



# General Assembly

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## Human Rights Council

### Fifteenth session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by the Asian Legal Resource Centre (ALRC), 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.

[22 August 2010]

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

## **Pakistan: Government urged to commute all death sentences and abolish the death penalty**

1. The Asian Legal Resource Centre welcomes the discussion by the Human Rights Council during its 15<sup>th</sup> session concerning the report of the Secretary General on the question of the death penalty. In light of this discussion, the ALRC is hereby submitting information pertaining to the death penalty in Pakistan.

2. The government of Pakistan has failed to abolish the death penalty in spite of the pledge it made in 2008 to commute death sentences to life imprisonment. According to estimates, there are around 7400 prisoners on death row,<sup>1</sup> the largest number in any country in the world. This number constitutes around one third of the death row prisoners in the world. It must be noted that the government has not carried out judicial executions since September 2008, which are typically carried out by hanging in Pakistan, but condemned prisoners remain seriously concerned for their future, as do their family members, while the death penalty remains in place. Many among them have already spent more than 10 years in prison. The ALRC recalls that prolonged detention on death row is at the very least cruel and inhuman treatment and therefore constitutes a violation of these persons' rights in of itself.

3. Prior to the present hiatus to executions, Pakistan was amongst the countries in the world which executed the highest number of persons each year. To date 128 countries have abolished the death penalty, and of those that have not, only around half carry out executions. Pakistan voted against a United Nation General Assembly resolution for a moratorium on the death penalty in December 2007.

4. The government of Pakistan has promised since June 21, 2008 to commute death sentences on several occasions, but little action has been taken to put this into effect. Reports have indicated that in some prisons, prisoners sentenced to death have been moved from death row cells to other barracks, but remain separated from other prisoners. Pakistan's death penalty has been commuted before. Former Prime Minister Zulfikar Ali Bhutto and founder of the current ruling party, the Pakistan People's Party, commuted the death sentence to life imprisonment but he was later executed by the military.

5. The country's parliamentary bodies - the national assembly and senate - in mid-April 2010 approved the eighteenth amendment to the Constitution of Pakistan, deleting the majority of the amendments made by past military rulers, but the parliament has not touched the amendment made to the constitution by General Zia Ulhaq comprising the death penalty. In the 1970s, the government led by the late Zulfikar Ali Bhutto raised the minimum term of a life sentence from 14 to 25 years with the idea that capital punishment would be abolished in the years to come. However, this did not materialize and General Zia, the country's military ruler from 1977 to 1988, kept both the death penalty and the increased life sentence intact through an ordinance which was later incorporated in the Constitution. Mr. Bhutto was later hanged in 1979. Former President Musharraf did nothing to alter either the death sentence or the minimum term.

6. Pakistan's legislators also did not attempt to commute the death sentence in the eighteenth amendment, allegedly because of pressure by Islamic fundamentalist parties. The federal cabinet decided on July 2, 2008 to commute the death sentence, but due to pressure from Muslim fundamentalists and a Suo Moto action from the then-Chief Justice

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<sup>1</sup> According to ALRC sources as well as reports by Amnesty International and the Human Rights Commission of Pakistan.

of Pakistan, Mr. Abdul Hameed Dogar, who had been appointed by former president General Musharraf during the state of emergency, the government avoided issuing a formal notification commuting death sentences.

7. When Pakistan was founded 63 years ago, only murder and treason carried the death penalty. Now the death penalty can be handed to persons found guilty of 27 'crimes' including blasphemy, stripping a woman in public, terrorist acts, sabotage of sensitive installations, sabotage of railways, attacks on law enforcement personnel, spreading hate against the armed forces, sedition, and many more.

8. Although the Pakistan Juvenile Justice System Ordinance was extended to apply nationwide in 2004, implementation remains limited. This is the case notably as, also in 2004, the High Court in Lahore revoked this ordinance, which exempted those under the age of 18 years from execution. An appeal is still pending. Pakistan is one of just five countries in the world to have executed a minor/juvenile offender in recent years. In one such case, Mutabar Khan was hanged on June 13, 2006 for a crime committed when he was 16, and the authorities of another jail, Mach Central Jail, have acknowledged holding two juvenile offenders on death row. Often, after years of trial defendants will have trouble convincing the judge that they were actually underage when they broke the law.

9. The country's two parallel judiciary systems, one secular and other one based on Shariah laws, creates a situation in which the death penalty has been handed out in ways that do not satisfy the requirements of the International Covenant on Civil and Political Rights (ICCPR), which Pakistan ratified on June 23, 2010. The Islamic Shariah Courts are quick to hand out death sentences following trials that do not meet the internationally accepted standards of fair trial. The judicial bodies in the country follow Islamic injunctions and are a significant hindrance to the abolishment of the death penalty.

10. Pardons concerning death sentences can only be given by the victims. Death sentences are usually settled after a blood money payment called diyat and courts will often urge family members to resolve matters out of court. Human rights NGOs have branded this the 'privatisation of justice' and it tends to give the wealthy impunity. Because of diyat payments it is suspected that death penalties are dealt out more freely, because judges assume a settlement will be found.

11. Many among the 7,400 on death row are there as a result of the blasphemy law, under which crimes carry an obligatory death sentence, but for which evidence is often tenuous or involves personal vengeance. Section 295C of Pakistan's Penal Code provides the death penalty for "Whoever by words, either spoken or written, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of The Holy Prophet (Peace be Upon Him)".

12. This law is vague and open to abuse, notably against non-Muslims in Pakistan. It represents a severe limitation on religious freedom, as it effectively targets religious minorities. The law is also used by Muslim fundamentalist groups against liberal Muslims. The law has also often been used by those with personal grudges, as well as against Muslims who have converted to Christianity. When Pakistan's former president, General Musharraf, considered amending the law to limit such potential abuses, pressure from Islamic hardliners caused him to abandon these amendments, so the law remains, with all its flaws. An accusation of blasphemy commonly subjects the accused, as well as police, lawyers, and judges involved in the case, to harassment, threats and attacks. An accusation is sometimes the prelude to vigilantism and rioting.

13. Pakistan ratified the International Covenant on Civil and Political Rights in April 2010, which was signed by the President in June. While these steps are welcome, the ALRC believes that it is imperative for the government to also take immediate steps to

ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

14. Recommendations: As stated above, Pakistan currently has around one third of the world's death row prisoners, so any discussion of the issue of the death penalty must address this situation. The Asian Legal Resource Centre urges the Council to take all necessary steps to ensure that the government of Pakistan:

- i. Provides immediate guarantees that none of the estimated 7400 death row prisoners will be executed.
  - ii. Commutes all death sentences to life imprisonment.
  - iii. Without delay abolishes the death penalty.
  - iv. Ratifies the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, bringing domestic legislation into line with its international obligations and ensuring the full implementation of this legislation.
  - v. Repeal the Blasphemy law and free all persons being detained pursuant to this law.
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