<sup>74</sup>

It should also be reminded that in 2013 the Supreme Court ruled that in murder cases, "the normal penalty of death should be awarded and leniency in any case should not be shown, except where strong mitigating circumstances for lesser sentence could be gathered."<sup>75</sup> This ruling was notable because it reinforced a growing tendency to hand down death sentences almost automatically in cases of murder. While it appears that the Supreme Court may now be reversing course, the 2003 ruling was instrumental in the development of this trend.

## 5.2 Years on death row

Despite a high percentage of death penalty cases being overturned on appeal, the fact remains that the great majority of individuals sentenced to death by lower courts end up spending years on death row. Although there are no accurate official statistics on the length of cases, lawyers and judges interviewed by FIDH and HRCP reported that murder cases can take from five to 15 years to complete - from the start of the trial before a lower court to the exhaustion of the last appeal - and prisoners sentenced to death spend an average of 11 years on death row.<sup>76</sup> A former Inspector-General of Police told the FIDH and HRCP that murder cases can take as long as 25 years from start to finish.<sup>77</sup>

This is due in part to the huge backlog in cases. When a Lahore High Court judge was interviewed by FIDH and HRCP in November 2018, he said that they were still handling appeals that had been filed in 2016. This backlog is even more pronounced at the Supreme Court level: as of November 2018, there were a reported 42,000 cases pending before the Supreme Court – an increase of 2,215 since the previous year.<sup>78</sup>

### What is death row?

The term "death row" is typically used to describe two distinct situations: 1) a special section of a prison that houses only prisoners who have been sentenced to death and are awaiting execution; 2) the state of prisoners under a death sentence who are awaiting execution, without being held in a special section of the prison.

In Pakistan, prisoners who have been sentenced to death and have exhausted all appeals are moved from the general population and housed in so-called "death cells." Prisoners whose sentences have not been upheld by higher courts are typically housed among the prison's general population.

The length of all appeal processes in capital cases is also due in part to defendants' inability to hire or retain lawyers who will represent them before higher courts. The significant caseload of many defense lawyers, and particularly those appointed as public defenders, means that they are often unable to actively pursue cases and ensure that the cases go through the system within a reasonable timeframe.

74. See Justice Project Pakistan & Allard K. Lowenstein International Human Rights Clinic, Yale Law School, A "Most Serious Crimes" – Pakistan's Unlawful Use of the Death Penalty, September 2016, p.21. Available at: [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).

75. Badar Munir vs State, 2003 YLR 753(G).

76. Roundtable discussion with NGO representatives, 19 November 2019, Lahore, Pakistan.

77. Interview conducted in Islamabad, Pakistan, 24 November 2018.

78. Express Tribune, *Pakistan's justice system best in the world: CJP Nisar*, 16 January 2019, <https://tribune.com.pk/story/1889421/1/>.

Moreover, due to the fact that an appeal hearing for a capital offense cannot proceed until counsel is appointed at the expense of the state when the defendants cannot afford their own, many defendants can remain without a lawyer for months or even years while their cases are pending appeal as lawyers often withdraw from cases and are not immediately replaced. Several family members of incarcerated death row prisoners told FIDH and HRCP that their relatives' cases had not been able to progress because of the family's inability to pay for a lawyer.

***“Since I am a woman, and I have no money and no education, I cannot pursue this case at the Supreme Court. This is why nothing has happened.”*** - Wife of a prisoner of death row, who has appealed his death sentence to the Supreme Court, which last held a hearing on his case in 2005.<sup>79</sup>

### **Detention conditions on death row**

Conditions in Pakistani jails are well below international standards, partly due to their severe overcrowding.<sup>80</sup> A 2018 report by the International Committee of the Red Cross found that country's total prison population exceeded the official capacity by 57%.<sup>81</sup> In one jail visited by HRCP, the male prison population was reported to be 3,759, i.e. 1,399 prisoners more than its official capacity of 2,360.<sup>82</sup>

This overcrowding results in deplorable sanitary conditions, which lead to the spread of various diseases. Other factors, such as the limited availability of trained physicians and medicine in prisons, and the insufficient amounts and poor quality of food provided, contribute to poor conditions of detention. As a result, relatives are forced to spend significant amounts of money to bring extra food and other supplies, such as soap, to prisoners [see below, *Section 6.2*].

Conditions of prisons located in rural areas are reported to be significantly worse than those in prisons located in or near cities. NGO representatives with whom FIDH and HRCP met, explained that although there were regular inspections of detention conditions by the authorities for jails in urban areas, those located in rural areas were rarely, if ever, visited and checked.

Prisoners who have been sentenced to death and have exhausted all appeals are housed in so-called “death cells” and are formally labeled as “condemned prisoners.” The death cells, measuring on average 2.5m by 3.5m and designed to house one or two prisoners, often house six to eight inmates. Kept away from the general population, the inmates are allowed out of their cells for one hour a day: 30 minutes in the morning and 30 minutes in the evening.

Prison overcrowding has a direct correlation with the speed with which prisoners on death row are executed. Prisons with the highest rates of overcrowding have also the highest rates of executions. According to some of the NGOs and lawyers working with defendants on death rows, some jails that are severely overcrowded accelerate executions in order to make space for inmates.<sup>83</sup>

79. Interview conducted in Lahore, Pakistan, 20 November 2018.

80. A major cause of overcrowding in Pakistani prisons is the large population of prisoners in pre-trial detention, who are kept in the same prisons and wards as convicted prisoners. A May 2018 report by Cursor of Development and Education (CODE) Pakistan found that, as of 1 October 2017, 66% of Pakistan's total prison population of 84,287 prisoners were awaiting or undergoing trial. Available at: <http://codepak.org/wp-content/uploads/2018/05/Addressing-overcrowding-in-prisons-by-reducing-pre-conviction-detention-in-Pakistan.pdf>.

81. ICRC, “Overcrowding: Pakistan prisons holding 57% more inmates than capacity,” 15 May 2018, <https://www.icrc.org/en/document/overcrowding-pakistan-prisons-holding-57-more-inmates-capacity>.

82. Central Jail, Kot Lakhat, Punjab Province; visit conducted by HRCP staff on 19 March 2019.

83. Civil society roundtable discussion, Lahore, Pakistan, 19 November 2018.

Years spent on death row carry significant consequences for individuals. Death row prisoners who are eventually exonerated and released are not accepted back into society, or are rejected by their families. "In the eyes of the community, they will be forever considered as convicts," said a Pakistani defense lawyer to FIDH and HRCP.<sup>84</sup>

The term "death row phenomenon" is used to describe the emotional distress felt by prisoners who have been sentenced to death as a result of living under the constant threat of an impending execution, or the uncertainty of their fate, for prolonged periods of time and often in harsh conditions. Several court rulings in other jurisdictions have found that prolonged judicial proceedings in cases involving capital punishments could amount to cruel, inhuman, or degrading treatment.<sup>85</sup>

A psychologist who specializes in prisoners' mental health, told HRCP that children between the ages of 14 and 18 were found to be more susceptible than adults to psychiatric illnesses such as schizophrenia, bipolar disorder, depression and anxiety. This inherent vulnerability is compounded when adolescents are removed from 'positive' social influences and find themselves in a detention center. The lack of psychological training among law enforcement, prison staff, lawyers, and the judiciary means that mental illness is rarely taken into evidence or even deemed integral to a 'fair' trial.

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84. Roundtable discussion with legal professionals, Lahore, Pakistan, 21 November 2018.

85. Patrick Hudson, *Does the Death Row Phenomenon Violate a Prisoner's Human Rights under International Law?*, European Journal of International Law (2000), Vol. 11 No. 4, 833-856, <http://www.ejil.org/pdfs/11/4/556.pdf>.

## 6. Impact of capital punishment on families and children

One of the defining features of the use of capital punishment is its significant and long-lasting impact on the families of those sentenced to death, and particularly on their children. Families suffer from long-term psycho-social impacts, as a result of their relatives being sentenced to death, as well as from significant socio-economic impacts, much of which are due to the substantial costs associated with the legal process.<sup>86</sup>

### 6.1 Psycho-social impact

***“I was married for one day only [before my husband was arrested] and he has been in jail for 27 years. He is being punished inside the jail and I am being punished outside the jail.”*** - Wife of death row prisoner, who has been in prison for 27 years.<sup>87</sup>

All the family members of prisoners sentenced to death with whom FIDH and HRCP spoke expressed deep emotional pain as a result of the conviction of their relatives and their imprisonment. “Since we don’t have any money, we cannot pursue the case. But we miss him and we feel like one part of us is missing,” said Rehana, the sister of a death row prisoner.<sup>88</sup>

This pain was magnified by a belief by many of them that there had been miscarriages of justice – either because they believed their relative was innocent or because of significant denials of fair trial rights. The pain is also often amplified by significant social stigma attached to having a close family member convicted of a capital offense, and the resulting social exclusion of the family within their community. While in some cases, neighbors and other community members were sympathetic, especially if they believed that the individual in question had been wrongfully accused and convicted, many of the relatives with whom FIDH and HRCP spoke, expressed difficulties in maintaining social bonds with their neighbors and other community members in the aftermath of the arrest of their relatives.

#### **Families of “blasphemers”**

The social stigma attached to accusations of blasphemy is particularly strong in Pakistan. For families of individuals who have been accused of blasphemy, the situation in their home villages can quickly become untenable, even before the trial concludes.

Several relatives of men convicted of blasphemy interviewed for this report expressed significant concerns about their safety as a result of their relatives being accused and/or convicted on charges of blasphemy. For some, the threats forced them to move to another village and, in one case, to another country.

FIDH and HRCP met with the wife of an individual who had been accused of blasphemy in 2014. The wife and the children could no longer live with the family of the accused because everyone in the area knew about the blasphemy charges and it had not been safe for them to live there. She said that it had been six years since she last met her in-laws and that she had only been able to keep in touch with them through phone calls. She said they did not know where her husband was for five months before finding out that he had been arrested. She said that she feared for the safety of her children. She and her children currently live with her parents, as the people in the area are not aware of the blasphemy charges against her husband and her parents have been living in that area for a long time and enjoyed the sympathies of the locals.

86. For more information on the effect of the death penalty on families and children, see the documentation of the World Coalition Against the Death Penalty regarding children whose parents have been sentenced to death or executed, on the occasion of the 2019 World Day Against the Death Penalty; available at: <http://www.worldcoalition.org/worldday.html>.

87. Name changed. Interview conducted in Lahore, Pakistan, 20 November 2018.

88. Name changed. Interview conducted in Lahore, Pakistan, 20 November 2018.

During an interview with HRCP, the Inspector General of Police in Punjab Province explained that children of death row prisoners tend to see their parents less and less frequently as time passes. This is due to economic reasons, as the journey may be long and expensive for families who have to travel from rural areas, and social reasons. At least two of the women on death row to whom HRCP spoke, said that their parents and husbands had effectively abandoned them.<sup>89</sup> NGO representatives also told FIDH and HRCP that it was typical for children to stop visiting their parents in jail after one or two years, as other children noticed that they were absent on Sundays (the typical visiting day) and may bully them as a result.<sup>90</sup>

### **Women sentenced to death**

Although it should be noted that no women have been executed in Pakistan over the past 20 years, as of June 2019 there were 33 women under death sentence in Pakistan.<sup>91</sup> Women on death row have significantly less access to resources, are less educated, and are less likely to be literate than their male counterparts, and are thus more likely to sign confessions. Most women who have been sentenced to death in Pakistan have been convicted on narcotics-related or domestic violence-related offenses.<sup>92</sup>

Women on death row in Pakistan tend to be subjected to higher levels of stigma than men. A woman who had been accused of blasphemy and remained in prison for four and a half years explained to FIDH and HRCP that a simple argument between her children and their peers at school had rapidly spiraled into accusations of blasphemy by the other children's families, ultimately resulting in her conviction.<sup>93</sup> In all her years in jail, she never saw her children. During this time, one of her daughters married. She claimed that the people who had accused her of blasphemy were sufficiently well connected to pressure the jail authorities into not letting her see her children.

The impact on children of women who have been sentenced to death or to prison sentences is particularly strong for younger children, as children under six are allowed to live with their imprisoned mothers inside the jail. In these cases, their well-being depends largely on the conditions in the jails in which their mothers have been incarcerated. For example, the Central Jail in Lahore provides a *crèche* and playground facilities for under-six children. The young children the HRCP team met seemed happy, but given that their mothers had been in jail for at least five years, this appeared to be the only life they knew.

## **6.2 Socio-economic impact**

In a vast majority of cases investigated by FIDH and HRCP for this report, the person who is convicted of a capital crime and placed on death row is the primary income earner in the family. This means that for many families, their already limited resources are further depleted as a result of the incarceration of the breadwinner, leaving little money to support the detainee's legal proceedings.

Although many individuals can be eventually exonerated, the fact that their cases can take years or even decades to conclude means that expenses accumulated over the years and had significant long-term impacts.

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89. Interviews conducted in Lahore, Pakistan, 20-21 November 2018.

90. Civil society roundtable discussion, Lahore, Pakistan, 19 November 2018.

91. Dawn, *Women's prisons: a feminist issue*, 25 June 2019, <https://www.dawn.com/news/1468981>.

92. Civil society roundtable discussion, Lahore, Pakistan, 19 November 2018.

93. Interview conducted in Lahore, Pakistan, 20 November 2018.



***“Because my children were very small when he was convicted, they didn’t go to school and now they are all illiterate. I had to sell the house to pay for daily expenses and now I don’t have any land.”*** - Wife of a prisoner who was sentenced to death in 2012 and whose case is currently pending at the Supreme Court after the commutation of his sentence by the High Court in 2017.<sup>94</sup>

The costs of legal aid and the reduced income for families of individuals sentenced to death are magnified by the high costs of visiting their relatives in jail. This is due in part to the fact that prisons are often located far from people’s homes, especially for prisoners who have already been convicted.

***“Although we are allowed to visit every two weeks, we can only afford to go every few months, and we can only spend 30 minutes with my husband. We have to travel so far to the jail for so little.”*** - Wife of death row prisoner, who has been in prison for 27 years.<sup>95</sup>

In addition to the cost of transportation, families also spend significant amounts of money to buy food and other essential supplies to supplement the meager food and basic necessities that the authorities provide inside the jails. Asma,<sup>96</sup> the wife of a prisoner on death row who was convicted of blasphemy in 2014, told FIDH and HRCIP that each time she visits her husband in jail - which she can only do every two or three months - she spends at least 8,000-10,000 Rupees (EUR 45-56) on depositing money for him and bringing him food. She only makes 12,000 Rupees a month working as a cook, and an NGO helps her with another 10,000 Rupees. “It’s very hard to pay for my children’s education but I am determined to pay for it. I wouldn’t be able to do it without the help of the NGO. Half of the money I earn goes towards paying for transportation for my children to go to school,” she said.

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94. Name changed. Interview conducted in Lahore, Pakistan, 20 November 2018.

95. Name changed. Interview conducted in Lahore, Pakistan, 20 November 2018.

96. Name changed. Interview conducted in Lahore, Pakistan, 20 November 2018.

## 7. Recommendations

The scale of the use of the death penalty in Pakistan means that achieving full abolition will be a long process. However, there are numerous steps to be taken along the road to abolition, in order to drastically reduce the number of death sentences and executions.

These steps would also simultaneously strengthen Pakistan's criminal justice system and ensure its compliance with international standards, not only when the death penalty is concerned. This would also contribute to creating a system that no longer targets and disproportionately impacts lower economic classes and marginalized communities, such as religious minority groups.

### **General recommendations towards the abolition of the death penalty:**

- Exclude from the list of crimes eligible to the death penalty those which do not meet the threshold of the “most serious crimes” in accordance with Article 6 of the ICCPR, with a view to fully abolish the death penalty for all crimes.
- Immediately implement an official moratorium on executions.
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.
- Introduce a comprehensive Anti-Torture Act that is consistent with Pakistan's obligations under international law and specifically the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Ratify the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED) and incorporate a definition of enforced disappearances in domestic law that is consistent with the ICPPED.
- Extend a standing invitation to all thematic special procedures established by the UN Human Rights Council, and respond favorably to the following pending requests for official country visits made by: the UN Special Rapporteur on extrajudicial, summary or arbitrary executions (eight requests); the UN Special Rapporteur on the situation of human rights defenders (five requests); and the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (six requests).

### **Recommendations regarding legal aid:**

- Develop an independent, federally-funded public defense system that adheres to relevant international standards and principles, such as the 2013 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and the Basic Principles on the Role of Lawyers, and that takes in account the needs of specific groups, including, but not limited to, women, children, minorities, and other marginalized groups.
- Ensure that public defenders who are assigned to capital cases possess education, training, skills, and experience that are commensurate with the nature of their work, including the gravity of the offenses dealt with, and the rights and needs of women, children, and groups with special needs, in accordance with Principle 13 of the 2013 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.
- Establish legal aid standards and provide training programs for legal aid service providers, which include specific modules on children's rights.
- Establish private spaces in prisons where defense lawyers are able to meet their clients and ensure that prison guards do not violate the privacy of lawyers and their clients.
- Ensure defense lawyers are allowed access to their clients as regularly as lawyers deem necessary.

### **Recommendations regarding juveniles:**

- Ensure that all stakeholders in the criminal justice system, particularly judges in trial courts, are trained on the 2018 Juvenile Justice System Act, are monitored on its implementation, and are instructed to presume defendants are minors when the evidence is inconclusive.
- Set aside specific court rooms for juveniles, with dedicated and trained judges who only hear cases involving minors.

- Invest in provision of services aimed at improving the mental well-being of minors involved (either directly as defendants or indirectly due to a parent being convicted) in death penalty cases.

#### **Recommendations regarding trials and judicial performance:**

- Amend relevant legislation to provide for the bifurcation of trials so that sentencing hearings are held separately.
- Develop and implement a system of evaluation of judicial conduct based on objective benchmarks.

#### **Recommendations regarding police investigations:**

- Implement comprehensive training modules for police officers regarding evidence collection, crime scene preservation, and chain of custody procedures.
- Ensure that all police officers receive training regarding the 2018 Juvenile Justice System Act and are monitored on its implementation, and that all necessary age determination procedures, including ossification and dental tests, are conducted in order to determine the age of possible minors.
- Reinforce the powers granted to public prosecutors at the local level to improve the quality and presentation of evidence produced before magistrates.

#### **Recommendations regarding detention conditions:**

- Ensure that families of detainees have a right to information, especially with regard to the timing of executions, and are able to visit their relatives on a regular basis.
- Ensure that the place of residence of the prisoners' families is taken into consideration with regard to the location of their place of detention.
- Ensure that detention centers are furnished with adequate spaces to permit visitation by families and lawyers.

#### **Recommendations to the European Union:**

- Reiterate the strong opposition to the death penalty, in all cases and without exceptions.
- Reiterate calls for the universal abolition of capital punishment and calls on Pakistan to reinstate the moratorium on executions, with the longer-term objective of full abolition of the death penalty.
- Regularly express concern regarding unfair trials that lead to the use of the death penalty in Pakistan, including the execution of minors and persons with mental disorders.
- Insist on the necessity to bring the national legislation into line with international law and standards, including a ban on the execution of juvenile offenders and persons with mental disorders, and a moratorium on carrying out executions while appeals are pending.
- Urge the competent authorities to undertake a prompt and impartial investigation into deaths in custody and extrajudicial killings by the security forces, as well as allegations of torture, and to prosecute the perpetrators of extrajudicial killings and torture.
- Recall that the maintenance of GSP+ status is conditional upon the effective implementation of key international conventions.
- Insist that the Pakistani authorities grant access to international observers and human rights organizations to courts in order to allow them to observe proceedings in cases involving the use of the death penalty.

## Annex I: Offenses punishable by death

Legislation	Article/ Section	Charge	Alternative to capital punishment
Pakistan Penal Code			
	121	Waging and abetting war against Pakistan	Imprisonment for life <sup>99</sup> and liable to a fine
	132	Abetment of mutiny [if mutiny is committed]	Imprisonment for life or imprisonment of either description <sup>100</sup> for a term, which may extend to ten years, and liable to a fine
	194	Perjury to secure a conviction for a capital offense, if an innocent person is executed	Imprisonment for life, or imprisonment with hard labor for a term, which may extend to 10 years, and liable to a fine
	295-C	Use of derogatory remarks in respect to the Holy Prophet [blasphemy]	Imprisonment for life, and liable to a fine
	301	Unintentional homicide	Liable for <i>qatl-i-amd</i> (see Section 302 below)
	302	Homicide	(b) Imprisonment for life as <i>ta'zir</i>  (c) Imprisonment 'of either description for a term which may extend to 25 years, where according to the injunctions of Islam the punishment of <i>qisas</i> is not applicable' <sup>101</sup>
	354-A	Stripping a woman in public	Imprisonment for life, and liable to a fine
	364-A	Kidnapping a child under the age of 14	Imprisonment for life or imprisonment with hard labor for a term which may extend to 14 years and shall not be less than seven years
	365-A	Kidnapping for ransom/ extortion	Imprisonment for life, and liable to forfeiture of property
	367	Kidnapping for unnatural lust	Rigorous imprisonment for a term which may extend to 25 years, and liable to fine
	376	Rape	Imprisonment of either description for a term which shall not be less than 10 years or more than 25, and liable to a fine
	396	Dacoity with murder	Imprisonment for life, or imprisonment with hard labor for a term which shall not be less than four years nor more than 10 years, and liable to fine
	402-B	Hijacking	Imprisonment for life, and liable to forfeiture of property and a fine
	402-C	Harbouring or abetting hijacking	Imprisonment for life, and liable to a fine
<i>Offenses of Zina (Enforcement of Hudood) Ordinance 1979</i>			
	5	Zina <sup>102</sup>	Under subsection (2)(b), if s/he is not a <i>muhsan</i> , <sup>103</sup> s/he is liable to be punished publicly in the form of whipping numbering 100 strokes

99. As mentioned in Section 2.3.1 of this report, Section 57 of the PPC says: 'In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for 25 years.'

100. "Imprisonment of either description" means that it is at the judge's discretion to sentence a defendant to imprisonment with hard labor or simple imprisonment.

101. Under the Criminal Law (Amendment) Act 2004, Section 302 was amended to include: 'Provided that nothing in this clause shall apply to the offense of *qatl-i-amd* if committed in the name or on the pretext of honor and the same shall fall within the ambit of (a) and (b), as the case may be.'

Legislation	Article/ Section	Charge	Alternative to capital punishment
<i>Offenses Against Property (Enforcement of Hudood) Ordinance 1979</i>			
	17(4)	Haraabah <sup>104</sup>	-
<i>High Treason (Punishment) Act 1973</i>			
	2	Treason	Imprisonment for life
<i>Railways Act 1890 and Railways (Amendment) Act 1995</i>			
	127	Sabotage of the railway	Imprisonment for life, liable to forfeiture of property, and liable to a fine which may extend to PKR 20,000 (EUR 116).
<i>Control of Narcotics Substances Act 1997</i>			
	9	Possession of, import or export of, and trafficking in narcotics	Although these offenses are defined separately under Sections 6, 7 and 8, respectively, the alternative punishment in all three cases is imprisonment for life or imprisonment for up to 14 years and liable to a fine of up to PKR 1 million (EUR 5,815) if the quantity of the narcotic substance is between 100 g and one kg
<i>Pakistan Army Act 1952</i>			
	24	Offenses in relation to the enemy and punishable by death	There are 10 distinct offenses <sup>105</sup> listed under this section, the alternative punishment for which reads 'or with such less punishment as is in this Act mentioned.'
	26	Disclosure of parole or watchword	For those on active service, the alternative punishment reads 'or with such less punishment as is in this Act mentioned.' Those not on active service may be punished with imprisonment with hard labor for up to five years 'or with such less punishment as is in this Act mentioned.'

102. 'Unlawful sexual intercourse.

103. Under the Offense of Zina (Hudood) Ordinance 1979, a 'muhsan' is 'a Muslim adult man who is not insane and has had sexual intercourse with a Muslim adult woman who, at the time he had sexual intercourse with her, was married to him and was not insane' or 'a Muslim adult woman who is not insane and has had sexual intercourse with a Muslim adult man who, at the time she had sexual intercourse with him, was married to her and was not insane.'

104. Also spelled 'hirabah'; the crime of committing corruption on earth.

105. These are defined as follows: [a person subject to the Act who] (a) shamefully abandons or delivers up any garrison, fortress, airfield, place, post or guard committed to his charge or which it is his duty to defend, or uses any means to compel or induce any commanding officer or other person to do any of the said acts; or (b) in the presence of any enemy, shamefully casts away his arms, ammunition, tools or equipment, or misbehaves in such manner as to show cowardice; or (c) intentionally uses words or any other means to compel or induce any person subject to this Act, [or to the Pakistan Air Force Act, 1953 (VI of 1953),] or to the [Pakistan Navy Ordinance, 1961 (XXXV of 1961)], to abstain from acting against the enemy or to discourage such person from acting against the enemy; or (d) directly or indirectly, treacherously holds correspondence with, or communicates intelligence to, the enemy or who coming to the knowledge of such correspondence or communication treacherously omits to discover it to his commanding or other superior officer; or (e) directly or indirectly assists or relieves the enemy with arms, ammunition, equipment, supplies or money, or knowingly harbors or protects an enemy not being a prisoner; or (f) treacherously or through cowardice sends a flag of truce to the enemy; or (g) in time of war, or during any operation, intentionally occasions a false alarm in action, camp, garrison or quarters or spreads reports calculated to create alarm or despondency; or (h) in time of action, leaves his commanding officer, or quits his post, guard, picquet patrol or party without being regularly relieved or without leave; or (i) having been made a prisoner of war, voluntarily serves with or aids the enemy; or (j) knowingly does when on active service any act calculated to imperil the success of the Pakistan forces or any forces cooperating therewith or of any part of such forces.

Legislation	Article/ Section	Charge	Alternative to capital punishment
	31	Mutiny	The alternative punishment reads 'or with such less punishment as is in this Act mentioned.' Again, there are four distinct offenses listed under this section. <sup>106</sup>
<i>Pakistan Navy Ordinance 1961</i>			
	29	Misconduct in action by persons in command	Long imprisonment in 'any other case', that is, if the offense was not committed with 'intent to assist the enemy.'
	30	Misconduct in action by other officers and men	Long imprisonment in 'any other case', that is, if the offense was not committed with 'intent to assist the enemy.'
	31	Obstruction of operation	Long imprisonment in 'any other case', that is, if the offense was not committed with 'intent to assist the enemy.'
	32	Corresponding with, supplying or serving with the enemy	Long imprisonment in 'any other case', that is, if the offense was not committed with 'intent to assist the enemy.'
	36	Offenses of mutiny	Long imprisonment
	37	Failure to suppress mutiny	Long imprisonment
<i>Pakistan Air Force Act 1953</i>			
	34	Offenses in relation to the enemy and punishable by death <sup>107</sup>	There are 15 offenses listed under this section, but there is no alternative punishment to death
	37	Mutiny <sup>108</sup>	There are four offenses listed under this section, but there is no alternative punishment to death
<i>Explosive Substances Act 1908</i>			
	3	Punishment for causing explosion likely to endanger life or property	Life imprisonment
<i>Anti-Terrorism Act 1997</i>			
	7(a)	Act of terrorism that causes the death of any person	Life imprisonment and fine

106. These are defined as follows: [a person subject to the Act who] (a) begins, incites, causes, or conspires with any other person to cause, or joins in, any mutiny in the military, naval or air forces of Pakistan or any forces cooperating therewith; or (b) being present at any such mutiny, does not use his utmost endeavors to suppress the same; or (c) knowing or having reason to believe in the existence of any such mutiny or any intention to commit such mutiny, or of any such conspiracy, does not without reasonable delay give information thereof to his commanding or other superior officer; or (d) attempts to seduce any person in the military, naval or air forces of Pakistan from his duty or his allegiance to the Government of Pakistan.

107. These are defined as follows: [Any person subject to this Act, who] (a) shamefully abandons or delivers up any garrison, fortress, post, place or guard, committed to his charge, or which it is his duty to defend, or uses any means to compel or induce any commanding officer or other person to commit the said act; (b) intentionally uses any means to compel or induce any person subject to Military, Naval or Air Force law to abstain from acting against the enemy, or to discourage such person from acting against the enemy; or (c) in the presence of the enemy shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or (d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against Pakistan; or (e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies; or (f) treacherously or through cowardice sends a flag of truce to the enemy; or (g) in time of war or during any Air Force operation, intentionally occasions a false alarm in actions, camp or quarters or spreads reports calculated to create alarm or despondency; or (h) in time of action leaves his commanding officer or his post, guard, picket, patrol or party without being regularly relieved or without leave; or (i) having been made a prisoner of war, voluntarily serves with or aids the enemy; or (j) knowingly harbors or protects an enemy not being a prisoner; or (k) being a sentry in time of war or alarm, sleeps upon his post or is intoxicated; or (l) knowingly does any act calculated to imperil the success of the Military, Naval or Air Forces of Pakistan or any forces cooperating therewith or any part of such forces; or (m) treacherously or shamefully causes the capture or destruction by the enemy of any aircraft belonging to the Government; or (n) treacherously uses any false air signal or alters or interferes with any air signal; or (o) when ordered by his superior officer or otherwise under orders to carry out any Air Force operations, treacherously or shamefully fails to use his utmost exertions to carry such orders into effect.

108. These are defined as follows: [Any person subject to this Act, who] (a) begins, incites, causes, or conspires with any other persons to cause, any mutiny in the Military, Naval or Air Forces of Pakistan or any forces cooperating therewith; or (b) joins in any such mutiny; or (c) being present at any such mutiny, does not use his utmost endeavors to suppress the same; or (d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to commit such mutiny or any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or (e) endeavors to seduce any person in the Military, Naval or Air Force of Pakistan from his duty or allegiance to the Government.

## Annex II: Statistics

The statistics presented in this section were obtained from HRCP's monitoring database and may not reflect every single death sentence and execution in Pakistan since 2015, particularly those stemming from trials in military courts. The numbers should be taken as indicative of the trends regarding the application of capital punishment in Pakistan.

### Death sentences and executions in Pakistan, 2015-2019

	2015	2016	2017	2018	2019 (to August)	Total
<b>Death Sentences</b>	418	426	261	347	333 <sup>109</sup>	1,785
<b>Executions</b>	333	89	64	14	8	508

### Death sentences and executions by type of court, 2015-2019

	Sessions Courts	Military Courts	Anti-Terrorism Courts	Other/ Unknown
<b>Death sentences (2015)</b>	260	27	117	14
<b>Executions (2015)</b>	84	10	59	180
<b>Death sentences (2016)</b>	198	112	27	89
<b>Executions (2016)</b>	31	2	7	49
<b>Death sentences (2017)</b>	215	9	34	3
<b>Executions (2017)</b>	19	43	2	0
<b>Death sentences (2018)</b>	149	156	35	7
<b>Executions (2018)</b>	11	1	2	0
<b>Death sentences (2019 – to August)</b>	292 <sup>110</sup>	2	37	2
<b>Executions (2019 – to August)</b>	7	0	0	1
<b>Total death sentences</b>	1,114	306	250	115
<b>Total executions</b>	152	56	70	230

109. The total tally of death sentences in 2019 includes four cases for which the province is not known.

110. The statistics for Sessions Courts in 2019 include death sentences handed down by Model Courts, which were set up at the provincial level starting in April 2019 to deal with murder and narcotics cases. Because the mission took place before these courts were set up, this report does not aim to analyze issues specific to Model Courts.

### Death sentences and executions by type of offense, 2015-2019<sup>111</sup>

	<b>Murder</b>	<b>Terrorism-related offenses</b>	<b>Sexual &amp; Gender-based violence offenses</b>	<b>Narcotics-related offenses</b>	<b>Kidnapping offenses</b>	<b>Blasphemy</b>	<b>Other/unknown offenses</b>
<b>Cases resulting in death sentences (2015)</b>	217	18	17	2	17	3	21
<b>Cases resulting in executions (2015)</b>	246	6	10	0	13	0	13
<b>Cases resulting in death sentences (2016)</b>	198	95	11	2	5	3	8
<b>Cases resulting in executions (2016)</b>	70	5	1	0	1	0	10
<b>Cases resulting in death sentences (2017)</b>	184	6	1	1	2	4	1
<b>Cases resulting in executions (2017)</b>	16	14	1	0	0	0	0
<b>Cases resulting in death sentences (2018)</b>	138	40	5	7	3	1	0
<b>Cases resulting in executions (2018)</b>	14	0	1	0	0	0	0
<b>Cases resulting in death sentences (2019 – to August)</b>	80	0	4	0	3	2	49
<b>Cases resulting in executions (2019 – to August)</b>	7	0	1	0	1	0	0
<b>Total cases resulting in death sentences</b>	817	159	38	12	30	13	79
<b>Total cases resulting in executions</b>	353	25	14	0	15	0	46

111. Data in this category refer to cases relating to each type of offense. A single case may include more than one defendant and thus more than one death sentence and/or more than one execution.



### Death sentences and executions by province, 2015-2019

	Punjab & Islamabad Capital Territory	Sindh	Khyber Pakhtunkhwa	Balochistan
<b>Death sentences (2015)</b>	378	25	6	9
<b>Executions (2015)</b>	299	17	11	6
<b>Death sentences (2016)</b>	400	24	2	0
<b>Executions (2016)</b>	81	1	6	1
<b>Death sentences (2017)</b>	229	30	2	0
<b>Executions (2017)</b>	32	2	30	0
<b>Death sentences (2018)</b>	296	32	17	2
<b>Executions (2018)</b>	10	0	4	0
<b>Death sentences (2019 – to August)</b>	294	25	10	0
<b>Executions (2019 – to August)</b>	7	0	1	0
<b>Total death sentences</b>	1,597	136	37	11
<b>Total executions</b>	429	20	52	7



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# Keep your eyes open

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