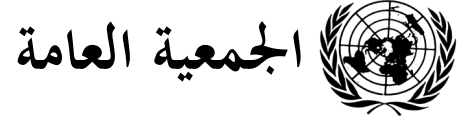


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مجلس حقوق الإنسان  
الدورة الثالثة والعشرون  
البند ٣ من جدول الأعمال  
تعزيز وحماية جميع حقوق الإنسان المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير المقررة الخاصة المعنية باستقلال القضاة والمحامين، السيدة غابرييلا  
كناول

إضافة

البعثة إلى باكستان\*

موجز

أجرت المقررة الخاصة المعنية باستقلال القضاة والمحامين زيارة رسمية إلى جمهورية باكستان الإسلامية بدعوة من الحكومة في الفترة من ١٩ إلى ٢٩ أيار/مايو ٢٠١٢. وقابلت السلطات الحكومية والتشريعية والقضائية، فضلاً عن ممثلين عن الجمعيات المهنية ومنظمات المجتمع المدني وأكاديميين وغيرهم من أصحاب المصلحة. وزارت المقررة الخاصة إسلام آباد وكراتشي ولاهور.

\* يُعَمَّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز، فيُعمَّم باللغة التي قُدِّمَ بها فقط.

وتبحث المقررة الخاصة، في هذا التقرير، الإجراءات التي اتخذتها باكستان من أجل ضمان استقلال القضاة والمدعين العامين والمحامين وحمائهم، كما تحلل التحديات والعقبات التي تعيق إقامة العدل بكفاية وفعالية وأداء الجهات الفاعلة في النظام القضائي لمهامها بشكل مستقل ونزيه وفعال منذ أن بدأت عملية الانتقال من نظام ديكتاتوري عسكري إلى نظام ديمقراطي في عام ٢٠٠٨.

ويشير التقرير بشكل خاص إلى أوجه اللبس المستشكلة، في الولايات القضائية والنظم والأنظمة القانونية؛ والنظام الجديد لتعيين القضاة في المحاكم العليا؛ وعدم حماية الجهات الفاعلة القضائية؛ وتطبيق قوانين تمييزية؛ والنشاط النضالي للمحكمة العليا في مجال القضاء واستخدام هذه المحكمة لصلاحياتها التلقائية؛ وحالة عدم الاستقرار التي تعانيها النساء في نظام العدالة؛ ووجود نظم "عدالة" غير رسمية. وتبحث المقررة الخاصة أيضاً ظروف عمل دوائر القضاء والادعاء العام والمسألة ذات الصلة المتعلقة بتراكم القضايا، وتأخير الإجراءات، وفرص اللجوء إلى العدالة. ويحلل التقرير حالة المحامين بشكل منفصل. وأخيراً، تتطرق المقررة الخاصة إلى الحاجة إلى تعليم جيد وتدريب مستمر لصالح جميع الجهات الفاعلة القضائية، لا سيما في مجال حقوق الإنسان وحقوق المرأة والمساواة بين الجنسين.

## Annex

[English only]

### Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Pakistan (19 to 29 May 2012)

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## **I. Introduction**

1. The Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, visited the Islamic Republic of Pakistan (hereafter Pakistan) from 19 to 29 May 2012 at the invitation of the Government. She wishes to commend the Government for opening up to visits by special procedures after a hiatus of 13 years and hopes that the door will remain open for other mandate holders who have expressed an interest in visiting Pakistan.
2. The purpose of the visit was to understand how Pakistan endeavours to ensure the independence of the judiciary, magistrates, prosecutors and lawyers, as well as their protection, and to analyse the challenges and obstacles encountered which impede justice to be administered adequately and efficiently and actors of the judicial system to discharge their functions independently, impartially and effectively.
3. In addition to Islamabad, the Special Rapporteur visited Karachi and Lahore. She met with the Chief Justice of the Supreme Court, the Minister of State of the Ministry of Foreign Affairs, the Ministers of Law, Justice and Parliamentary Affairs of Pakistan and the Province of Punjab, the Advisor to the Prime Minister on Human Rights, members of the National Assembly, and the Attorney General of Pakistan. She also held meetings with senior Government officials, judges of the Supreme Court, High Courts, District Courts, and the Federal Shariat Court, as well as representatives of bar associations, lawyers, academics, the National Commission on the Status of Women, non-governmental organizations, United Nations agencies and other stakeholders.
4. The Special Rapporteur wishes to warmly thank the Government, and in particular officials at the Ministry of Foreign Affairs, for their invitation and for having facilitated a smooth programme of meetings with full respect for her mandate. She also thanks all those who gave the benefit of their precious time and experience, especially the United Nations Resident Coordinator and his team.

## **II. The justice system**

5. Pakistan is a Federal State composed of four provinces – Balochistan, Khyber Pakhtunkhwa, Punjab and Sindh – and four territories: Islamabad Capital Territory, Federally Administered Tribal Areas, Azad Kashmir and Gilgit-Baltistan. Democratic general elections in February 2008 marked the beginning of a transition from military dictatorship to democracy. Many reforms have since been undertaken in order to restore full constitutional order, including reforms regarding the judiciary. Nevertheless, the general situation in Pakistan remains very difficult and affected by violence related to religious extremism and insurgency, including violence spilling over from neighbouring Afghanistan, tensions stemming from the unresolved international territorial dispute over the Kashmir region, consequences of large-scale natural disasters, and poverty.

### **A. Historical and political context**

6. The Government of India Act (1935) served as the country's first constitution when it achieved independence in 1947. In 1956, the Constituent Assembly of Pakistan elaborated an autonomous constitution, which was abolished under military rule in 1958. A new constitution was promulgated in 1962 and was abrogated in 1969 when martial law was imposed. Following the division of the country with the independence of Bangladesh in 1971, the present Constitution was drafted and came into effect on 14 August 1973.

Since that time, however, constitutional order has frequently been disrupted by military coups and interventions, and 20 amendments have been adopted.

7. Although the Constitution formally protects the independence of the judiciary, Pakistan's history has seen repeated assaults on the integrity of the courts and the legal profession. In turn, Pakistan's higher judiciary often compromised its independence and impartiality by validating military interventions and sanctioning constitutional amendments that fundamentally changed the legal and political system in the country.

8. One of the most recent judicial crises started on 9 March 2007 when then President, Pervez Musharraf, dismissed the Chief Justice of the Supreme Court, Iftikhar Chaudhry. The crisis was aggravated in November 2007 when President Musharraf issued a proclamation of emergency and a Provisional Constitutional Order, designed to forestall constitutional challenge to the legitimacy of his holding simultaneously the position of President and Chief of Army Staff. A new Oath of Office (Judges) Order made it mandatory for superior court judges to take fresh oaths under the new Provisional Constitutional Order so as to remain in office. Only five of the 17 Supreme Court judges took oath under the new Provisional Constitutional Order. On 23 November 2007, the newly constituted Supreme Court and its Chief Justice upheld the legality of the Provisional Constitutional Order, as well as presidential actions that stemmed from the declaration of emergency. The former Chief Justice was placed on house arrest.

9. The crisis led to a major rallying of the legal profession and civil society against President Musharraf's rule, known as the Lawyer's Movement, which spearheaded the social unrest that ultimately led to the lifting of the emergency on 15 December 2007 and fresh elections in February 2008, restoring constitutional order. On 22 March 2009, Iftikhar Chaudhry was reinstated as Chief Justice, and subsequently, all other judges who had been dismissed were also reappointed after the Supreme Court declared that the 2007 Provisional Constitutional Order, the Oath of Office (Judges) Order and all judicial appointments made by the Chief Justice during that period were null, void and illegal. Over 70 so-called Provisional Constitutional Order judges were removed. Many were later charged with contempt of court if they did not resign or present an unconditional apology.

## **B. Legal framework**

10. The current legal system is based on a complex combination of common law, inherited from the British, and sharia, or Islamic law. The colonial power introduced common law gradually, as need arose, and with limited jurisdiction in criminal and civil matters. Law was reformative and many gaps remained. When Pakistan came into being, it was decided that gaps should be filled with Islamic Law, in the same way that Islamic law had been codified in the area of family law.

11. Islamic law forms part of Pakistan's legal framework, and its status is guaranteed by the Constitution, which requires that legislation be in compliance with the injunction of Islam as laid down in the Koran and the Sunna. Although Islamic law represents a vast body of jurisprudence spanning over 1,400 years, it is not fully codified, and can be therefore subject to different interpretations. Such interpretations may create ambiguity and represent a real challenge for enforcing the rule of law and respecting the principle of legality. Conflicts have also arisen regarding the hierarchy of Islamic law and provisions of the Constitution, particularly in relation to fundamental rights.

12. Regarding recognition of human rights, the Constitution contains a comprehensive chapter on fundamental rights,<sup>1</sup> which includes, among others, fair trial guarantees. Article 8 stipulates that “any law, or any custom or usage having the force of law, insofar as it is inconsistent with the rights conferred by the Chapter, shall, to the extent of such inconsistency, be void.” Yet, the Special Rapporteur was told that when there is a conflict between the Constitution and Islamic law, the latter prevails. This is of concern, because it adds an important element of uncertainty to the enforcement of the Constitution and the fundamental rights contained therein.

13. In the realm of international human rights law, Pakistan has recently ratified two important treaties, namely the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which include many provisions relating to the administration of justice, fair trial, equality before the law and non-discrimination. The Special Rapporteur commends this positive step and urges the Government to undertake all necessary steps, including the passing of new domestic legislation, to implement these essential human rights conventions.

### **C. Constitutional provisions related to the judiciary**

14. Part VII of the Constitution is dedicated to the “judicature,” which only includes the superior courts: the Supreme Court, five High Courts (one for each province and the Islamabad Capital Territory) and the Federal Shariat Court.<sup>2</sup> The Constitution contains detailed provisions on the composition, jurisdiction, powers and functions of these courts.

15. The qualifications of judges, their mode of appointment, service conditions, salary, and pension are also laid down in the Constitution. Article 209 provides for the grounds, as well as forum and procedure, for the removal of judges from the superior courts. The Supreme Judicial Council (SJC), consisting of the Chief Justice, the two most senior judges of the Supreme Court, and the two most senior Chief Justices of the High Courts, on its own or on reference by the President, may recommend the removal of a judge on the ground of misconduct or physical or mental incapacity.

16. The preamble and article 2A of the Constitution specifically provide for the independence of the judiciary to be secured. However, the separation of powers between the judiciary and the executive is not as clearly stated, since article 175(3) stipulates that “the judiciary shall be separated progressively from the Executive within fourteen years from the commencing day” in 1973. In addition, article 68 states that “no discussion shall take place in Majlis-e-Shoora (the Parliament) with respect to the conduct of any Judges of the Supreme Court, or a High Court, in the discharge of his duties.” More specifically, article 37(d) states that justice must be inexpensive and expeditious.

17. The Constitution also establishes that the Attorney General shall give advice to the Federal Government on legal matters and perform other duties of legal character referred or assigned to him by the Government, and in the courts and tribunals.<sup>3</sup> The President appoints the Attorney General and can also terminate his term of office at any time.

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<sup>1</sup> Chapter 1, part II.

<sup>2</sup> Articles 175 to 212B.

<sup>3</sup> Article 100.

## **D. The court structure**

### **1. The Supreme Court<sup>4</sup>**

18. The Supreme Court is the highest court and therefore the final arbiter of the law and the Constitution. Its decisions are binding on all other courts.

19. The Supreme Court is currently composed of 17 justices who are nominated by the Judicial Commission. The nominations need to be confirmed by a Parliamentary Committee before the President of Pakistan finally appoints the justices. If necessary, the Chief Justice, in consultation with the Judicial Commission, may nominate ad hoc judges for a limited period of time.

20. The Supreme Court exercises original and exclusive jurisdiction in inter-governmental disputes, whether between the Federal Government and a provincial government or among provincial governments. The Supreme Court also exercises original jurisdiction, *suo moto* or upon petition, for the enforcement of fundamental rights, where “a question of public importance” is involved.<sup>5</sup> The Court has advisory jurisdiction in giving an opinion to the President on a question of law. Finally, the Supreme Court acts as an appellate court in a number of civil and criminal matters referred to it by the High Courts, as well as against judgements and decisions of Service Tribunals and some special courts, and the Federal Shariat Court (the latter are heard before the Shariat Appellate Bench of the Supreme Court, see below).

### **2. The High Courts<sup>6</sup>**

21. Pakistan has five High Courts, one for each of the four provinces and one for the Islamabad Capital Territory. Each High Court consists of a Chief Justice and a number of other judges determined by their respective provincial law. The Judicial Commission, with a larger composition, including the Chief Justice of the concerned High Courts, the relevant Provincial Minister of Law and an advocate nominated by the Provincial Bar Council, nominates the judges of the High Courts. The nominations have to be confirmed by a Parliamentary Committee before the President of Pakistan appoints the judges.

22. The High Courts serve as appellate courts in a vast number of civil and criminal matters; however crimes that fall specifically under the appellate jurisdiction of the Federal Shariat Court are excluded from their jurisdiction. Nevertheless, under the same offences, the High Courts may entertain bail petitions.

23. They may also exercise original jurisdiction in the enforcement of fundamental rights, rule on *habeas corpus* appeals and, on application by an aggrieved party, order that officials of the Federation, the province or a local authority refrain from unlawful activities. They may also annul unlawful administrative acts. In addition, the High Courts supervise and control all lower courts.

### **3. The Federal Shariat Court<sup>7</sup>**

24. The Federal Shariat Court was created in 1980; it consists of eight Muslim judges, including the Chief Justice. Not more than four of the judges are, have been or are qualified

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<sup>4</sup> Article 175 and 176 to 191.

<sup>5</sup> Article 184 (3).

<sup>6</sup> Article 175 and 192 to 203.

<sup>7</sup> Articles 203 A to 203 J.

to be a judge of a High Court, and not more than three shall be *ulema*, that is, well versed in Islamic law. The Judicial Commission, with a larger composition, including the Chief Justice and the most senior member of the Federal Shariat Court, nominates the judges of the Court. The nominees must be confirmed by a Parliamentary Committee and appointed by the President. Contrary to the other superior courts where judges are appointed until the legally prescribed retirement age, judges of the Federal Shariat Court are appointed for a term of three years; they may be appointed for additional terms.

25. The Federal Shariat Court, *suo moto* or upon petition by a citizen, the Federal or a provincial government, may examine and determine whether or not a certain provision of law is repugnant to the injunctions of Islam, as laid down in the Koran and the Sunna. If a certain provision of law is declared to be repugnant to the injunctions of Islam, the Government is required to take necessary steps to amend the law so as to bring it in conformity.

26. The Federal Shariat Court also exercises appellate revisional jurisdiction over the lower courts in criminal cases under (sharia-based) *Hudood* Ordinances. *Hudood* Ordinances include for instance, theft, armed robbery, fornication, libel and use or sale of alcohol. However, the court may not turn an acquittal into a conviction. The Federal Shariat Court's decisions can be appealed to the Shariat Appellate Bench of the Supreme Court, which consists of three Muslim judges of the Supreme Court and not more than two *ulema*, appointed by the President as ad hoc members thereof.

#### 4. Courts of first instance

27. District or other courts of a level below the High Courts lie within the competence of the provinces and other administrative units. The first instance judiciary may be broadly divided into two classes: civil courts established under the 1962 West Pakistan Civil Court Ordinance, and criminal courts created under the 1898 Criminal Procedure Code. The hierarchy of the lower civil courts is as follows in descending order: District Judge, Additional District Judge, Senior Civil Judge, Civil Judge First class, Civil Judge 2nd class and Civil Judge 3rd class. Similarly, the hierarchy of criminal courts is: Sessions Judge, Additional Sessions Judge, Judicial Magistrate First class, Judicial Magistrate 2nd class and Judicial Magistrate 3rd class. Provincial laws respectively fix their pecuniary and territorial jurisdictions. Appeals against the decisions of civil courts lie with the District Judge or the High Court, while those against criminal courts' decisions lie with Sessions Judge or the High Court.

28. The respective High Courts exercise both administrative and judicial supervision over the other courts. The administration of justice, however, is determined by provincial laws and rules, including the terms and conditions of service of judicial officers. The authority for appointment and promotion of lower courts' judicial officers lies with the High Courts. Recruitment procedures may vary from one province to another.

29. The Chief Justice of the High Court is competent to initiate disciplinary action against a judge of the first instance courts, yet such proceedings are apparently initiated and dealt with under the provincial Government Servants (Efficiency and Discipline) Rules, which were primarily designed for executive officers and therefore contain gaps and anomalies as regards judicial officers. For instance, these rules are silent regarding how judicial officers should conduct themselves in and outside the courtroom.

#### 5. Special courts

30. Other civil and criminal courts and tribunals also exist, created under special laws and enactments to deal with federal subjects. Their jurisdiction, powers and functions are



specified in their statutes. The decisions and judgements of these special courts can be challenged before the superior judiciary through revision or appeal. Such courts include, inter alia, Banking Courts, Income Tax Tribunals, Anti-Corruption Courts, Anti-Narcotics Courts, Anti-Terrorist Courts and Labour Relations Courts.

### **III. Challenges to the independence and impartiality of the judiciary and the proper administration of justice**

#### **A. Ambiguities regarding jurisdictions and legal systems**

31. The jurisdiction of Pakistan's superior courts does not extend to the Federally Administered Tribal Areas (FATAs).<sup>8</sup> The FATAs represent a buffer zone of high strategic importance; extending the rule of law to these territories would go against the interests of the local elites who can exercise their powers unhindered. Indeed, in the FATAs, it is the executive who decides disputes and cases as per the Frontier Crime Regulations, without respect for the fundamental democratic principle of separation of powers.

32. The FATAs were compared by several interlocutors to "islands of lawlessness." Yet, and even though in a 1973 precedent, the Government extended the jurisdiction of the High Court of Khyber Pakhtunkhwa, and by extension that of the Supreme Court, to the Provincially Administered Tribal Areas (PATAs), there seems to be no political consensus on the extension of the Constitution and jurisdiction of the superior courts to the FATAs.

33. Reportedly, the Constitution does not extend to the administrative unit of Gilgit Baltistan either. Gilgit Baltistan is a disputed area which has developed its own judicial system. Thus, some fundamental rights can be enforced by the system, but not all of the rights recognized by the Constitution. Azad Kashmir is technically an independent State and has its own Constitution, which includes provisions on fundamental rights, and its own judicial hierarchy.

34. The Special Rapporteur is seriously concerned that since the jurisdiction of the highest courts as enshrined in the Constitution does not apply to the whole territory of Pakistan, many people could be deprived of the fundamental rights guaranteed by the Constitution. She further believes that a uniform legal system enshrined in the Constitution is necessary to avoid ambiguities and discrepancies in the administration of justice, which create difficulties for litigators to seek justice.

35. Another issue that creates ambiguity is the recognition in the Constitution of another superior court, namely the Federal Shariat Court. There is reportedly no hierarchy between the appeal jurisdiction of the Federal Shariat Court and the High Courts and it is the nature of the crime in each case that will determine under which jurisdiction an appeal will be examined (crimes under *Hudood* Ordinances will be heard by the Federal Shariat Court). Decisions of the Federal Shariat Court can be appealed before the Supreme Court, but only before its Shariat Appellate Bench. The composition of this bench consists of justices of the Supreme Court, but also of (not more than two) *ulema* appointed by the President as ad hoc members. This is worrisome as it is not clear which interpretation of Islam will be represented, and because the *ulema* can be appointed to the Shariat Appellate Bench on the basis of popularity or personal affinities, instead of on the basis of qualifications.

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<sup>8</sup> Article 247 of the Constitution.

36. It is of further concern that the chapter of the Constitution instituting the Federal Shariat Court is said to override any other constitutional rules, thereby creating further confusion as to the hierarchy of the superior courts. At the same time, judges of the Federal Shariat Court do not enjoy the security of tenure as do judges of the High Courts or the Supreme Court, and are therefore more vulnerable to external pressures and influences from secular and religious circles.

37. The Special Rapporteur believes that the existence of this additional superior court in the Constitution is problematic and leaves room for interpretations of the laws and the Constitution that might be contradictory. She considers that the ordinary superior courts are equally competent to judge if a law is repugnant to Islamic principles, and therefore questions the rationale and utility of the Federal Shariat Court.

## **B. Selection and appointment of judges**

38. A fundamental and generally positive change in the process for appointing judges to the superior courts was introduced in 2010 by the 18th and 19th amendments to the Constitution. Before the amendments, the President of Pakistan appointed the justices of the Supreme Court after consultation with the Chief Justice. The amendments created a Judicial Commission to nominate judges of the Supreme Court, the High Courts and the Federal Shariat Court.

39. The Judicial Commission is composed of nine members: the Chief Justice; the four most senior justices of the Supreme Court; a former justice of the Supreme Court nominated by the Chief Justice in consultation with the other justices in the Commission; the Federal Minister of Law, Justice and Parliamentary Affairs; the Attorney General and a senior advocate of the Supreme Court, nominated by the Pakistan Bar Council. In the case of High Court appointments, the Chief Justice of that court, the relevant Provincial Minister of Law and an advocate nominated by the Provincial Bar Council are also involved. As regards appointments to the Federal Shariat Court, the Chief Justice and the most senior judge of that court are involved.

40. The nominations made by the Judicial Commission are then presented before a Parliamentary Committee, composed of four senators and four members of the National Assembly, equally divided between the Government and the opposition, which have the power to reject or confirm the nominations. If rejected, the Committee has to state the reasons for its decision to the Prime Minister. If confirmed, the nominations are presented to the President of the Republic for appointment. The authority of the Parliamentary Committee was reportedly reduced through a judgement of the Supreme Court.<sup>9</sup> How such jurisprudence is being applied in practice, and to what extent, remains unclear.

41. To ensure the independence of judges, their appointments should follow objective criteria clearly defined and set up in the rules and procedure of appointment. Such criteria should exist at all levels of the judicial system and should not be subjected to the vested interests of political and other actors. On several occasions, the Special Rapporteur heard serious criticism regarding the quality of judicial appointments, especially in the High Courts. She was told that in some instances, nepotism had led to the appointment of persons of mediocre competence to the bench. These allegations are worrisome and should be investigated and addressed as a matter of priority, especially in the light of the vacancies to be filled.

<sup>9</sup> *Munir Hussain Bhatti v. Federation of Pakistan* (PLD 2011 SC 407).

42. Selection and promotion criteria for judges of the first instance courts can differ from one province to another. Pakistan's lower judiciary would highly benefit from unified selection, appointment and promotion procedures and criteria for judges of the lower courts. Selection should only be done on the basis of competence and merits and any system that does not recognize this principle should be revised.

### **C. Budget and conditions of work**

43. In order to deliver justice and uphold the rule of law, the judiciary must be properly equipped and adequately financed. Regrettably, according to the information received during the mission, the percentage of the budget allocated to the judiciary is minimal and far below that of other State institutions. With reportedly less than 1 per cent of the total federal budget attributed to the judiciary, improvements will be slow and conditions of work of the judiciary will remain unsatisfactory.

44. The Supreme Court and the High Courts benefit from a certain degree of autonomy in the administration of their budgets. The respective Chief Justices are authorized, for instance, to re-appropriate funds within the budgetary allocation, without the approval of the Finance Ministry. Chief Justices are also competent to create or abolish posts and upgrade or downgrade them. All this is positive in principle, but if the budget is inadequate, this autonomy becomes void.

45. Over the last four to five years, a lot of commendable efforts have been made to improve the general conditions of work in the judicial system at all levels. For example, the salaries of judges of first instance courts have been substantially raised. According to the Ministry of Law, in a bid to fight and prevent corruption, judges are now the highest paid State officials in the country. According to many, the positive effect of the increase in salaries on combating corruption has yet to be seen.

46. During the visit, interlocutors from all boards unanimously noted that the working conditions of the lower judiciary were poor and inadequate, and negatively impacted on the delivery of justice. The Special Rapporteur visited the district court of Islamabad where she was struck by the conditions in which judges, prosecutors and lawyers work and how the parties and witnesses to a case are received. Judges and other judicial actors at the lower level of the judiciary are lacking basic facilities, such as electricity, water and sanitation, chambers, separate offices, waiting rooms, libraries, equipment, including computers and filing systems, and support staff, including paralegals.

47. The State's reluctance to sufficiently fund the judiciary is a phenomenon generalized throughout all the provinces. The Special Rapporteur notes that the existence of an effective legal system should be regarded as essential for the development and stability of democracy in Pakistan, and calls upon the authorities to increase the support and resources available to the administration of justice, in particular to the first instance courts.

### **D. Backlog of cases, judicial delays and access to justice**

48. Throughout Pakistan there exists a considerable backlog of cases at all levels of the judiciary, but especially in the lower courts. The number of pending cases per judge is alarmingly high and contributes to further delays in the delivery of justice. On average, judges apparently have 200 cases to adjudicate per day – sometimes up to 300 cases. This situation is humanely impossible to deal with. The insufficient number of judges at the first instance level also seriously delays the delivery of justice and therefore negatively affects the public's confidence in the judiciary. Vacancies in the lower courts are also high. For

instance, 10 out of the 11 Anti-Terrorism Courts in the Province of Sindh were reported to have vacant judge positions in 2011. The Special Rapporteur was told that the lifespan of a civil case in Pakistan could reach 20 years, which amounts to a de facto denial of justice.

49. In addition to the shortage of judges in the lower courts, it seems that the situation is somewhat similar in the High Courts. There is a number of long-term vacancies in some High Courts, which also extensively contributes to delays in the justice system. For instance, at the time of the visit, the Punjab High Court in Lahore was functioning with half of its required manpower. Such vacancies are partly due to the dismissal of the so-called Provisional Constitutional Order judges. While the appointment of judges to these vacant positions must respect established rules and criteria, the relevant actors are encouraged to take all actions necessary, within the prerogative defined by law, to remedy this situation and thereby avoid further increase in the backlog at the lower and superior courts levels, which hinders people's access to justice.

50. There is also a general perception among the public that the judiciary is massively corrupt, especially at the level of the High Courts and the lower courts. Regardless of the veracity of allegations of corruption in the judiciary, the Special Rapporteur strongly believes that proper investigations under clear and transparent rules should be carried out for all claims, especially cases of allegations of corruption; all the guarantees of fair trial and due process of the accused must be respected in order to restore the public's faith in the justice system and to strengthen the capacity of the judiciary to contribute to fighting corruption in other State institutions.

51. Finally, there is no institutionalized legal-aid programme. Various forms of legal assistance are given through non-governmental organizations or legal aid cells within law firms. In Punjab, some kind of system of legal assistance was established, but did not work properly in practice because the eligibility criteria were too stringent and the process too lengthy. According to the Ministry of Law, a bill establishing a Public Defenders Office, initiated in 2008, was at the final stage of approval in Parliament. While this is a positive step, it is not clear when the bill will be approved and when the office will become operational. The application of the bill to the provinces and other administrative units in Pakistan also remains unclear.

## **E. Lack of protection, threats, attacks and killings**

52. The judiciary, legal profession and prosecution services in Pakistan regularly come under pressure from all kinds of public and private actors, including non-State actors such as extremist religious groups, insurgents and terrorists. The Special Rapporteur is seriously worried by the number and nature of reported cases of threats, attacks and killings of judges and lawyers. In the face of such criminal violence and intimidation, the State seems to have been unable to provide protection and secure the lives and safety of some of its citizens, judges in particular. Physical security is an essential condition for judges to carry out their duties independently and impartially, yet there is no institutionalized protection mechanism for judges and other actors of the justice system.

53. The Special Rapporteur was appalled to hear of cases of judges being shot at in their own courtroom. As a result of this violence and the lack of protection, judges are afraid for their lives; this is particularly the case with judges at the first instance level who are in direct and close contact with the communities for which they adjudicate. Some judges are reluctant to condemn suspected terrorists or religious extremists for fear of reprisal, thus, the delivery of justice is negatively affected.

54. An emblematic example often related to the Special Rapporteur during her mission is the case of Judge Pervez Ali Shah who had handed down the death sentence to the person who murdered the Governor of Punjab, Salman Taseer, because of his publicly proclaimed opposition to blasphemy laws. The judge was threatened with death and had to flee the country with his family, while the murderer was celebrated by religious extremists groups.

55. The lack of victim and witness protection mechanisms also has a strong negative effect on the efficiency of the justice system, especially regarding criminal cases. Setting up appropriate victim and witness protection mechanisms represents a challenge as it requires financial and technical resources, as well as strong political leadership. Notwithstanding, this is a basic requirement indispensable to any functioning criminal justice system.

## **F. Discriminatory laws: the case of blasphemy laws**

56. The Special Rapporteur expresses particular concern regarding cases brought under the so-called blasphemy laws.<sup>10</sup> She heard reports that in some instances, judges have been coerced or pressured to decide against the accused, even without supporting evidence, and that lawyers, in addition to their reluctance to take up such cases because they are afraid for their security, are targeted and forced not to represent their clients properly. Even when acquittals for blasphemy charges are pronounced, the person acquitted most often has to leave the country because of threats to his or her life by non-State groups. In some cases, acquitted persons have been killed by vigilante mobs. In most cases though, the condemnatory sentences passed by the lower courts are overturned at the High Court level. It was also noted that in some areas, the blasphemy laws are abused to target Christians. In 2011, the Governor of Punjab and the Federal Minorities Minister were both killed due to their public support for amendments to blasphemy laws.

57. The vague language of the blasphemy laws make 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 religious or sectarian groups. 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.

58. Many interlocutors expressed their concern regarding the Government's passivity, which, in their view, further emboldened extremists to attack minorities. 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 justice.

59. Alleged discriminatory application of the *Hudood* Ordinances is also troublesome. Many interlocutors reported to the Special Rapporteur that women have been the principal targets of these laws. As in the case of conviction for blasphemy, judgements under *Hudood* Ordinances are often overturned on appeal.

60. Laws that are ambiguous can be applied in an arbitrary and discriminatory manner and impede the proper administration of justice. For this reason, the Special Rapporteur believes that they should be repealed and replaced with clear provisions in full conformity

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<sup>10</sup> The blasphemy laws are contained in section 295B (1982) and section 295C (1986) of the Penal Code.

with the Constitution of Pakistan and international human rights instruments to which Pakistan is a party.

61. The Special Rapporteur is further concerned about the existence of *qisas* (retribution) and *diyat* (compensation, also known as blood money) laws which allow the family of a murder victim to pardon the killer in return for monetary compensation. As a result, murder cases are settled out of court, undermining the efficiency of the criminal justice system and other laws, such as laws against crimes in the name of honour, thus contributing to the rise of impunity.

## **G. Judicial activism and the Supreme Court's use of *suo moto* powers**

62. Judicial activism, and in particular the exercise of *suo moto* powers by the Supreme Court, was commented on by virtually all the interlocutors during the mission. However, the opinions expressed were very diverse; the Special Rapporteur heard positive, negative and mixed assessments.

63. *Suo moto* procedures are based on article 184(3) of the Constitution, which establishes two requirements before the Supreme Court is entitled to determine matters in the exercise of its related powers: firstly, the issue must be of "public importance"; secondly, it must in some way have an impact on the enforcement of "fundamental rights" as enshrined in Chapter 1, Part II, of the Constitution.

64. The Special Rapporteur is concerned that the role of the Supreme Court seems to have become very politically sensitive. By several accounts, at the time of the mission, the Chief Justice, who had become a major pole of institutional power, was the most popular public figure in Pakistan. According to several sources, the superior judiciary is the only arm of the State that is working at the moment, which is why it has so much visibility and so much hope is placed in the person of the Chief Justice and in the Supreme Court. The Supreme Court is expected to fill the gaps left by a dysfunctional system of governance. The problem is that it creates expectation that the Supreme Court will solve everything, which is simply impossible, as not all issues faced by Pakistan are of a judicial nature and other State institutions must play their part.

65. Some observers are of the opinion that the Supreme Court is making too frequent use of its *suo moto* powers and that it has interpreted "fundamental rights" in a very broad manner. The Chief Justice was accused of selectivity in composing the benches for *suo moto* inquiries, thereby concealing political aims. There are no clearly defined criteria determining when the Supreme Court should take up an incident or not. This creates some level of uncertainty regarding the practice of *suo moto*, which seems difficult to reconcile with the rule of law. Observers also worried about the effect of the frequent invocation of *suo moto* powers in the Supreme Court's ordinary cases and work.

66. The Special Rapporteur wishes to commend the use of the Supreme Court's inherent powers in cases related to gross human rights violations, for instance in the case of enforced disappearances, referred to as "missing persons," in Balochistan and Sindh. The use of this procedure has in some cases enabled the Court to uphold human rights law and contribute to combating impunity. However, she also expresses concerns regarding the lack of clear criteria guiding the use of *suo moto*, which can undermine its very nature and may jeopardize other pending cases from being considered in a timely manner by the Supreme Court. It is also unfortunate when unfounded impressions of abuse of power are created. So as to avoid such negative perception, it would seem recommendable that a transparent system for selecting the benches of the Court to be created, with clearly established rules.

67. Furthermore, it was reported that the Supreme Court has, in the last few years, increasingly made use of its *suo moto* powers in a series of high-profile cases, which have directly challenged the prerogatives of the Parliament and the executive.

68. As recommended by the National Judicial Conference in 2011, *suo moto* litigation would be more successful with separate benches of justices established to hear human rights cases for a specified time; also if the Supreme Court adopted procedural rules to channel cases; if the legal fraternity was enabled to report cases of human rights violations to High Courts; and if preliminary inquiries were held before taking *suo moto* action.

69. In the light of judicial activism, the issue of accountability mechanisms for judges is particularly important. Some reported that there is no uniform and effective accountability mechanism for the judiciary in Pakistan. The Supreme Judicial Council can only receive complaints against judges of the Supreme Court and the High Courts and cases they take up are said to be rare. As a result, codes of ethics and conduct for judges are not consistently and systematically enforced.

## **H. Prosecutorial services**

70. Almost all the people with whom the Special Rapporteur spoke reported that prosecutorial services are in a particularly challenging situation and prosecutors have very difficult conditions of work, especially those at the district and provincial levels. The budget is insufficient and prosecutors do not have administrative control over it. Prosecutors are also in a certain position of weakness since their tenure is not secured and they can be removed from office at any time at the will of the executive.

71. It seems that inadequate remuneration and lack of recognition of the prosecutor's work, greatly contribute to the lack of interest in such posts. Consequently, qualified people stay away from prosecutorial positions. The reported poor quality of prosecution services results in extremely low conviction rates and loss of the public's trust in the formal justice system. People thus tend to turn to informal dispute settlement fora, which lack basic guarantees of fair trial and due process.

72. In the context of the criminal justice system, the conviction rate is allegedly only two per cent, which, in the opinion of the Special Rapporteur, demonstrates the failure of the current system and the urgent need to take both long-term and short-term measures to improve the rate of convictions, fight impunity and restore the public's faith in the formal justice system.

73. Issues related to the procedures in force for providing evidence, especially in criminal cases, also contribute to poor conviction rates. The Islamic law evidence procedure, introduced in the 1984 Evidence Act, basically consists of the use of witnesses. The lack of inclusion of forensics, circumstantial evidence, and other modern types of evidence negatively affect the investigators preparing the cases. Such rules of procedures relating to evidence must be revised as a matter of urgency and in the light of legal and technological developments.

74. Several of the difficulties faced by prosecution services are due to the poor quality of investigations carried out by police services. Although a direct assessment of the functioning of the police falls outside of the prerogative of the Special Rapporteur's mandate, she wishes to underline that when investigation services fail to properly deliver, they directly and negatively impact the ability of the prosecution services to take cases forward and obtain convictions, consequently impairing the delivery of justice.

75. Finally, the Special Rapporteur feels compelled to mention reports she received regarding the experience of victims registering complaints with the police, which is too gruesome and often includes the payment of a bribe in order for the police officers to register the complaints. Because of the experience that they would have to suffer, most people refrain from registering complaints. The attitude of the police is reportedly worse when it comes to certain types of complaints, like gender-based violence.

## **I. Women in the justice system**

76. During her visit, the Special Rapporteur paid particular attention to integrating a gender perspective and women's rights in the justice system. She is concerned with the historical lack of women justices in the Supreme Court and the Federal Shariat Court, and with the presence of only two women in the High Courts. The gap in the equal representation of women in the judiciary in general remains huge.

77. Women who do sit on the bench often suffer discrimination from the public and other actors of the justice system, including their peers. Most of the time, women are assigned to family or civil courts, and do not play a prominent role in the criminal justice system. Assignment of cases is also often discriminatory; cases deemed important are directed to men judges. Given this situation, measures to improve the representation of women in the judiciary need to be urgently taken. In particular, measures implemented to recruit new judges should include a gender perspective and encourage competent women candidates.

78. Special affirmative action is further needed, along with strong political leadership of the Government, to remove obstacles for women to practice law. In a positive development, the Special Rapporteur was informed that more women are registered with the Bar Associations in Pakistan than 10 years ago. Clear guidance should also be available in law schools and colleges to further encourage women's representation on the bench and in the various legal professions.

79. The approach of the judiciary in general is very conservative and representative of a traditional and patriarchal societal structure. Gender biases and discriminatory attitudes and practices are reflected and reproduced within the judiciary and the administration of justice. In this light, sustained and comprehensive sensitization and awareness-raising programmes are urgently needed for all State institutions, including the judiciary, prosecutors and lawyers, in order to push for change with regard to patriarchal and discriminatory attitudes and practices.

80. As mentioned above, the Special Rapporteur was further struck by reports of existing laws, such as the blasphemy laws, being misused to target women and strip them of their fundamental rights. Many stages of the justice system, starting with filing a case with the police, to accessing lawyers and appearing and testifying before the courts, are gender-biased, and therefore impede the full functioning of justice for women. The Special Rapporteur was encouraged to hear that the current Government has been pro-active on legislation relating to the rights of women. She wishes to underline that emphasis now needs to be put on the implementation of such legislation.

81. Nevertheless, it seems that in many areas of Pakistan, access to justice for women remains illusory. Women's illiteracy is high, their knowledge of their own rights and of the law is poor to non-existent, a male relative must accompany them for procedures with the police or the courts, and no formal mechanism is in place to protect them. These are all areas that need to be addressed urgently and in a comprehensive manner by all branches of



the State, including the judiciary itself. The National Commission on the Status of Women can provide priceless leadership and recommendations on all of these matters.

## J. Informal justice systems

82. Reports of conflicts being resolved by informal justice systems, often at the grass-root or community level are distressing. Such informal dispute settlement systems are deeply rooted in conservative interpretations of tradition and/or religion and lead to conflict resolution and punishments which are in contradiction with laws in Pakistan, fundamental rights recognized in the Constitution, and international human rights standards.

83. In 2004, the Sindh High Court issued a decision declaring that trials by *jirgas* were illegal and in breach of provisions of the Constitution and directed that contravention would be prosecuted as contempt of court, punishable by imprisonment. The Supreme Court itself has declared on several occasions that *jirgas* and *panchayats* are unlawful assemblies and that their decisions have no legal validity. Such fora for judicial-looking adjudication, which are often more accessible, inexpensive and speedy as compared to formal first instance courts, should be effectively discouraged and combated in practice.

84. The evident disconnection between the modern formal justice system and the tribal areas or local level demonstrates the urgency to better integrate the formal justice system into the communities it serves. A number of testimonies indicated that it was only in urban areas that one had the choice of accessing the formal justice system; in the villages, the only choice is between the village elders and customary laws. Such laws are sometimes also presented as Islamic laws or in an Islamic frame; they dominate dispute settlements through forced reconciliation, retribution and compensation, and are a source of power for local authorities, hence their reluctance to let go of them.

85. Besides, it seems that a great number of people do not trust the formal justice system, claiming that it is complex, difficult, slow and expensive, as opposed to the informal system which allegedly provides simple, cheap and quick relief. Yet, many interlocutors observed that if the formal justice system actually worked for people, they would certainly change their mind and opt for it instead.

86. It is of great concern that it is mostly women who are victimized by punishments awarded by *jirgas* and other informal dispute settlement fora. The Special rapporteur fully supports the National Commission on the Status of Women's petition demanding the ban of *jirgas* filed before the Supreme Court. The points of view of women are simply not represented in such informal adjudication settings. Furthermore, women are often pressured to settle for such reconciliatory systems and not to pursue justice.

## IV. The situation of lawyers

87. The role played by lawyers in restoring the rule of law and contributing to the establishment of democratic governance is highly commendable, as are their enthusiasm and dedication.

88. There are four categories of lawyers in Pakistan: ordinary advocates, advocates of the High Courts, advocates of the Supreme Court and senior advocates of the Supreme Court. Lawyers are organized in two types of professional associations. Bar Councils, at both Federal and provincial level, are statutory bodies that exercise public functions, such as admission to the Bar and disciplinary proceedings against lawyers. Bar Associations are professional associations of lawyers that exist at both lower and superior court levels.

89. Observers reported that Bar associations do not have enough financial resources. While there is a provision in the law for allocation of resources to the Bar without discrimination, the Special Rapporteur heard worrying allegations according to which the executive would try to influence and pressure Bar leaders with promises of grants. In practice, there is no transparency in the allocation of funds to Bar associations, and several observers said allocations are given on the basis of personal affinities and political allegiance.

90. The Special Rapporteur is also concerned that a limited number of lawyers might still be surfing on the wave of respect which arose from the Lawyers' Movement, while misconducting themselves vis-à-vis their clients, judges and the police. Instances were reported where lawyers beat up, slapped or threw shoes at judges in their own courtrooms, without suffering any consequences for their improper and reprehensible behaviours. Such behaviours call for rigorous enforcement of existing disciplinary measures. Codes of conduct also need to be revised in order to fill remaining gaps. Furthermore, Bar Associations and Bar Councils have to adopt a clear and strong stance on ethics and misconduct issues and must not tolerate that breaches of codes of conduct go unpunished. Bar Councils should effectively enforce disciplinary actions.

91. Malpractice by lawyers also contribute to delays and adjournment of cases, especially in the lower courts; indeed, the longer the case, the higher the fees. It was nevertheless pointed out that some lawyers too are overworked, which results in routine adjournments of cases and the extended length of proceedings.

92. Enforcing the code of conduct for lawyers is a short-term solution; for many observers, a longer-term solution would be improvement in the quality of legal training. The only academic requirement to enter the Bar is a Law degree following a Bachelor's degree. No vocational training is required before entering the profession. Becoming a lawyer is now considered an easy profession in Pakistan and many lawyers indicated to the Special Rapporteur that the LLB is the easiest degree to obtain. Law colleges have mushroomed in recent years and as a direct consequence, the number of practising lawyers has dramatically increased. The quality of education varies from one academic institution to another; as a result, there seems to be "different types of lawyers" in Pakistan with different educational backgrounds and who do not share the same value system. Pakistan is in need of a uniform education system for the legal profession, with high quality standards enforced throughout.

93. Furthermore, guaranteeing security for lawyers is of utmost importance. Threats, attacks, kidnappings and killings of lawyers should not be tolerated. In the Province of Sindh during 2011, at least 21 lawyers were killed, 16 of them belonged to the Karachi Bar Association. The perpetrators of such killings almost invariably go unpunished. This situation of impunity further discourages lawyers and other people from fighting for the rule of law. Moreover, according to information received, some lawyers refuse to take up cases which are deemed sensitive in terms of religion, customs or tradition out of fear of reprisals against themselves or their families.

94. Some observers reported that after the Lawyers' Movement, the space between the bench and the Bar started shrinking. While the Special Rapporteur fully understands that the bench and Bar have been fighting for the same goals, that is, the restoration of the constitutional order, the rule of law and democracy, she is of the opinion that only by maintaining their independence from other State and non-State actors, including each other, can the judiciary and lawyers strengthen the independence of the justice system.

## **V. Education, training and capacity-building**

95. All those met during the mission were unanimous in recognizing the importance of quality education, continuous profession training and capacity-building programmes for all the actors in the judicial system in order to ensure an independent, impartial and adequate administration of justice. Judges, prosecutors and lawyers should have access to quality continuing education, including specialized training on gender equality and women's rights, international human rights law and human rights mechanisms. Such training must be accessible to all judicial actors, including Bar associations, regardless of the level at which they operate.

96. Professional and vocational training is also lacking. As a result, many non-legal tactics are used in court. However, for judges for instance, the issue is not only about legal knowledge, as case management is equally important. Information received from judges revealed that they feel deprived of training opportunities, including opportunities to study abroad, and the quality of the Judicial Academy is in no way comparable to the high standards of the National Defence University which trains civil service officers.

97. In this context, the Special Rapporteur wishes to encourage further strengthening of technical cooperation with international and regional actors, such as the European Union, the United Nations Office on Drugs and Crime, the United Nations Development Programme (UNDP) and civil society organizations, in developing quality education curricula and professional training programmes.

## **VI. Conclusions**

98. **The Special Rapporteur wishes to commend Pakistan's transition from a military-based dictatorship to a Parliamentary democracy. Tremendous changes have been initiated in the last years, some of which have contributed to improving the independence of the judiciary. Transition, nevertheless, always comes with challenges, and very often more challenges are encountered along the way. These challenges should be assessed and addressed as a matter of urgency because the independence of the justice system is a necessary precondition to the rule of law and democracy.**

99. **At the time of the visit, both houses of Parliament had just approved a law creating a National Human Rights Institution. The creation of this institution represents an opportunity to complement the system and fill the gaps so as to alleviate the work of the Supreme Court in cases related to fundamental rights. It is not intended to duplicate or replace the courts of first instance.**

100. **Long-term reforms seem to have so far been neglected and the danger is that short-term reforms will be short-lived if they are not framed in long-term perspectives and policies. Each branch of the State has an essential role to play within the boundaries of its mandate, as provided for in the Constitution. An independent and impartial judicial system will certainly contribute to strengthening the rule of law and effectively combating impunity for human rights violations.**

## VII. Recommendations

### The Constitution and the courts

101. The structure of the judicial system as a whole should be enshrined in the Constitution and clearly bound by all its provisions.
102. The formal justice system must be urgently improved in order to discourage recourse to informal “justice” systems. Alternative dispute resolutions, like conciliation and mediation, should be incorporated into the formal justice system, be non-discriminatory and respect fundamental rights.
103. The jurisdiction of the Supreme Court and the application of the Constitution should be extended to all territories under the control of Pakistan, including the Federally Administered Tribal Areas.
104. There should be a genuine discussion on the independence, utility and functions of the Federal Shariat Court, with a view to considering its possible elimination.
105. Clear criteria guiding *suo moto* procedures should be adopted by the Supreme Court.
106. Professional managerial divisions should be established within the courts at all levels, so as to fulfil tasks of an administrative nature – like the assignment of cases – and alleviate the workload of judges.
107. The Acts creating special courts, such as the Anti-Terrorist Court, should not be worded vaguely; they should make explicit reference to procedural guarantees, which must be the same as for all courts in compliance with the Constitution of Pakistan and international human rights law.

### Budget and conditions of work

108. The relevant authorities at the Federal and provincial levels should substantially increase the financial and human resources of the judiciary, in particular at the level of first instance courts, so as to ensure that the judiciary is properly equipped and adequately financed.

### Appointment, backlog of cases, judicial delays and access to justice

109. More judges should be appointed, especially at the level of the lower courts. In this context, vacancies should be filled expeditiously, but with transparency and full respect for the principles related to the selection and appointment of judges established by international human rights law. Criteria for the selection of judges should be revised and be consistent throughout Pakistan and at all levels of the judiciary.
110. All allegations of corruption in the judiciary should be properly investigated under clear and transparent rules, set beforehand, and with respect for fundamental guarantees of fair trial and due process of the accused.
111. A programme of free legal aid should be institutionalized at the national level and sufficient funds should be allocated to it so as to enable it to function properly.

### **Protection mechanisms**

112. The Government should set up a specific mechanism for the protection of judges, as well as court officials, prosecutors and lawyers, in consultation with the professional bodies and other associations of judges, prosecutors and lawyers throughout the whole territory of Pakistan.

113. Any acts of harassment, threats or physical assaults, including killings, of judges, prosecutors, lawyers, other judicial officers and legal professionals should be promptly investigated and perpetrators sanctioned.

### **Accountability**

114. The Judicial Council should take appropriate measures to enforce the code of conduct of judges of the superior courts in a transparent and consistent manner, with full respect for the fundamental guarantees of fair trial and due process.

115. A unified code of conduct for the judges of the courts of first instance should be established with the participation of associations and representatives of judges, and implemented in a consistent and transparent manner, with full respect for the fundamental guarantees of fair trial and due process, in order to enhance public confidence in the administration of justice.

### **Criminal justice system**

116. The Government should give priority to establishing adequate victim and witness protection mechanisms throughout the country.

117. Blasphemy laws, *Hudood* Ordinances, and anti-Ahmadi laws, as well as any other discriminatory legal provision, 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.

118. Credible amendments should be made to the existing laws and rules for alternative dispute resolution, including *qisas* and *diyat*, so as to ensure that they do not violate the fundamental rights contained in the Constitution as well as international human rights law, and to prevent impunity.

### **Prosecution services**

119. Appointment and selection of prosecutors, including the Attorney General, should be transparent and based on merit. Objective criteria should be set for this purpose and admission to the prosecutorial career should be conducted through a public competitive selection process.

120. Security of tenure of prosecutors, including that of the Attorney General, should be ensured as an important element for strengthening their independence and impartiality.

121. Prosecutors should be provided with adequate infrastructure and physical conditions of work, as well as with the necessary human and technical resources to effectively perform their tasks.

122. A unified code of ethics for prosecutors should be established, and compliance with its provisions should be monitored and accounted for.

### **Women in the justice system**

123. The appointment of women to the Supreme Court, the High Courts and the Federal Shariat Court should be encouraged and put into practice.

124. The gender-biased approach that is prevalent at the different stages of the justice system – from women’s complaints to the police to their appearance and testimony before the courts – must be eliminated.

### **Informal justice systems**

125. The Government should urgently provide strong political leadership and implement practical measures to ban informal justice systems, such as *jirgas* and *panchayats*, and pave the way for a change in behaviours and attitudes towards them.

126. The Supreme Court should take a clear stance on the illegality of *jirgas*, *panchayats* and other custom-based informal dispute settlement systems and adopt a clear guiding policy for lower courts to follow when confronted with cases relating to decisions or orders passed by such fora.

127. Those who participate in informal justice systems should be held accountable by the formal justice system and specific legislation should be elaborated and implemented in practice to facilitate such prosecutions.

### **Lawyers**

128. Measures should be taken to improve the quality and professionalism of the legal career. In this respect, it would be advisable to introduce a uniform written bar examination as a requirement for admission to the legal profession. Candidates to the bar examination should have at minimum completed a university degree in Law as well as a mandatory internship period with a lawyer.

129. Lawyers associations should develop a unified ethical code, applicable to all lawyers in Pakistan. This code should provide for an applicable disciplinary procedure and give detailed guidance on the infractions by lawyers that trigger disciplinary measures; ethical codes should be vigorously and coherently implemented and enforced by the responsible legal organization.

### **Capacity-building**

130. Judges, prosecutors and lawyers should have access to quality continuing education, including specialized training on gender equality and women’s rights, international human rights law, and human rights mechanisms. Basic training in human rights law should be made compulsory for all judges, prosecutors and lawyers.