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## Human Rights Council

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### **Written statement\* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 August 2017]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.17-15065(E)



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## **PAKISTAN: The world's largest death row prisoners awaiting for their fate**

The Asian Legal Resource Centre (ALRC) would like to draw the attention of the UN Human Rights Council to the state of death penalty in Pakistan. The right to life is the inalienable right of every human being. Pakistan's Constitution, international norms and conventions dictate that no one shall be deprived of life and liberty. In Pakistan this right is only available to a select few. The normative laws may provide an extensive basis for the protection of the right to life. But the substantive laws, such as the Protection of Pakistan Act, 2014 and Anti-terrorism Acts, are arbitrary and unjust-causing travesty in the name of justice.

ALRC/AHRC is thankful to the UNHRC and the International Community for raising their voices against executions. The international bodies have played a pivotal role in stopping executions which have increased since December 15, 2014. We would also like to thank the Commune of Nations who supported our cause. If not, there would have been more executions as in 2015 when more than 344 death row inmates were hanged to death. Unfortunately for Pakistan, the civil and military establishments have always indulged in a tug of war for power. Needless to say, this causes non-implementation of any pragmatic strategy. Although the Civilian Government was against lifting of the moratorium on hanging it was only at the behest of the Military that they reluctantly ceded.

Fortunately, due to pressure exerted by civil society and the international community, the hangings have become few and far between. The lifting of the moratorium on the execution of death sentences, while the Criminal Justice System is mired in corruption and injustice, is a complete travesty of justice and human decency. Exercising the death penalty, in an already intolerant society, is clearly a populist move rather than a deterrent to crime and terror. Blind to justice and international norms, these Courts have handed down death sentences to minors, the mentally and physically challenged as is the case of Imdad Ali.

With more than 475 hangings since the lifting of the moratorium on execution on December 27, 2014, Pakistan ranks third in the world in the number of executions, behind Saudi Arabia and China. Given serious fair trial concerns, executions are travesties of justice. Insufficient access to lawyers and endemic Police torture to extract confessions severely undermine due process and fair trial.

The State has been unable to contain the spread of terrorist ideology or ensuing violence. Hanging an alleged terrorist has proven to be futile in deterring crime, as the incidents of terrorism continue to rise in many parts of the country.

Instead of executing inmates, perhaps the better counter-terrorism measure would be to eliminate the terror cells that are mass producing suicide bombers and militants. The Interior Ministry recently shared the State Department's statistics with Parliament to prove that the ongoing operations against terrorists had helped improve the situation to a large extent.

According to the Amnesty International, at least 8,500 prisoners were under the death penalty at the end of 2015. According to the Interior Minister of State, in 2015 there were 6,016 death row inmates in the country. It is not clear whether he was referring only to inmates whose death sentences had been finalized on appeal. Pakistan has the largest number of people in the world on death row. At this rate, if the Government were to decide to up their execution rate and hang all the death row convicts within a year, State executioners will have to hang 667 people daily.

Establishment of Military Courts to try militants has also proven fruitless against curbing the tide of militancy. Despite completing their mandate of two years and a Sunset Clause becoming operational, the military courts are still doling out capital punishment after summary trials. The criteria of sending cases to the military courts has still not been decided or drawn up. The Police, already marred by corruption and inefficiency, are authorized to decide which of the criminal cases will be sent to military courts. The inefficiency of the police can be gauged from a case of car theft that was sent to a military court from the Koral Police Station of Islamabad. Upon scrutiny it was revealed that the offender had the same FIR number of 2013 against another unknown person. However the police in attempts to show its efficiency had sent the case of theft to a military court by changing the year from 2013 to 2014.

The criminal justice system in Pakistan is one of the few examples of an archaic remnant of the colonial era system where capital punishment was omnipresent. The threat of capital punishment looms over much of the criminal justice system. At the time of Pakistan's independence in 1947, only two crimes, murder and treason, were eligible for the death penalty. Today, Pakistani law identifies 27 crimes punishable by death, in addition to terrorist offenses. Many of those crimes, such as blasphemy and adultery, directly contravene the holdings of the Human Rights Committee.

Despite the Constitutional guarantee under Article 9, the courts hand down death penalties without following any due process, or fair trial. Right to life is a supreme and inalienable right, and any exception to it must be narrow and well - founded. The death penalty legitimizes an irreversible act of violence by the State and will inevitably claim innocent lives. As long as human justice remains fallible, the risk of executing an innocent can never be eliminated.

Following the Peshawar Massacre that claimed the lives of more than 150 school children on December 16, 2014, the moratorium on the death penalty was lifted. It was on the insistence of the military hierarchy that sought refuge for its shortcoming for failing to protect the children by lifting the moratorium on the death penalty. Instead of working out a cohesive counter-terrorism strategy the military and intelligence agencies urged the hanging of death row inmates who were already languishing in jail for decades, many of them innocent. Calls for comprehensive reforms to this overall system of justice, has been called for, time and time again, by civil society activists, the intelligentsia and interested parties. However, despite such repeated calls – except for a few half-hearted pledges by the Government for reforms, no concrete measures have been taken so far

The lifting of the moratorium on the death penalty was always going to be more of a populist move than a deterrent. And, this has proved to be the case. With poor reputations and labyrinthine and archaic procedure of testimony and evidence, the Anti-Terrorism and Session's Courts have been passing death sentences. Rampant miscarriage of justice that results due to confession obtained through torture is the basis for these courts to hand down death sentences. These courts are blind to justice and norms. They have been handing death sentences to minors and even the mentally and physically challenged. Without tackling the root cause of terrorism, i.e. poverty, unemployment, illiteracy, and increasing radicalization, hope for reformation is wishful thinking. Drawing a distinction between the good Taliban and the bad Taliban, while the innocent are hanged, serves no meaningful purpose, other than perpetuating cruelty.

In the light of the above the ALRC would like to recommend that the Government of Pakistan should:

- a) Immediately place a moratorium on the death penalty, and release all inmates who have served out more time in jail than the prescribed penalty for their alleged crime.
- b) The State should invest extensively and heavily in reforming the Criminal Justice System. The Government should make wide scale reforms in policing, the criminal justice system and witness protection
- c) Roll back the Military Courts that have already completed their mandate of two years and the Sunset Clause that has become operational.

The State should own up to their own shortcomings and inefficiency at curbing terrorism. They should devise a cohesive plan of action to check the spread and dissemination of violent ideologies in the name of religion.

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