



UNITED NATIONS HUMAN RIGHTS COUNCIL

**28<sup>th</sup> Session of the Working Group on the Universal Periodic Review  
October - November 2017**

**HUMAN RIGHTS COMMISSION OF PAKISTAN'S SUBMISSION TO THE  
UNIVERSAL PERIODIC REVIEW OF PAKISTAN**

Submitted on 30 March 2017

*The Human Rights Commission of Pakistan (HRCP) was established in 1987 as an independent non-government organization. Since then it has developed to become an influential countrywide human rights body. HRCP has established a leading role in providing a highly informed and objective voice on the national level in the struggle for the provision of human rights for all and democratic development in Pakistan. HRCP's role in highlighting human rights abuses has been recognized not only on a national level but also internationally. Besides monitoring human rights violations and seeking redress through public campaigns, lobbying and intervention in courts, HRCP organizes seminars, workshops and fact finding missions. It also issues a bi-lingual monthly magazine, Jehd-e-Haq, a quarterly e-bulletin and an annual report on the state of human rights in the country, available in both English and Urdu. In consultative status with the Economic and Social Council since 2010, the HRCP aims to ensure the progressive development and effective implementation of all internationally recognized human rights; secure the realization of civil, cultural, economic, political and social rights.*

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## **SUBMISSION OF THE HUMAN RIGHTS COMMISSION OF PAKISTAN TO THE UNIVERSAL PERIODIC REVIEW OF PAKISTAN**

### **Introduction**

1. The Human Rights Commission of Pakistan (HRCP) welcomes the opportunity to contribute to the Human Rights Council's (HRC) third Universal Periodic Review (UPR) of Pakistan.
2. In this submission, the HRCP raises concern about the following issues:
  - a. Death penalty;
  - b. Human rights defenders and freedom of expression;
  - c. Enforced and involuntary disappearances
  - d. Freedom of thought, conscience and religion;
  - e. Gender-based violence against women.
3. With respect to each of the above-mentioned concerns, the HRCP calls upon the Working Group on the UPR and the Human Rights Council to make a number of recommendations to the authorities in Pakistan.

### **(a) Death penalty<sup>i</sup>**

4. The informal moratorium on death penalty, in place since late 2008, was withdrawn after the 2014 Peshawar attack<sup>ii</sup>, supposedly to proceed with executing those convicted of terrorism-related offences. By lifting the moratorium, the government seemed to indicate that it was convinced that capital punishment was the only effective way to deal with the menace of terrorism and militancy. Following the resumption of executions, the government lobbied for and adopted the 21st Constitutional Amendment and changes to the Army Act 1952, which allowed the establishment of military courts to try civilians suspected of terrorist offences<sup>iii</sup>. The manner of justice dispensed by the military courts is in clear violation of Pakistan's constitutional due process guarantees and international standards, such as Article 14 of the ICCPR<sup>iv</sup>.
5. Since December 2014, executions have been carried out at an alarming rate and have not been confined to those convicted of terrorism-related charges. In 2015, 333 individuals were hanged and another 87 were executed in 2016. Meanwhile, courts have continued to award capital punishment for as many as 27 offences. During 2015, 496 persons were awarded the death penalty by court; 426 in 2016; and 12 during the first two months of 2017.
6. The amendments to the Army Act 1952, did not expressly exclude juveniles from trial before military courts, which led to the possibility that the provision of Juvenile Justice System Ordinance (JJSO) 2002,<sup>v</sup> whereby juvenile courts shall have exclusive jurisdiction to try individuals below 18 years of age, could be overridden in certain terrorism-related cases. Courts have pronounced and confirmed death sentences to individuals who claimed that they were younger than the age of majority at the time of commission of the alleged offence. The court often determined the age of the accused based on visual assessment by the police. In some cases, the issue of juvenility was raised too close to the execution which pointed to the excessive absence of safeguards.
7. In 2016, in the case of Imdad Ali<sup>vi</sup>, the Supreme Court ruled that schizophrenia did not fall within its legal definition of mental disorders and was curable. The court also held that there was no evidence to suggest that the convict was paranoid when he committed the crime and thus should not be exempted from execution. The precedent set by the Court ruling is as troublesome in the context of Pakistan's obligation to eliminate death penalty for persons suffering from mental retardation.
8. In 2015, in the case of Abdul Basit<sup>vii</sup>, a paraplegic condemned prisoner, the Supreme Court ordered execution but the prison rules failed to specify how a paralyzed prisoner was to be executed. The procedure demanding that the convict should be stand up when he was hanged. Till December 2016, his death warrant was issued four times but each time he was spared on humanitarian grounds. He remains on the death row.
9. On October 12, 2015, two brothers, Ghulam Sarwar and Ghulam Qadir<sup>viii</sup>, who had spent 10 years on death row, were executed while their appeal was still pending. A year later, the Supreme Court acquitted them as they were proved innocent.

## **(b) Enforced and involuntary disappearances**

10. Enforced disappearance has become a national phenomenon in Pakistan in recent years and has spread to areas where it had not been reported from earlier, for example, Sindh, where political activists have largely been targeted<sup>ix</sup>. Zeenat Shahzadi became one of the first women victims of the practice in August 2015<sup>x</sup> and in January 2017, a number of bloggers and activists were “disappeared” from Islamabad and cities in Punjab<sup>xi</sup>. They were released later.
11. There is a wide range in estimates of the overall number of cases. The officially constituted Commission of Inquiry on Enforced Disappearances (CIED) reports nearly 1,219 unresolved cases of alleged enforced disappearance as of 21<sup>st</sup> December 2016. HRCP, which documents human rights violations in 60 selected districts in the country, has reported 341 cases of enforced disappearance from January 2014 to December 2016. Thus, even taking the most conservative estimates, a significant number of disappearances remain unresolved in the country.
12. In its second UPR, the Government of Pakistan accepted a recommendation (122.20) to specifically criminalize enforced disappearances in the Pakistan Penal Code (PPC). However, it has taken no concrete steps to make disappearances a distinct and autonomous crime. Criminal complaints in cases of disappearances, where registered by the police, continue to be filed under general criminal law provisions of the PPC related to abductions, kidnapping (sections 359 to 368) or wrongful confinement (section 364).
13. During its first and second UPRs, Pakistan accepted and noted recommendations to ratify the Convention against Enforced Disappearances. However, the Government has taken no steps towards implementation of that recommendation.
14. Despite accepting a specific recommendation (122.114), the State has failed to strengthen and allocate sufficient resources to the Commission of Inquiry on Enforced Disappearances (CIED), which continues to operate with limited power and resources and its orders are not always complied with. The CIED has not had any impact in terms of putting an end to disappearances or bringing alleged perpetrators to justice. However, the Commission has certainly had a positive impact by bringing to the public the number of the missing persons through its monthly reports, which show that the phenomenon is not only present but is also widespread. However, despite its flaws, cases have been referred to the Commission by the Supreme Court of Pakistan.
15. While Pakistan accepted recommendations (122.111 and 122.115) in its second UPR, efforts to bring perpetrators of enforced disappearances to justice have failed at all levels. The National Commission of Human Rights (NCHR) does not have jurisdiction over intelligence agencies and can only make recommendations where the armed forces are responsible for human rights violations. The CIED keeps a record of reported disappearances and “traces” the whereabouts of “missing” people, but has failed to take any action where the “missing” people are found in the custody of security agencies. Courts have played an important role in highlighting and condemning the practice of enforced disappearances, but have largely confined their role to recovering “disappeared” people, not bringing the perpetrators to account.
16. In 2013, in one of its strongest judgments yet on the practice of enforced disappearance, the Supreme Court held in the Muhabat Shah case<sup>xii</sup> that the unauthorized and unacknowledged removal of detainees from an internment center amounted to enforced disappearance. The Court also held that “no law enforcing agency can forcibly detain a person without showing his whereabouts to his relatives for a long period” and that currently, there was no law in force in Pakistan that allowed the armed forces to “unauthorizedly detain undeclared detainees”. The Court held that armed forces personnel responsible for disappearances should be dealt with “strictly in accordance with law”<sup>xiii</sup>. Notably, the Supreme Court also held that although Pakistan had not yet ratified the Convention on Enforced Disappearance, the principles enunciated in the Convention were applicable in Pakistan in the interpretation of other rights such as the right to life. However, even the strongest judgement could not benefit the victims of disappearances as shown by the continued occurrence of such cases.
17. While Pakistan had made commitments to combat the practice of disappearance, it enacted new legislation that facilitated the perpetration of enforced disappearances, including Action in Aid of Civil Power Regulation 2011<sup>xiv</sup> and the Protection of Pakistan Act (POPA) 2014<sup>xv</sup> (which lapsed in July 2016). These laws have the impact of legalising forms of secret, unacknowledged, and incommunicado detention and are inconsistent with international human rights obligations, including the one in relation to the right to life<sup>xvi</sup>.

## **(c) Gender based violence against women**

18. In its second UPR, the Government of Pakistan accepted recommendations to “ensure the reporting and investigation of cases of violence against women” (122.107), “increasing the number of support structures for women on the provincial level” (122.21) and “adopting the Bill on Anti-Domestic Violence” (122.25). These recommendations have been partially implemented as The Punjab Protection of Women against Violence Act, 2016 was passed into law by the Punjab legislative assembly in March 2016<sup>xvii</sup>. This law contains remedies for victims of violence, criminalizes all forms of violence against women and also provides them with special centers which remove the usual red tape hurdles that complicate a woman’s quest for justice.
19. In May 2016, the Council of Islamic Ideology (CII), a constitutional body which reviews all laws formulated to advise to the legislature if they are in accordance with Islam, proposed its own version of women’s protection bill, as a response to The Punjab Protection of Women against Violence Act. Among other things, the draft included permission to husbands to ‘lightly beat’ their wives<sup>xviii</sup>. Many of CII’s recommendations have not been taken seriously in the past but the recent ‘advice’ exposes the mindset of the zealots occupying the CII. It is alarming and worrisome that such bigots have a platform from where they can reach out to a large audience. In an environment, which is undoubtedly hostile towards women, one is bound to wonder why anyone should consider it necessary to further encourage infringement of the rights of women.
20. In October 2016, the Offences in the Name or Pretext of Honor Act 2016 and Anti-Rape Law was adopted in a joint sitting of parliament. The Anti-Rape Law gave legal cover to the collection and use of DNA in evidence. It declared that the trial for offences such as rape and related crimes shall be conducted in-camera and allowed the use of technology to record statements of victims and witnesses, to spare them from court appearance. The law also provides that a female police officer must be present when information is being recorded in cases of sexual violence. The anti-honor killing law was the most notable recent change on the country’s legal horizon with regard to violence against women. Through this law, amendments were made to the Pakistan Penal Code (PPC) and the Code of Criminal Procedure (CrPC) to end impunity for so-called honor crime. While this law was initially praised, it was later realized that it has many loopholes and offers a few changes in the previous legislation<sup>xix</sup>.
21. In February 2015, the Federal Ombudsman proposed an amendment to the Protection of Women from Harassment in the Workplace Act, 2010, to extend the definition of ‘workplace’ to include workplaces of domestic servants and homebased workers. However, the amendment has not been adopted by either the National Assembly or the Senate<sup>xx</sup>.
22. Provincial governments of Punjab, Sindh and KP had formed Provincial Watch Committees to monitor the implementation of the Sexual Harassment Act. These committees, however, meet infrequently and have hardly yielded any results.

**(d) Freedom of thought, conscience and religion**

23. Pakistan received seven recommendations in its second UPR asking for the amendment or repeal of the blasphemy laws, some of which were noted while others rejected. Blasphemy laws remained in force and several new cases were registered, mostly in Punjab. At least 19 people remained on death row after being convicted under Pakistan’s draconian blasphemy law and hundreds awaited trial. Pakistan has made no attempts to amend or repeal the law that facilitates persecution of religious minorities and legitimizes impunity for perpetrators of violence against them.
24. In September 2013, the CII unanimously ruled that there is no need to amend the blasphemy law and that the CII will not allow such reform. In a landmark judgment, on October 7, 2016, the Supreme Court (SC) of Pakistan upheld the death sentence of Mumtaz Qadri, who murdered the former Governor of Punjab, Salmaan Taseer in 2011<sup>xxi</sup>. During the court’s hearings, Qadri’s supporters tried to reach the SC to pressurize the judges, which is a commonality during cases of a religious nature, when courtrooms are filled to pressurize judges to provide judgements in the favor of religious groups. However, over 90 people were arrested who tried to enter the SC.
25. On September 26, 2016, the National Assembly approved the long-stalled Hindu Marriage Bill 2016, to set up a legal framework for regulation of Hindu marriage and divorce. It is apprehended that a provision of the bill, on annulment of marriage if either spouse changes their religion, could facilitate forced conversion of married Hindu women. The bill now needs assent of the Senate. Sindh formulated its own Hindu marriage

law in February 2016, while the other provinces plan to adopt the bill being approved by the federal parliament.

26. Ahmadi voters continue to appear on separate voters' list while all other religious minorities have been added to a common list of voters after the abolition of the system of separate electorates. To complete voter registration, Ahmadi voters must provide their address and disassociate themselves from Islam in contravention with their religious views. During the 2013 elections, Ahmadis expressed fears that the separate voter list is available to the public and so this could put them at risk of attacks. The Ahmadis have, for decades, disassociated from elections resulting in Ahmadis having no representation, be it national, provincial or district level.

### **Recommendations**

- a. Take effective steps to implement all recommendations made by the UN Working Group on Enforced Disappearance that visited Pakistan in 2012.
- b. Take progressive steps for abolishing capital punishment and in the meanwhile suspend executions as well as introduce safeguards to protect the minors as well as the mentally and physically challenged accused and convicts.
- c. Initiate concrete measures to prevent all forms of gender-based violence and address gaps which despite changes in the law allow impunity for the perpetrators in practice.
- d. Reform the blasphemy laws with a view to prevent their abuse and victimisation of religious minorities as well as address shortcomings at the investigative, prosecutorial, procedural, administrative and judicial levels to ensure that the accused have a fair chance at defending themselves.
- e. Ensure meaningful steps to prevent faith-based discrimination in law and practice and end exclusion of citizens from the democratic process on account of their faith

## ENDNOTES

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<sup>i</sup> HRCP opposes the death penalty under any circumstances, and considers its use to constitute a violation of the right to life and freedom from cruel, inhuman or degrading punishment.

<sup>ii</sup> 'Death penalty moratorium lifted completely in Pakistan: Officials', 10 March 2015, accessed at <https://www.dawn.com/news/1168652>

<sup>iii</sup> 'Parliament passes 21st Constitutional Amendment, Army Act Amendment', 6 January 2016, accessed at: <https://www.dawn.com/news/1155271>

<sup>iv</sup> For details: <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>

<sup>v</sup> For details: [http://www.senate.gov.pk/uploads/documents/1479818359\\_431.pdf](http://www.senate.gov.pk/uploads/documents/1479818359_431.pdf)

<sup>vi</sup> Imdad Ali had murdered a cleric in 2001 and was sentenced to death in 2002. In 2012, after spending a decade in prison, government doctors certified Imdad as paranoid schizophrenic. His death warrant was issued in late October and he was to be executed on November 2 but the execution was temporarily stayed. For more details see, 'Pakistan court stays execution of mentally-ill Imdad Ali', 30 October 2016, accessed at: <http://www.bbc.com/news/world-asia-37828839> and 'Schizophrenia not a mental illness': SC paves way for Imdad Ali's execution', 21 October 2016, accessed at: <https://www.dawn.com/news/1291384>

<sup>vii</sup> 'Pakistan: Paralysed death-row prisoner 'suffering life worse than hell' after stay of execution expires', 25 April 2016, accessed at: <http://www.independent.co.uk/news/world/asia/pakistan-paralysed-death-row-prisoner-abdul-basit-stay-of-execution-expires-family-mercy-clemency-a6999901.html>

<sup>viii</sup> 'Acquittal verdict: Executed brothers' kin in distress', 23 October 2016, accessed at: <https://www.dawn.com/news/1291711>

<sup>ix</sup> See, for example, Human Rights Commission of Pakistan, "HRCP's alarm at missing men in Sindh turning up dead", 5 December 2014, accessed at: <http://hrcp-web.org/hrcpweb/hrcps-alarm-at-missing-men-in-sindh-turning-up-dead/>

<sup>x</sup> "What Happened to Zeenat Shahzadi", 30 August 2016, accessed at: <http://hrcpweb.org/hrcpweb/what-happened-to-zeenat-shahzadi/>

<sup>xi</sup> See "Pakistan: UN expert calls for return of four disappeared human rights and social media activists", 11 January 2017, accessed at:

<http://www.un.org/apps/news/story.asp?NewsID=55943#.WM8JHIUmQ5U> and "Pakistan activist Waqass Goraya: The state tortured me", BBC News, 9 March 2017, accessed at: <http://www.bbc.co.uk/news/world-asia-39219307>

<sup>xii</sup> Muhabat Shah petitioned the Supreme Court to trace the whereabouts of his brother, Yaseen Shah, who had been "missing" since a joint operation was conducted by the army and police in Mardan in 2010. According to a letter of the superintendent of the Malakand internment center submitted to the Supreme Court, 66 detainees were brought to Malakand internment center in November 2011. Out of the 66 detainees, 31 were declared as "internees" by the "internment authority" and kept at Malakand internment center. The other 35 were removed from the Malakand internment center by the army. A list of the 35 people who were removed from the Malakand internment center was submitted to the Supreme Court. Yaseen Shah was one of them. Despite multiple orders of the Supreme Court, the army authorities only produced seven persons before the Court and the remaining 28 persons, including Yaseen Shah, remained unaccounted for. See HRC No.29388-K/13, 10 December 2013.

<sup>xiii</sup> See *International Commission of Jurists*, "ICJ urges Senate to reject 'Protection of Pakistan' Bill", 14 May 2014, accessed at: <http://www.icj.org/icj-urges-senate-to-reject-protection-of-pakistan-bill/>, p.5.

<sup>xiv</sup> See <http://www.isj.org.pk/the-actions-in-aid-of-civil-power-regulation-2011/>

<sup>xv</sup> The Protection of Pakistan Act, 2014, can be accessed here: [http://www.na.gov.pk/uploads/documents/1404714927\\_922.pdf](http://www.na.gov.pk/uploads/documents/1404714927_922.pdf)

<sup>xvi</sup> See *International Commission of Jurists*, 'Pakistan: newly enacted counter-terrorism law endangers human rights', 11 July 2014, accessed at: <https://www.icj.org/pakistan-newly-enacted-counter-terrorism-law->

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endangers-human-rights/

<sup>xvii</sup> See <http://punjablaws.gov.pk/laws/2634.html>

<sup>xviii</sup> See <https://www.dawn.com/news/1260803>

<sup>xix</sup> See <https://www.dawn.com/news/1272833>

<sup>xx</sup> See [http://epaper.dawn.com/DetailImage.php?StoryImage=27\\_02\\_2017\\_005\\_003](http://epaper.dawn.com/DetailImage.php?StoryImage=27_02_2017_005_003)

<sup>xxi</sup> See <https://www.worldwatchmonitor.org/2015/10/pakistans-supreme-court-makes-landmark-judgment/>