



**UN Human Rights Committee, 118<sup>th</sup> session, Geneva, from 17<sup>th</sup> October to 4<sup>th</sup> November 2016**

**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS IN VIEW OF THE PREPARATION BY THE UN HUMAN RIGHTS COMMITTEE OF A LIST OF ISSUES FOR THE EXAMINATION OF THE FIRST PERIODIC REPORT OF PAKISTAN UNDER ARTICLE 40 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

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P.O. Box, 91, Rue des Bains, 33, 1211 Geneva 8, Switzerland  
Tel: +41(0) 22 979 3800 – Fax: +41(0) 22 979 3801 – Website: <http://www.icj.org> -  
E-mail: [info@icj.org](mailto:info@icj.org)

**ICJ's submission to the UN Human Rights Committee for the preparation of a List of Issues for the examination of the First Periodic Report of Pakistan**

1. During its 120<sup>th</sup> session, scheduled to take place from 3<sup>rd</sup> July to 28<sup>th</sup> July 2017, the Human Rights Committee (the Committee) will undertake its examination of Pakistan's initial periodic report on the implementation of the International Covenant on Civil and Political Rights ("the Covenant").
2. Ahead of this, during its 118<sup>th</sup> session, from 17 October to 4 November 2016, the Committee will prepare and adopt a List of Issues on Pakistan. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Committee's preparation of this List of Issues.
3. In this submission, the ICJ draws the Committee's attention to the following issues:
  - The compliance of Pakistan's counter-terrorism laws with the State's obligations under Articles 6, 9 and 14 of the Covenant, particularly in the context of its "military justice" system (section A. below) and the operation of the Protection of Pakistan Act (section B. below);
  - The continuing practice of enforced disappearances and impunity for law enforcement and military agencies (section C. below); and
  - The compliance of Pakistan's blasphemy laws with Articles 14, 18, and 19 of the Covenant (section D. below).

In respect of each issue highlighted in the present submission, the ICJ formulates suggestions for questions that the Committee may wish to incorporate in its List of Issues on Pakistan.

**A. THE TRIAL OF CIVILIANS IN MILITARY COURTS**

4. Pakistan faces a real and serious threat of of terrorist attacks. The ICJ reiterates that Pakistan, consistent with its obligations under the Covenant, has a legal duty to protect people within its jurisdiction against terrorist attacks, and where terrorist attacks occur, a duty to investigate, prosecute and bring perpetrators to justice. However, counter-terrorism measures, including security legislation, must respect Pakistan's international human rights obligations, including those under the Covenant.
5. In January 2015, Pakistan empowered military courts to try civilians for terrorism-related offences as part of its 20-point "National Action Plan", adopted by the Government following the horrific attack on the Army Public School in Peshawar in December 2014, which killed nearly 150 people, most of them children. The expansion of military jurisdiction over civilians was accomplished through the 21<sup>st</sup> Amendment to Pakistan's Constitution and amendments to the Army Act, 1952. These amendments allow military courts to try offences related to "terrorism" allegedly committed by those who claim to, or are known to, belong to a terrorist organization "using the name of religion or a sect". Both sets of amendments are set to expire on 6 January 2017 pursuant to a "sunset clause", after which they will cease to have effect, although there is always a possibility they could be renewed.

6. Pakistan's newly constituted system of "military justice" has placed Pakistan in clear violation of its legal obligations and political commitments to respect the right to life, the right to a fair trial, and the independence and impartiality of the judiciary.<sup>1</sup>

7. In the 18 months since military courts were empowered to try terrorism-related offences, they have convicted at least 93 people, possibly including children, in opaque, secret proceedings. They have sentenced 89 people to death and at least 12 people have been hanged after trials that are grossly unfair. In all these cases, the government and military authorities have failed to make public information about the time and place of the trials; the specific charges and evidence against the convicts; as well as the judgments of military courts including the essential findings, legal reasoning, and evidence on which the convictions were based.

8. International standards clarify that the jurisdiction of military tribunals should be restricted solely to specifically military offences committed by military personnel: They should not, in general, be used to try civilians, or to try people for gross human rights violations.

9. Article 14 of the ICCPR states "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." The UN Human Rights Committee has made clear that the right to a fair trial before an independent and impartial court under Article 14 of the ICCPR applies to all courts, whether ordinary or specialized, civilian or military.<sup>2</sup> The Human Rights Committee has also stated that "the trial of civilians in military or special courts raise serious problems as far as the equitable, impartial and independent administration of justice is concerned."<sup>3</sup> It has also repeatedly called on countries to prohibit trials of civilians before military courts.<sup>4</sup>

10. The *Draft Principles Governing the Administration of Justice Through Military Tribunals*,<sup>5</sup> which were adopted by the former UN Sub-Commission on the Promotion and Protection of Human Rights in 2006, affirm that the jurisdiction of military courts should be restricted to military personnel in relation to military offences. The principles also emphasize the right to a fair trial, including the right to appeal to civilian courts, and also that civilians accused of a criminal offence of any nature shall be tried by civilian courts.

11. Similarly, Principle 29 of the UN Updated Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity states that: "The jurisdiction of military tribunals must be restricted solely to specifically military offenses committed by military personnel."<sup>6</sup>

12. International standards require that military courts, like all other courts, must be independent, impartial and competent, and must respect minimum guarantees of fairness, including those set out in Article 14 of the ICCPR.<sup>7</sup>

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<sup>1</sup> See *International Commission of Jurists*, "Military Injustice in Pakistan", 23 June 2016, accessed at: <http://www.icj.org/pakistan-military-justice-system-unjust-and-ineffective-new-icj-paper/>

<sup>2</sup> Human Rights Committee General Comment 32, "Article 14: Right to Equality before courts and tribunals and to a fair trial," (General Comment 32) UN Doc. CCPR/C/GC/32, para. 22.

<sup>3</sup> *Ibid.*

<sup>4</sup> For example, Human Rights Committee, Concluding Observations: Slovakia, UN Doc. CCPR/C/79/Add.79 (1997) para 20; Lebanon, UN Doc. CCPR/C/79/Add.78 (1997) para. 14; Chile, UN Doc. CCPR/C/CHL/CO/5 (2007) para 12; Tajikistan, UN Doc. CCPR/CO/84/ TJK (2004) para. 18.

<sup>5</sup> *Draft Principles Governing the Administration of Justice Through Military Tribunals*, U.N. Doc. E/CN.4/2006/58 at 4, 2006.

<sup>6</sup> *Updated Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, U.N. Doc. E/CN.4/2005/102/Add.1, 8 February 2005.

<sup>7</sup> For more details on international standards on the trial of civilians before military courts, see *International Commission of Jurists*, "The trial of civilians by military courts", Section 5, accessed

13. Pakistani military courts are not independent and the proceedings before them fall far short of national and international fair trial standards.<sup>8</sup> Judges of military courts are military officers who are a part of the executive branch of the State and do not enjoy independence from the military hierarchy. They are not required to have judicial or legal training, or even a law degree,<sup>9</sup> and do not enjoy any security of tenure,<sup>10</sup> which are prerequisites of judicial competence and independence.<sup>11</sup>

14. Pakistani military courts do not give detailed, reasoned judgments.<sup>12</sup> A duly reasoned, written judgment, including the essential findings, evidence and legal reasoning, is an essential component of a fair trial. Even in cases in which the public may be excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public, except in the interest of juveniles, or proceedings concerning matrimonial disputes or the guardianship of children.<sup>13</sup>

15. In addition, the imposition of death sentences by military courts in Pakistan is incompatible with Pakistan's obligations to respect and protect the right to a fair trial and the right to life.

16. Where permissible under international standards, the death penalty may only be imposed pursuant to a final judgment rendered by a competent court after a legal process that affords all possible safeguards to ensure a fair trial, including those set out in Article 14 of the ICCPR. The UN Human Rights Committee has stressed that in cases where the death penalty is imposed, scrupulous respect of the guarantees of fair trial is particularly important. The imposition of a death sentence following a trial that does not meet the minimum requirements of fairness under Articles 9 and 14 of the ICCPR is a violation of the right to life guaranteed under Article 6 of the ICCPR. As noted above, military courts in Pakistan are not independent and the proceedings before them are not consistent with the minimum requirements of fairness set out in Article 14 of the ICCPR.

17. The over-broad provisions of the amended law also create the possibility that in certain counter terrorism-related cases, the Army Act could override the provisions of the Juvenile Justice System Ordinance (JJSO), 2000, which give juvenile courts exclusive jurisdiction to try individuals below 18 years of age and prohibit the death sentence where juvenile offenders are found guilty.

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at: <http://www.icj.org/pakistan-military-justice-system-an-affront-to-human-rights-new-analysis-brief/>

<sup>8</sup> For more information about the operation of military courts, see also Katharine Houreld, 'Worries grow as new courts hand Pakistan army more power', *Reuters*, 25 March 2015, accessed at: <http://www.reuters.com/article/us-pakistan-military-courts-insight-idUSKBN0ML2PD20150325>

<sup>9</sup> See, for example, *UN Basic Principles on Independence of the Judiciary*, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 (UN Basic Principles on Independence of the Judiciary). Principle 10: 'Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives.'

<sup>10</sup> *Ibid.*, principle 12: 'Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.'

<sup>11</sup> Section 133, Pakistan Army Act, 1952.

<sup>12</sup> See Babar Sattar, 'Militarized Justice', *The News*, 5 December 2015, accessed at: <http://www.thenews.com.pk/Todays-News-9-355146-Militarised-justice>

<sup>13</sup> Human Rights Committee General Comment 32, "Article 14: Right to Equality before courts and tribunals and to a fair trial," (General Comment 32) UN Doc. CCPR/C/GC/32, para. 22.

18. The ICJ notes that in its reply to the List of Issues in relation to its Fifth periodic report to UN Committee on the Rights of the Child (CRC) under Article 44 of the UN Convention on the Rights of the Child, Pakistan claimed that the JJSO supersedes the Army Act, 1952 and that military courts do not have the jurisdiction over children.<sup>14</sup> However, the Attorney General's office has argued the converse in the courts,<sup>15</sup> and in a number of cases, family members of people convicted by military courts have argued before various courts in the country that the convicts were children when they were arrested by law enforcement agencies.

19. Under international standards, including under the International Covenant on Civil and Political Rights; the Convention on the Rights of the Child (CRC); as well as the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), juveniles are entitled to all internationally recognized fair trial guarantees that apply to adults, as well as special care and additional protection.

20. Under the CRC, the best interests of the child must be taken into account in any encounter that he or she has with State authorities, including in respect of the criminal justice system. While these standards encourage alternatives to ordinary judicial procedures, they are alternatives that must be more, not less, protective of their needs as children, and include: trial without delay and final judgment within six months from the date of charge; the presence of parents during the trial if it is in the best interest of the child; and independent scrutiny of the methods of interrogation including the presence of a lawyer and parent. The CRC has repeatedly affirmed in respect of a number of countries, that the use of military tribunals to try civilians is incompatible with the Convention on the Rights of the Child.<sup>16</sup>

21. The UN draft Principles Governing the Administration of Justice through Military Tribunals provide that in line with these standards, "in no case...should minors be placed under the jurisdiction of military tribunals."<sup>17</sup>

22. For these reasons, the ICJ recommends that the following question be included in the List of Issues for the examination of Pakistan:

***Does Pakistan intend to renew the 21<sup>st</sup> Amendment after it expires in January 2017?***

***What measures has Pakistan taken since January 2015 to bolster the regular criminal justice system to effectively try terrorism-related cases?***

***How does the Government ensure people tried by military courts are guaranteed basic fair trial rights?***

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<sup>14</sup> Committee on the Rights of the Child, *Replies of Pakistan to the list of issues*, UN Doc. CRC/C/PAK/Q/5/Add.1, accessed at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/073/42/PDF/G1607342.pdf?OpenElement>, para 66.

<sup>15</sup> See, for example, Peshawar High Court, Writ Petition No. 2979 of 2015, announced on 14 October 2015.

<sup>16</sup> See, for example, Committee on the Rights of the Child, Concluding observations on Egypt, UN Doc. CRC/C/OPAC/EGY/CO/1 (2011); Committee on the Rights of the Child, Concluding observations on Israel, UN Doc. CRC/C/ISR/CO/2-4 (2013); and UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict: Concluding Observations: United States of America*, 25 June 2008, CRC/C/OPAC/USA/CO/1, available at: <http://www.refworld.org/docid/4885cfb0a.html>

<sup>17</sup> Principle 7, Draft Principles Governing the Administration of Justice Through Military Tribunals, UN Doc. E/CN.4/2006/58.

**What measures has the Government taken to ensure military courts do not try children?**

**Do people tried by military courts have the right to a lawyer of their choice?**

**Do military courts issue judgments with detailed reasons explaining the courts' verdicts? Are such judgments open to public scrutiny?**

**What steps has the Government taken to ensure people tried by military courts are not subjected to torture and other ill-treatment while in the custody of military authorities?**

## **B. PROTECTION OF PAKISTAN ACT**

23. In July 2014, Pakistan passed the Protection of Pakistan Act (POPA) for "speedy trial" of offences related to "waging of war or insurrection against Pakistan".<sup>18</sup> The law had a "sunset clause" of two years, and expired on 14 July 2016. However, according to media reports and statements of Government officials, the Government is considering renewing POPA for another two years.

24. POPA was a highly oppressive law that gave sweeping and unaccountable powers to law-enforcement agencies. Many of these provisions run counter to Pakistani constitutional guarantees of fair trial and the right to liberty, as well as its international obligations, including under the Covenant.<sup>19</sup>

25. The law authorized secret detention and enforced disappearance by law-enforcement agencies, security forces and investigating officers, who could withhold "any information relating to a detainee, accused or internee who is an enemy alien or a militant".<sup>20</sup> Such secret detention and enforced disappearance are in clear violation of uncontested norms of international human rights law.

26. The law also permitted the government to authorize preventive detention for up to 90 days for broad and vaguely defined acts.<sup>21</sup> International and regional expert human rights mechanisms have repeatedly cautioned against the use of preventive detention, calling for it to be applied in exceptional circumstances only and accompanied by stringent safeguards that were not present under the POPA regime.

27. POPA also allowed members of the armed forces, civil armed forces or the police to conduct warrantless searches, which is incompatible with the obligation to respect and protect the guarantee of the right to privacy under Article 14 of Pakistan's Constitution and Article 17 of the Covenant,<sup>22</sup> or arrest people without judicial approval for a wide range of vaguely defined offences, in turn, giving rise to concern about the compatibility of such arrests with the right to liberty and security of person under Article 9 of the Covenant.

28. Other oppressive provisions of POPA included extensive powers to law-enforcement agencies to use firearms; establishment of "special courts" that operate in violation of fair

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<sup>18</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>19</sup> See, for example, *International Commission of Jurists*, "Pakistan: newly enacted counter-terrorism law endangers human rights", 11 July 2014, accessed at: <http://www.icj.org/pakistan-newly-enacted-counter-terrorism-law-endangers-human-rights/>

<sup>20</sup> Section 9, Protection of Pakistan Act, 2014.

<sup>21</sup> Section 6, *Ibid.*

<sup>22</sup> Section 3(2)(c), *Ibid.*

trial standards; and giving broad immunities to the police, armed forces or civil armed forces acting in aid of civil authority to shield them from any accountability.

29. According to media reports, hundreds of people have been detained under POPA, a large number of them in Karachi. Charges have been brought in a few dozen cases, but special courts constituted under the act have not concluded even a single trial. This is quite a failure for a law that was enacted for the purpose of "speedy trial" of terrorism suspects. Indeed, it completely undermines that primary objective.

30. There are reports that the extensive powers of search, arrest and detention given to law-enforcement agencies under POPA were misused by the authorities in the two years the law was in operation. POPA was used to keep people in custody for long periods of time, including in preventive detention. The Muttahida Qaumi Movement (MQM) has alleged POPA was used in Karachi to arbitrarily arrest dozens of MQM activists. The Pakistan People's Party has also made similar claims, especially after the Federal Investigation Agency was given powers of detention and interrogation under POPA to "eradicate militancy" and "combat financial terrorism".

31. For these reasons, the ICJ recommends that the following question be included in the List of Issues for the examination of Pakistan:

***Does the Government intend to renew the Protection of Pakistan Act for another two years?***

***Given that "special courts" constituted under POPA have not concluded a single trial in the two years POPA was in operation, on what grounds is the Government considering renewal of the law?***

***What steps did the Government take to ensure the sweeping powers given to law enforcement agencies under POPA were not misused?***

***If the law is renewed, what steps will the Government take to ensure the broad powers given to law enforcement agencies under POPA will not be misused?***

### **C. ENFORCED DISAPPEARANCES**

32. The practice of enforced disappearance has persisted in Pakistan and has spread to areas where it had not been reported earlier. Previously restricted mainly to Balochistan and the northwestern region of the country, enforced disappearances now appear to have become a nation-wide phenomenon, especially in response to political opposition and nationalist and separatist movements.<sup>23</sup>

33. There is a wide range in estimates of the overall number of cases. Defence of Human Rights, a non-governmental organization working towards the recovery of disappeared persons, has reported that more than 5,000 cases of disappearances had still not been accounted for. The Voice of Baloch Missing Persons alleges some 18,000 persons to have been forcibly disappeared. The officially constituted Commission of Inquiry on Enforced Disappearances, on the other hand, reports nearly 1,400 unresolved cases of alleged enforced disappearance. The Human Rights Commission of Pakistan, which documents human rights violations in 60 selected districts in the country, has reported 370 cases of enforced disappearance since 2014. Thus, even taking the most conservative estimates, a significant number of enforced disappearances remain unresolved in the country.

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<sup>23</sup> See, for example, *Human Rights Commission of Pakistan*, "[HRCP's alarm at missing men in Sindh turning up dead](http://hrcp-web.org/hrcpweb/hrcps-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/>



34. The Government has failed to bring perpetrators to account in even a single case of enforced disappearance. Pakistan has still not ratified the International Convention for the Protection of All Persons from Enforced Disappearance and "enforced disappearance" is still not recognized as a distinct crime in the country.

35. Instead of combatting the practice of enforced disappearance and bring perpetrators to account, the Government has enacted new legislation that facilitates the perpetration of enforced disappearance, including by explicitly legalizing forms of secret, unacknowledged, and incommunicado detention (see section B. above concerning the Protection of Pakistan Act).<sup>24</sup>

36. Families of people convicted by military courts have raised concerns that some of the people tried by military courts were subjected to enforced disappearance by military authorities.

37. The case of Muhammad Ghauri, sentenced to death by a military court on 1 January 2016, is one such example of an alleged enforced disappearance. In his petition to the Lahore High Court, Muhammad Ghauri's father, Javed Iqbal Ghauri, claimed his son was a student of the Islamic International University Islamabad, and went "missing" on 7 January 2010. The Supreme Court took notice of the case and directed the Inspector General of Police, Islamabad, to locate Muhammad Ghauri. The Commission of Inquiry on Enforced Disappearances also took up Muhammad Ghauri's case. The Inspector General of Police and the intelligence agencies denied that Muhammad Ghauri was in their custody for three years, but finally in 2013 admitted he was detained at an internment center in the Federally Administered Tribal Areas (FATA). According to Javed Iqbal Ghauri, he was not informed of any charges or cases against his son. It was only in January 2016 that he eventually found out through a newspaper article that his son, Muhammad Ghauri, had been convicted and sentenced to death by a military court.<sup>25</sup>

38. The Pakistan Army Act bars civilian courts from exercising their appellate jurisdiction over decisions of military courts. Civilian courts in Pakistan have held they may use their extraordinary writ jurisdiction to hear cases related to military courts where "any action or order of any authority relating to the Armed Forces of Pakistan is...either *coram non judice*, *mala fide*, or without jurisdiction. Relying on this, Javed Iqbal Ghauri challenged his son's conviction and sentence on grounds of violation of the right to a fair trial. However, on 27 January 2016, the Lahore High Court dismissed his petition. The three-page order of the Court did not address the specific concerns raised by the petitioner, including allegations of enforced disappearance.<sup>26</sup> The case is currently pending before the Supreme Court.

39. Another case that highlights the practice of enforced disappearance in Pakistan and the impunity for the crime is the case of *Muhabbat Shah*.<sup>27</sup> The case involved allegations related to the unauthorized removal of 35 persons from a Malakand internment center by the armed forces. Despite multiple orders of the Court, the army authorities only

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<sup>24</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/> and "ICJ urges Government not to extend oppressive counter-terrorism law", 30 June 2016, accessed at: <http://www.icj.org/pakistan-icj-urges-government-not-to-extend-oppressive-counter-terrorism-law/>

<sup>25</sup> Copy of the petition available with the ICJ. See also, Malik Asad, "Curious case of the 'missing' terror convict", *Dawn News*, 29 January 2016, accessed at: <http://www.dawn.com/news/1236109>

<sup>26</sup> Lahore High Court, Rawalpindi bench, Writ Petition No. 197 of 2016.

<sup>27</sup> HRC No. 29388-K/13, 10 December 2013.



produced seven persons before the Court and the remaining 28 persons remain unaccounted for.

40. In its ruling on the case in December 2013, the Supreme Court held that the unauthorized and unacknowledged removal of detainees from an internment center amounted to an 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”<sup>28</sup> and that currently, there was no law in force in Pakistan that allowed the armed forces to “unauthorizedly detain undeclared detainees”. Finally the Court held that armed forces personnel responsible for the enforced disappearances should be dealt with “strictly in accordance with law”.<sup>29</sup>

41. The ICJ has also received information about other “missing persons” who are allegedly detained in internment centers in FATA but their detention is not acknowledged. These concerns are exacerbated by the military’s refusal to give family members and civil society monitors, including the ICRC, access to these internment centers.

42. In August 2015, Zeenat Shahzadi, a Pakistani journalist who had been following the alleged enforced disappearance of an Indian engineer, Hamid Ansari, went “missing” from Lahore. According to Zeenat’s family, she had been receiving threatening phone calls asking her not to pursue the case before her alleged enforced disappearance. Nearly a year later, her fate and whereabouts remain unknown. Zeenat’s case is one of the rare cases of an alleged enforced disappearance where the victim is a woman.

43. For these reasons, the ICJ recommends that the following question be included in the List of Issues for the examination of Pakistan:

***What measures has the Government taken to ensure people tried by military courts were not subjected to enforced disappearance?***

***Why does the Government prevent NGOs, human rights activists, and independent observers, including from the ICRC, from access to internment centers in FATA, where allegedly many of the people allegedly subjected to enforced disappearance are secretly held?***

***Why has not even a single perpetrator of enforced disappearance been brought to account despite multiple orders of the Supreme Court?***

***What measures has the Government taken to implement the Supreme Court’s judgment in the Muhabbat Shah case?***

***What steps has the Government taken to expressly criminalize enforced disappearance?***

***What steps has the Government taken to ratify the UN Convention on Enforced Disappearance?***

#### **D. BLASPHEMY LAWS**

44. Pakistan’s “blasphemy laws” consist of a variety of “crimes” including “misusing” religious epithets, “defiling” the Holy Quran, “deliberately outraging religious sentiment”, and using derogatory remarks in respect of the Prophet Muhammad. Sentences for these offences range from fines to long terms of imprisonment, and in

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<sup>28</sup> Ibid, p. 12.

<sup>29</sup> Ibid. p. 20.

the case of defamation of the Prophet Muhammad (section 295-C), a mandatory death sentence.

45. Since their promulgation, these oppressive and frequently misused blasphemy laws have been denounced by Pakistani civil society activists and human rights groups; academics; and members of the judiciary and government. Concerns about these laws have also been raised during the review by UN Member States of Pakistan's human rights record at the UN Human Rights Council,<sup>30</sup> as well as by UN human rights mechanisms<sup>31</sup> and international human rights organizations,<sup>32</sup> who

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<sup>30</sup> During Pakistan's second Universal Periodic Review in 2012, Pakistan received seven recommendations related to its blasphemy laws. Pakistan rejected recommendations 122.30, which called for the derogation of the law on blasphemy to guarantee in practice the right to freedom of religion. Pakistan noted a number of recommendations including recommendation 122.28, which asked the Government to ensure that blasphemy laws and their implementation are in line with international law (Switzerland); Enact legislation ensuring freedom of religion and belief for all religious groups and consider abolishing the so-called blasphemy laws; Repeal or reform thoroughly the so-called blasphemy law; recommendation 122.31, which asked Pakistan to modify or repeal the blasphemy laws in order to bring them in line with the principles related to freedom of thought, conscience and religion, and in particular with its obligations under the International Covenant on Civil and Political Rights (ICCPR); recommendation 122.32, which called for repealing the discriminatory blasphemy laws against religious minorities and ensure that there is no impunity for those who commit hate crimes /Repealing the blasphemy law and respect and guarantee freedoms of religion or belief and of expression and opinion for all, including Ahmadis, Hindus and Christians; and recommendation 122.33, which called for repealing the blasphemy law, or at least amend it to protect persons from eventual abuses or false accusations and lighten corresponding penalties, that are currently disproportional. Pakistan accepted recommendation 122.121, which called on the Government to continue its efforts to enhance legislation and measures to further address the situation of religious minorities, including blasphemy laws, forced conversion and discrimination against non-Muslim minorities, and recommendation 122.156, which asked the Government to adopt measures to ensure the protection of religious minorities, including Ahmadis, Christians, Hindus and Sikhs, prevent the abuse of blasphemy legislation, halt forced conversions, and take necessary steps to prevent violence against members of religious minority communities. The list of recommendations and Pakistan's responses can be accessed here:

[http://www.upr-info.org/sites/default/files/document/pakistan/session\\_14\\_-\\_october\\_2012/recommendationsandpledgespakistan2012.pdf](http://www.upr-info.org/sites/default/files/document/pakistan/session_14_-_october_2012/recommendationsandpledgespakistan2012.pdf)

<sup>31</sup> See, for example, Report of the Special Rapporteur on Freedom of Religion or Belief, 2012, Heiner Bielefeldt: "States should repeal any criminal law provisions that penalize apostasy, blasphemy and proselytism as they may prevent persons belonging to religious or belief minorities from fully enjoying their freedom of religion or belief", UN Doc. A/HRC/22/51 accessed at: [http://www.ohchr.org/Documents/Issues/Religion/A.HRC.22.51\\_English.pdf](http://www.ohchr.org/Documents/Issues/Religion/A.HRC.22.51_English.pdf); Abdelfattah Amor, following his visit to Pakistan in 1995: "Generally speaking, blasphemy as an offence against belief may be subject to special legislation. However, such legislation should not be discriminatory and should not give rise to abuse. Nor should it be so vague as to jeopardize human rights, especially those of minorities. If offences against belief are made punishable under ordinary law, then procedural guarantees must be introduced and a balanced attitude must be maintained. While protecting freedom of conscience and freedom of worship is clearly a necessity, applying the death penalty for blasphemy appears disproportionate and even unacceptable, especially in view of the fact that blasphemy is very often the reflection of a very low standard of education and culture, for which the blasphemer is never solely to blame." UN Doc. E/CN.4/1996/95/Add.1; and Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, following her mission to Pakistan in 2012, UN Doc. A/HRC/23/43/Add.2 (2013) para 117: "Blasphemy laws, Hudood Ordinances, and anti-Ahmadi laws, as well as any other discriminatory legal provisions, should be repealed and replaced with provisions in conformity with Pakistan's Constitution and the international human rights law instruments to which Pakistan is a party", accessed at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/126/79/PDF/G1312679.pdf?OpenElement>

<sup>32</sup> See, for example, *Amnesty International, Pakistan: Use and Abuse of the Blasphemy Laws*, July 1994; Freedom House, *Policing Belief: the impact of blasphemy laws on human rights*, October 2010, accessed at: [https://freedomhouse.org/sites/default/files/Policing\\_Belief\\_Full.pdf](https://freedomhouse.org/sites/default/files/Policing_Belief_Full.pdf), pp. 69-89; and "UN rights experts call for urgent measures to protect Pakistan's religious minorities", 2 June 2014, accessed at: <http://www.un.org/apps/news/story.asp?NewsID=47938#.VdIjSEUeXVY>

have all observed that Pakistan's offences against religion violate its obligations under international human rights law and have urged that Pakistan repeal or radically amend them.

46. The UN Special Rapporteur on the Independence of Judges and Lawyers, for example, following a mission to Pakistan in 2012, found that

*These laws serve the vested interests of extremist religious groups and are not only contrary to the Constitution of Pakistan, but also to international human rights norms, in particular those relating to non-discrimination and freedom of expression and opinion.*<sup>33</sup>

The Special Rapporteur went on to recommend that Pakistan should repeal or amend the blasphemy laws in accordance with its human rights obligations.

47. Moreover, human rights bodies and mechanisms have clarified that the mandatory imposition of the death penalty, which is prescribed under section 295-C, is prohibited under international human rights law.<sup>34</sup>

48. The criminalization of the exercise of the rights to freedom of expression and religion or belief in Pakistan in the shape of the blasphemy laws is a flagrant violation of Pakistan's international human rights obligations, including its obligations to respect the rights to freedom of thought, conscience and religion; freedom of expression; and the right to equal treatment before the law. Furthermore, the retention of the mandatory death sentence, as a penalty upon conviction for a crime, including under 295-C of the Penal Code, violates Pakistan's obligations under the Covenant including to respect the rights to life, to a fair trial, and to prohibit torture and other cruel, inhuman or degrading treatment or punishment.

49. The ICJ's detailed study of the implementation of blasphemy laws in Pakistan shows that the laws are widely misused and defendants in blasphemy cases are systematically denied their right to a fair trial.<sup>35</sup>

50. A key precondition to a fair trial recognized globally is that criminal offences must be prescribed by law and must conform to the principle of legality. This means that the laws proscribing acts or omissions as criminal must be formulated clearly and precisely to ensure individuals can regulate their conduct accordingly.

51. Various provisions related to offences against religion are framed in overly broad, vague terms, and breach the principle of legality. Section 295-C of the Pakistan Penal Code, for example, criminalizes words, representations, imputations, innuendos, or insinuations, which directly or indirectly, defile "the sacred name of the Holy Prophet". If proven, the offence carries a mandatory death penalty. The elements of the offence set out in this provision are vague and overbroad, are open to subjective interpretations, and

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<sup>33</sup> Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, 2012, UN Doc. A/HRC/23/43/Add.2, para 57, p. 13.

<sup>34</sup> See, for example, Special Rapporteur on extrajudicial executions: UN Doc. [A/HRC/14/24](#) (2010), para. 51(d) and UN Doc. [A/HRC/4/20](#) (2007) paras 55-66; Human Rights Committee: *Thompson v Saint Vincent*, UN Doc. CCPR/C/70/D/806/1998 (2000) para. 8.2, *Kennedy v Trinidad and Tobago*, UN Doc. CCPR/C/74/D/845/1998 (2002) para. 7.3, *Carpo et al v The Philippines*, UN Doc. CCPR/C/77/D/1077/2002 (2003) §8.3, *Larrañaga v The Philippines*, UN Doc. CCPR/C/87/D/1421/2005 (2006) para 7.2, *Mwamba v Zambia*, UN Doc. CCPR/C/98/D/1520/2006 (2010) para 6.3 and Human Rights Committee Concluding Observations: *Botswana*, UN Doc. CCPR/C/BWA/CO/1 (2008) para 13.

<sup>35</sup> *International Commission of Jurists*, "On Trial: the implementation of Pakistan's blasphemy laws", 4 November 2015, accessed at: <http://www.icj.org/pakistan-trials-for-blasphemy-fundamentally-unfair-icj-new-report/>

give virtually no instruction to the people or to law enforcement officials and the judiciary regarding what behavior is prohibited.

52. The UN Special Rapporteur on the Independence of Judges and Lawyers, in a report following a mission to Pakistan in 2012, made a similar observation

*The vague language of the blasphemy laws make[s] no reference to a potential offender's psychological state or intention and represents an open door for abuse and the persecution of minorities, in particular by religious or sectarian groups.*<sup>36</sup>

53. In practice, the vague and broad wording of the provision has allowed a wide range of acts and expression to be prosecuted under section 295-C, including, for example: using language resembling the Prophet's name on fabric; placing the Prophet's name in an allegedly insulting place on an advertisement; disputing Islamic beliefs and rituals; failing to remove an allegedly blasphemous post from a Facebook page, and even calling for reform or even critiquing provisions of offences against religion in the Pakistan Penal Code.

54. The right to be tried by independent and impartial tribunals is at the heart of a judicial system that guarantees human rights. Judicial independence also encompasses protection of judges, in law and in practice, from threats, harassment, reprisals or attacks, both from state and non-state actors.

55. Judges who hear blasphemy cases have reported being harassed, intimidated, and threatened to convict individuals accused of committing blasphemy. Some judges have reported receiving letters and phone calls warning them of attacks against themselves and their families if defendants in blasphemy cases are acquitted.<sup>37</sup>

56. Where hearings are public, courtrooms are often packed with hostile crowds, chanting slogans against the accused. Often, these crowds belong to, or are affiliated with, organized religious groups.

57. Such conduct impedes the fairness of proceedings, which requires "the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive." The UN Human Rights Committee has noted, for example, that the hearing is not fair if "the defendant in criminal proceedings is faced with the expression of a hostile attitude from the public or support for one party in the courtroom that is tolerated by the court..."<sup>38</sup>

58. Following her visit to Pakistan in 2012, the UN Special Rapporteur on the independence of the judiciary also expressed concern that judicial independence was under threat in cases of blasphemy as judges were "coerced or pressured to decide against the accused, even without supporting evidence", and that

*The judiciary too has grown very afraid of public sentiment regarding blasphemy cases. Such sentiment, coupled with intimidation and violence, as well as the lack of protection measures from authorities, seriously encroaches on the independence of the judiciary and results in a biased delivery of*

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<sup>36</sup> Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, 2012, UN Doc. A/HRC/23/43/Add.2 (Report of the Special Rapporteur on the independence of judges and lawyers).

<sup>37</sup> Consultation of lawyers and judges on offences related to religion, September 2014, Lahore.

<sup>38</sup> Human Rights Committee, General Comment 32, supra fn. 48, para 25.

*justice.*<sup>39</sup>

59. Another fundamental aspect of the right to a fair trial that is particularly relevant in proceedings involving blasphemy allegations, is the right to trial before an impartial tribunal or judge.

60. The impartiality of a judge can be defined as the absence of bias, animosity or sympathy towards either of the parties. Under international standards, courts must be impartial, and also appear to be impartial. Thus, judges have a duty to step down from cases in which there are sufficient grounds to question their impartiality.

61. The vague and overbroad wording of section 295-C of the Pakistan Penal Code, which criminalizes words, representations, imputations, innuendos, or insinuations, which directly or indirectly, defile "the sacred name of the Holy Prophet", has allowed prejudices, religious leanings and personal predilections of judges to shadow their judgments, calling into question their impartiality. This bias is apparent in the conduct of judges during blasphemy proceedings, and also their judgments.<sup>40</sup>

62. These concerns are magnified further by the requirement under Pakistani law that judges presiding over first instance trials in 295-C cases be Muslim. The provision, when coupled with the vagueness of the law, all but invites the types of partiality noted above in the judgments of first instance court, and is inconsistent with the rights to trial before an independent and impartial court.

63. Under Article 14(1) of the ICCPR, holding oral hearings on the merits of a case determining a criminal charge, which the parties and members of the public, including the media, can attend, is the general rule. The Human Rights Committee has clarified that the publicity of hearings ensures transparency, and thus provides an important safeguard for the interest of the individual and of society at large. While Article 14 acknowledges that courts have the power to exclude all or part of the public from the proceedings, this must only be done in exceptional circumstances, specifically for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice.<sup>41</sup> However, closing part or all of the proceedings, or alternatives measures taken must nonetheless be compatible with the right of the accused to a fair trial in the context of adversarial proceedings.

64. For reasons of security, access to the proceedings that take place in jails is usually only permitted to the accused; prosecution and defense lawyers; and witnesses. Members of the defendants' family or media are barred access to the proceedings in jail trials. This impedes the right to a public hearing, which generally requires oral hearings of the case, which the parties and members of the public, including the media can attend.

65. These measures are not only incompatible with the right to a public hearing, at times, they also do not work: in one case, for example, individuals hostile to the defendant were allowed access to the proceedings being carried out in jail. The trial court had authorized jail trial after the accused and his lawyer received threats to their lives during proceedings in the Sessions Court. Even during proceedings in jail, however, individuals

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<sup>39</sup> Report of the Special Rapporteur on the independence of judges and lawyers, *supra* fn. Page 13.

<sup>40</sup> *International Commission of Jurists*, "On Trial: the implementation of Pakistan's blasphemy laws", 4 November 2015, accessed at: <http://www.icj.org/pakistan-trials-for-blasphemy-fundamentally-unfair-icj-new-report/>, pp. 34-36.

<sup>41</sup> Human Rights Committee, General Comment 32, *supra* fn. paras 28 and 29.

hostile to the accused falsely claimed to be lawyers and attended the hearings. The prison authorities, however, failed to prevent that from happening.

66. Additionally, in jail trials, defendants and their lawyers cannot communicate confidentially as prison officials are at all times present during their meetings. This is inconsistent with the right of the accused to adequate time and facilities to prepare their defense and communicate with counsel, and to defend themselves with assistance of counsel. This contravenes the accused's right to counsel under international standards, which require governments to recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.<sup>42</sup>

67. Article 10(1) of the ICCPR requires that States guarantee that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

68. Overcrowded prisons, torture and other ill-treatment, and inadequate health and hygiene facilities generally plague detention and prison facilities for all crimes. The predicament of individuals accused of blasphemy, who are detained pending trial or appeal or serving sentences for blasphemy, is compounded by the security and safety risks they face as the offence with which they are accused or have been convicted also makes them also vulnerable to attacks. Special measures taken by prison authorities, ostensibly for the protection and security of those awaiting trial or serving sentences for blasphemy, have further undermined individuals' right to humane treatment in detention or prisons.

69. Ostensibly as a measure to protect those awaiting trial on blasphemy charges and those serving sentences following conviction for blasphemy, individuals have been held in individual cells separate from other detainees. Usually, the block of cells in which they are held (referred to as "high security barracks") is at a distance from other prison cells, and they are barred from speaking or interacting with other detainees. In many cases, they also have been prohibited from leaving their cells for exercise or fresh air, recreation or exercise.

70. In cases that are "high-profile", cells of such individuals have been monitored at all times by CCTV cameras. In addition, facilities such as the provision to cook their own food, which are available to other detainees,<sup>43</sup> are denied to many blasphemy accused, purportedly for their own security. In some cases, detainees accused of blasphemy are discouraged from keeping their own books, especially their respective holy books.

71. Individuals accused of blasphemy kept in solitary confinement recounted to the ICJ some elements of their daily struggle to maintain their sanity. A 28-year old man, charged under section 295-C, in pre-trial detention for over two years spoke to the ICJ about the suffering faced by him and others

*There are terrorists, serial killers and rapists in the same prison who have more rights than us –they have friends, they can chat over a game of cards or a cup of tea, they can feel the sun and breathe fresh air. Is a mere allegation of blasphemy so much worse than we have been stripped of all our rights? I don't know how long before our minds start rotting in this environment<sup>44</sup>*

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<sup>42</sup> Article 14(3) (b) and (d) and Principle 22, *UN Basic Principles on the Role of Lawyers*, supra fn.60.

<sup>43</sup> Rule 259, Pakistan Prison Rules.

<sup>44</sup> ICJ interview, September 2015.

72. The practice of prison authorities to detain individuals accused of, or convicted for, blasphemy-related offences for extended periods of time in solitary confinement is in violation of Pakistani law as well as international standards.

73. For these reasons, the ICJ recommends that the following question be included in the List of Issues for the examination of Pakistan:

***What steps has the Government taken to reduce misuse of the blasphemy laws?***

***Is proof of intent necessary for a conviction under Section 295-C of the Pakistan Penal Code?***

***Is Section 295-C applicable to the defamation of other religions apart from Islam?***

***What measures has the Government taken to provide security for judges in blasphemy trials?***

***In light of the threats received by judges hearing blasphemy cases, how does the Government ensure judges in blasphemy trials are independent and impartial?***

***Why is it a requirement under the law that only Muslim judges can hear Section 295-C cases?***

***What measures has the judiciary taken to ensure judges who hear blasphemy trials are impartial?***

***Have disciplinary proceedings been initiated against judges who display bias against the defendant in blasphemy cases?***

***What steps has the Government taken to ensure "jail trials" meet the requirements of fair trial as stipulated in Article 14 of the Covenant?***

***What measures is the Government taking to ensure that blasphemy trials are conducted in a court without fear of intimidation and hostile crowds?***

***Has the Government considered trying blasphemy cases at the High Court level?***

***What is the rationale for keeping people accused or convicted of blasphemy in prolonged solitary confinement?***

***Under what legal provisions are blasphemy suspects and convicts kept in solitary confinement?***

***Has the Government explored other means of ensuring the security of people convicted or accused blasphemy that do not come at the cost of the mental and physical health of the detainee?***

***Are prison authorities required to ensure that people kept in solitary confinement undergo regular medical check-ups?***