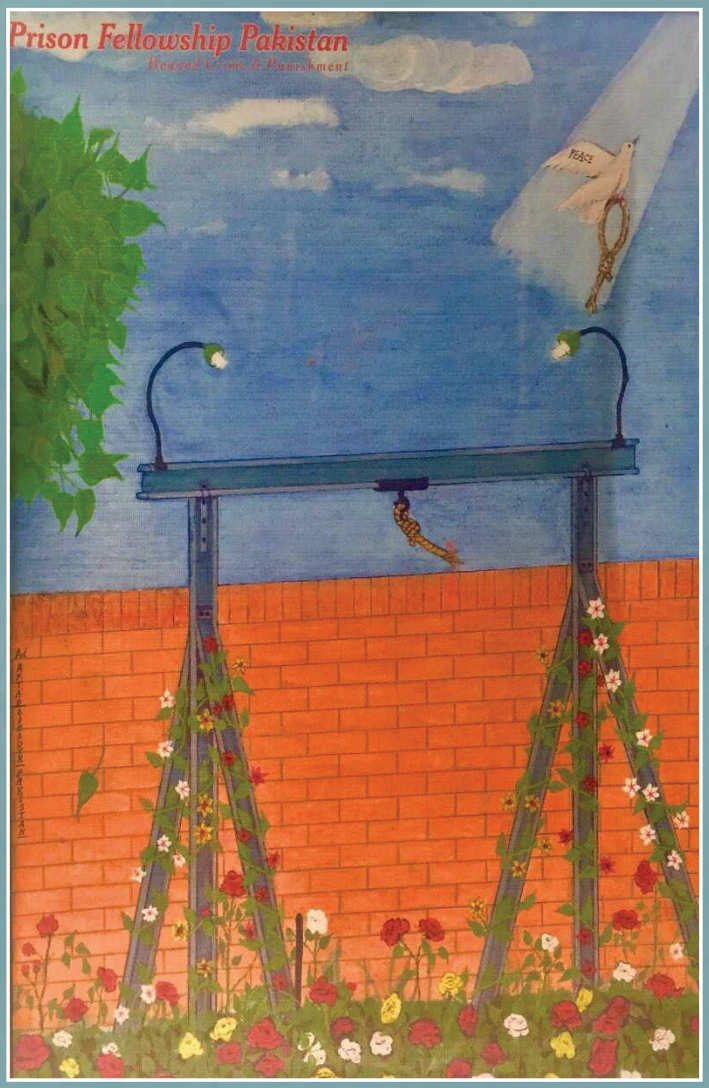
Justice Denied:

A Global Study of Wrongful Death Row Convictions

January 2018

THE CORNELL CENTER ON THE DEATH PENALTY WORLDWIDE

Cornell Law School



Artwork by Aftab Bahadur, wrongfully convicted in Pakistan, and executed on June 10, 2015.

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THE CORNELL CENTER ON THE DEATH PENALTY WORLDWIDE aims to bridge critical gaps in research and advocacy around the death penalty. First, the Center provides comprehensive, transparent data on the death penalty laws and practices of all countries and territories that retain the death penalty. Second, it publishes reports and manuals on issues of practical relevance to defense lawyers, governments, courts, and organizations grappling with questions relating to the application of the death penalty, particularly in the global south. Third, it engages in targeted litigation and advocacy focusing on the implementation of fair trial standards and the rights of those who come into conflict with the law, including juveniles, women, and individuals with intellectual disabilities and mental illnesses. Finally, it provides training through the Makwanyane Institute to a cadre of competitively chosen Fellows, who undergo intensive capital defense training with the intent to return home and share their knowledge with other capital defenders around the globe. More information is available at **www.deathpenaltyworldwide.org.**

ACKNOWLEDGEMENTS

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IN CAMEROON: The Réseau des avocats camerounais contre la peine de mort (RACOPEM), or Cameroonian Network of Lawyers Against the Death Penalty, is a national association of lawyers that advocates for the abolition of the death penalty and the respect of human rights within the criminal justice system. It does so by undertaking research on death penalty issues, organizing capital defense trainings, and holding awareness-raising events to encourage civil society and media debates on capital punishment issues.

IN INDONESIA: LBH Masyarakat is a not-for-profit non-governmental organization, based in Jakarta, that provides free legal services for the poor and victims of human rights abuses, including people facing the death penalty or execution; undertakes community legal empowerment for marginalized groups; and advocates for law reform and human rights protection through campaigns, strategic litigation, policy advocacy, research, and analysis.

IN JORDAN: Iyad Alqaisi is a practicing lawyer based in Amman and the director of Justice Clinic, an NGO focused on legal reforms. He is a member of the Jordan Bar Association and the Palestinian Bar Association. An Open Society Foundation Rule of Law Fellow, he holds an LL.M from Syracuse University, New York and an LL.B from Jordan's Yarmouk University.

IN MALAWI: We relied heavily on data generated by the Malawi Resentencing Project, spearheaded by the Malawi Human Rights Commission in collaboration with the Cornell Law School International Human Rights Clinic, Reprieve, the Paralegal Advisory Services Institute, the Director of Public Prosecutions, Legal Aid, the Malawi Law Society, Chancellor College of Law, and the Malawi Prisons Service. Through this project, paralegals and lawyers gathered mitigating evidence for more than 150 prisoners who had received mandatory death sentences. After hearing this evidence in accordance with a new, discretionary sentencing regime, the high courts released 124 prisoners—the rest received reduced sentences.

IN NIGERIA: The Legal Defence and Assistance Project (LEDAP) is a non-governmental organization of lawyers and law professionals engaged in the promotion and protection of human rights, the rule of law, and good governance in Nigeria. LEDAP employs a range of methods to achieve its mission. It employs impact

litigation and social advocacy to advance the rule of law and good governance, and provides free legal representation to poor and vulnerable victims of human rights violations, with special projects to support representation of women and children. LEDAP also works with the Directors of Public Prosecution to improve administration of criminal justice in the country, and undertakes programs to raise awareness of international human rights norms within the legal community in Nigeria.

IN PAKISTAN: Justice Project Pakistan is a legal action non-profit organization based in Lahore, Pakistan. It provides direct pro bono legal and investigative services to the most vulnerable Pakistani prisoners facing the harshest punishments, particularly those facing the death penalty, the mentally ill, victims of police torture, and detainees in the War on Terror. JPP's vision is to employ strategic litigation to set legal precedents that reform the criminal justice system in Pakistan. It litigates and advocates innovatively, pursuing cases on behalf of individuals that hold the potential to set precedents that allow those in similar conditions to better enforce their legal and human rights. Its strategic litigation is coupled with a fierce public and policy advocacy campaign to educate and inform the public and policy-makers to reform the criminal justice system in Pakistan.

* * *

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INTRODUCTION

"[T]he interest in preventing wrongful convictions is now international and not confined to any region or type of criminal justice system . . . Wrongful convictions are tragic, they can occur anywhere, and they are a serious human rights problem."[1]

Over the last several decades, wrongful convictions of persons condemned to death have been documented in every region of the world. In some cases, innocent men and women have spent decades on death row before being exonerated and released. In others, they have been executed before evidence of their innocence has come to light. The prevalence of wrongful convictions has exposed the fallibility of every criminal justice model and has led some states to abolish the death penalty altogether.

To date, there have been few in-depth comparative studies of the causes of wrongful capital convictions.[2] Most empirical research on the topic has focused on the United States, where death row exonerations have been highly publicized.[3] This report, by contrast, explores the phenomenon of wrongful convictions in six different jurisdictions representing a range of geographical regions, legal traditions, and political contexts. It represents the first attempt to identify the systemic factors in each country that increase the likelihood that innocent persons will be sentenced to death.

Each of our country chapters includes research on the failings of the criminal justice system as well as an individual case study. The case studies illustrate how different risk factors play out in capital prosecutions (though the risk factors are invariably more extensive than any one case can represent). The case studies also highlight the problematic gap between constitutional and legislative protections for those facing the death penalty, and states' failure to implement those safeguards in practice.

Our research results confirm what experts and practitioners have long warned: no criminal justice system is free of error, regardless of the system, region, or political regime, and any state that applies the death penalty will inevitably sentence innocent people to an irreversible punishment. We selected some of our country targets, such as Pakistan, Indonesia, and Nigeria, with the knowledge that, thanks to our partners' work, averred innocence cases had already come to public attention. For Cameroon, Malawi, and Jordan, however, this study represents the first attempt to locate and discuss cases of innocence on death row. Though the latter country experts faced greater logistical (and sometimes political) hurdles in pioneering this research, they had no difficulty in identifying cases that presented all the warning signs of wrongful capital convictions.

DEFINITIONS

For the purposes of this report, we define "wrongful conviction" as a case in which the available evidence indicates that the defendant was factually innocent of the capital offense for which he or she was convicted. We intentionally employ a narrow definition of the term so as to avoid any debate over terminology; we therefore exclude cases in which the defendant committed the crime but was legally insane. It is worth noting, however, that the legal definition of "wrongful conviction" could be much broader, encompassing unfair trials and miscarriages of justice even where there is some evidence that the defendant committed a crime.[4]

METHODOLOGY

This project relied heavily upon partnerships with in-country experts, primarily practicing capital defense lawyers and human rights organizations engaged in advocacy and reform efforts around death penalty issues. The researchers conducted interviews of lawyers and activists, analyzed case files gathered on site (including police reports, trial transcripts, witness statements, client interviews, and judicial decisions), and conducted follow-up factual investigations. The researchers also engaged in desk research to expand their understanding of risk factors in individual countries, analyzing reports, articles, and conclusions issued by international and regional human rights bodies, non-governmental organizations, academic institutions, and the media.

THE PREVALENCE OF WRONGFUL CONVICTIONS AROUND THE WORLD

In 2016, at least 60 prisoners were exonerated after having been condemned to death, in countries across the geographical and political spectrum.[5] Yet this represents only a tiny fraction of those who are currently on death row for a crime they did not commit. Few innocent prisoners are able to obtain access to the courts, either because they lack lawyers or because there are no procedural mechanisms available by which they can present new evidence of innocence. As a result, wrongful convictions are vastly underreported—and political leaders have no inkling of the scope of the problem. Greater awareness is key to promoting reforms that will reduce the likelihood that innocent people will be condemned to death and executed. Nevertheless, no set of reforms is capable of eliminating all possibility of human error. For that reason, the best way to prevent the executions of innocents is to abolish the death penalty altogether.

ASIA

In recent decades, evidence of wrongful convictions and subsequent exonerations have increased across Asia, resulting in a nascent innocence movement fueled by the reaction to highly publicized cases of wrongful convictions. Wrongful convictions have been well documented in China, Japan, Malaysia, Mongolia, Taiwan, Thailand, and Vietnam. As a result, innocence organizations now exist in Japan, Taiwan, Singapore, the Philippines, and are forming in China and Thailand.

CARIBBEAN

Wrongful convictions in the Caribbean have received international attention thanks to work of organizations such as the Death Penalty Project. Factors that increase the likelihood of wrongful convictions include poorly resourced police forces, rising crime rates, the admission of false confessions and other unreliable testimony, and lack of access to counsel from the time of arrest.[6]

AFRICA

In proportion to the number of prisoners on death row across the continent, there have been relatively few exonerations in African countries. There are a number of reasons for this. First and foremost, there is a dearth of competent lawyers to represent persons facing the death penalty, particularly on appeal. Second, lawyers receive no funding for investigation and experts, which limits their ability to challenge the prosecution's case. Third, case files and evidence are often lost due to poor recordkeeping.

Despite these barriers, dedicated lawyers and legal organizations, such as the Legal Defence and Assistance Project (LEDAP) in Nigeria, are going to great lengths to overcome barriers to justice for their innocent clients. In 2016, death row prisoners in at least five African countries—Ghana, Malawi, Mauritania, Nigeria, and Sudan—were exonerated and released. With adequate resources, wrongful convictions would likely emerge in every country on the continent.

MIDDLE EAST AND NORTH AFRICA (MENA)

In many MENA states, the threat of terrorism has prompted countries to establish rigid trial procedures that lower evidentiary standards and prevent criminal defendants from receiving a fair trial. As fair trial standards lower, the threat of wrongful conviction increases. There are only a few recorded exonerations in the region, including in Egypt, Jordan, and Kuwait. The limited number of confirmed exonerations is likely attributable to government secrecy, lack of resources for investigation, and persecution of human rights lawyers.

UNITED STATES

From 1973 to 2017, 161 former death row inmates were exonerated in the United States.[7] Erroneous eyewitness testimony, false and coerced confessions, official misconduct, inadequate legal representation, false or misleading forensic evidence, and false testimony from informants were among the factors identified as leading to wrongful convictions in those cases. Of the 20 death row inmates who have been exonerated in the past five years, eight of them had served 30 or more years in prison.[8]

The impact of the national innocence movement in the United States was illustrated by abolition movements in Illinois and Maryland. In 2000, Illinois Governor George Ryan commuted the sentences of all 167 death row prisoners in response to the exonerations of 13 men who had been previously sentenced to death. This was followed in 2011 by a law abolishing the death penalty. In Maryland, the highly publicized exoneration of Kirk Bloodsworth helped prompt legislation abolishing the death penalty in that state in 2013.

SYSTEMIC RISK FACTORS FOR WRONGFUL CONVICTIONS: LESSONS LEARNED FROM THE INNOCENCE MOVEMENT WORLDWIDE

As stories of wrongly convicted persons have emerged around the globe, organizations have called for legal reforms to prevent wrongful convictions and provide redress for victims. National innocence projects have not only been instrumental in changing the public debate around the death penalty, but have also spurred investigation into the causes of wrongful convictions in their legal systems.

Drawing upon available analyses of the systemic flaws that leave defendants vulnerable to wrongful conviction and execution, we briefly define each of the major risk factors documented by national innocence projects, particularly in the United States.[9] The extent to which each of these factors contributes to wrongful convictions depends on the legal system and cultural context. For example, racial bias has played a major role in wrongful convictions in the United States, but is irrelevant in most African countries. Nevertheless, our research has revealed a surprising degree of overlap in systemic failings across different countries, providing valuable insights for states where a lack of resources and political engagement has caused them to underestimate the prevalence of wrongful capital convictions.

INEFFECTIVE ASSISTANCE OF LEGAL COUNSEL

Effective legal representation is the single best defense against wrongful conviction. A lawyer with the skill, experience, and resources to mount an effective defense can mitigate the risks arising from many of the other systemic failings outlined below. In the great majority of retentionist countries, however, capital defendants have no access to competent legal representation—and in some cases, to no legal representation whatsoever. In some jurisdictions, there is no right to counsel from the time of arrest, leaving accused persons vulnerable to coercive interrogation techniques. Almost universally underpaid and under-resourced, capital defenders are often unable to conduct investigations, call witnesses, and consult with experts. Lawyers frequently do not meet their clients in advance of trial, and—in extreme cases—may not even appear at scheduled hearings. Limited contact with the client and insufficient time and resources can impede even the best lawyers from mounting an adequate defense.

TORTURE AND COERCION LEADING TO FALSE CONFESSIONS

In many death penalty jurisdictions, especially those where police lack the resources and training to conduct thorough investigations, confessions form the centerpiece of the prosecution's case. Police use torture as well as physical and psychological abuse to obtain confessions from the accused, a practice that often leads to false confessions. Police are particularly likely to engage in torturous interrogation techniques to elicit a confession when they lack other evidence in a case. Deficiency of training in proper interrogation techniques and a shortage of resources, such as forensic tools, investigative resources, and experts, also may encourage police to employ draconian methods to secure evidence against a suspect. Even when police refrain from using physical coercion, they sometimes use prolonged, manipulative and suggestive questioning—tactics that are particularly likely to

elicit false confessions from persons who are intellectually disabled. Pervasive delays in charging heighten the risk of prolonged interrogation and/or torture.

Vulnerable populations, such as juveniles and the mentally ill, are at particular risk of succumbing to police pressure to confess. While neither of these groups should be subject to capital punishment in accordance with most domestic and international law, they continue to be prosecuted and executed around the world.[10] Providing counsel during interrogation would help prevent coerced interrogations, but lawyers are rarely provided at the time of arrest or in police stations.

MISTAKEN EYEWITNESS IDENTIFICATION

Mistaken eyewitness testimony is a factor in 75% of wrongful convictions in the United States.[11] Mistaken eyewitness testimony occurs when witnesses believe that their memory is an accurate representation of what they see, but are incorrect, usually as a result of psychological and/or environmental factors that affect the reliability of their recollection. Such factors include stress, weapons, the use of a disguise, racial differences between the witness and the suspect, lighting, distance, and limited time spent viewing the perpetrator. Police practices such as suggestive photo arrays and identification parades can enhance the risk of mistaken identification. Media exposure and public discussion of the crime can also affect a witness' memory. Lengthy delays in proceedings also add to a risk of wrongful conviction by allowing witnesses' memories to fade and corroborating evidence to be lost or eroded. Eyewitness testimony typically carries significant weight with police investigators and with triers of fact; thus, mistakes in such testimony create a high risk of wrongful conviction.

MISCONDUCT BY OFFICIALS

Misconduct by prosecutors, police, or the judiciary increases the risk of wrongful conviction. In the United States, prosecutorial misconduct was a factor in 47% of the cases maintained by the National Registry of Exoneration.[12] Prosecutorial misconduct includes the withholding of exculpatory evidence; misleading the court, jury, or defendant; offering false testimony; coercing statements from the accused or from witnesses; and using criminal charges to retaliate against a suspect. Like state-appointed defense counsel, government police and prosecutors may also be underfunded, poorly trained, or lacking experience to handle complicated capital cases. When prosecutors are unable or unwilling to acknowledge critical mistakes in investigative tactics, defendants are at much higher risk of wrongful conviction.

Rudimentary policing techniques and lack of resources can lead to false charges and arbitrary arrests of innocent people. Often when a crime is reported, police conduct a broad dragnet operation in the area where the crime occurred, setting up roadblocks to seek out potential suspects or otherwise arresting people at random to bring into the station for questioning on the assumption that one or more will be charged. In other cases, police base their arrests on incomplete information gained from preliminary interviews. Sometimes, mere association with the victim—family, friends or other known associates—may be sufficient cause to arrest. In some of the most fraught cases, a single personal trait, such as status in the community or nationality, may be the cause for arrest.

Bribery also significantly increases the risk of wrongful conviction. When an official orders a person to pay a bribe, the risk of wrongful conviction is increased because it shifts the crux of the inquiry from whether there is sufficient evidence to convict to whether the accused has means to pay. Those who cannot pay are detained longer and often tortured, either as a means of punishment or to obtain a confession. A detainee may also be asked to pay a bribe for access to bail, leading in some countries to a pre-trial detention population that "is overwhelmingly made up of those who are too poor to pay their way out."[13]

There is no clear evidence that higher police salaries reduce corruption; however, low police salaries provide little incentive for police officers to spend their own money on resources to investigate cases, leading to reliance on unlawful methods such as bribery and torture. In many countries, bribery is also an expected cost of doing business for lawyers, who may be required to pay to expedite bail and trial proceedings for their clients.

LENGTHY PRETRIAL DETENTION

Lengthy pretrial detention is another factor that heightens the risk of wrongful conviction. Prisoners held incommunicado at police stations may falsely confess to a crime they did not commit after lengthy interrogation or abuse. In some countries, particularly in Sub-Saharan Africa, prisoners may be held on remand for as long as a decade before their trials begin. During that time, they typically have no access to legal counsel. As the years pass, evidence is lost, witnesses die, and memories fade, fatally undermining their chances of acquittal.

FAIR TRIAL VIOLATIONS

In capital cases, states should rigorously adhere to the due process safeguards required under national and international law. Instead, states routinely cut corners in capital prosecutions, particularly when politicians and the public are clamoring for swift punishment of those responsible for heinous crimes.

One of the most fundamental due process rights set forth in Article 14 of the International Covenant on Civil and Political Rights is the right to a fair and public hearing by a competent, independent and impartial tribunal. Nevertheless, many retentionist states lack an independent judiciary, and in others the judiciary is plagued by corruption.

Some countries coping with terrorist activity have adopted special laws to facilitate prosecution of terrorist suspects. These laws often violate fair trial norms and undermine procedural safeguards that protect against wrongful conviction.

OBSTACLES TO APPEAL AND POST-CONVICTION REVIEW

The rights to appeal and to post-conviction review, though they cannot prevent wrongful conviction at trial, provide essential protections against wrongful executions.[14] Without a meaningful opportunity to seek such review, persons who have been wrongly convicted and condemned to die have no means of establishing their innocence.

Even where the right to appeal exists in theory, it is often unavailable in practice. Poor recordkeeping in many countries leads to improperly filed, illegible, or missing court files. Without a complete record of proceedings,

courts find it difficult or impossible to review errors at trial. Moreover, in many countries access to counsel on appeal is ephemeral, at best. Across Sub-Saharan Africa, in particular, prisoners represent themselves *pro se* on appeal, without the assistance of anyone with legal training. They have no access to investigators, and may even lack the ability to read and write. In some countries, prison guards write the majority of prisoners' appeals.

In response to widely publicized exonerations, several countries have established special post-conviction review procedures to ensure that new evidence of innocence can be presented and considered. In most retentionist states, however, such remedies are either non-existent or fettered with procedural obstacles. As with the right to appeal, the effectiveness of these procedural mechanisms is contingent on access to competent post-conviction counsel.

FALSE TESTIMONY FROM INFORMANTS OR CO-DEFENDANTS

Testimony from jailhouse informants or co-defendants is linked to approximately half of the wrongful convictions in the United States.[15] Informants may be rewarded with money, better prison conditions, or release from jail for any information, regardless of its veracity. Similarly, when prosecutors offer leniency to co-defendants in exchange for testimony, they heighten the risk of a wrongful conviction. In this situation, the co-defendants have an incentive to testify in a way that aids the prosecution, which increases the risk that they will testify falsely.[16] Police and prosecutors often use the testimony of co-defendants and informants in crimes with little to no physical evidence. When there is little else to consider, the power of informant testimony is magnified—along with the risk of a wrongful conviction.

RACIAL AND ETHNIC DISCRIMINATION

When criminal investigations target racial or ethnic minorities, stereotyping and discrimination create a higher risk of wrongful convictions. Foreign nationals, in particular, are vulnerable to abuse because of their lack of familiarity with the legal system. International law provides that foreign nationals must receive information on their right to communicate with their consulate. Moreover, accused persons who speak a foreign language must receive the assistance of interpreters during interrogation and throughout criminal proceedings. In practice, however, the authorities frequently ignore these rights.

TUNNEL VISION

Tunnel vision is a type of cognitive bias where individuals—here, police, prosecutors, or others—become prematurely focused on a suspect, which influences their perception and interpretation of new information and makes them less likely to consider alternatives or be persuaded by new facts pointing to innocence.[17] Defense attorneys can also suffer from tunnel vision if they believe their client is guilty and thus fail to investigate alternative theories or otherwise zealously advocate for their client. Actors exhibiting tunnel vision continue to look for, and focus on, evidence that supports the conclusion that the suspect is guilty, thereby putting the suspect at risk of being wrongfully convicted. Several factors can aggravate tunnel vision, including public and media pressure to solve a highly publicized crime, or sunk cost issues, such as time, money, and emotion spent on prosecuting a suspect.

FALSE OR MISLEADING FORENSIC EVIDENCE

Few countries that apply the death penalty have access to forensic analysis of any kind, much less the tools used to test for highly technical forensic material, such as DNA.[18] Where forensic evidence is available, it is typically limited to footprints, fingerprints, or blood-type evidence. This evidence is rarely conclusive, and is easily altered or damaged by intentional conduct or through lack of adequate tools and training.[19] Lengthy pretrial detention contributes to the loss or destruction of forensic evidence.

Forensic labs may also produce—through intentional or negligent processing—erroneous results that falsely implicate a suspect. Forensic labs are typically linked with the police or prosecutors' office, jeopardizing their independence. Nevertheless, because of its scientific nature, triers of fact may place a great deal of weight on flawed forensic evidence, creating a higher risk of wrongful conviction.

* * *

In the country chapters to follow, we identify the factors that have likely contributed to the wrongful convictions and death sentences of innocent prisoners. For each country, we have also selected a single case study that illustrates how these factors have played out in practice. Typically there are multiple, overlapping causes of wrongful convictions. Each case is different, and each presents a different constellation of factors. Moreover, the risk factors identified above take shape in different ways, depending on local culture and practice.

For example, in Nigeria police conduct dragnet operations that lead to arbitrary arrest and detention. In Pakistan, police torture and the use of fabricated forensic testimony is commonplace, and weak evidentiary standards in capital trials conducted under the Anti-Terrorism laws make it easier for courts to rely on such evidence. In Jordan, falsified crime reconstructions led by the police are a signature feature of wrongful convictions. Indonesia's discrimination against foreign nationals, particularly in the prosecution of drug-related offences, creates a risk that bias will lead to wrongful conviction. In both Malawi and Cameroon, the dearth of qualified and well-funded lawyers prevent criminal defendants from receiving competent legal representation, without which they cannot hope for a fair trial.

For many of the innocent men featured in our case studies, this is the first time their stories have been told. It is our hope that this report will inspire policymakers and jurists to support the reforms needed to ensure that other innocent men and women receive the justice they deserve. Without those reforms, none of the countries featured here can be confident that persons currently on death row actually committed the crimes for which they were condemned to die.

The lessons learned from this report apply equally to other retentionist states. While each country is unique, one or more of the risk factors identified here can be found in every state that retains the death penalty. We urge all retentionist states to adopt the recommendations listed at the end of this report, which represent universal best practices to reduce the risk of wrongful conviction.

COUNTRY PROFILES

Chapter 1: Cameroon

Although Cameroon has not carried out any executions since 1997, its courts continue to hand down death sentences. Since December 2014, the annual number of new death sentences has skyrocketed in response to the government's enactment of a new and exceptionally broad anti-terrorism law. Military courts in the country's northernmost province, where Boko Haram fighters frequently cross the Nigerian border to mount attacks on military and civilian targets, sentenced 89 people to death in 2015[1] and at least 160 the following year, many of them civilians.[2] We estimate that there are currently around 235 prisoners under sentence of death in Cameroon, around 100 of whom were convicted of terrorism-related offenses.[3]

The Cameroonian Penal Code sets out a range of capital offenses, from murder and treason to robbery or kidnapping resulting in death.[4] The country's 2014 anti-terrorism law, however, has provided the basis for the vast majority of new death sentences issued after 2015.[5] The law provides for two methods of execution: hanging and shooting by firing squad.[6]

Cameroon is a party to the International Covenant on Civil and Political Rights (ICCPR), as well as the African Charter on Human and Peoples' Rights (ACHPR). It has regularly abstained from voting on periodic UN General Assembly resolutions to implement a global moratorium on capital punishment.

Cameroon's capital proceedings are fraught with serious fair trial violations, including the lack of resources and training for defense counsel, widespread police torture, judicial corruption, and the absence of meaningful appeals. These systemic failings are even more acute in terrorism cases. The case of Moctar Amadou and Salissou Moussa,[7] who were sentenced to death on the flimsiest of evidence for alleged actions that fall far short of intentional killing, is emblematic of the deeply concerning flaws in Cameroon's terrorism prosecutions.

CASE STUDY: *MOCTAR AMADOU AND SALISSOU MOUSSA*

Moctar Amadou and Salissou Moussa, an uncle and nephew, were sentenced to death for a non-violent offense characterized as "terrorism," based solely on a political rival's statement to the police. Their conviction exemplifies the high risk of wrongful convictions associated with terrorism proceedings in Cameroon, which suspend essential fair trial guarantees and embrace an overly broad definition of terrorist activity.[8] Many of the systemic flaws at play in this case—notably the lack of access to effective legal representation—extend to capital prosecutions more generally in Cameroon.

At the time of the allegations, Moctar and Salissou lived in Afadé, a remote village located near the Nigerian border in the northernmost province of Cameroon, around 270 km (or 170 miles) from the provincial capital of Maroua. This region has suffered most acutely from raids and incursions by Boko Haram fighters based in Nigeria, particularly since 2014, when Boko Haram entered into open confrontation with the Cameroonian army.[9] From 2014 to 2016, Boko Haram launched over 500 attacks and around 50 suicide bombings in the country, killing at least 1,300 civilians.[10] In response, local authorities have prohibited Cameroonians from

crossing the border, and military courts in Maroua have handed down hundreds of death sentences under the new anti-terrorism law promulgated in December 2014.[11]

Flawed police and judicial investigation

On July 27, 2015, Boko Haram fighters attacked Cameroonian troops and police near the village of Afadé. The exchange of gunfire wounded several Boko Haram fighters, and the militants retreated across the border. Shortly afterwards, Afadé's village headman and other villagers reported to the police that Moctar and Salissou had illegally crossed into Nigeria the day after the attack to provide medical care to injured Boko Haram militants. Both Moctar and Salissou had received medical training as nurses but, unable to find work in their field, they depended on farming for their livelihood. At the time of the allegations, Moctar managed the pharmacy in Afadé's medical center but did not own any medical supplies or equipment. Salissou was still a nursing student and had no direct medical experience.[12]

The police summoned Moctar and Salissou for questioning, and they both voluntarily presented themselves at the police station and denied the accusation. Neither had a criminal record nor known ties to Boko Haram, but the police arrested them on terrorism charges without conducting any further investigation. The defendants also explained, as they would later at their trial, that the denunciation was motivated by a dispute over the village chieftainship and a property inheritance matter.[13] Neither the police nor the investigating judge pursued this critical line of inquiry into the motive for the denunciation.

Lack of effective legal representation

At trial, the defendants were represented by *avocats stagiaires*, or trainee lawyers: recent law school graduates who had not completed the practical portion of their training and were not yet licensed to practice law. Under Cameroon's criminal law, capital defendants must be represented at trial, but the representative does not need to meet any professional eligibility criteria. A capital defender does not need to have criminal defense experience, does not need to have qualified as a lawyer, and indeed does not need to have received any legal training at all. It is common practice for law students or recent graduates working towards their law license to gain experience by taking on capital files, which more senior lawyers avoid because the legal aid fee is woefully inadequate.[14]

Salissou and Moctar's trainee lawyers failed to carry out any investigation into the circumstances of the allegations. Legal aid fees do not cover transportation or investigation costs, and they did not have the resources to visit Afadé, which is located a considerable distance—at least five hours' drive—from Maroua. Consequently, they introduced no witnesses and no other evidence to corroborate the defendants' testimony or strengthen their defense.

Grossly insufficient evidence to convict

The military tribunal of Maroua sentenced Salissou and Moctar to death for terrorism in April 2016 despite the manifest dearth of evidence against them.[15] The prosecution's case rested entirely on hearsay evidence; namely, the police report recording the denunciation by the village chief and others. None of the accusers had witnessed the defendants providing medical care to Boko Haram fighters. Furthermore, none of the accusers testified at

trial, making it impossible for the defense to challenge their evidence on cross-examination. Besides the written record of the denunciation, the prosecution presented no evidence connecting the defendants to Boko Haram or showing that the defendants had crossed the border into Nigeria.[16] Nevertheless, the prosecution argued that the denunciation was "relevant and sustained," and therefore credible.[17]

Without explaining its reasoning, the court deemed the prosecution's evidence sufficient to convict the defendants for terrorism. It further held that the defendants had been motivated by financial gain, although none of the evidence presented to the court supported this conclusion. Once the court found the defendants guilty, it immediately sentenced them to a public execution by firing squad, without considering whether a lower sentence might be more appropriate to the facts of the case. In declining to exercise its discretion to consider relevant mitigation,[18] the military court applied the broadest and most severe interpretation of the anti-terrorism law, significantly aggravating the consequences of a wrongful conviction.

Resource-limited access to a meaningful appeal

Unlike the relatives of most death row inmates, Salissou and Moctar's family had the means to hire a more experienced lawyer on appeal. Furthermore, the family persuaded nine witnesses to travel to Maroua to testify at the appeal hearing and covered all of their travel expenses.[19]

The nine witnesses testified on appeal to two main facts. First, they established the alibi of the two defendants, whom witnesses saw in their village throughout the day of the Boko Haram attack and over the following days. Second, the witnesses confirmed that the defendants were involved in a dispute with the village headman over the village chieftaincy and a property inheritance.[20]

Based on this evidence, the Court of Appeal of Maroua, sitting as a military court of appeal, overturned the convictions for lack of evidence in January 2017. It found that the trial court had based the conviction on rumor or personal knowledge of the events rather than the evidence adduced at trial.[21]

It is very rare in Cameroon for death row prisoners convicted of terrorism to obtain relief on appeal.[22] Critically, marshaling this new evidence before the court would have been impossible had the defendants' family not had the means to cover legal, investigative, and transport costs—resources that are beyond the reach of the majority of death-sentenced prisoners in the country.[23]

RISK FACTORS FOR WRONGFUL CONVICTIONS IN CAMEROON

Cameroon's legal system is both bilingual and bi-jural, incorporating elements of both common law and civil law traditions as a result of split British and French colonial mandates after the First World War. The government is under a constitutional obligation to issue all legislation in both official languages, French and English, and in theory, common law applies in the country's two anglophone regions while civil law applies in the eight francophone regions. All recent attempts to harmonize Cameroonian law, however, have overwhelmingly favored civil law concepts and the country's francophone majority.[24] The Code of Criminal Procedure, for instance, purports to offer a mix of both traditions, but embraces all the fundamental aspects of a civil law-based, inquisitorial system.[25]

The following risk factors for wrongful convictions are prevalent throughout Cameroon.

Ineffective assistance of legal counsel

Deficient legal training and woefully insufficient resources prevent defense lawyers in Cameroon from mounting an adequate defense for their capital clients. Under Cameroonian law, indigent defendants facing the death penalty are entitled to state-funded legal representation, but the fees are so low (5,000 CFA, or approx. $US 9, per hearing) that they often barely cover transportation costs, let alone the time and expenses required to prepare a sufficient defense.[26] Additionally, the fee is not available until after the end of the proceedings and can take months to process.[27] In the face of such a financial disincentive, experienced lawyers rarely take on capital cases. Instead, many capital defendants receive the assistance of trainee lawyers who have yet to pass their qualifying exams but who are willing to accept a low fee in order to gain experience.[28] Legal aid provisions fail to set forth minimal professional qualifications for capital defense lawyers: they do not need to have prior criminal defense experience, be licensed to practice law, or indeed have received any legal training at all.[29] A 2016 study concluded that in almost all terrorism cases, trainee lawyers had acted for defendants facing a mandatory death penalty.[30]

In light of these restrictions, most capital defense lawyers are unable to carry out basic investigation into the cases of their clients. This may mean that lawyers cannot gather the evidence to support even simple defenses. One lawyer in a terrorism case explained that he could not afford to make phone calls to his client's home village to speak to people who could have offered alibi evidence—let alone visit the village in person or transport them to the provincial capital so that they could testify at the defendant's trial.[31] Without the ability to present a cogent defense, an innocent defendant faces a higher risk of wrongful conviction.

Torture and coercion leading to false confessions

The use of torture to elicit unreliable confessions has long been a feature of criminal prosecutions in Cameroon.[32] In recent years, it has been a marked feature of the government's current anti-terrorism policies.[33] After investigating over 100 cases of torture in the Far North region between 2013 and 2017, Amnesty International concluded that security forces commonly arrest terrorism suspects without charge and detain them incommunicado in secret facilities for long periods—on average 32 weeks, but up to two and a half years—before transferring them to ordinary prisons to await trial.[34] Security forces in these secret facilities routinely use torture to elicit confessions or information on other suspected Boko Haram fighters.[35] Security forces administer beatings, immobilize or suspend detainees in stress positions, and subject them to simulated drownings.[36] They deprive detainees of food, water, medical treatment, and basic hygiene.[37] The brutality of these practices combined with inhumane detention conditions has led to numerous custodial deaths. Of the 101 torture victims interviewed for Amnesty's report, 32 had witnessed one or more deaths resulting from torture.[38] The investigation also revealed that at least four torture victims had physical or mental disabilities.[39]

Defense lawyers in terrorism prosecutions report that military judges routinely turn a blind eye to these widespread practices, refusing to credit defendants' accounts of torture or to order an investigation into the allegations. Instead, courts rely upon doctored police files (usually recording a later arrest date in order to mask

the secret detention) and confessions made under duress to convict the defendant of terrorism and sentence him to death.[40]

Misconduct by officials

Police misconduct

In the context of terrorism investigations, security forces carry out arbitrary arrests, sometimes on entire groups, based on little more than rumors or personal accusations. The lack of meaningful police investigations heightens the likelihood that innocent people will be sentenced to death. As one human rights researcher explained, the government's crackdown on Boko Haram affects not only Boko Haram fighters, but also "normal people who happened to be in the wrong place at the wrong time . . . In the fight against Boko Haram, innocent people are paying the price."[41] In February 2015, for instance, police arrested 32 men from the same village in the Far North region based on rumors that the village provided food to Boko Haram. Most of these men were later released, but because of the desperately harsh and overcrowded prison conditions in Maroua, one of them died in jail.[42] In another episode in December 2014, the Maroua police arrested 200 men and boys following a "cordon-and-search" operation,[43] most of them from the villages of Magdeme and Double. The authorities later admitted that 25 of them died in custody that very night,[44] most likely as a result of police torture. Earlier that month, security forces attacked a Koranic school in Guirvidig and arrested 84 minors, 47 of whom were under the age of ten. Their families had no access to the children until they were released six months later.[45]

Judicial misconduct and lack of judicial independence

When judges lack independence from other branches of government, they are more likely to make decisions motivated by external or erroneous factors, placing defendants at higher risk of wrongful conviction. The executive branch fully controls the political appointment process in Cameroon. Judges are also promoted, transferred, and disciplined by the executive, nullifying any possibility for judicial independence, and creating ample opportunities for corrupt decision-making by the judiciary. As one barrister explained, the lack of judicial independence is the "single factor which causes the erosion of this ideal of fair trial" in Cameroon.[46]

The judiciary's lack of independence is compounded by poor remuneration and lack of organizational resources,[47] leading to widespread corruption.[48] In 2013, 55 percent of respondents who came in contact with the judiciary paid a bribe, and 81 per cent of respondents believed the judiciary to be corrupt or extremely corrupt.[49] In 2011, Vice President Ali told the press that over 300 judges were being investigated for corruption charges.[50] While such investigation seems like a positive step, data collected over the five intervening years indicates that the problem persists.[51]

Fair trial violations

Application of weak evidentiary standards

In most terrorism cases, much of the evidence in the prosecution's file consists of written affidavits from witnesses whose names are withheld from the defense and who never appear at trial.[52] Sometimes the prosecution identifies the witness simply as a "credible source."[53] Without the ability to challenge the prosecution's witness testimony, the defense is deprived of any means of mounting even the most minimal

defense. Moreover, in some cases, the prosecution relies on statements so general in nature that they fail to allege any acts and merely conclude that the defendant is a Boko Haram supporter.[54] Courts have thus relied on written reports describing behavior that can at most be described as suspicious—such as staying out late, speaking with foreigners, traveling outside of the village, or purchasing expensive objects—to support terrorism convictions.[55] As one defense lawyer in the region explained, there are so few procedural safeguards that in many instances, state witnesses manufacture the terrorism accusations to attack their enemies and "village feuds end up in court."[56]

In the 2015 case of Younous Mahamat, the prosecution's only witness, a village headman, reported to the police that the defendant had requested a religious ritual to help him renounce his involvement with Boko Haram. The defendant testified in his defense that he had never made such a request and had never been involved with Boko Haram. The military tribunal found the village headman "very credible" and, based on his written declaration alone, convicted Younous of providing weapons to Boko Haram. The court convicted Younous of terrorism and sentenced him to death.[57]

Accelerated trial procedures

Cameroon's military tribunals employ accelerated procedures that prevent defendants from receiving a fair trial and increase the risk of wrongful convictions. Though defendants are often held in secret custody for over a year before being brought to court or assigned counsel, the actual trial process proceeds very quickly.[58] Such trials typically involve only one or two substantive hearings in which testimony is given and the two sides present arguments.[59] A typical case will have an initial hearing in which the lawyer is appointed, then one or two substantive hearings—each of which may only last two hours—and finally a hearing in which the court announces the verdict.[60]

CONCLUSION

The explosion of death sentences for terrorism offenses in Cameroon is deeply concerning in light of the criminal justice system's routine use of torture as a method of investigation, its systemic underfunding of defense lawyers, its acceptance of grossly insufficient standards of evidence, and its denial of basic fair trial rights. Substantial reforms are needed to reduce the risk of wrongful conviction. Most important, courts must appoint qualified and competent lawyers to represent those accused of capital crimes, and those lawyers should be paid an adequate salary. Police should be trained on proper investigation and interrogation techniques, and those who engage in torture should be prosecuted and imprisoned. The legislature should consider adopting rules that would prevent the consideration of any confession that is taken outside the presence of counsel. Corrupt judges should be prosecuted and removed from the bench. Terrorism trials must adhere to the fair trial standards set forth in Article 14 of the ICCPR. These reforms and others will help minimize the risk that other innocent persons are wrongly convicted and sentenced to death.

Chapter 2: Indonesia

Indonesia was one of only 23 states that carried out executions in 2016. From November 2008 to March 2013, the country had a *de facto* moratorium on executions. The moratorium ended on March 14, 2013 with the execution of a Malawian national convicted of drug trafficking.[1] Since 2013, 23 people have been executed by firing squad.[2] The election of President Joko "Jokowi" Widod seems to have spurred the recent upsurge of executions; he has repeatedly called for a harsh crackdown on drug dealers and other criminals. In July 2016, Indonesia executed four people, all of whom were convicted of drug-related offenses.[3] At least 215 people remain on death row in Indonesia.[4]

Foreign nationals in general, and African nationals in particular, are disproportionately likely to be executed for drug offenses.[5] In 2015, fourteen prisoners were executed; twelve were foreign nationals.[6] In July 2016, four persons were executed; three were African immigrants convicted of drug offenses.[7]

Although Indonesia has no mandatory death penalty, a wide range of capital offenses are punishable by death, including murder, terrorism-related offenses, drug offenses, corruption, treason and espionage, military offenses, crimes against humanity, and genocide.[8] In recent times, most executions have been carried out for either murder or non-violent drug offenses in relation to the state's public campaign against drug trafficking.[9]

As a UN member state, Indonesia is a party to multiple international laws and treaties, including the International Covenant on Civil and Political Rights (ICCPR), to which it acceded in 2006.[10] Indonesia has abstained from the last three UN General Assembly resolutions to implement a global moratorium on capital punishment, after voting against the 2007, 2008, and 2010 resolutions.

Overt racial discrimination, the widespread use of torture, corrupt police practices, challenges to accessing effective legal representation, and compromised appeals procedures all prevent defendants from receiving fair trials. The recent case of Humphrey Jefferson Ejike Eleweke, a Nigerian national trapped by the cumulative shortcomings of the justice system, illustrates how these risk factors operate to enhance the risk that innocent people will be sentenced to death.

CASE STUDY: *HUMPHREY JEFFERSON EJIKE ELEWEKE*

Humphrey Jefferson "Jeff" Ejike, a Nigerian national, was arrested for drug trafficking and possession in Jakarta, Indonesia in August 2003.[11] Despite a dearth of evidence linking him to the crime, and in the face of evidence that he was likely entirely innocent of these charges, Jeff was sentenced to death.

The story of Jeff Ejike's migration to Indonesia began like many others. In May 1999, he left his home in Nigeria and moved to Jakarta in hopes of finding a good job.[12] There, he and Rekon Kanu, another Nigerian immigrant whom he knew from their home village, opened a restaurant serving Nigerian fare.[13] After working there for a year and a half, Jeff resigned because Rekon did not pay him as promised.[14] In December 2001, Rekon left Indonesia and his brother Kelly took control of the restaurant.[15] In March 2002, Kelly was arrested

for drug possession and the Rekon restaurant was shut down. When Jeff discovered this, he sought permission from the landlady to reopen the restaurant, which he did in August 2002.[16]

Arrest based on falsified evidence

Jeff's reopening of the restaurant (also called "Rekon") made Kelly extremely angry. Kelly was upset both that Jeff was managing his brother's restaurant and that Jeff had implemented a 'no drugs' policy, harming Kelly's ongoing business.[17] Kelly made numerous calls threatening that he would have Jeff imprisoned and killed, unsettling Jeff enough that in July 2003 he consulted police officer Felix Kewas.[18] At Officer Kewas's suggestion, Jeff submitted a written record of the threats to the Jakarta police, which Officer Kewas duly filed and noted to his superior officer.[19]

Jeff had unwittingly made it possible for Kelly to carry out his threats by hiring a man named Ifanyi to work as the restaurant cashier in February 2003. Unbeknownst to Jeff, Ifanyi had assisted Kelly in his drug business in the past.[20] According to post-conviction witness testimony, Ifanyi conspired with Kelly to retaliate against Jeff, striking a deal with the police to plant drugs in the restaurant, then have Jeff arrested for possession or shot, in return for splitting the proceeds from their drug trafficking business.[21]

On August 2, 2003, an anonymous text message tip was received by Adjunct Police Commissioner Hendra, who immediately initiated a search of Rekon restaurant.[22] Jeff and Officer Kewas each arrived shortly after, and each asked to see a search warrant, but the police refused.[23] Nevertheless, Jeff voluntarily assisted the police by unlocking Ifanyi's bedroom in the restaurant.[24] After officers searched the room and found nothing, they left to make a phone call. On their return, they claimed to have discovered 1.7 kg of heroin inside the mattress in the bedroom that they had unsuccessfully searched minutes earlier.[25] Police falsely noted in their report that Jeff, not Ifyani, lived in the bedroom and charged him with drug possession and trafficking.[26]

False confession obtained through torture and coercion

After his arrest, Jeff was tortured for 12 days until he confessed to the charges.[27] Jeff's cellmate, Dennis Attah, witnessed some of the torture, which he said "terrified" him because he had never "seen such beating" in his life.[28] The police tortured Jeff by depriving him of sleep, beating him, blindfolding him, handcuffing him and binding his legs, and suggesting that he would be killed if he did not sign a confession. Armed police showed him pictures of other Africans the police had killed. By the time Jeff signed the confession, he was so weak that he was lying on the ground.[29]

In addition to torturing him, police tried to extract a bribe from Jeff in exchange for reduced charges. They told him that for RP 500,000,000 (approx. US$ 37,600), the police would reduce the quantity of drugs on his charge sheet to 20 grams.[30] Jeff refused this way out, protesting, as he would continue to do unwaveringly for the next 13 years, that he was innocent. The police also asked Jeff to name other African drug dealers in exchange for his release.[31] As Jeff refused to respond to these questions, his case went to trial.

Racial and ethnic discrimination

Jeff was discriminated against because he was an African immigrant. In its decision against Jeff, the High Court stated "black people coming from Nigeria often become the subject of supervision of the Police because there is a suspicion that they often conduct transactions of narcotics… meticulously and covertly."[32] Every witness against him noted that Jeff was black, and multiple witnesses highlighted the fact that Rekon restaurant served African food exclusively to "black foreigners."[33] The court notes in its consideration of "incriminating elements" that as "a Foreign National, the actions of the defendant of bringing into Indonesia and trying to sell heroin narcotics in Indonesia has very bad impact and can threaten the resilience and survival of the young generation, the nation and citizens of Indonesia in the future."[34] This overtly discriminatory perspective, combined with the specific pressure on police to make arrests for drug-related offences, creates a higher risk of wrongful conviction for foreign nationals.

Denial of right to fair trial

Jeff was unable to fully participate in the trial because he could not understand the proceedings. The only translation provided in the court was in English, a language Jeff does not speak fluently. Additionally, the translator did not have a microphone or other audio equipment in the courtroom, so Jeff could not clearly hear the translation.[35] As a result, Jeff was unable to understand the evidence given against him by the witnesses for the prosecution, and therefore was unable to participate in his own defense by correcting erroneous testimony that could have been challenged on cross-examination.

Deficient evidence to convict

There were major deficiencies in the prosecution's case against Jeff. The evidence against him was entirely circumstantial and critical exonerating and mitigating evidence was never presented. Despite repeated requests, the drugs supposedly found at the scene were never presented as evidence at trial.[36] Additionally, Ifanyi—a seemingly crucial witness—was never arrested or even asked to give a statement. Indeed, when the police arrived, they told Ifanyi to leave the premises along with the restaurant patrons, though other employees were not asked to leave.[37]

Inability to present exonerating evidence in post-conviction review

Just over a year after Jeff's arrest, Kelly—who was serving his sentence in the same prison where Jeff was being held—became gravely ill. On his deathbed, he called his cellmates—including Jeff—to confess that he had framed Jeff, and to ask for Jeff's forgiveness. Immediately after Kelly died, Jeff alerted his counsel that, in front of a group of witnesses, Kelly had confessed to framing him. Counsel interviewed five prisoners who were present at the confession, all of whom corroborated Jeff's account of the confession.[38] Armed with this new exonerating evidence, counsel filed for post-conviction review on May 16, 2006. The Supreme Court rejected the application because the arguments put forward were based on "new evidence that are unilateral statements and not prescriptive in nature," language that the Court often uses to reject petitions for judicial review.[39] The Court did not explain its reasoning any further.[40]

In 2008, attorney Ricky Gunawan of the legal aid group Community Legal Aid Institute (LBH Masyarakat), compelled by what he saw as significant evidence of innocence, took on Jeff's case. He sought to raise key arguments regarding racial discrimination, torture, and lack of mitigation that the courts had not considered in Jeff's defense.[41] However, when counsel tried to submit Jeff's review application in 2016, the clerk of the lower court refused to accept it or forward it to the Supreme Court.[42] Indeed, the Supreme Court, in defiance of a Constitutional Court ruling allowing for multiple applications for post-conviction review in capital cases, had issued a circular decree that death row inmates are only entitled to one review.[43] This administrative decision had enormous consequences, preventing Jeff from having meaningful access to review of his case and making his wrongful conviction impossible to remedy.

Violation of right to clemency

After Jeff learned that his name was on the list of those to be executed in the summer of 2016, he finally agreed to file a clemency petition—which he had always refused on principle, as the procedure requires an acknowledgment of guilt.[44] His clemency request was still pending when Jeff was executed on July 29, 2016 in violation of legislation mandating that executions be stayed while clemency is undetermined.[45] Moreover, Jeff was not informed of the day he would be executed with sufficient notice (the law requires a minimum of 72 hours' warning).[46]

Having deprived Jeff of his right to clemency, the Indonesian authorities never had an opportunity to consider his model behavior during his 13 years of imprisonment. According to prison authorities, he followed rules and instructions, avoided conflict, and he put his medical training to use as a doctor's assistant. His strong religious faith also compelled him to form and lead Christian prayer groups.[47]

In light of the many irregularities surrounding Jeff's execution, his lawyer requested an investigation by the national Ombudsman. In July 2017, the Ombudsman concluded that there had been "institutional negligence" and that the execution should not have been carried out. He cited as evidence the pending clemency appeal, the violation of Jeff's constitutional right to judicial review based on new evidence, and the insufficient notice provided to Jeff and his family. The Ombudsman also noted that there were originally 14 people scheduled to be executed, but 10 of them were given a temporary reprieve for no known reason, while Jeff's execution was carried out "in a hurry"—raising the issues of arbitrariness and discrimination in Indonesia's application of the death penalty.[48]

RISK FACTORS FOR WRONGFUL CONVICTIONS IN INDONESIA

Indonesia's complex legal system has evolved from three main sources of law: (1) the Dutch civil code;[49] (2) national constitutional law;[50] and (3) customary law based on religious faith or traditional belief.[51] Discrimination against foreign nationals is a central feature of Indonesia's application of the death penalty. Institutional bias exacerbates the risk of wrongful conviction, particularly when combined with police misconduct, corruption, ineffective assistance of legal counsel, and pervasive barriers to post-conviction review.

Ineffective assistance of legal counsel

The lack of competent defense counsel in Indonesia is one of the most pernicious and widespread factors heightening the risk of wrongful convictions.[52] Indonesian law guarantees the right to competent counsel for capital defendants from arrest through police interviews and trial, but in practice this right is often violated.[53] Many defendants do not have access to a lawyer until after police investigation begins.[54] Deficiencies in the quality of legal representation are largely attributable to the state's failure to provide adequate resources for state-funded counsel. Attempting to redress these shortcomings, Indonesia's 2011 Law on Legal Aid requires that the central government allocate a budget for legal aid, but due to insufficient funding, the small number of lawyers outside of the capital, and the lack of eligible regional legal aid organizations, the law has not delivered on its promise to increase access to legal representation.[55] Additionally, a defendant's geographic location can hinder him or her from receiving legal aid because most lawyers are based in Java; travel to many parts of Indonesia, an archipelago of over 900 inhabited islands that covers some 735,000 square miles, is both costly and logistically challenging.[56]

Those lawyers who are appointed to defend people facing the death penalty often fall short of the requirement to provide competent and zealous representation. In some cases, court-appointed lawyers have reportedly worked with law enforcment to ensure that defendants cooperate with police or make confessions. In 2007, a court-appointed lawyer for an Indonesian facing the death penalty for drug trafficking advised his client to "answer any questions from the investigator with 'yes.'"[57] In 2013, Yusman Telambanua was sentenced to death after his legal counsel asked the court to impose the death sentence because his client's alleged actions were "ruthless and sadistic."[58] Yusman did not appeal because his lawyer did not inform him of his right to appeal.[59] These extreme deficiencies in representation are tantamount to, or worse than, having no representation at all.

Torture and coercion leading to false confessions

Although torture is prohibited by the Constitution and the law criminalizes employing violence or force to elicit a confession,[60] the use of torture to obtain confessions is a widespread police practice.[61] Between July 2014 and May 2015, the Commission on the Disappeared and Victims of Violence (KontraS) recorded 224 reports of police violence, including 84 cases of torture.[62]

Torture used to obtain false confessions increases the risk of wrongful convictions.[63] Prior to "confessing," Pakistani national Zufiqar Ali was tortured for days; the damage to his internal organs was so extensive that he needed stomach and kidney surgery.[64] Police beat Jeff Ejike, threatened to kill him, and deprived him of sleep for 12 days before he provided a false statement of guilt.[65] In addition to suspects, witnesses are reportedly tortured or intimidated to provide testimony.[66] Police also employ methods of coercion to elicit false testimony against others. For example, Zufiqar Ali's arrest was based on the testimony of a single witness, his co-defendant. The man later retracted his testimony in court, claiming that investigators told him to say the drugs belonged to Ali. Despite his retraction of the primary evidence against Ali, both men received the death penalty.[67]

Discrimination against foreign nationals

When criminal investigations target foreign nationals, stereotyping and discrimination create a higher risk of wrongful convictions. As non-citizens with little or no familiarity with the legal system, foreign nationals are particularly vulnerable to police abuse and coercion. They are often unaware of their legal rights and cannot assert them (especially if they are not fluent in the country's language).

Consular authorities can provide critical assistance for foreign defendants, both in their host country and their native country.[68] Article 36 of the Vienna Convention on Consular Relations mandates that local authorities must advise detained foreign nationals of their rights to consular notification and access.[69] Indonesian law generally complies with this provision and provides that foreign nationals must be provided with interpretation services, where necessary. In practice, however, foreign nationals in death penalty cases are frequently deprived of these rights.[70] In one known example, Indonesian officials prevented Pakistani Zufiqar Ali from contacting the consulate and from seeing a lawyer or translator for months.[71] Out of 17 foreign nationals recently interviewed, seven were not provided an interpreter and had no choice but to sign documents provided by police in a language they did not understand.[72] Even when interpreters are provided, they may not be fluent in the defendant's native language. For example, one Chinese national couple who spoke a Chinese dialect, Hakka, received a Mandarin interpreter. They struggled to communicate with the court and to understand the proceedings, but still received the death penalty.[73] And, as noted above, Jeff Ejike received an English-language interpreter, a language in which he was not fluent.

Underpinning and reinforcing these fair trial violations is the prevalent stigma against foreign nationals in the Indonesian criminal justice system. In particular, foreign nationals of African descent are stereotyped as drug traffickers and are more likely to be investigated by the police for drug crimes.[74] Combined with the pressure on the police to make arrests for drug crimes in the wake of harsher drug laws,[75] this systemic prejudice heightens the vulnerability of foreign nationals. In July 2017, President Widodo ordered the police to shoot drug traffickers who resist arrest in order to crack down on drug dealers in Indonesia.[76] Such incitements to violence from the head of state strengthen existing police assumptions about the guilt of foreign nationals and entrench practices that exacerbate the risk of wrongful convictions.

Furthermore, in sentencing defendants to death for drug crimes, some judges have considered foreign nationality as an aggravating factor.[77] For example, the District Court that convicted and sentenced Jeff Ejike to death stated that "black people coming from Nigeria" are under police surveillance due to suspicion that they conduct drug sales "meticulously and covertly."[78]

Lengthy pretrial detention

Indonesian law provides that defendants in death penalty cases can be detained up to 171 days before seeing a judge.[79] Such lengthy pre-charge detention violates detainees' rights by eroding evidence that might prove their innocence, such as alibis and forensic evidence, and giving the police time to gather evidence by coercive means. Furthermore, without a judge reviewing the basis for the arrest, there is no accountability for

unsubstantiated arrests of innocent persons. In fact, many defendants are only brought before a court at the beginning of their trial, without a judge verifying that the evidence underpinning their charge is sufficient.[80]

Obstacles to appeal and post-conviction review

Appellate delays and missing court files

Appellate courts provide crucial protection against wrongful convictions in many countries. They review errors made by the trial courts and have the power to order new trials and revise sentences. But in Indonesia, the right to appeal is severely curtailed by lengthy delays and the lack of trial records. Death sentences may be appealed to the High Court and Supreme Court and may only be carried out after a final judgment by the Supreme Court, a process that can take up to ten years.[81] Further, and in contravention of international law, executions have been carried out while legal action is still pending.[82] For example, on April 8, 2015, Andrew Chan and Myuran Sukumaran filed an application for a constitutional review of the Clemency Law and the Constitutional Court Law.[83] Although the Court accepted the case, and scheduled the first hearing for May 20, 2015, Andrew and Myuran were executed on April 29, 2015.[84]

The failure of Indonesian courts to keep accurate records of court proceedings is another factor that enhances the risk of wrongful convictions. Indonesian courts do not create trial transcripts or record questions or statements by the judge, prosecutor, defense attorney, or witnesses.[85] One consequence of this practice is that in many cases, courts copy summaries of witness statements directly from the prosecutor's pleadings into their judgments, jeopardizing their ability to critically assess the credibility of evidence.[86] Another grave consequence is the near impossibility for appellate lawyers, if they did not represent the defendant at trial, to reconstruct the record and craft cogent and relevant arguments on appeal. Appellate courts, in turn, cannot effectively assess evidentiary challenges or evaluate the gravity of fair trial violations. The lack of accurate and comprehensive court records also exacerbates the risk of wrongful convictions in cases involving foreign nationals or non-Bahasa speaking witnesses. Furthermore, the lack of court records compounds the difficulty of bringing an appeal based on ineffective assistance of counsel.[87]

Obstacles to post-conviction review on discovery of new evidence

Post-conviction review provides an additional safeguard against wrongful convictions in many countries. In general, it provides a mechanism whereby courts can consider significant, new evidence that casts doubt on the integrity of a defendant's conviction or death sentence. The availability of post-conviction review does not guarantee that innocent persons will be protected from execution. At the same time, the absence of effective post-conviction review—particularly where the appellate process is flawed—dramatically increases the likelihood that innocent persons will be executed.

In 2013, the Constitutional Court ruled that the criminal procedure law limiting capital defendants to one post-conviction review based on new evidence was unconstitutional and should be revoked.[88] After this decision, the Supreme Court, equal in authority to the Constitutional Court but intended to execute Constitutional Court decisions, circulated a decree rejecting the Constitutional Court's reasoning and re-asserting that death row inmates are limited to one review unless the application is based on an error of law.[89] The attorney for Jeff Ejike

reported that his attempts to seek a second post-conviction review in light of significant evidence of innocence were rejected because the court clerk would not accept the application in light of the Supreme Court decree.[90]

CONCLUSION

As long as Indonesia's use of the death penalty is tainted by racial and ethnic discrimination, innocent persons—and particularly foreign nationals—risk execution for crimes they did not commit. Nevertheless, there are certain reforms that could mitigate that risk. Strengthening fair trial safeguards by ensuring, for instance, that every capital defendant is assigned an effective lawyer, is able to exercise his right to appeal, and is able to access a transparent clemency process, would provide important protections. Prosecuting police who torture suspects would deter them from engaging in similar abuse in the future. Requiring that court proceedings be transcribed and typewritten by professional court reporters would facilitate the review of appellate arguments. And allowing multiple post-conviction appeals to allow for consideration of new evidence of innocence, consistent with the 2013 Constitutional Court ruling, would also provide an extra layer of protection for persons who were wrongly condemned to death.

To bring Indonesia's death penalty practices into line with international law, moreover, procedural rules should reinforce the prohibition on executing people with mental illness or intellectual disability. Finally, given the range of systemic issues facing the criminal justice sector, the government should consider establishing an independent body to review death penalty cases in depth and consider the arguments for and against abolition of the death penalty.

Chapter 3: Jordan

Although Jordan is located in one of the geographical strongholds of the death penalty, it has never been one of the world's leading executioners. Jordan halted executions entirely from 2006–2013, but hangings resumed in 2014 in response to rising homicide rates.[1] Since then, Jordan has hanged 28 people, many of them for terrorism offenses.[2]

Jordan's recent upsurge in executions has coincided with increased terrorist activity in the country. In March 2017, 15 people were executed on the same day, ten of whom had been convicted of terrorism-related crimes.[3] A government spokesperson stated that "Anyone who dares to engage in terrorist activities against Jordan will face the same destiny."[4] As of late October 2017, there were 120 death-sentenced inmates in Jordan's prisons.[5]

Recent revisions to the Jordanian Penal Code have preserved a broad range of death-eligible offenses, including murder, terrorism, robbery and treason.[6] The Code also imposes the mandatory death penalty for several offenses, including some forms of rape, espionage, and military crimes.[7] Though shooting was previously the method of execution, hanging has been used since the resumption of executions in 2014.[8]

Jordan is a party to international human rights treaties including the U.N. Convention Against Torture and the International Covenant on Civil and Political Rights (ICCPR).[9] Jordan has abstained from all but one of the periodic UN General Assembly resolutions to implement a global moratorium on capital punishment (it voted against the first such resolution in 2007).

The case of Badar Ramadan Shaath highlights the shortcomings of capital prosecutions in Jordan and demonstrates how flaws in the criminal justice system heighten the risk of wrongful convictions. It also illustrates how effective legal representation can transform the outcome of a prosecution based on unreliable evidence. Unlike the vast majority of capital defendants, who must rely on under-resourced legal aid lawyers to represent them, Badar and his family were wealthy enough to hire one of the most prominent criminal lawyers in the country, a former trial and appellate judge.

CASE STUDY: *BADAR RAMADAN SHAATH*

In March 2000, police arrested Badar Ramadan Shaath in connection with two killings: a robbery and murder committed in a jewelry store in February 1999 and the murder of a taxi driver committed in September 1999. Badar, who always maintained his innocence, was sentenced to death based on a false confession extracted by torture and a falsified "crime reconstruction" report. After the appeals court vacated his conviction and ordered a retrial, two trial courts in succession declared him not guilty (at his second trial, the Major Felonies Court found his confession "forced, illegal and unreliable").[10] The State appealed both acquittals, however, adding to the lengthy legal process and Badar's time in prison.[11] It was not until April 2003 (after a fourth trial court had again sentenced him to death) that the Cassation Court, Jordan's highest appeals court, reversed the lower court judgment and cleared Badar of all charges, agreeing that his confession was invalid.[12]

Arbitrary arrest and lack of evidence

Initially, the police investigation focused on Jarir Shabab, who had killed himself and his girlfriend a few days after the taxi murder. Police arrested Badar based on nothing more than his friendship with Shabab. The evidence against Shabab, who was charged posthumously, was weak and contradictory; the evidence against Badar was even more so. Police forensic investigators found that Shabab had killed himself with a gun that matched the weapon used to kill the taxi driver.[13] A friend of Shabab testified that Shabab had bragged about robbing the jewelry store and killing the owner.[14] At trial, however, he merely testified that Shabab planned to rob the store and was irritated that someone else had done so before him.[15] None of this evidence incriminated Badar.

The police also ignored Badar's alibi and his lack of motive for the robberies. When the police arrested him, they speculated that Badar and Shabab had robbed the jewelry store together.[16] The police theory was that the duo had killed the taxi driver after he refused to relinquish his vehicle, which they planned to use to rob a bank.[17] But on the day of the taxi homicide, Badar had attended a computer training class for which he presented signed attendance sheets.[18] Further, for most of the two months before the jewelry store homicide, when Badar supposedly surveilled the owner, Badar was in Egypt attending a computer course.[19] Finally, the police never found any evidence that Badar had a financial motive: Badar was financially secure at the time of the offenses. He testified at trial about his middle class family, from whom he had recently received an ample inheritance, and about his steady record of employment as an engineer and in information technology.[20] Badar also received significant rental income from family properties and testified that he had never needed money.[21]

Forced confession obtained through police coercion

The centerpiece of the prosecution's case against Badar was his confession, which he signed after nine days of interrogation.[22] During this period, Badar's lawyer repeatedly tried to see him, but the police refused to grant him access.[23] During his detention, the police beat and humiliated Badar and forced him to remain standing for over three days.[24] To end his torture, Badar agreed to sign a confession dictated by a police officer. The police instructed him to learn it by heart. Immediately afterwards, the investigating judge arrived and took his statement in the presence of the police. Badar was too frightened to report the torture.[25] At his second trial, one of the investigating officers admitted that police had used "harsh tactics" against Badar.[26] The officer testified that he had seen Badar beaten and had heard him screaming. He also characterized Badar's confession as "reluctant."[27] The trial court concluded that the confession was "forced, illegal, and unreliable"[28]—but it still took three more rounds of appeals for Badar's conviction to be overturned.

Badar's alleged confession was also riddled with factual inaccuracies. For instance, it stated that during the store robbery, Badar opened cabinets to steal the jewelry inside, but photos of the crime scene show the jewelry intact, with the key still in the cabinet door. In fact, there was no evidence of any theft at all.[29] The "confession" was also unreliable with regard to the second offense, stating that Badar threw the body in the street when it was actually found in a garage; incorrectly identifying the area where the stolen taxi was left; and asserting that the defendants cleaned the inside of the car, when crime scene investigators found it full of cigarette butts, blood samples, and fingerprints.[30]

Reliance on a falsified crime reconstruction

Aside from the coerced confession, the only evidence presented at trial was a falsified and misleading reconstruction of the jewelry store crime based on Badar's false confession, with Badar playing a leading role. The reenactment report contains further falsified information. It states, for instance, that the defendant did not make any errors in the course of the reenactment, though in fact Badar made many errors because he had never been to the scene before. For example, the photos show Badar seeking a basement exit from the jewelry shop, unaware that it did not exist. Badar testified that an officer had to tell him "where the door was."[31] Furthermore, an officer testified that the four police officers who signed the report to authenticate its contents, did not actually hear anything the defendant said during the reenactment, and one of them was not even present.[32]

Badar's case is emblematic of the risk factors that enhance the risk of wrongful convictions in Jordan, outlined in more detail below.

RISK FACTORS FOR WRONGFUL CONVICTIONS IN JORDAN

Jordan's legal system combines civil and Islamic law.[33] Capital trials in Jordan routinely fall short of international fair trial standards. Indigent capital defendants are often unable to secure effective lawyers and have difficulty obtaining counsel to help them file appeals. Moreover, the widespread use of police torture and the pervasiveness of unreliable "crime reconstructions" increase the likelihood that innocent people will be sentenced to death. The following risk factors for wrongful convictions are prevalent throughout Jordan.

Ineffective assistance of legal counsel

Effective legal representation is the foremost safeguard for criminal defendants against the perils of any justice system, and many of the systemic flaws that increase the risk of wrongful convictions can be mitigated by a zealous defense. Indigent persons accused of crimes in Jordan are entitled to counsel provided at public expense in cases involving the death penalty or potential life imprisonment. In practice, however, many accused are represented by ineffective lawyers or none at all.

Legal representation should be available from the time of arrest to protect detained persons from police abuse and other human rights violations.[34] In Jordan, however, the right to counsel is protected by law only when charges are filed, which may take days or weeks after an individual is first detained.[35] This gap in access to counsel is extremely problematic, because without immediate access to a lawyer defendants are unaware of their rights and are at higher risk of being coerced into giving false confessions.

A criminal defendant's ability to present a robust defense is also hampered by the absence of counsel during interrogation, as well as the lack of any requirement to make audio or video recordings of the interrogation. If lawyers were present, they could corroborate their client's testimony regarding methods used in interrogation and/or other procedural irregularities. Moreover, because defendants typically meet with their attorneys only one or two days before trial, if at all, they are not afforded adequate time to prepare a defense.36 This is particularly true for defendants tried before the State Security Court, which has jurisdiction over many crimes classified as terrorism.[37] Prosecutors bringing cases before the State Security Court reportedly isolate defendants from their

lawyers and families in order to "protect the secrecy of the investigation."[38] In mid-2017, Jordan's parliament approved a bill guaranteeing criminal defendants the right to access to a lawyer at the time of arrest and during interrogations. Nevertheless, it remains unclear how the reform will be implemented and the protection does not extend to defendants under criminal investigation by Jordan's intelligence agency.[39]

Inadequate resources also undermine the right of the accused to prepare his or her defense. The state fails to provide independent experts or investigative resources to assess key forensic evidence or to document mitigating factors such as physical or mental disabilities.[40] Additionally, the state is not obligated to inform a detainee's family of his or her arrest. This can prevent family members from providing financial assistance for bail or private counsel and from testifying to an alibi or other important mitigating evidence.[41]

Torture and coercion leading to false confessions

The pervasiveness of torture in police interrogations heightens the risk of false confessions, which in turn aggravates the chance of wrongful conviction.[42] Although the law prohibits torture[43] and King Abdullah has called for an end to torture in prisons, these principles have not led to reform.[44] Instead, the practice continues,[45] and in some cases, the torture is so severe that it results in death.[46] The most common forms of torture include beating with electric cables and sticks and hanging defendants from metal bars by the wrists for hours.47 The intelligence services also allegedly use sleep deprivation, solitary and incommunicado detention, and threats of harm to family members to coerce confessions from detainees.[48]

In many capital cases, convictions are based on little evidence other than confessions extracted using torture or duress.[49] Some forced confessions have been completely contradicted by later evidence. For example, Bilal Moussa was sentenced to death for a murder after confessing under torture.[50] Five years later, Zuheir Khatib was executed for the same crime after evidence came to light that Moussa was innocent and Khatib had committed the murder.

The use of torture to elicit false confessions is compounded by the absence of defense counsel during questioning. Kamel Yehya Suboh, a lawyer who represented Ahmad Al-Ali against false charges of murder, found out from a newspaper that his client had "confessed" to the crime, following days of interrogation during which police had prevented Suboh from seeing his client.[51]

In some cases, witnesses have also been detained and tortured to provide testimony against a suspect, increasing the likelihood of false testimony and the risk of wrongful conviction. In the case of Abu Sidreh, the defendant's younger brother was detained for three days and beaten with an electric cable until he provided a statement attesting to his brother's "guilt."[52]

Tunnel vision

Tunnel vision—a bias leading police or prosecutors to become prematurely focused on a suspect—increases the risk of wrongful conviction. In Jordan, tunnel vision manifests in four distinct ways: as bias against those accused of terrorism offenses; in overreaching with respect to solving cold cases; as bias reinforced by walking a suspect through a crime scene reconstruction; and as a result of inaccurate portrayals of guilt in the media.

First, tunnel vision affects those accused of terrorism because police and lawmakers have reduced due process protections for people suspected of terrorism offenses. These actions by authority figures undermine the presumption of innocence against suspected terrorists.[53]

Second, when the cold case unit of the Jordanian police seeks resolution to long-unsolved cases, the process is often hampered by tunnel vision. Incentivized to find resolution where there has been insufficient evidence to charge anyone for years or even decades, the cold case unit has a tendency to hone in on suspects (especially those with a criminal record), regardless of evidence, in order to close unsolved cases.[54]

Third, crime scene reconstructions—a widely used tool of police investigation in Jordan—muddle the difference between real and demonstrative evidence.[55] These reconstructions involve taking an accused person to the scene of a crime and making him reenact the supposed events with the police directing and watching.[56] An officer who views such a reconstruction may convince himself that the accused is guilty of the crime he or she just "saw" him committing. Evidence from a reconstruction may also bias the trier of fact.[57] For example, Ahmad Al-Ali was arrested and taken to the scene of the crime for a reenactment over 11 years after the crime was committed. Ahmad was unable to find his way around the scene, but he was given directions to reenact the scene by the gathered police and prosecutors, securing the image of Ahmad as perpetrator.[58] Ahmad was ultimately executed, though there is evidence that he had a very strong innocence claim.

Finally, the Jordanian media regularly report the facts of crimes inaccurately. These reports may create significant issues with tunnel vision for the police and prosecutors. One Jordanian lawyer recounted multiple reports containing inaccurate facts that served as the catalyst for investigation of the media-implicated subject, despite the inaccuracy of the original reporting and the contradictory evidence that was subsequently discovered.[59]

Fair trial violations

The right to a fair trial is a principle of international human rights law "designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms."[60] Without access to fair trial rights, defendants in capital cases are much more likely to be wrongfully convicted.

Jordan prosecutes those accused of terrorism crimes, broadly defined, before the State Security Court, a court that is not independent of the executive and acts as a military court.[61] This court has imposed death sentences, some of which have resulted in executions,[62] and has been criticized for its reluctance to consider widespread claims of torture and false confessions as result of torture.[63]

Misconduct by officials

Both Jordan's police and intelligence services are known to carry out arbitrary arrests, especially in cases involving national security. Many detainees of intelligence agencies are not informed why they have been arrested and have no way of contacting either their family or a lawyer.[64] Intelligence services have also arrested relatives of wanted suspects, accusing them of crimes they did not commit as a way of inducing the key suspect to turn himself in. For example, Jordanian intelligence arrested Fahmi S., the 17-year-old brother of a suspect who was in Saudi Arabia at the time, telling him: "We'll take you instead of [your brother]."[65]

Lengthy pretrial detention

Delays in proceedings add to a risk of wrongful conviction by extending interrogation and permitting the destruction or erosion of evidence. Jordan's law criminalizes detention for more than 24 hours without a prosecutor's order; in practice, however, prosecutors are often granted extensions, delaying charging for up to six months for a felony.[66] In addition, inefficiency and backlogs combined with lengthy legal proceedings cause further delays. Cases routinely involve postponements of more than 10 days between sessions and proceedings can last for several months or years while the accused remains in detention.[67]

Delays also occur prior to arrest. Abu Sidreh was arrested more than three years after the crime for which he was ultimately convicted.[68] In another case, Ahmad Al-Ali was arrested in 2000 for a crime that was committed 11 years earlier, in 1989.[69] Memories fade with time, and key evidence can be lost—making it much more difficult to obtain reliable evidence. In the case of Ahmad Al-Ali, the defendant was unable to prove his innocence with evidence collected at the crime scene because it had been destroyed. A police officer testified at Ahmad's trial that police policy is to destroy specimens after three years, so all forensic evidence collected from the scene had been long destroyed.[70]

Obstacles to appeal and post-conviction review

Improperly filed, destroyed, or illegible official documents make the presentation of a defense difficult and increase the risk of wrongful conviction. Statements given to the police are often handwritten. When these are illegible, counsel is unable to properly review them for elements that will support the defendant's claims. A prosecutor can likewise be misled or misinformed by an illegible or partly legible document. Until recently, nearly all court transcripts in Jordan were handwritten, and in the State Security Court, this practice continues.[71] Illegible trial transcripts cause significant problems on appeal, for if counsel cannot read a transcript, it is difficult or impossible to raise issues that were preserved for appeal at trial. In turn, this will make it impossible for appellate courts to provide redress against problems arising at trial.[72]

CONCLUSION

Capital defendants in Jordan face a high risk of wrongful conviction as a result of systemic flaws in the justice system, particularly in tribunals designed to target terrorism. While broad criminal justice reform requires a long-term commitment of political will and resources, a number of more modest initiatives, achievable in the short-term, could have a significant impact on the number of innocent people sentenced to death. These include training for lawyers, police, prosecutors, and judges on standards of investigation and reliability of evidence, mandatory audio/video recordings of all police interrogations, and the mandatory assignment of a defense lawyer from the time a defendant is arrested for a death-eligible offense. Courts should disallow evidence produced through unreliable crime scene reenactments. Moreover, court proceedings should be transcribed and typewritten by professional court reporters. Finally, persons should not be sentenced to death before the State Security Courts, whose procedures do not comport with the fair trial rights set forth in Article 14 of the ICCPR.

Chapter 4: Malawi

Malawi is one of the poorest countries in the world. Resources for criminal justice are scarce, and the quality of justice suffers as a result. Though Malawi has not carried out any executions since 1992,[1] courts continue to hand down death sentences. There are currently 15 people on death row,[2] and in 2016, at least one person was sentenced to death.[3] By law, murder, rape, robbery, burglary, treason and other military offenses are punishable by death.[4] In practice, however, the death penalty is only sought in murder cases.[5] The method of execution is hanging.[6]

Malawi is a party to several international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture, and the African Charter on Human and Peoples' Rights.[7] In 2016, Malawi voted in favor of the UN General Assembly resolution to implement a global moratorium on capital punishment for the first time, after abstaining from all prior resolutions.[8]

In 2007, in the case of *Kafantayeni and Others v. Attorney General*, Malawi's Supreme Court found that the mandatory death penalty violated the Malawian Constitution. Prior to 2007, courts automatically handed down death sentences for anyone convicted of murder, regardless of the circumstances of the defendant and the offense. After *Kafantayeni*, the courts were instructed to consider mitigating circumstances before imposing punishment. In 2010 the decision was made retroactive, allowing all 168 individuals sentenced under the prior law to seek a resentencing hearing.[9] Since 2015, the High Courts have held over 150 resentencing hearings. Significantly, none of the death row inmates resentenced to date have received a new death sentence. Our analysis of the data from the 168 cases that have benefitted from resentencing suggests that 27 death row inmates had strong claims of actual innocence that they were unable to effectively present at trial or on appeal.[10]

The case of three brothers—John Nthara, Jamu Banda, and Michael Banda—illustrates many of the systemic problems that heighten the risk of wrongful convictions in Malawi.

CASE STUDY: *JOHN NTHARA, JAMU BANDA, AND MICHAEL BANDA*

John Nthara, Jamu Banda, and Michael Banda lived with their families in the village of Chinkuyu, near the Malawian capital of Lilongwe. The men supported their families by farming. John had six children; Jamu had three; and Michael had two. They had never before committed a crime.

In December 1993, a mentally ill man armed with a machete arrived in their village. He chased and threatened villagers, stabbing at least one man.[11] He then entered John Nthara's home, where he destroyed property, including food. A number of villagers attempted to remove him from the house, but he resisted.[12] Finally, he took a burning piece of firewood and shut himself in a pit latrine. According to several witnesses, the burlap door to the latrine caught fire, and the fire quickly spread to the thatched roof.[13] John and two of his neighbors, Michael Banda and Jamu Banda, attempted to put out the fire and help the man escape.[14] They tore off the roof to get inside, but by the time they got him out, he was severely injured.

The three rescuers immediately reported the occurrence to the Village Chief, who advised them to report the incident to the police.[15] The rescuers contacted the police, who informed them that they had no transport available but would come to the village when they could.[16] John, Jamu, and Michael therefore placed the injured man on a cart and started taking him to the hospital. He died soon after of his injuries.

Flawed police investigation

When the rescuers arrived at the station, the police immediately arrested them. The police decided, without a shred of evidence, to investigate the incident as a case of mob justice. The rescuers became the primary suspects in the man's death, though none of them had a criminal record. Police failed to interview multiple witnesses who could have corroborated the brothers' account.[17]

Denial of right to counsel and denial of a fair trial

John, Jamu, and Michael were held for four years in pretrial detention without access to the courts. Their families sold all of their cattle to pay for a private lawyer, who absconded before trial. When the lawyer failed to show up at court, the court refused to appoint legal aid lawyers to represent the brothers at trial. The three defendants, who were illiterate and had no means of contacting witnesses in their remote village, were prosecuted without any legal representation whatsoever. On December 9, 1998, the jury returned with a guilty verdict and the three rescuers were sentenced to death, which at that time was the mandatory sentence for murder.[18]

The imprisonment of the three men had devastating consequences for them and their families. John Nthara's wife, Betina Msampha, lost the sole means of support for the couple's six children. She was forced to live in a relative's home, where she and her children slept on the floor of the kitchen, waking early so as not to disturb their hosts, and going to bed after the rest of the family had finished cooking. Betina slept in the ashes of the fireplace. None of her children were able to attend school, as she could not afford to pay their fees.

Denial of right to appeal

After their conviction, John, Jamu, and Michael were incarcerated on death row in the country's maximum security prison in Zomba. No lawyer was appointed to represent them on appeal. Since they could neither read nor write, they were unable to draft their own legal arguments. Twenty years after their arrest, new lawyers attempted to trace their court files as part of an effort to obtain the brothers' release. No trial record could be located.

Delay and inefficiency

In 2005, seven years after they were sentenced to death, a Malawi High Court Judge, Justice Chiwudza Banda, visited the brothers in Zomba Prison.[19] After interviewing the men, the judge expressed his concern that they had been wrongfully convicted and promised to take steps to have their sentence reviewed.[20] He also visited the men's village to investigate further.[21] The judge died one month later, and though two of his clerks had attended the interview, no one from his office or from amongst his fellow judges took up the cause.[22] The three men were to wait in vain for another nine years to hear the results of the promised investigation into their plight.

In 2014, the men were again given reason to hope that their wrongful conviction would be overturned. Students working with Northwestern Law School Professor Sandra Babcock[23] and the Malawi Human Rights Commission conducted a joint investigation with the Director of Public Prosecutions. Both the prosecution and the defense concluded that the three prisoners were likely innocent of the crime for which they had been convicted. At a sentencing conference on April 11, 2014, the Director of Public Prosecutions acknowledged the wrongful convictions and concluded that the men should be released from prison as soon as possible. That same month, before a court hearing could be scheduled, Michael Banda died in prison from complications related to AIDS. He had received little treatment in prison, and weighed just 41 kilos when he died. Shortly thereafter, the judge who was to hear the men's appeal also died.

In 2015, a resentencing project for death row prisoners triggered by the invalidation of the country's mandatory death penalty gave John and Jamu a new opportunity to present their case to the Malawi High Court. On May 19, 2015, they were released after having spent over 20 years in prison for a crime they did not commit. They returned to their village and to the children they had been forced to leave decades earlier. They were warmly welcomed home by their communities, who through their own observations on the day of the fire never believed that they had committed a crime.[24]

RISK FACTORS FOR WRONGFUL CONVICTIONS IN MALAWI

Malawi's justice system is derived from English common law. Criminal suspects are often held for years in pre-trial detention ("remand") without access to legal counsel or the courts. The country's legal aid system provides only a handful of lawyers to service the hundreds of prisoners facing capital charges.[25] Lawyers lack proper training and resources, and frequently fail to meet with their clients until the day of trial.[26]

Police investigators lack training and resources. Police abuse of suspects is rampant, and many prisoners report that they confessed to escape beatings or torture. Forensic evidence such as DNA is virtually unknown. The right to appeal exists in theory for capital murder defendants, but the great majority of those convicted of capital crimes cannot obtain legal counsel on appeal.[27] Under these circumstances, there is a high risk that innocent people may be sentenced to death.

The following risk factors are prevalent throughout Malawi.

Ineffective assistance of legal counsel

Unavailability of lawyers

The Malawi Constitution guarantees free legal aid to indigent defendants in cases "where the interests of justice so require."[28] The vast majority of capital defendants in Malawi cannot afford to pay for a lawyer, and there aren't enough legal aid lawyers to meet their needs. In January 2018, there were only 15 legal aid lawyers representing indigent persons in criminal and civil cases throughout the entire country.[29] In March 2016, the director of the Legal Aid Bureau informed the court registry that legal aid lawyers no longer had the capacity to represent homicide defendants because of funding difficulties.[30] Consequently, detainees charged with

homicide were left to wait in jail indefinitely until the suspension was lifted in July 2017. Currently, Legal Aid can only afford to assign a defense in homicide matters on a case-by-case basis.[31]

The starting salary for a legal aid lawyer in Malawi is very low relative to private practice,[32] leading many lawyers, who are frequently hired directly from law school, to leave Legal Aid within one or two years. Few private lawyers take homicide cases due to defendants' inability to pay legal fees, so most defendants receive delayed and poor representation, or none at all.[33]

Local paralegals sometimes provide supplemental legal aid services in police stations, prisons and courts,[34] but they are also vulnerable to funding shortages. Since late 2016, many paralegals have been placed on indefinite leave due to lack of funding.[35]

Inadequate opportunity to prepare a defense

Criminal defense lawyers often do not meet criminal clients prior to the day of trial.[36] Furthermore, the lack of funding and training severely restricts a defense lawyer's ability to conduct a proper investigation.[37] Most crimes occur in remote villages, sometimes hundreds of miles away from the regional Legal Aid office, in areas impossible to access without an all-terrain vehicle. Telephone communication is not an adequate alternative, as few key witnesses are likely to have a phone, and those who do will have limited access to electricity to keep it charged or credit to place calls. Consequently, witnesses for the defense, beyond the defendant himself, are rarely called to testify in Malawi's homicide trials.

As of November 2017, there were no Malawian psychiatrists staffing the country's sole mental hospital, and few mental health workers were trained to carry out comprehensive assessments of capital murder defendants to determine whether they had intellectual disabilities or mental impairments. This creates an additional risk of wrongful conviction for mentally ill or intellectually disabled people. Such defendants will be simultaneously limited in their ability to present a case on their behalf and unable to access the expertise needed to diagnose their limitations, especially since defense counsel, prosecutors, and judges are not trained to recognize signs of mental illness and intellectual disability. [38]

Misconduct by police

Rudimentary policing tools associated with a lack of resources heightens the risk of false charges and arbitrary arrests. More advanced investigative tools are entirely absent; access to forensic analysis is nil. As a result, police often respond to a reported crime by simply conducting a broad dragnet operation in the area where the crime occurred, rounding up groups of people to bring into the station for questioning on the assumption that one or more will ultimately be charged. Often, a single person is compelled to take responsibility for a crime, just to ensure it is "solved."[39]

Relatives or friends of a known suspect are often arrested with the suspect, regardless of their involvement in the crime. In the case of Abraham Phonya, the police discovered that Abraham's brother Frank had a stolen car and killed the owner. The police arrested both brothers and then, during interrogation, beat Frank until he died.

Before he died, Frank told the police that Abraham was not involved. Still, Abraham was also beaten by the police and forced to confess to the murder, for which he was sentenced to death.[40]

A single trait, such as nationality, may be the predicate for arrest. In the case of George Mshani, police were informed that a Tanzanian man had committed a murder in a border town in Malawi that Tanzanian nationals frequently cross to trade. George, a Tanzanian national, had crossed the border for the day to buy a cow. While he was having lunch, the police stormed the restaurant and arrested him. He did not speak the most widely-spoken language in Malawi, Chichewa, fluently and was unable to either understand or properly defend himself against the accusations. He was tried for murder and sentenced to death.[41]

In the most egregious cases, there is no evidence at all linking the defendants to the crime. Gray Zimba was a child of just 16 when he was arbitrarily arrested for a crime he did not commit and severely beaten by the police. Afterwards, he had difficulty walking and still carries scars over 20 years later. At his resentencing hearing, even the prosecution conceded that Gray had been wrongly convicted, and the judge ruled that the evidence linking Gray to the crime "[a]ppears extremely tenuous."[42]

Torture and coercion leading to false confessions

Torture is a common mechanism for eliciting confessions in the Malawian criminal justice system,[43] although it is prohibited both in the Constitution and under international law.[44] Police beat arrestees, and often prevent them from sleeping, eating, or drinking for days on end.[45] The system's heavy reliance on torture is due in part to a lack of investigative tools. Police officers may use torture to weed through arbitrarily arrested suspects by extracting a confession from the "true" culprit.[46]

Many of Malawi's death penalty convictions rest upon defendant confessions alone. Unfortunately, the practice of using torture to elicit a confession is so pervasive and ingrained that lawyers do not always raise the issue at trial, preventing courts from barring the evidence.[47]

Compounding the problem is the fact that police often draft confession statements, without input from the prisoners, many of whom are illiterate. For example, Clitus Chimwala denied all knowledge of the murder for which he was arrested. Officers wrote a confession in his name, refused to divulge its contents to him, and forced him to sign it by beating him with metal rods and batons.[48]

False testimony from co-defendants

Testimony from co-defendants or other biased parties, alone or coupled with the primary defendant's confession, is often the foundation of a prosecution case. Such testimony may be unreliable if it has been elicited from a person who stands to gain from the defendant's conviction, usually because it reduces his own culpability. When prosecutors offer leniency in exchange for testimony, they heighten the risk of a wrongful conviction. Plea bargains are not a common tool in Malawi, but informal arrangements do occur, offering an easy option for a co-defendant willing to lie in order to mitigate his own guilt, especially as there would be little or no evidence available to confirm the lie. Ismail Gome, for example, was convicted and sentenced to death solely on the basis of his forced confession and the testimony of his co-defendant, who provided evidence in exchange for reduced

charges. The co-defendant later admitted that he fabricated the story, and that Ismail was completely innocent.[49]

Tunnel vision

Tunnel vision, which causes premature focus on a single suspect, aggravates the risk of wrongful conviction.[50] In the case of Mayamiko Chimphonda, police had evidence of the victim's dying declaration naming his killers, neither of whom was Mayamiko. Nevertheless, because the police had already fixed their sights on Mayamiko as the culprit, the police accepted his co-defendants' testimony against him, even in the face of obvious exonerating evidence.[51]

The problem of tunnel vision can also translate from fixation on a primary suspect to his associates. In multiple cases in Malawi, if the primary suspect dies or cannot be caught, blame is shifted to another person with less or no culpability. In the matter of Binwell Thifu, the police's primary suspect in a murder case escaped and never returned to his village. As a result, police arrested Binwell, the escaped man's cousin and close friend, and charged him with the crime instead.[52]

Finally, in a particularly egregious case, the police arrested the wrong man for a crime after failing the rudimentary task of confirming his identity. While seeking to arrest Timoty Mfuni, who had allegedly committed a murder, police accidentally arrested his cousin, Gift Ngwira. Although Gift protested his innocence and explained his true identity, neither the police, prosecution, nor defense questioned who they assumed him to be. Gift spent 11 years on death row under a mistaken identity.[53]

Obstacles to appeal and post-conviction review

When prisoners are unable to access the appellate courts, they have no means of challenging the validity of their convictions. Malawian law provides for an automatic right of appeal against conviction in murder cases.[54] In practice, however, death row inmates encounter many obstacles in exercising the right to appeal. Only 16% of the capital cases in the Malawi Resentencing Project had benefitted from an appeal.[55]

The likelihood of a defendant being represented by counsel on appeal is vanishingly slim. Attorneys often fail to even alert their clients of their right of appeal, or if they do, are not able and/or willing to assist. The significant backlog of cases in the Malawian courts constrains legal aid attorneys from spending time on appeals. Sometimes, as in the case of Geofrey Mponda, prisoners attempt to appeal on their own, but are never heard. A resentencing court later found that the "inordinately long…delay to process the defendant's appeal" constituted "an obvious violation of the right of appeal."[56]

Moreover, mismanagement of court records, leading to incomplete or missing case files and trial transcripts, further prevents prisoners from meaningfully exercising their right of appeal. As a resentencing judge noted, "Malawi's courts are plagued with missing court records and trial transcripts. This affects defendants' right to a fair trial, the right of appeal. It is a significant human rights issue."[57] Without access to an official record, it is extremely difficult for counsel to make the necessary arguments on appeal. In Malawi, court records are often lost or destroyed. Despite an extensive search for records, about 60% of the 168 cases brought for rehearing after the *Kafantayeni* ruling had missing or incomplete case files.[58]

Lengthy pre-trial detention

Delays, particularly at the pre-trial stage, are a key contributor to the risk of wrongful convictions, because they allow ample time for coercion of innocent defendants to plead guilty and can jeopardize the accused's defense if alibi witnesses become unavailable, exculpatory evidence is lost, or the reliability of testimony is compromised by time.[59] The courts in Malawi face an extraordinary backlog of cases, including capital cases, which can be blamed for much of the prison overcrowding in the country.[60] As noted by the Chief Justice of the Malawi Supreme Court, indigent defendants are hurt worst by these delays: "Most places of custody in Malawi hold a significant proportion of people who pose no threat to anyone . . . Prisoners are there *because* they are poor and illiterate and unable to access the justice system."[61] Defendants rarely have bail hearings and are denied their right to challenge the legality of their detention, resulting in pre-trial detentions that can last for years.[62] Of 168 individuals sentenced to death from 1994 to 2007, 93 spent more than two years in pre-trial detention, averaging 4.3 years.[63] The longest pre-trial detention was nine years.[64]

CONCLUSION

The flaws in Malawi's criminal justice system are not unique to Malawi, and may be found in many other countries in the global south. Nonetheless, they pose a substantial risk that innocent people will be wrongly convicted and sentenced to death. The lack of resources cannot justify depriving capital defendants of due process. Even countries with scarce resources can reform police practice, improve record-keeping procedures, and train lawyers to effectively represent capital defendants. Lawyers not only need proper training, but should receive adequate resources and time to prepare their defense. Police who torture should be prosecuted. Lengthy pretrial detention can be remedied through "camp courts," a Malawian innovation that sends judges to prisons to hear bail applications from prisoners who have been held long past the statutory limit. While these reforms would not eliminate the risk of wrongful convictions, they would reduce the numbers of innocent persons who currently reside in Malawi's prisons.

Chapter 5: Nigeria

Nigeria is one of the world's most active proponents of the death penalty. In 2016 alone, Nigeria sentenced 527 people to death[1] and it has carried out seven executions in the last decade.[2] Its courts regularly issue death sentences for a range of offenses and its prisons hold almost 2,000 death-sentenced inmates.[3]

Several offenses in Nigeria, including murder and armed robbery, carry the mandatory death penalty in all states. In the 12 northern states that follow Shariah law, the state may also impose the death penalty for crimes including rape by a married person, adultery, consensual homosexual sex, incest, witchcraft, and perjury resulting in the execution of an innocent person.[4] High-profile kidnappings by Boko Haram have inspired public debate over whether the death penalty should be instituted for kidnapping.[5] The usual method for execution is hanging,[6] though in some states governed by Shariah law executions for some crimes may also be carried out by firing squad or stoning.[7]

While Nigeria is a party to a number of human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), international law is not implemented until adopted by the national legislature.[8] Nigeria has abstained from voting on the last six UN General Assembly resolutions to implement a global moratorium on capital punishment,[9] and each time signed a diplomatic note disputing the very legitimacy of the vote.[10]

Given this context, it is concerning that criminal trials in Nigeria fall far short of fundamental fair trial guarantees. Lack of effective defense counsel, pervasive police torture and corruption, widespread arbitrary arrests, and the absence of meaningful appellate review are common features of capital proceedings. Recent years have seen a wave of positive legislative reforms targeting the deficiencies of the criminal justice sector,[11] but implementation has been weak and scattered.[12] The case of Monday Ilada Prosper, who was wrongly convicted and spent 11 years on death row, illustrates how the accumulation of these systemic flaws led to an innocent man being sentenced to die.

CASE STUDY: *MONDAY ILADA PROSPER*

Monday Ilada Prosper was wrongly convicted and sentenced to death in 2005 based on a dispute with his former employer. His conviction rested upon the false testimony of one witness and a written confession extracted by torture. It took 11 years for the Court of Appeal to overturn his conviction in a judgment that chastised the trial court for delivering a "mockery of justice."[13] Prison officials then demanded bribes to implement the judgment, delaying Monday's release for six further months.[14]

Monday Prosper moved to Benin City from the countryside in 2001 seeking a job to support his parents and siblings. After working for a pastor for two years, Monday secured employment with Boniface Guobadia, a man in his eighties who needed a driver. Monday had been driving Boniface for over a year when he approached his employer about several months of salary arrears owed to him.[15] His mother had recently fallen ill and he needed funds to travel home.[16] The delay in payment also affected Monday's school-age siblings, for whom he was unable to pay tuition fees and who sometimes went hungry during this time.[17]

Boniface promised to pay Monday on May 3, 2003, but by the afternoon of that day, he still had not done so.[18] Monday reminded Boniface of his promise as he drove him near a busy roundabout. Boniface lost his temper, shouting that he would pay when he had the money and hitting Monday on the head with his walking stick.[19] Monday stopped the engine, left the car, and declared that he quit.[20] There is no evidence that anyone reported this incident to the police.

A few months later, Monday returned to Boniface's home to request his unpaid salary. Boniface instructed his doorman, George, to throw Monday out.[21] As Monday refused to leave, George pulled out a knife and both received minor injuries in the ensuing fight. Boniface called the police and had Monday arrested.[22]

Wrongful arrest and false confession obtained by torture

The police initially seemed disinclined to pursue any charges against Monday. After he gave a statement describing the incident at the roundabout and his attempt to recover his unpaid wages, a police officer told him that he had not committed any crime.[23] Then Boniface arrived at the station. From his detention cell, Monday overheard him place a call to his secretary asking him to bring a check to the police station, after which the police's treatment of Monday changed dramatically.[24]

Boniface accused Monday of theft and attempted breaking-and-entering. According to his police statement, on May 3, 2003, Monday stopped the car at the roundabout, feigning a mechanical difficulty, in order to retrieve a bag of sand hidden in the hood.[25] He used it to hit Boniface in the head, disorientating him, and stole 75,000 Naira (approx. US$ 211).[26] Boniface also claimed that Monday had attempted to break into his house to rob him, but the prosecution ultimately dropped the second charge after the trial court deemed it unsupported by any evidence.

After Boniface's visit to the station, the police threw out Monday's earlier statement and drafted a confession that agreed with his former employer's denunciation.[27] When Monday refused to sign it, three officers took turns beating him with the back of a cutlass and the butt of a gun. They tied his hands and ankles and hung him from a pole.[28] After a week of police torture, Monday signed the confession,[29] which became a key piece of evidence in the case against him.

Lack of access to effective legal representation

Monday was not assigned a lawyer until he was finally arraigned in November 2004, over a year after he was arrested.[30] His lawyer spoke with him only once before trial, for less than half an hour, and did not explain either the criminal proceedings or the possibility of bail.[31] The lawyer also failed to investigate and present critical evidence. Though Monday's pastor visited him at the station after his arrest and found him covered in blood, the lawyer never contacted this potential witness of police torture.[32] Moreover, the lawyer failed to question verifiable inaccuracies contained in Monday's "confession," which, for instance, asserted that he had stolen the money in order to pay for his wife's medical bills when he was in fact not married.[33] Finally, the lawyer refused Monday's request that he contact his family.[34] As a result, Monday's family never learned of his incarceration and ensuing death sentence and were unable to help prepare his defense or support him during his time in prison. Monday did not receive a single visit during his decade on death row.[35]

The lawyer's negligence toward his client was on full display when, partway through the trial, he abandoned Monday to attend to a civil case (which was likely more remunerative). In his stead, he sent a colleague who admitted to the judge that she did not know the facts of the case. The court postponed the hearing and chastised the lawyer for his conduct.[36]

Violations of fair trial rights and judicial misconduct

Gross errors and bias on the part of the court, unresolved conflicts in the prosecution evidence, and inadequate defense preparation pervaded Monday's trial. The combination of these factors led to Monday's conviction and death sentence despite the dearth of evidence against him.

The trial court failed to critically assess contradictory evidence in the prosecution's case. The police report contained different facts than Boniface's statement, noting that Monday picked up sand from the ground (rather than a bag of sand from the hood) and threw it in Boniface's eyes (rather than hit him on the head) while he stole a lesser amount (70,000 Naira, or approx. US$ 197).[37] The trial court found these contradictions immaterial and characterized the sand—in whichever form—as an "offensive weapon."[38] The implications of this finding were severe: Monday was convicted of armed robbery, which carried a mandatory death sentence, rather than simple theft, which is not a capital offense. The court of appeal later found that the inconsistency was key since it affected the determination of whether Monday had used a "weapon."[39]

In fact, the trial judge did more than wave away critical inconsistencies in the evidence, he also cited "evidence" that was simply nonexistent. His judgment affirmed, for instance, that the police had conducted an investigation into whether Monday was owed unpaid wages and found that it was untrue, when in fact the police never investigated this issue.[40] Monday's recollections of his trial confirm the judge's bias against the defendant. From the outset of the proceedings, the judge told the lawyer that his client was "a criminal," and even threatened him with prison for speaking up on his client's behalf.[41]

Finally, the trial court bent the law in order to ignore Monday's allegations of torture and the retraction of his confession. Monday's lawyer objected to the confession's inclusion at the very start of trial, but the judge found that it did not constitute a confession, allowed it into evidence, and postponed until later the decision on its reliability.[42] Monday's lawyer failed to raise the issue again or to elicit testimony about the police torture when Monday took the stand. Profiting from the lawyer's negligence, the court went on to rely on the statement, which it now described as a confession, to convict Monday. Furthermore, the court falsely stated in its judgment that there had been no objection to the confession's introduction into evidence. The appeals court later deplored the trial court's handling of the case, stating that "all the findings of the trial Judge are . . . grossly perverse, as they are not in any way supported by the records."[43]

Monday was sentenced to death by the trial court on October 10, 2005, over two years after his arrest. It was not until June 2014, 11 years after he was arrested, that his conviction was overturned by a court of appeal, thanks to the assistance of volunteer lawyers from a Nigerian NGO, the Legal Defence and Assistance Project. Most death row inmates, by contrast, cannot find a lawyer to help them file an appeal, let alone obtain experts in death penalty cases. Following his release, Monday returned to his hometown and reunited with his family, who had

thought him dead given his long disappearance.[44] They had endured many hardships during his absence, and his siblings had left school due to lack of money.[45] He has since been unable to find employment because of the stigma attached to his incarceration and has had to leave his home state.[46] He has received no compensation for his wrongful conviction.[47]

RISK FACTORS FOR WRONGFUL CONVICTIONS IN NIGERIA

Nigeria's criminal justice system builds upon three distinct legal traditions: English common law, Islamic or Shariah law, and customary law, which reflects the traditional law of the ethnic groups indigenous to Nigeria.[48] In the country's federal system of 36 states, each state is governed by its own combination of legal traditions.[49]

The following risk factors for wrongful convictions are prevalent throughout Nigeria.

Ineffective assistance of legal counsel

Although under international law all capital defendants must be represented by a lawyer,[50] Nigeria's Legal Aid Act falls short of this principle, providing only that courts "may" provide legal aid in serious criminal cases. Furthermore, the list of charges that are eligible for legal aid does not include armed robbery, a mandatory death penalty offense.[51] Nigeria's Legal Aid Council, created to provide counsel to indigent defendants, has only one salaried lawyer per state.[52] One national expert has decried "the complete underfunding of the legal aid system."[53] In a country where 70% of the population lives on less than $US 1 per day, and 70% of criminal defendants are indigent, state-funded counsel is critical to ensure an adequate defense.[54] Legal Aid is further hampered by "inadequate logistics, dearth of current and relevant [legal texts], poor remuneration, low publicity for the [Legal Aid process], failure to introduce new initiatives and programs, and dearth of essential infrastructure."[55]

Because legal aid programs are overburdened, there is seldom time nor money for vital pre-trial case preparation, such as meetings with the client, fact investigations, or hiring experts. Lawyers often meet their client for the first time just before trial, which precludes the proper preparation of a defense and renders client confidentiality non-existent, as these brief meetings usually take place in front of police officers.[56] Often the defendant is the sole witness in his or her own defense. Even if counsel is prepared to call witnesses, many people are afraid to testify in court due to fear of retaliation from police or powerful families supporting the prosecution, or fear of being stigmatized by association with a criminal defendant. Moreover, witnesses rarely appear to testify because they usually cannot afford the cost of traveling to court and many cannot spare the time to repeatedly attend prolonged proceedings.[57]

While the right to counsel on appeal is guaranteed by law and judicial precedent, in practice it is extremely challenging for death-sentenced prisoners to find an appellate lawyer to represent them. As state-funded counsel are already overstretched, they seldom have the capacity to take on appeals, and death row inmates typically lose their legal aid lawyer immediately after sentencing. Consequently, most are unable to exercise their right to appeal.

Misconduct by Officials

Police misconduct pervades the Nigerian criminal justice system, which suffers from chronic under-resourcing and corruption. Police practices are characterized by insufficient investigations, arbitrary arrests, bribery, torture, and extrajudicial killings.

While the size of the police force doubled between 1999 and 2008, the Nigerian government failed to keep pace with training, equipping, and managing new recruits.[58] Limited police budgets leave only 20% of funds to operations after covering the cost of salaries.[59] Large portions of that limited funding are embezzled or wasted on unnecessary expenses.[60] As a result, officers lack the most basic supplies, such as pens, complaint sheets, and fuel.[61] Advanced investigative tools are in short supply, with only two forensic laboratories and one forensic pathologist in the entire country.[62] As a result, investigations are rudimentary and defendants are often prosecuted despite a total lack of evidence beyond a confession. This practice contributes to a high risk of wrongful conviction, as many confessions, obtained under coercive circumstances, are unreliable.

Police raids and arbitrary arrest

In the wake of a violent offense, police typically conduct large dragnet operations in poor neighborhoods or at checkpoints, arresting people under false pretenses or for petty crimes.[63] According to one prominent defense lawyer, "almost every violent crime incident is associated with police raids. This has led to many false charges."[64] Police commonly invade public spaces, sometimes in disguise, to arrest random people, taking them to jail at gunpoint and compelling them to either pay for release or be charged with a crime they did not commit.[65] They may charge innocent bystanders deliberately in order to close old case files, exact bribes, or cover up extrajudicial killings.[66]

The case of Williams Owodo is symptomatic of this deeply problematic practice.[67] The five co-defendants (four of whom were minors) were arbitrarily arrested in a typical police round-up following the recovery of a murder victim's body in the street. The police drove to the area where the crime occurred and, without conducting any investigation, simply grabbed bystanders, shoving them into waiting vehicles to transport them to the police station. One of the defendants, Tony Ataloye, was walking home with his sister when they were both captured this way. His sister was released on bail, but because their mother only had enough money to cover bail for one of her children, Tony remained in police custody for three days. He was only 16 years old at the time. Though he denied knowledge of the crime, the police subjected him to beatings and threats until he signed a pre-prepared confession. His co-defendants gave similar accounts of police mistreatment.[68]

Appellate courts have condemned the practice of indiscriminately rounding up bystanders, though by the time the appeals courts have an opportunity to review a case, the wrongly accused persons may have already spent years in jail. The Owodo defendants were imprisoned for 17 years before their convictions were overturned on appeal.[69] In a similar case of arbitrary arrest, Sopuchi Obed and Oto-Obong Sunday spent 10 years in prison before a court of appeal overturned their convictions, finding that there was no reliable evidence against them.[70]

Many wrongly convicted death row prisoners lack the means to successfully appeal their cases. As noted above, most death row inmates are unrepresented after their trials and lack the knowledge to appeal their convictions.

Moreover, some trial courts accept flimsy evidence, which may then be difficult to overcome or counter in the appellate process due to deferential standards of review and an unwillingness to accept new evidence.[71] While an appeal offers some wrongfully convicted persons belated access to justice, it can neither provide a remedy for the losses and hardships of years in prison, nor can it address all wrongful convictions.

Corruption

Regardless of culpability, every arrested person is typically asked to pay a bribe to the police. Those who cannot are detained longer, denied bail, and tortured, either as punishment or to obtain a confession.[72] The pre-trial detention population is therefore "overwhelmingly made up of those who are too poor to pay their way out."[73] The extent to which low police salaries contribute to the culture of corruption is unclear, because salary raises for police have had little effect on the prevalence of corrupt practices.[74] Regardless, low police salaries provide little incentive for police officers to spend their own resources on investigations that do not receive state funding.[75]

Misuse of prosecutorial powers

Prosecutorial misconduct creates a significant risk of wrongful conviction as prosecutors act as one of the key checks in the criminal justice system. Prosecutors should exercise their discretion not to pursue charges where evidence is insufficient, but in practice this is not always the case.[76] A new code of conduct for prosecutors promulgated in 2015 by the federal Minister of Justice addresses this issue and provides new guidelines for prosecutorial discretion, but the impact of these new guidelines is still unclear.[77]

Lengthy pre-trial detention

For those who are unable to pay a police bribe, a magistrate can order indefinite detention until the conclusion of the police investigation, without reviewing the evidence to determine the likelihood that the detainee will eventually be charged.[78] This long-standing practice, called a "holding charge," has led to extreme delays in the charging process.[79] In some cases, individuals have been kept in pre-trial detention for more than 10 years for crimes they did not commit.[80] The 2015 federal Administration of Criminal Justice Act sought to address this problem by limiting pre-charge detention to 28 days, but implementation of this law has been slow. In two states studied last year, the rule was implemented in only 12% of cases.[81] Consequently, criminal suspects are still subject to indeterminate pre-charge detention, increasing the risk of wrongful conviction as exonerating evidence becomes harder to marshal with the passage of time.

Long pre-trial detention also exacerbates the power imbalance between prosecution and defense. Defense counsel are usually not appointed until the time of trial,[82] and in the interim, the likelihood that defense witnesses disappear or lose interest or evidence is lost or destroyed increases, while the state relies on confessions and evidence gathered at the time of the arrest. It is common for trials in Nigeria to last two years or more, in addition to several years of pre-trial detention.[83] Williams Owodo and his co-defendants, for instance, were arrested in 1995, but it took until 1998 for them to be arraigned, and their trial, which lasted four years, did not begin until 1999. They were sentenced to death in 2003, nine years after their arrest.[84]

Torture and coercion leading to forced confessions

Torture is an everyday part of the Nigerian criminal justice system, despite legal prohibitions against it.[85] Eighty percent of those held in Nigerian prisons have reported being tortured,[86] including vulnerable groups such as women, children, and the elderly.[87] This reliance on torture is due in part to the lack of investigatory resources available to the police.[88] Prosecutors rely heavily, if not exclusively, on confessions obtained through torture in trying their cases.[89] More than half of Nigeria's death row inmates interviewed by LEDAP between 2001–2003 were convicted based on their confessions—and in most of these cases, on their confessions alone.[90]

While confessions obtained through torture are inadmissible, defendants rarely succeed in challenging admissibility,[91] in part because physical evidence fades during the long delay between the torture and the hearing. Thus, it is often the defendant's word against the officer's, and in most cases, the judge sides with the police.[92]

Williams Owodo, the 17-year-old whose case is described above, was coerced into giving a statement to the police. After he told them that he had an alibi, Williams was beaten on the forehead and presented with a false confession drafted by the interviewing officer. Williams refused to sign it until the officer threatened to shoot him. At trial, Williams explained these circumstances to the judge and retracted the confession, as did all of his co-defendants.[93] All the confessions—written by the same officer—were nearly identical, unlike what one would expect from individual recollections.[94] Nevertheless, Williams and his co-defendants were convicted and sentenced to death.[95] The appeals court, recognizing that the statements had been elicited by torture, ultimately overturned the convictions of all the defendants in 2012, after they had spent 17 years in prison.[96]

The 2015 federal Administration of Criminal Justice Act addressed this problem by recommending that police video-record all confessions or take them in the presence of a defense lawyer.[97] A recent court of appeal decision in Lagos confirmed that courts should give less weight to confessional statements that do not comply with these rules.[98] As with other recent reforms, however, compliance with this measure is currently weak and scattered.[99]

Williams Owodo's case also demonstrates how vulnerable populations, such as juveniles and the mentally ill, may be at particular risk of succumbing to police pressure to confess. While Nigerian and international law excludes both these groups from capital punishment, neither is excluded in practice. Vulnerable groups should receive increased protections, such as counsel during interrogation, throughout the judicial process. Unfortunately, representation is rarely provided to any defendant at the interrogation stage, facilitating the use of police violence to compel confessions.

CONCLUSION

While Nigerian lawmakers have recently passed important reforms to the criminal justice system, implementation has been sporadic and improvements have been slow to appear. To reduce the risk that innocent people will be unjustly convicted, Nigeria should enact a number of additional reforms. Police should be trained not to conduct dragnet operations that risk sweeping up innocent people, and police who torture must be prosecuted. The state must adequately fund legal aid lawyers to represent indigent defendants both at trial and on appeal, and must give them the time and resources necessary to prepare their defense. Strict time limits should be enforced for the prosecution of criminal cases. Corrupt public officials should be prosecuted and removed from office. Until these reforms are adopted, the likelihood of wrongful capital convictions remains as high as ever in a criminal justice system characterized by arbitrary arrests, police torture, biased courts, and ineffective lawyers.[100]

Chapter 6: Pakistan

Few countries in recent years have carried out as many executions as Pakistan. Following a terrorist attack on a school that killed over 130 children in December 2014, the government lifted the informal moratorium on executions that had been in place since 2008.[1] Though at first executions were to be limited to those convicted of terrorism offenses, inmates sentenced for common law offenses were also soon sent to the gallows.[2] By the end of 2015, Pakistan had executed 332 people in its first year of resuming executions.[3] With 8,200 prisoners, Pakistan's death row is one of the largest in the world.[4] Among those prisoners are a number of juvenile offenders.[5]

Pakistan applies the mandatory death penalty for a range of offenses including murder, terrorism-related offenses resulting in death, and adultery.[6] At the court's discretion, the death penalty may also be imposed for drug trafficking, apostasy, rape, kidnapping, treason, and military offenses.[7] Hanging is the sole method of execution. Although religious law may authorize other methods of execution, none is applied in practice.[8]

Pakistan is a signatory to several international treaties, including the International Covenant on Civil and Political Rights (ICCPR), which requires scrupulous adherence to human rights standards in capital cases—including fair trial guarantees.[9] Pakistan has voted against every UN General Assembly resolution to implement a global moratorium on capital punishment,[10] and oftentimes signed a diplomatic note disputing the very legitimacy of the vote.[11]

Given the numbers of condemned prisoners and the pace of executions, the structural failings of Pakistan's criminal justice system create a substantial risk of wrongful capital convictions and executions. As one report recently concluded, "Pakistan's criminal justice system is incapable of fairly adjudicating capital cases."[12]

The case of Aftab Badahur lays bare the consequences of Pakistan's flawed criminal justice system. Aftab's case, characterized by custodial torture, false testimony, and ineffective legal representation, reveals how these risk factors increase the likelihood that an innocent person will be sentenced to death.

CASE STUDY: *AFTAB BAHADUR*

Aftab Bahadur was only 15 or 16 years old when he was sentenced to death for the murder of a woman and her two young sons. The victims belonged to the same tribal group as the Sharifs, a powerful political family headed by Nawaz Sharif, then Prime Minister of Pakistan.[13] Due in part to the high profile of the victims, the crime received national media coverage, and the police were under intense pressure to solve the case and arrest the perpetrators.[14] Implicated by a colleague who was questioned under torture, then tried hastily by a special court designed to deal with terrorism cases, Aftab was sentenced to death on the basis of his false confession (also extracted by torture), a coerced eyewitness statement, and fabricated forensic evidence. Egregious police misconduct combined with the failure of Aftab's lawyer to investigate his age or his alibi resulted in an innocent child being sentenced to death.

False testimony elicited through police torture

Aqeel Bari, who owned a clothing shop in Lahore, returned home from work in the evening of September 5, 1992, to find his wife, Sabiha, and his two small sons murdered, and his infant daughter seriously injured.[15] He immediately reported the crime to the police, stating that he did not know the identity of the perpetrator.[16] Later that same evening, he gave the police a further statement: based on the report of a family servant, Baba Fateh Mohammed, he believed the perpetrator to be Ghulam Mustafa.[17] A plumber by trade, Ghulam had been called to Aqeel's house several times over the years to complete repairs.

Ghulam was arrested the morning after the offense. Nadeem Paul, Aftab's cousin and colleague, saw Ghulam at the police station that same evening and recalled that he looked very badly injured.[18] Under duress, Ghulam confessed to killing the boys and implicated his apprentice, Aftab, in the killing of Sabiha.[19]

Hearing that the police were searching for him, Aftab fled. The police arrested two of his cousins in his stead, Nadeem and Naweed Paul, who were 14 and 15 years old at the time. The police subjected them to such extensive torture that 20 years later, Nadeem still had trouble walking.[20] The police arrested around ten other people and tortured them in connection with the investigation.[21] When the police finally arrested Aftab over a month after the crime, they also subjected him to torture and forced him to sign a confession stating that he had committed the murder.[22]

False eyewitness testimony

The key evidence supporting Aftab's conviction was the eyewitness testimony of Baba Fateh Mohammed, who, at the time of the crime, had been employed as a servant by Aqeel's father for a decade.[23] When needed, Fateh also served Aqeel and his family, who lived next door. According to his statement to the police and the trial court, Fateh saw Ghulam and Aftab working on repairs in Aqeel's home on the day of the crime. Fateh left to run an errand, and on returning he heard screaming coming from Aqeel's house.[24] He reported looking through a window and seeing Ghulam cut the throat of one of the boys with a bloody knife and Aftab strangling Sabiha with a cable.[25] He began to run to the neighboring house to warn Aqeel's father but fainted on the way.[26] He did not revive until Aqeel transported him home after discovering the crime, five or six hours later.[27]

Twenty years after Aftab was sentenced to death, lawyers working with the human rights organization Justice Project Pakistan took on his case. They saw early indications that Fateh's testimony was unreliable. For instance, the courts never considered how Fateh could have remained unconscious in a public place for such a long period, or why the police waited between 5 to 7 days to take his statement although he was the only eyewitness to the crime.[28] Conducting the first investigation into the circumstances of the crime, Aftab's new lawyers interviewed Fateh. Now a frail elderly man in his 80s, Fateh admitted that he had not been at the crime scene that day, had not witnessed the murders, and had only agreed to testify under pressure from the police and his employer. Even 20 years after the events, he was too frightened to legally retract his statement, but he did recant his testimony before a religious minister.[29] Ironically, his faith had heightened the trial court's reliance on his credibility. The level of detail he provided impressed the trial judge,[30] and a mark on Fateh's forehead, denoting many years of regular prayer,[31] paved the way for Aftab's wrongful conviction.

Fabricated forensic evidence

A second critical piece of evidence against Aftab and Ghulam was a set of fingerprints that the police claimed they found at the scene of the crime. Both Ghulam and Aftab, however, testified at trial that the police had brought them, separately, to the Bari house, smeared their hands in red oil, and forced them to leave fingerprints on the walls and a wardrobe.[32] Aftab initially refused to cooperate, but the police tortured him into submission.[33] His lawyer failed to investigate this subterfuge, neither asking the court to consider the similarity of the co-defendants' accounts of police misconduct, nor having the fingerprint samples examined.

Ineffective legal representation

As a plumber's apprentice, Aftab could not afford to hire his own lawyer. His state-assigned counsel never informed him of the progress of his case, making it impossible for him to contribute key information to the defense strategy.[34] Aftab's lawyer presented no evidence beyond his testimony.[35] Not only was he negligent in failing to challenge the coerced and fabricated evidence detailed above, he also failed to investigate two major defenses, either of which could have spared Aftab the death penalty.

First, school records demonstrated that Aftab was 15 or 16 years old at the time of his arrest.[36] Under Pakistani law, juveniles may not be sentenced to death, and this alone should have ensured that he was never executed.[37] Trial counsel never bothered to ascertain Aftab's age at the time of the crime. Consequently, the court was not informed of his age, and the high court judgment indicates that the judge mistakenly believed he was 20 years old.[38]

Second, Aftab's lawyer wholly failed to investigate his alibi. Aftab stated that on the day of the offense, he was in Faisalabad (about 120 km, or 74 miles, from Lahore), attending a court hearing on an unrelated matter. By the time his post-conviction lawyers sought alibi evidence 20 years later, all the official court records had been destroyed. Aftab's cousin confirmed in investigation interviews that Aftab was in Faisalabad that day—but the investigators were unable to find official records to document his presence.[39]

Denial of due process

Aftab was tried under the now-defunct Special Courts for Speedy Trial Act.[40] Designed to deal swiftly with terrorism charges, the Special Courts also sometimes adjudicated high profile criminal cases under intense media scrutiny. The procedural rules of the Special Courts imposed strict time constraints that precluded the preparation of a full defense. The police had only 14 days to complete their investigation and submit a report to the court. Then, from the date the court took cognizance of a case, it had 30 days to render a decision.[41] Only one appeal was allowed to another special court, the Supreme Appellate Court, which likewise had only 30 days to decide the case.[42] No appeals were possible to courts in the regular legal system, such as the Supreme Court of Pakistan.[43] This compressed timeline ruled out any chance that capital defenders could investigate facts, find witnesses and experts, and generally prepare an adequate defense.

Aftab was convicted and sentenced to death by a Special Court in January 1993. The Supreme Appellate Court quickly confirmed his conviction in March 1993.

No meaningful opportunity for pardon

In considering Aftab's request for clemency, the government took into consideration neither the powerful exonerating evidence in this case, nor Aftab's model behavior during his 22 years on death row. Well-liked by inmates and staff, Aftab taught himself to paint and found solace in creating art. He was tasked with creating all of the signs in his prison, and eventually produced signs for other prisons as well.[44]

A recent study concluded that, "Pakistan's clemency process makes it virtually impossible for the accused to obtain pardons."[45] After the government lifted the moratorium on executions in December 2014, the Presidency summarily rejected hundreds of mercy petitions without any meaningful review. In fact, the government has not granted a single clemency request since executions resumed almost three years ago.[46]

In Pakistan, as in other Shariah law jurisdictions, the victim's family has the power to forgive a defendant for the murder of a family member, usually in exchange for the payment of a compensatory sum called diyya. Aftab and his family were too poor to negotiate a diyya with the Bari family. Aftab's socio-economic vulnerability, a factor that should be irrelevant to his punishment, prevented him from obtaining this private reprieve.

When Aftab's execution was scheduled in the wake of Pakistan's decision to lift its six-year moratorium on using the death penalty, an unusual array of allies attempted to halt the hanging. The head prison warden sought to prevent the execution, arguing to his superiors that Aftab had been selected arbitrarily for execution and did not represent a priority case. And, on the evening of his execution, Baba Fateh Muhammed came to the prison in person, attempting to officially withdraw his testimony. The prison was on lockdown, however, and had blocked off all public entrances. Fateh yelled and implored at the gate,[47] but it was too late for Aftab. He was hanged on June 10, 2015.

RISK FACTORS FOR WRONGFUL CONVICTIONS IN PAKISTAN

Pakistan's criminal justice system combines Shariah law and British common law, largely adapted from the colonial British Indian Penal Code.[48] In recent years, Pakistan has passed a number of anti-terrorism laws. These laws place strict limits on procedural protections in capital cases, thereby increasing the risk of wrongful conviction. For example, the Anti-Terrorism Act (ATA) of 1997 establishes a separate system for prosecuting terrorism crimes, offering fewer safeguards than the ordinary criminal justice system and fast-tracking convictions.[49] Additionally, the Protection of Pakistan Act[50] authorizes warrantless arrests not only by police, but also by the armed forces; shifts burdens of proof from the government to criminal defendants; and denies prisoners notice of their charges.[51]

The following risk factors for wrongful convictions are prevalent throughout Pakistan.

Ineffective assistance of legal counsel

Inadequately trained defense counsel

Being represented by a lawyer with the skills and resources to mount an effective defense is the single most important safeguard against the risk of a wrongful conviction. The Constitution of Pakistan guarantees to criminal defendants the right to be defended by a legal practitioner of his or her choice.[52] The High Court Rules

further provide that in capital cases, if the accused is unrepresented, the court shall engage a lawyer for him or her at the state's expense.[53]These rules do not, however, guarantee the appointment of competent lawyers. Appointed counsel are chosen from a list primarily comprised of "young and inexperienced lawyers" who receive meager compensation from the state.[54]

Critical errors by appointed lawyers have resulted in convictions and death sentences. As in Aftab Badahur's case, the lawyer for Shafqat Hussain, a 14-year-old defendant facing capital punishment, not only failed to offer evidence or summon witnesses, but also never inquired about Shafqat's age, which under Pakistani law would have been an absolute bar to execution.[55]

Inadequate opportunity to prepare a defense

Limited time and resources further impede lawyers from mounting an adequate defense.[56] Judges typically assign counsel on the eve of trial, or once the trial is already underway. As a result, defense attorneys are rarely given an opportunity to conduct adequate investigations.[57] A state's failure to provide lawyers with adequate time and resources to prepare a defense violates its obligations under Article 14 of the ICCPR, and when the death penalty results, amounts to a violation of the right to life.[58]

Torture and coercion leading to false confessions

Police torture in Pakistan is frequently aimed at obtaining confessions that incriminate the victim or other suspects.[59] The Pakistan Human Rights Commission has observed that police lack "sophisticated methods of investigation" and therefore rely heavily on confessions to solve crimes.[60] Indeed, one prominent Pakistani human rights lawyer believes that torture is the main—and sometimes the only—method of police investigation in Pakistan.[61]

The routine reliance on torture has been documented repeatedly over the past 35 years.[62] In one illustrative case, prisoner Muhammad Amin recounted how, at age 17, he "was hung by my hands, beaten repeatedly with batons, punched, slapped and kicked. They held a gun to my head and said they would kill me if I did not confess."[63] In some cases, torture is so extreme that it leads to death, such as in the case of Akhtar Ali, who died after being brutally beaten by police.[64]

Pakistani law prohibits torture and in 2010, Pakistan ratified the Convention Against Torture.[65] Nevertheless, in Faisalabad—the district where the second highest number of executions has occurred since the moratorium ceased—torture is rampant. Justice Project Pakistan obtained 1,867 medical-legal certificates of physical examinations of criminal defendants that were filed in one year alone. Of those, 1,424—or 76%—found conclusive evidence of abuse.[66] Because Pakistan does not have an independent state-sponsored mechanism for investigating or documenting allegations of torture, however, perpetrators of such abuse are rarely investigated and seldom punished.[67] Without the tools to investigate torture claims, it is also extremely difficult to prove torture and counter a false confession in court.

By delaying the filing of court charges, police can hold and torture suspects for days following their arrest.[68] While the Code of Criminal Procedure provides that a confession obtained under custodial torture is

inadmissible, courts routinely admit and rely on confessions made under duress.[69] Often, such "confessions" are the *only* evidence prosecutors have against defendants, as was the case for Shafqat Hussain. At age 14, Shafqat was detained for several days while police beat him continually, suspended him by his wrists, burned him with cigarettes, administered electric shocks, and deprived him of sleep until he confessed.[70] Shafqat's torture-procured admission of guilt was admitted and became the sole basis for his conviction.[71] As Shafqat's case also illustrates, vulnerable populations, such as juveniles and the mentally ill, are especially prone to confess falsely under torture.

Misconduct by officials

Police corruption

In the police culture of Pakistan, bias and bribery often determine whether a charge is filed, creating a serious risk that poor citizens or unpopular groups will be disproportionately charged.[72] Pakistan's police are handicapped by a "lack of resources, poor training facilities, [and] insufficient and outmoded equipment," with some officers earning as little as US$ 100 per month.[73] In other words, "the system simply is not structured to reward good behavior."[74] Aftab Bahadur reported that police had asked for a 50,000 rupee bribe (approx. US$ 2,000) to drop the charges against him[75]—a sum that he could not afford to pay. Additionally, many Pakistani citizens report being threatened with false charges by police if they report these abuses.[76] Corruption increases the risk that the persons prosecuted are those who are unable or unwilling to pay bribes, regardless of the weakness of the evidence uncovered against them.

Lack of training and funding for prosecutors

Like state-appointed defense counsel, government prosecutors are also underfunded and often poorly trained, and this exacerbates the lack of police accountability. According to one former prosecutor, often "prosecutors do not speak to witnesses until the case comes to court . . . making them over-dependent on the police."[77] This dependence is problematic because while legally Pakistan's prosecutors have a level of autonomy in directing criminal prosecutions,[78] in practice they have little ability to assert authority over local police. As a result, prosecutors may face difficulties overseeing investigations and directing police to gather more convincing proof.[79] Moreover, because police can unilaterally file interim charges, prosecutors are virtually powerless to winnow out weaker cases that primarily rest on uncorroborated oral testimony or potentially problematic confessions.[80]

Prosecutors' excessive caseloads far outstrip their capacity to investigate and prosecute.[81] Their inability to carefully review the evidence, order further investigations, and distinguish between reliable evidence and tainted testimony compromises their ability to distinguish the guilty from the innocent.[82] This problem is exacerbated in cases where an overburdened and poorly resourced defense lawyer represents an indigent defendant.[83]

Lengthy pretrial detention

Mainly due to jail overcrowding and scarce resources,[84] delays prior to charging are derailing the objectives of Pakistan's "National Judicial Policy,"[85] which requires criminal trials to be finished within a year after final charges are filed. These delays, which often extend for years, severely prejudice the accused's ability to defend

against the charges. The accused's defense may be jeopardized if an alibi witness becomes unavailable, exculpatory evidence is lost, or if the reliability of witness testimony is compromised by time.

With a backlog of over a million cases, delays and lengthy pretrial detention periods are common.[86] The lower courts, which play an essential gatekeeping function for fair trials, "are in poor shape [due to] limited resources, lack of professionalism, and incompetence,"[87] and their chronically overburdened staff are unable to ensure that prosecutions are carried out in accordance with the rule of law, undermining the system's ability to generate reliable outcomes. The Anti-Terrorism Courts (ATCs) are also "severely understaffed, underfunded, and lack essential resources."[88] The ATCs are legally required to complete trials within 7 days, resulting in a hasty process stripped of important safeguards.[89]

Fair trial violations

While Pakistan asserts that its "courts operate on the salutary principle that an accused is presumed innocent until proven guilty,"[90] this is rarely the case in practice. A series of Supreme Court decisions have further undermined the rights of the accused and heightened the risk of wrongful convictions. Most significantly, in 2002, the Supreme Court of Pakistan ruled that if a court "is satisfied that the offence has been committed in the manner alleged by the prosecution, the technicalities should be overlooked."[91] Since that ruling, "small discrepancies in the evidence" have increasingly been overlooked and more questionable evidence let in.[92]

As with many procedural problems, this trend is even more acute in the Anti-Terrorism Courts, which expressly shift the burden of proof from the prosecution to the accused.[93] This shift has been reinforced by the Protection of Pakistan Act, which states that a person arrested for suspected terrorism offenses "shall be presumed to be engaged in waging war or insurrection against Pakistan unless he establishes his non-involvement in the offense."[94] In this system, which is deliberately skewed toward the prosecution, indigent defendants face nearly insurmountable challenges in mounting a defense.

Obstacles to appeal and post-conviction review

Without a meaningful opportunity to appeal, many of the above risk factors cannot be remedied, increasing the likelihood of wrongful conviction. Pakistan's Constitution provides for the right to appeal death sentences to the High Court (which automatically reviews death sentences) and the federal Supreme Court.[95] Nevertheless, attempts to introduce new, potentially exculpatory evidence on appeal almost never succeed. For example, Shafqat Hussein was arrested at age 14, was likely intellectually disabled, and was tortured for nine days prior to giving a false confession. Despite the efforts of experienced lawyers on appeal, the judge refused to consider this evidence, instead rejecting Shafqat's claims on procedural grounds.[96] Shafqat was executed in 2015 without a court ever examining the evidence of his juvenility.

Although guaranteed by law, the appeals process suffers from the same delays that afflict the trial-level courts. Pakistan's failure to ensure individuals' right to appeal without undue delay violates international law.[97] For example, Ubeid Pershaad was on death row for 13 years pending appeal.[98] Though Pakistan has claimed that the Supreme Court has the inherent power to re-open finalized cases on the basis of new exculpatory evidence,[99] in practice, those sentenced to death have little opportunity to gather and present new evidence—particularly when

they have been forced to wait years for trial, and several more years on appeal. In the case of Aftab Bahadur, by the time he engaged competent counsel, his alibi records had been destroyed, and his attempts to provide new evidence regarding his juvenility were rejected.

CONCLUSION

Every capital prosecution in Pakistan is at a real risk of resulting in a wrongful conviction as a result of these serious systemic failings. At each stage of the process, from arrest to trial, appeal, and post-conviction review, those charged with capital crimes often face insurmountable barriers to justice. While the government has made efforts to address some of these issues in recent years[100], they often have little impact in the face of institutional, legal, and practical barriers that prevent reform.[101] Furthermore, recent laws targeting terrorist acts have set back even the minimal progress toward criminal justice reform. By further reducing already insufficient procedural protections for capital defendants, anti-terrorism legislation leaves defendants at greater risk than ever of wrongful conviction. In order to mitigate these risks, the government of Pakistan should prioritize enacting legislation criminalizing police torture and establishing independent investigation mechanisms that create real accountability for violations. It should also train and fund prosecutors and defense lawyers, and ensure the defense has sufficient time and resources to adequately represent capital clients. Evidentiary standards and due process safeguards should be strengthened in anti-terrorism courts to comply with Article 14 of the ICCPR. Moreover, it is critical that the government reform appeal, post-conviction review, and clemency procedures to enable lawyers to present new evidence to correct past injustices, including with respect to juvenility, mental disorders and disabilities, and innocence. Finally, the government should decrease the number of crimes that can attract a death sentence to bring its legislation in line with its international commitments and reduce the overload on the justice system.

CONCLUSION AND RECOMMENDATIONS

In each of the countries profiled above, innocent people are at risk of wrongful conviction. We wish to emphasize, however, that these countries are not unique. Every country that retains the death penalty—from the poorest to the most wealthy—runs the risk that innocent persons will be executed. No criminal justice system is perfect, and the risk of error can never be entirely eliminated. The only way to completely exclude the possibility of executing the innocent is to abolish the death penalty altogether.

Short of abolition, there are a number of other essential reforms that every retentionist state should adopt to minimize the risk of wrongful convictions and death sentences.

PROVIDE ADEQUATE FUNDING AND TRAINING FOR CAPITAL DEFENSE LAWYERS.

High quality legal representation is the first and most important defense against wrongful convictions, and each state has an international obligation to ensure that capital defendants receive competent counsel with adequate time and resources to prepare their defense.

TRAIN POLICE AND IMPOSE SANCTIONS FOR MISCONDUCT.

States must train police in proper methods of investigation and interrogation. Police require funding for investigations so that they do not over-rely on confessions to prove guilt. Courts should disallow evidence obtained from crime scene reenactments where the defendant has been compelled to participate. Where police abuse witnesses or suspects, they should be promptly disciplined and sanctioned. Where suspects claim that they have been subject to torture, those allegations must be promptly investigated and the results of the investigation must be shared with the defense. Any government official found to have engaged in torture must be prosecuted. Confessions procured through any form of coercion must be excluded from evidence.

REQUIRE THAT ALL POLICE INTERROGATIONS BE RECORDED.

Video recording of police interrogations allows factfinders to better weigh the credibility of allegations of torture or mistreatment. Where video recording is not feasible, interrogations should be audio recorded.

REQUIRE THAT COUNSEL BE PRESENT DURING ANY INTERROGATION.

Legislatures should consider adopting laws requiring the presence of the suspect's lawyer during any police interrogation, and providing that if a confession is taken in the absence of counsel, the courts should not consider it as evidence against the accused.

REDUCE PRETRIAL DETENTION BY ENFORCING SPEEDY TRIAL RIGHTS.

In countries where prisoners are subject to lengthy pretrial detention, courts should rigorously enforce their right to a speedy trial, where applicable. Legislatures should impose time limits on prosecutions, and courts should preclude prosecutions where critical evidence has been lost as a result of the state's delay.

ENSURE EVIDENTIARY STANDARDS AND DUE PROCESS SAFEGUARDS IN TERRORISM CASES ARE AS STRONG AS THOSE REQUIRED FOR ORDINARY CRIMES.

Terrorism prosecutions raise greater risks of wrongful conviction, particularly when the suspects are religious or ethnic minorities. An atmosphere of fear and uncertainty exacerbates the likelihood that courts will tolerate due process violations. For that reason, judicial proceedings against terrorism suspects must adhere to the same due process safeguards and evidentiary standards as are required in ordinary criminal trials, consistent with each state's obligations under Article 14 of the International Covenant on Civil and Political Rights (ICCPR).

LIMIT THE USE OF INFORMANT TESTIMONY.

The use of informant testimony should be strictly limited to minimize the risk of wrongful convictions. Informant testimony should not be admitted as evidence without a prior determination of the informant's credibility and reliability.[1] No conviction should be based solely on informant testimony.

ADOPT POST-CONVICTION REVIEW MECHANISMS THAT ALLOW PRISONERS A MEANINGFUL OPPORTUNITY TO PRESENT NEW EVIDENCE OF INNOCENCE.

Each state should adopt a process whereby prisoners can present new evidence of innocence, notwithstanding the length of time that has passed since their conviction. This process can take one of several forms, and can be judicial or executive in nature. Whatever the process, it must receive adequate funding and staff to review innocence claims, and it should be independent of the prosecution.[2]

ALLOW FOR POST-CONVICTION DNA TESTING, WHERE FORENSIC MATERIAL EXISTS AND THE TECHNOLOGY IS AVAILABLE.

In many countries, DNA technology is not widely available. Where it is, however, prisoners should be given access to post-conviction DNA testing if forensic material exists that could potentially prove their innocence.

COMPENSATE PERSONS WHO HAVE BEEN EXONERATED AFTER HAVING BEEN WRONGLY CONVICTED.

Article 14(6) of the ICCPR provides that states must compensate persons whose convictions have been reversed "on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice." Persons who have spent years in prison struggle to adjust to life after their incarceration, and are often without family support and unable to work. Compensation does not make them whole, but it helps them survive. It also imposes a sanction on the state that can serve as an incentive for reform.

ENCOURAGE THE ESTABLISHMENT OF INNOCENCE NETWORKS.

The advocacy of innocence networks has provided the impetus for reform in countries around the world. Members of innocence networks have provided representation to innocent prisoners, have advocated for legislative reforms, and educated the public about the prevalence of wrongful convictions. Given the shortage of lawyers around the world with the training, expertise, and funding necessary to investigate wrongful conviction cases, the role of innocence networks is paramount to ensure wrongly convicted prisoners have access to justice.

* * *

While this report has contributed to the growing body of knowledge about the prevalence and causes of wrongful convictions around the world, it also reveals the need for further research and investigation in this area. The countries featured in this report were chosen not because their legal systems are uniquely flawed, or because they contribute a greater number of wrongful convictions compared to their peers. Rather, they were chosen because they represent a diversity of geographic regions and legal systems, and because they had been omitted from previous studies on the incidence of wrongful convictions. Many other countries would benefit from similar study. Accurate data on the prevalence of wrongful convictions, particularly in the global south, is essential to expose the depth of the problem and to encourage the reforms that will ultimately save lives.

ENDNOTES

INTRODUCTION

[1] Brandon Garrett, Towards an International Right to Claim Innocence, p. 1220, 105 California Law Review 1173, 2017.

[2] One exception is China, where a number of scholars have examined the phenomenon of wrongful convictions. See Na Jiang, Wrongful Convictions in China: Comparative and Empirical Perspectives, 2016; Huang Shiyuan, Chinese Wrongful Convictions: Causes and Prevention, 80 University of Cincinnati Law Review 1219, 2012. In 2014, the Death Penalty Project published a report that examined cases of innocence around the world, but did not extensively analyze the systemic risk factors that contributed to wrongful convictions in each country. The Death Penalty Project, The Inevitability of Error: The Administration of Justice in Death Penalty Cases, 2014. Most comparative literature on wrongful convictions focuses on non-capital jurisdictions in Europe, Canada, and Australia. Miranda Jolicoeur, International Perspectives on Wrongful Convictions: Workshop Report, https://www.nij.gov/topics/justice-system/wrongful-convictions/Documents/international-perspectives-on-wrongful-convictions.pdf, Sep. 2010; Lynne Weathered, Wrongful Conviction in Australia, 80 University of Cincinnati Law Review 1391, 2012.

[3] For an excellent overview of the research on wrongful convictions in the United States, see Jon B. Gould & Richard A. Leo, One Hundred Years Later: Wrongful Convictions after a Century of Research, p. 832, 100 Journal of Criminal Law and Criminology 825, 2010.

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[9] The National Registry of Exonerations shows the presence of one or more risk factors in many of the recorded exonerations in the United States. Newkirk Center for Science & Society at University of California Irvine, the University of Michigan Law School, & Michigan State University College of Law, National Registry of Exonerations, www.law.umich.edu/special/exoneration/Pages/about.aspx, last accessed Jan. 23, 2018.

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[11] Gould & Leo, supra n. 3, at p. 841.

[12] Charles E. MacLean, James Berles, & Adam Lamparello, Stop Blaming Prosecutors: The Real Causes of Wrongful Convictions and Rightful Exonerations, p. 157, 44 Hofstra L. Rev. 151, 2015. This analysis includes data until Nov. 22, 2015; National Registry of Exonerations, supra n. 9.

[13] Martin Schönteich, Presumption of Guilt: The Global Overuse of Pretrial Detention, p. 87, Open Society Justice Initiative, 2014.

[14] For an excellent comparative study of post-conviction review mechanisms in innocence cases, see Garrett, supra n. 1.

[15] Alexandra Natapoff, Beyond Unreliable: How Snitches Contribute to Wrongful Convictions, p. 109, 37 Golden Gate University Law Review 107, 2007.

[16] J. Arthur L. Alcaron, Suspect Evidence: Admissibility of Co-Conspirator Statements and Uncorroborated Accomplice Testimony, p. 960, 25 Loyola of Los Angeles Law Review 953, 1992. During interviews, prosecutors can increase the risk that the co-defendant will falsely testify by subliminally signaling what a witness must say to obtain the offered benefits. Fred C. Zacharias & Bruce A. Green, The Duty to Avoid Wrongful Convictions: A Thought Experiment in the Regulation of Prosecutors, p. 9, 89 Boston University Law Review 1, 2009.

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[18] Garrett, supra n. 1.

[19] Brandon Garrett & Peter Neufeld, Invalid Forensic Science Testimony and Wrongful Convictions, 95 Virginia Law Review 1, 2009.

CAMEROON

[1] Amnesty Intl., Death Sentences and Executions in 2015, p. 11, ACT 50/3487/2016, Apr. 6, 2016.

[2] Amnesty Intl., Death Sentences and Executions in 2016, p. 37, ACT 50/5740/2017, Apr. 11, 2017.

[3] Nestor Toko, affiliated with the Réseau des avocats camerounais contre la peine de mort (Network of Cameroonian Lawyers Against the Death Penalty), interviewed by DPW, Nov. 27, 2017.

[4] Penal Code of Cameroon, arts. 90–91, Laws No. 65-LF-24 of Nov. 12, 1965 and No. 67-LF-1 of Jun. 12, 1967, as amended by Law No. 2016/007, Jul. 12, 2016..

[5] Anti-Terrorism Law [Loi Portant sur la Répression des Actes de Terrorisme], Law No. 2014/028, Dec. 23, 2014. Amnesty Intl., Death Sentences and Executions in 2015, supra n. 1, at p. 11; Amnesty Intl., Death Sentences and Executions in 2016, supra n. 2, at p. 37.

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[10] Ibid. at p. 3.

[11] Case of Public Ministry v. Amadou Moctar and Moussa Salissou, Military Tribunal of Maroua, Apr. 2016. De Marie Heungoup, supra n. 9.

[12] Case of Public Ministry v. Amadou Moctar and Moussa Salissou, Military Tribunal of Maroua, Apr. 2016.

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[17] Ibid.

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[19] Nestor Toko, affiliated with the Réseau des avocats camerounais contre la peine de mort (Network of Cameroonian Lawyers Against the Death Penalty), interviewed by DPW, Aug. 30, 2017.

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[21] Ibid.

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[27] Amnesty Intl., Right Cause, Wrong Means: Human Rights Violated and Justice Denied in Cameroon's Fight against Boko Haram, p. 41, AFR 17/4260/2016, Jul. 14, 2016.

[28] Nestor Toko, affiliated with the Réseau des avocats camerounais contre la peine de mort (Network of Cameroonian Lawyers Against the Death Penalty), interviewed by DPW, Aug. 30, 2017.

[29] Ibid.

[30] Amnesty Intl., Right Cause, Wrong Means, supra n. 27, at p. 41.

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[46] Baaboh Fey, supra n. 32, at p. 5.

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[49] Iñaki Albisu Ardigó, Cameroon: Overview of Corruption and Anti-Corruption, p. 4, Transparency Intl., https://www.transparency.org/files/content/corruptionqas/Country_profile_Cameroon_2016.pdf, Apr. 22, 2016.

[50] Cameroon Postline, Corrupt Judges To Face Disciplinary Sanctions: Ali, http://www.cameroonpostline.com/corrupt-judges-to-face-disciplinary-sanctions-ali/, Dec. 7, 2011.

[51] Albisu Ardigó, supra n. 49, at p. 4.

[52] Amnesty Intl., Right Cause, Wrong Means supra n. 27, at pp. 40–41.

[53] Ibid.

[54] Ibid.

[55] Ibid.

[56] Ibid.

[57] Affaire Ministère public v. Younous Mahamat, Judgment No. 046/15, Military Tribunal of Maroua, Jul. 21, 2015.

[58] Amnesty Intl., Right Cause, Wrong Means: supra n. 27, at p. 39.

[59] Ibid.

[60] Ibid.

INDONESIA

[1] Amnesty Intl., Indonesia: First execution in four years “shocking and regressive”, www.amnesty.org/en/latest/news/2013/03/indonesia-first-execution-four-years-shocking-and-regressive/, Mar. 15, 2013.

[2] Amnesty Intl., Death Sentences and Executions in 2013, p. 7, ACT/50/001/2014, Mar. 27, 2014. Amnesty Intl., Flawed Justice: Unfair Trials and the Death Penalty in Indonesia, pp. 27–29, ASA 21/2434/2015, Oct. 15, 2015. Amnesty Intl., Death Sentences and Executions in 2016, ACT/50/5740/2017, p. 21, Apr. 11, 2017. Penal Code of Indonesia, art. 11, Law No. 732 of 1915, as amended by Law No. 27 of 1999, May 19, 1999.

[3] Kate Lamb, Indonesia kills four prisoners in first executions in a year, The Guardian, www.theguardian.com/world/2016/jul/28/indonesia-mass-execution-prisoners, Jul. 29, 2016.

[4] Amnesty Intl., Death Sentences and Executions in 2016, ACT/50/5740/2017, p. 17, Apr. 11, 2017.

[5] FIDH & World Coalition Against the Death Penalty, The Death Penalty for Drug Crimes in Asia, p. 14, N.665a, Oct. 2015. Ricky Gunawan affiliated with LBH Masyarakat, interviewed by DPW, Jul. 17, 2017.

[6] Amnesty Intl., Flawed Justice: Unfair Trials and the Death Penalty in Indonesia, p. 40, ASA 21/2434/2015, Oct. 15, 2015.

[7] Amnesty Intl., Death Sentences and Executions in 2016, supra n. 4, at p. 21.

[8] Ibid.

[9] In 2013, of five people executed, two were convicted of drug charges and three were convicted of murder; in 2015, all 14 people executed were convicted of drug charges; in 2016, three of the four executed were convicted of drug charges. Amnesty Intl., Death Sentences and Executions in 2013, p. 23, ACT/50/001/2014, Mar. 26, 2014. Amnesty Intl., Flawed Justice, supra n. 6, at pp. 27–29. Amnesty Intl., Death Sentences and Executions in 2016, supra n. 4, at pp. 21–22.

[10] Cornell Center on the Death Penalty Worldwide, Death Penalty Database: Indonesia, www.deathpenaltyworldwide.org/country-search-post.cfm?country=Indonesia#f27-3, last accessed Sep. 25, 2017.

[11] Case of Humphrey Ejike, Verdict No. 2152/PID.B/2003/PN.JKT, Dist. Ct. Central Jakarta, Testimony of Hendra Jhoni, Apr. 1, 2004.

[12] Ricky Gunawan, affiliated with LBH Masyarakat, interviewed by DPW, Jul. 17, 2017.

[13] Post-conviction testimony later elicited from Nigerian community members in Jakarta universally portrays Jeff as a religious, upstanding, well-liked man, sought out by his countrymen for his advice and guidance, and known for his rejection of drugs. Post-conviction statements of John, Dec. 7, 2004, and Moses, Dec. 4, 2004.

[14] Ricky Gunawan, affiliated with LBH Masyarakat, interviewed by DPW, Jul. 17, 2017.

[15] Case of Humphrey Ejike, Post-conviction statement of Hannieyo Ingrid Hermanto, p. 1, Aug. 29, 2006.

[16] Ibid.

[17] Case of Humphrey Ejike, Post-conviction statement of Ugochukinu Ibiam Okoro, p. 2, Jun. 6, 2006. Case of Humphrey Ejike, Witness statement of Cello Ogbo, p. 1, Dec. 6, 2004.

[18] Case of Humphrey Ejike, Post-conviction statement of Felix William Kewas, p. 1, May 8, 2006.

[19] The report was never referenced during Jeff's trial or appeals. Post-conviction statement of Officer Felix Kewas, p. 2, May 8, 2006.

[20] Kelly had multiple "employees" in his drug trade. Ugochukinu, a witness for the judicial case review, also admitted that he was selling drugs and reporting to Kelly. Case of Humphrey Ejike, Post-conviction statement of Ugochukinu Ibiam Okoro, Jun. 6 2006.

[21] Ibid.

[22] Ricky Gunawan, affiliated with LBH Masyarakat, interviewed by DPW, Jul. 17, 2017.

[23] Case of Humphrey Ejike, Post-conviction statement of Officer Felix Kewas, pp. 2–3, May 8, 2006.

[24] Ibid. at p. 3.

[25] Case of Humphrey Ejike, Verdict No. 2152/PID.B/2003/PN.JKT, Dist. Ct. Central Jakarta, Testimony of Hendra Jhoni, p. 7, Apr. 1, 2004. Case of Humphrey Ejike, Post-conviction statement of Officer Felix Kewas, p. 3, May 8, 2006.

[26] Case of Humphrey Ejike, Post-conviction statement of Hannieyo Ingrid Hermanto, p. 2, Aug. 29, 2006.

[27] Case of Humphrey Ejike, Post-conviction statement of Dennis Attah, Aug. 28, 2006.

[28] Ibid.

[29] Ibid.

[30] Ibid.

[31] Ibid.

[32] Case of Humphrey Ejike, Verdict No. 2152/PID.B/2003/PN.JKT, Dist. Ct. Central Jakarta, Apr. 1, 2004.

[33] Ibid.

[34] Ibid.

[35] Ricky Gunawan, affiliated with LBH Masyarakat, interviewed by DPW, Jul. 17, 2017.

[36] Dennis Attah stated that Jeff requested to see the drugs for which he was convicted, but police did not comply. Case of Humphrey Ejike, Post-conviction statement of Dennis Attah, Aug. 28, 2006. The law in Indonesia does not require the presentation of physical evidence for a conviction in a drug case. Generally, though, police do present the drugs if actually found, so it is significant that none were presented in this case. Ricky Gunawan, affiliated with LBH Masyarakat, interviewed by DPW, Oct. 6, 2017.

[37] Case of Humphrey Ejike, Post-conviction statement of Officer Felix Kewas, May 8, 2006.

[38] Case of Humphrey Ejike, Post-conviction statements of Ugochukinu Ibiam Okoro, Jun. 6 2006; Cello Obgo, Dec. 6, 2004; John, Dec. 7, 2004; Moses, Dec. 4, 2004; and Kingsley, Dec. 4, 2004.

[39] Case of Humphrey Ejike, Supreme Ct. Verdict No. 18.PK/Pid/2007, Supreme Ct., Sep. 27, 2007. Ricky Gunawan, affiliated with LBH Masyarakat, interviewed by DPW, Oct. 6, 2017.

[40] Case of Humphrey Ejike, Supreme Ct. Verdict No. 1715 K/Pid/2004, Supreme Ct., Nov. 4, 2004, citing KUHAP [Code of Criminal Procedure of Indonesia], Law No. 8, art. 263 (2)(a, b, c), 1981.

[41] Ricky Gunawan, affiliated with LBH Masyarakat, interviewed by DPW, Oct. 6, 2017.

[42] Ricky Gunawan, affiliated with LBH Masyarakat, interviewed by DPW, Jul. 17, 2017.

[43] Erasmus A.T. Napitupulu, Overview on Death Penalty in Indonesia, pp. 6–7, Institute for Criminal Justice Reform, http://icjr.or.id/data/wp-content/uploads/2015/06/Overview-on-Death-Penalty-in-Indonesia.pdf, Jun. 12, 2015. There are other cases in which capital defendants have successfully obtained a second judicial review from the Supreme Court. See Letter from LBH Masyarakat to the Ombudsman RI, No. 622/SK/ORI/II/2017, Feb. 10, 2017, in the Summary of the Ombudsman's Report, Report No. 0793/LM/VIII/2016/JKT, Aug. 2017.

[44] Ricky Gunawan, affiliated with LBH Masyarakat, interviewed by DPW, Jul. 17, 2017.

[45] Indonesia Clemency Law, Law No. 5 of 2010, amending Law No. 22 of 2002.

[46] Presidential Decree No. 2, Procedures for the Execution of the Death Penalty, Law No. 2/PNPS/1964, adopted by Law No. 5 of 1969, provides that "three times twenty-four hours prior to the execution of capital punishment, the Attorney General shall notify the convicted of the imposition of the criminal (sanction)."

[47] Nusa Kambangan, Head of Batu Prison, Letter of Good Behavior for Humphrey Ejike, Mar. 30, 2016, obtained via LBH Masyarakat.

[48] Ombudsman of the Republic of Indonesia, Result of the Investigation of Ombudsman RI, LBH Masyarakat [Community Lawyer] for Humphrey Ejike Jefferson, Report No. 0793/LM/VIII/2016/JKT, Jul. 28, 2017.

[49] Dewi Savitri Reni, Update: The Indonesian Legal System and Legal Research, GlobaLex, www.nyulawglobal.org/globalex/Indonesia1.html, Jan.–Feb. 2015. Indonesia's civil law is based on the Dutch code, and its criminal code still closely reflects the Netherlands Indies Criminal Code of 1918.

[50] The Constitution of Indonesia was published in 1945, as Indonesia emerged from Japanese rule, and has been revised four times in the past 20 years to include provisions regarding human rights.

[51] Customary law (adat) is reflected at the provincial level: each of Indonesia's thirty-four provinces has a local government with its own practice of adat. Savitri Reni, supra n. 49.

[52] University of Michigan Law School Innocence Clinic, Causes of Wrongful Convictions, www.law.umich.edu/clinical/innocenceclinic/Pages/wrongfulconvictions.aspx, 2017.

[53] Amnesty Intl., Flawed Justice, supra n. 6, at pp. 30–31.

[54] Ibid.

[55] Ibid. at p. 31.

[56] Ibid.

[57] Nivell Rayda, Death-row inmates in Indonesia 'abused and tortured,' The Australian, www.theaustralian.com.au/news/world/deathrow-inmates-in-indonesia-abused-and-tortured/news-story/f321a2d537e7538f7a22cf17788df5b7, Jul. 28, 2016.

[58] Erasmus A.T. Napitupulu, Overview on Death Penalty in Indonesia, p. 12, Institute for Criminal Justice Reform, http://icjr.or.id/data/wp-content/uploads/2015/06/Overview-on-Death-Penalty-in-Indonesia.pdf, Jun. 12, 2015.

[59] Ibid.

[60] The Constitution states that every person shall have the right to be free from torture and other cruel, inhuman, and degrading treatment. The Constitution of the Republic of Indonesia, ch. XA, art. 28(I)(1), 1954, as amended in 1999, 2000, 2001, and 2002. Law Concerning Human Rights, Law No. 39 of 1999, art. 4, Sep. 23, 1999.

[61] This practice includes severe torture that can result in death. Asia Human Rights Commn., Asia Report 2015: Indonesia, p. 2, AHRC-SPR-001-2015, 2015. In 2016, Indonesia's Chief of Police admitted to the use of torture, particularly by the security services in interrogations of those accused of terrorist crimes, which in one case killed the detainee. Amnesty Intl., Indonesia: Police Chief's shocking torture admission only tip of the iceberg, www.amnesty.org/en/latest/news/2016/04/indonesia-police-chief-shocking-torture-admission-only-tip-of-iceberg/, Apr. 21, 2016.

[62] KontraS, Report of Torture 2014–2015: Delegitimising the Practice of Torture in Indonesia, https://www.kontras.org/data/REPORT%20OF%20TORTURE%202014-2015%20DELEGITIMIZING%20THE%20PRACTICE%20OF%20TORTURE%20IN%20INDONESIA.pdf, Apr. 23, 2015.

[63] Richard A. Leo, False Confessions: Causes, Consequences and Implications, pp. 332–343, 33 Journal of the American Academy of Psychiatry and the Law, Issue 3, Sep. 2009.

[64] Rayda, supra n. 57.

[65] Ricky Gunawan, affiliated with LBH Masyarakat, interviewed by DPW, Jul. 17, 2017.

[66] In one case, this practice resulted in the death of a witness. Napitupulu, supra n. 58, at p. 11.

[67] Kamran Yousaf, Pakistan hopes Zulfiqar Ali's clemency appeal will be considered favorably, The Express Tribune, https://tribune.com.pk/story/1151239/pakistan-hopes-zulfiqar-alis-clemency-appeal-will-considered-favourably/, Jul. 28, 2016. Rayda, supra n. 57.

[68] This is particularly true with respect to gathering evidence to support a defense. Amnesty Intl., Flawed Justice, supra n. 6, at pp. 40–45.

[69] Vienna Convention on Consular Relations, art. 36, U.N.T.S. vol. 596, p. 261, Apr. 24, 1963.

[70] Amnesty Intl., Flawed Justice, supra n. 6, at pp. 40–45.

[71] Rayda, supra n. 57.

[72] Amnesty Intl., Flawed Justice, supra n. 6, at p. 44

[73] Ricky Gunawan, affiliated with LBH Masyarakat, interviewed by DPW, Jul. 17, 2017.

[74] Isaac Dachen, 'They want to kill me because I am black'—Nigerian sentenced to death in Indonesia, Pulse NG, http://www.pulse.ng/gist/discrimination-they-want-to-kill-me-because-i-am-black-nigerian-sentenced-to-death-in-indonesia-id5317137.html, Jul. 28, 2016.

[75] Marguerite Afra Sapiie, Indonesia's war on drugs takes deadly turn, The Jakarta Post, http://www.thejakartapost.com/news/2017/03/13/indonesias-war-on-drugs-takes-deadly-turn.html, Mar. 13, 2017.

[76] Daily Mail, Shoot drug traffickers if resist arrest: Indonesia President, www.dailymail.co.uk/wires/afp/article-4721856/Shoot-drug-traffickers-resist-arrest-Indonesia-President.html, Jul. 23, 2017, quoting President Widodo: "Be firm. Especially to foreign drug dealers who enter the country. If they resist even the slightest, just shoot them."

[77] Ricky Gunawan, affiliated with LBH Masyarakat, interviewed by DPW, Jul. 17, 2017.

[78] Dist. Ct. Central Jakarta, Verdict No. 2152/PID.B/2003/PN.JKT, Apr. 1, 2004.

[79] The Criminal Procedure Code allows a suspect to be initially held for 24 hours, following which an investigator (usually police) may detain the suspect for 20 days, with a possibility of extension of a further 40 days. KUHAP [Code of Criminal Procedure of Indonesia], Law No. 8, arts. 18–19, 1981. Then, the suspect can be detained by the prosecutor for a further 20 days, with an extension of up to 30 days. Ibid. arts. 24(1–2), 25(1–2). If a suspect is charged with a crime that may result in nine or more years in prison, he may be detained for another 60 days without appearing in court. Ibid. art. 29(1–3).

[80] In all 12 of the cases reviewed by Amnesty International, the defendants were not seen by a judge until trial. Amnesty Intl., Flawed Justice, supra n. 6, at p. 33.

[81] Amnesty Intl., Flawed Justice, supra n. 6, at p. 50.

[82] Ibid. at p. 52.

[83] Ibid.

[84] Ibid.

[85] Ricky Gunawan, affiliated with LBH Masyarakat, interviewed by DPW, Jul. 17, 2017.

[86] Ibid.

[87] Napitupulu, supra n. 58, at p. 10.

[88] Judicial review, or Peninjauan Kembali, is an extraordinary post-conviction remedy. Judicial review can be brought against the Supreme Court's appeal ruling if the previous decision has errors or if there is new evidence. Ricky Gunawan, affiliated with LBH Masyarakat, interviewed by DPW, Jul. 17, 2017.

[89] Circular Letter No. 7/201, issued by the Supreme Court on 31 Dec. 2014. Napitupulu, supra n. 58, at pp. 6–7.

[90] Ricky Gunawan, affiliated with LBH Masyarakat, interviewed by DPW, Jul. 17, 2017.

JORDAN

[1] Amnesty Intl., Death Sentences and Executions in 2014, ACT 50/001/2015, Mar. 31, 2015. AFP, Jordan hangs 11 men after eight-year halt to death penalty, The Guardian, www.theguardian.com/world/2014/dec/21/jordan-hangs-11-men-death-penalty, Dec. 21, 2014.

[2] Eleven people were executed in 2014, two people were executed in 2015, none in 2016, and 15 are known to have been executed as of Nov. 2017. Amnesty Intl., Death Sentences and Executions in 2014, p. 5, ACT 50/001/2015, Mar. 31, 2015. Amnesty Intl., Death Sentences and Executions in 2015, p. 6, ACT 50/3487/2016, Apr. 6, 2016. Amnesty Intl., Death Sentences and Executions in 2016, ACT 50/5740/2017, Apr. 11, 2017.

[3] Al Jazeera, Jordan Hangs 15 Convicts at Dawn, Most in Years, www.aljazeera.com/news/2017/03/jordan-hangs-15-convicts-dawn-years-170304065547230.html, Mar. 4, 2017.

[4] Hannah Patchett, Al-Monitor, Jordan's Mass Execution Revives Debate on Death Penalty, www.al-monitor.com/pulse/originals/2017/03/jordan-mass-executions-fight-terrorism.html, Mar. 10, 2017.

[5] Email from Iyad Alqaisi, Oct. 11, 2017, citing figures obtained from Official from Department of Correction and Rehabilitation Centers on Oct. 10, 2017.

[6] Ibid.

[7] Jordan Penal Code, arts. 38, 99, 110–113, 124–126, 135–137, 142, 148, 158, 292, 342, Law No. 16 of 1960, as amended by Provisional Law No. 12, 2010. Law Protecting State Documents and Secrets, art. 15, Law No. 50 of 1971, 1971. Military Penal Code, art. 10, ACT 51/07/89, 1989.

[8] Cornell Center on the Death Penalty Worldwide, Death Penalty Database: Jordan, www.deathpenaltyworldwide.org/country-search-post.cfm?country=Jordan, last accessed Nov. 15, 2017.

[9] Penal Reform Intl., Towards the abolition of the death penalty and its alternative sanctions in the Middle East and North Africa: Algeria, Egypt, Jordan, Lebanon, Morocco, Tunisia and Yemen, p.13, www.penalreform.org/wp-content/uploads/2013/05/MENA-research-report-on-death-penalty-and-alternative-sanctions-ENGLISH-March-20121.pdf, Mar. 2012.

[10] Case of Badar Ramadam Shaath, Case No. 685/2001, Judgment, Major Felonies Court, Nov. 25, 2001.

[11] Case of Badar Ramadam Shaath, Case No. 1171/2001, Appellant's Arguments, Cassation Court, Dec. 11, 2001.

[12] Case of Badar Ramadam Shaath, Case No. 107/2003, Judgment, Cassation Court, Apr. 22, 2003.

[13] State and others v. Shaath and Shabab, Police Investigation Report, Apr. 6, 2000.

[14] State and others v. Shaath and Shabab, Statement to the police of Abdullah Subhi, Sep. 27, 1999, Police Investigation Report, Apr. 6, 2000.

[15] State v. Badar Ramadan Shaath, Criminal Case No. 14/2001, Testimony of Abdullah Subhi, May 31, 2001.

[16] State and others v. Shaath and Shabab, Police Investigation Report, Apr. 6, 2000.

[17] State v. Badar Ramadan Shaath, Criminal Case No. 14/2001, Prosecution's case, May 31, 2001.

[18] State v. Badar Ramadan Shaath, Criminal Case No. 14/2001, Testimony of Tawfiq Mohammad, May 31, 2001. Mohammad is an employee of the computer training school where Badar attended a class.

[19] State v. Badar Ramadan Shaath, Criminal Case No. 14/2001, Testimony of Badar Shaath, May 31, 2001. Badar also presented his certificates of course completion to the court.

[20] Ibid. Badar's employer also testified that Badar had an excellent work and attendance record and that on the day of the taxi homicide, the company decided to promote him. Ibid.

[21] Ibid. Badar testified that his annual rental income was JD 12,000 (approx. US$ 17,000.)

[22] Dr. Abd Al Rahman Tawfiq, defense lawyer for Badar Ramadan Shaath, former president of the Major Felonies Court, and former judge at the Cassation Court, interview conducted by Iyad Alqaisi, Sep. 2017. State v. Badar Ramadan Shaath, Criminal Case No. 14/2001, Testimony of Badar Shaath, May 31, 2001.

[23] State v. Badar Ramadan Shaath, Criminal Case No. 14/2001, Testimony of Badar Shaath, May 31, 2001.

[24] Ibid.

[25] Ibid.

[26] Case of Badar Ramadan Shaath, Case No. 685/2001, Major Felonies Court, Testimony of Nidal Al-Ayasra, Nov. 25, 2001.

[27] Ibid.

[28] Case of Badar Ramadan Shaath, Case No. 685/2001, Judgment, Major Felonies Court, Nov. 25, 2001.

[29] Ibid.

[30] State v. Badar Ramadan Shaath, Criminal Case No. 14/2001, Judgment, May 31, 2001. State and others v. Shaath and Shabab, Police statement of Badar Shaath, Mar. 14, 2000, Police Investigation Report, Apr. 6, 2000.

[31] State v. Badar Ramadan Shaath, Criminal Case No. 14/2001, Testimony of Badar Shaath, May 31, 2001.

[32] State v. Badar Ramadan Shaath, Criminal Case No. 14/2001, Defense closing statements, May 31, 2001.

[33] Penal Reform Intl., supra n. 9, at p. 11.

[34] In its 1989 resolution on the implementation of the Safeguards, the UN Economic and Social Council emphasized that states have an obligation to "provide special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, *above and beyond the protection afforded in non-capital cases*." Economic and Social Council Resolution 1989/64, Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, May 24, 1989. (emphasis added).

[35] Penal Reform Intl., supra n. 9, at p.13.

[36] Jordan National Centre for Human Rights, The Seventh Annual Report on Human Rights, http://bit.ly/2DDHMQI, 2010. Iyad Alqaisi, affiliated with Justice Clinic, interviewed by DPW, Oct. 23, 2017.

[37] Upon request from counsel, cases may be postponed for more than 48 hours, but such requests are granted only under exceptional circumstances, rarely for the sole purpose of creating an adequate defense. Ibid.

[38] Jordan National Centre for Human Rights, Annual Report on Human Rights Situation in Jordan for 2016, 2016. Jordan National Centre for Human Rights, Annual Report on Human Rights Situation in Jordan for 2015, 2015.

[39] Human Rights Watch, Jordan: Parliament Passes Human Rights Reforms, www.hrw.org/news/2017/10/04/jordan-parliament-passes-human-rights-reforms, Oct. 4, 2017.

[40] Jordan National Centre for Human Rights, The Seventh Annual Report, supra n. 38. Iyad Alqaisi, affiliated with Justice Clinic, interviewed by DPW, Oct. 23, 2017.

[41] Ibid.

[42] Human Rights Watch, Jordan: Torture in Prisons Routine and Widespread, www.hrw.org/news/2008/10/08/jordan-torture-prisons-routine-and-widespread, Oct. 8, 2008.

[43] Jordan Penal Code, art. 208, No. 16 of 1960, as amended by Provisional Law No. 12 of 2010, 2010.

[44] Amman Mohammed Fadilat, Torture in Jordan: Individual cases or systematic policy?, Alarby, www.alaraby.co.uk/investigations/2016/6/14/التعذيب-في-الأردن-حالات-فردية-أم-سياسة-ممنهجة, Jun. 14, 2016.

[45] The Public Security Directorate received and investigated 239 complaints of torture and mistreatment in police stations in 2015: 147 cases were not pursued further due to a decision by the police prosecutor, 45 were referred to the chief of a police unit for administrative punishment, and 27 remained pending. Many more cases of torture have likely gone unreported. Ibid.

[46] In the case of Sultan Al-Khatatbeh, for instance, four Public Security Directorate officers were charged with torturing Al-Khatatbeh to death when he died of a brain hemorrhage while in custody in 2013. Brett Wilkins, Torture, arbitrary detention, accepted honor killings, Digital Journal, www.digitaljournal.com/news/world/jordan-torture-arbitrary-detention-accepted-honor-killings/article/425297, Feb. 5, 2015.

[47] Human Rights Watch, Jordan: Torture in Prisons, supra n. 42.

[48] Amnesty Intl., Jordan: "Your Confessions are Ready for You to Sign": Detention and Torture of Political Suspects, p. 12, MDE 16/005/2006, Jul. 23, 2006.

[49] Reuters, Jordan: 15 executions 'shocking' says human rights group, The Guardian, www.theguardian.com/world/2017/mar/05/jordan-15-executions-shocking-says-human-rights-group, Mar. 4, 2017.

[50] Penal Reform Intl., supra n. 9, at p. 34.

[51] State v. Ahmad Mohammad Sadiq Al-Ali, Criminal Case No. 279/2000, Major Felonies Court, Jun. 21, 2001.

[52] State v. Salim Addullah Salim Saleem Abu Sidreh, Criminal Case No. 370/1995, Major Felonies Court, May 30, 1996.

[53] Al Jazeera, supra n. 3.

[54] Hamzeh Hewaimel, criminal defense lawyer in Amman, Jordan, interviewed by DPW, Nov. 19, 2017.

[55] Iyad Alqaisi, affiliated with Justice Clinic, interviewed by DPW, Aug. 24, 2017.

[56] David B Hennes, Comment, Manufacturing Evidence for Trial: The Prejudicial Implications of Videotaped Crime Scene Reenactments, 142 University of Pennsylvania Law Review 2125, 1994.

[57] Ibid.

[58] State v. Ahmad Mohammad Sadiq Al-Ali, Criminal Case No. 279/2000, Major Felonies Court, Testimony of Officer Marouf Aziz, Jun. 21, 2001.

[59] Iyad Alqaisi, affiliated with Justice Clinic, interviewed by DPW, Aug. 24, 2017.

[60] Human Rights First, What is a Fair Trial? A Basic Guide to Legal Standards and Practice, p. 1, www.humanrightsfirst.org/wp-content/uploads/pdf/fair_trial.pdf, Mar. 2000.

[61] Human Rights Watch, Jordan: End Protestor Trials in State Security Courts, www.hrw.org/news/2012/11/30/jordan-end-protester-trials-state-security-courts, Nov. 30, 2012..

[62] Amnesty Intl., Jordan: "Your Confessions", supra n. 48, at pp. 4, 17, 52.

[63] Ibid.

[64] For example, Ghassan Mohammed Salim Duar was arrested in the middle of the night by the General Intelligence Directorate and detained for 15 days in solitary confinement without legal basis. He was tortured physically and psychologically and forced to sign a

confession. U.N. Working Group on Arbitrary Detention, Opinion No. 17/2017 concerning Ghassan Mohammed Salim Duar, U.N. Doc. No. A/HRC/WGAD/2017/17, Jun. 23, 2017.

[65] Ibid.

[66] State v. Badar Shaath, Criminal Case No. 14/2001, Major Felonies Court, May 31, 2001.

[67] Iyad Alqaisi, affiliated with Justice Clinic, interviewed by DPW, Aug. 24, 2017.

[68] State v. Abu Sidreh, Criminal Case No. 370/1995, Major Felonies Court, May 30, 1996.

[69] State v. Al-Ali, Criminal Case No. 279/2000, Major Felonies Court, Jun. 21, 2001.

[70] Ibid.

[71] Dr. Abd Al Rahman Tawfiq, former president of Major Felonies Court, and former judge at the Cassation Court, interview conducted by Iyad Alqaisi, Sep. 2017.

[72] Iyad Alqaisi, affiliated with Justice Clinic, interviewed by DPW, Aug. 24, 2017.

MALAWI

[1] Cornell Center on the Death Penalty Worldwide, Death Penalty Database: Malawi, www.deathpenaltyworldwide.org/country-search-post.cfm?country=Malawi, last accessed Sep. 26, 2017.

[2] Andrew Dzinyemba, Officer in Charge of the Registry at Zomba Central Prison, interviewed by DPW, Nov. 9, 2017.

[3] Amnesty Intl., Death Sentences and Executions in 2016, ACT/50/5740/2017, p. 5, Apr. 11, 2017.

[4] Malawi Penal Code, secs. 38, 132, 133, 210, 300, 301, 309, Act No. 22 of 1929, Laws of Malawi Ch. 7.01, amended to 2012. Military Defence Force Act, secs. 34, 40, 41, Laws of Malawi, Ch. 12.01, as updated through to Dec. 31, 2012.

[5] Every prisoner sentenced to death since 1995 has been convicted of murder. Cornell Center on the Death Penalty Worldwide, supra n. 1.

[6] Malawi Penal Code, sec. 26(1), Act No. 22 of 1929, Laws of Malawi Ch. 7.01, amended to 2012.

[7] Cornell Center on the Death Penalty Worldwide, supra n. 1.

[8] Ibid.

[9] Kafantayeni and others v. Attorney General of Malawi, Constitutional Case No. 12 of 2005, High Court of Malawi, Apr. 27, 2007. McLemonce Yasini v. The Republic, MSCA Criminal Appeal No. 29 of 2005, Malawi Supreme Court of Appeal, Nov. 1, 2010.

[10] Malawi Resentencing Project data, as analyzed by the Cornell Center on the Death Penalty Worldwide, Aug. 2017.

[11] Post-conviction statement of Kachiwaya Jekesen, p. 1, Apr. 8, 2014.

[12] Ibid. Post-conviction statement of Betina Msampha, p. 2, Apr. 8, 2014.

[13] Post-conviction statement of Betina Msampha, p. 2, Apr. 8, 2014. Post-conviction statement of Chakwana Kalipentala, Apr. 8, 2014.

[14] Post-conviction statement of Betina Msampha, p. 2, Apr. 8, 2014.

[15] Post-conviction statement of Village Headman Potiphar Chikankheni and Vice-Village Headman Scott Bikitala, pp. 1–2, Apr. 8, 2014.

[16] Post-conviction statement of Chakwana Kalipentala, p. 5, Apr. 8, 2014.

[17] Ibid. Post-conviction statement of Kachiwaya Jekesen, p. 1, Apr. 8, 2014.

[18] Prison file of John Nthara, p. 1, Sep. 12, 1998. Prison file of Jamu Banda, p. 1, Sep. 12, 1998.

[19] Post-conviction interview with John Nthara, p. 3, Mar. 2014. Post-conviction interview with Jamu Banda, p. 4, Feb. 2014.

[20] Ibid.

[21] Post-conviction statement of Betina Msampha, p. 3, Apr. 8, 2014.

[22] Ibid. Post-conviction interview with John Nthara, p. 3, Mar. 2014. Post-conviction interview with Jamu Banda, p. 4, Feb. 2014.

[23] Professor Babcock is currently a Clinical Professor of Law at Cornell Law School, where she is also Faculty Director of the Cornell Center on the Death Penalty Worldwide.

[24] Post-conviction statement of Village Headman Potiphar Chikankheni and Vice-Village Headman Scott Bikitala, Apr. 8, 2014. Witness statement of Betina Msampha, Apr. 8, 2014.

[25] Sandra Babcock & Ellen Wight McLaughlin, Reconciling Human Rights and the Application of the Death Penalty, p. 193, in Malawi: The Unfulfilled Promise of Kafantayeni v. Attorney General, Capital Punishments: New Perspectives, p. 193, 2013.

[26] Ibid.

[27] Malawi Resentencing Project Case Database, as analyzed by the Cornell Center on the Death Penalty Worldwide, Aug. 2017. Fidelis Edge Kanyongolo, Malawi: Justice Sector and the Rule of Law, p. 118, AfriMap and Open Society Initiative for Southern Africa, 2006.

[28] Constitution of the Republic of Malawi, Act No. 20 of 1994, May 18, 1994, amended 2010.

[29] Chimwemwe Chithope-Mwale, affiliated with Legal Aid Bureau, interviewed by DPW, Jun. 6, 2017.

[30] Letter from Masauko E. Chamkakala, Director Legal Aid Bureau to His Honor Chigona, Mar. 21, 2016.

[31] Chimwemwe Chithope-Mwale, affiliated with Legal Aid Bureau, interviewed by DPW, Jun. 6, 2017.

[32] Ibid.

[33] For example, The Republic v. John Nthara and Jamu Banda, Sentence Rehearing No. 15 of 2015, High Court of Malawi, Mar. 19, 2015.

[34] Paralegal Advisory Service, Energising the Criminal Justice System in Malawi, pp. 8–10, https://cdn.penalreform.org/wp-content/uploads/2013/06/bro-2002-PAS-malawi-en_0.pdf, Apr. 2002.

[35] Clifford Msiska, affiliated with Malawi Paralegal Advisory Service Institute (PASI), interviewed by the Cornell Center on the Death Penalty Worldwide, Nov. 8, 2016.

[36] Ian Twea, affiliated with Barnett and James legal firm, interviewed by the Cornell Center on the Death Penalty Worldwide, Jul. 13, 2017.

[37] Ibid.

[38] Cornell Center on the Death Penalty Worldwide Faculty Director Sandra Babcock has spent the last ten years working with local partners in Malawi to improve access to justice for prisoners facing the death penalty. These facts cited here are based on her direct experience.

[39] For example, The Republic v. Harrison Raviwa, Sentence Rehearing No. 17 of 2016, Post-conviction statement of Charles Sani, para. 5, Dec. 31, 2015. In his capacity as Village Chief, Harrison Raviwa escorted a group of villagers who had committed an act of mob justice to the police station. Upon arrival, Harrison and the six other individuals were all detained and ultimately, Harrison alone was sentenced to death for a murder committed by the group.

[40] The Republic v. Abraham Phonya, Sentence Rehearing No. 2 of 2017, High Court of Malawi, Defense Submissions, p. 36, Dec. 9, 2016.

[41] The Republic v. George Mshani, Sentence Rehearing No. 34 of 2017, High Court of Malawi, Defense Submissions, pp. 2–4, Jan. 19, 2017.

[42] The Republic v. Charles Dick, Richard Jiba James, Charles Nyapala and Gray Zimba, Sentence Rehearing No. 69 of 2015, High Court of Malawi, Judgment, p. 36, Mar. 4, 2016.

[43] Rex Chikoko, Torture for Confessions, The Nation, http://mwnation.com/torture-for-confessions, Apr. 29, 2017. Fidelis Edge Kanyongolo, Malawi: Justice Sector and the Rule of Law, p. 107, AfriMap and Open Society Initiative for Southern Africa, 2006.

[44] Constitution of the Republic of Malawi, supra n. 28, at art. 19. ICCPR, art. 7, 999 U.N.T.S. 171, Dec. 16, 1966. Convention Against Torture, art. 15, 1465 U.N.T.S. 85, Dec. 10, 1984.

[45] Malawi Resentencing Project Case Database, supra n. 27. Rex Chikoko, Torture for Confessions, The Nation, http://mwnation.com/torture-for-confessions/, Apr. 29, 2017. Fidelis Edge Kanyongolo, Malawi: Justice Sector and the Rule of Law, p. 107, AfriMap and Open Society Initiative for Southern Africa, 2006.

[46] Freedom House, Malawi: Freedom in the World, 2016, https://freedomhouse.org/report/freedom-world/2016/malawi, 2016.

[47] Malawi Resentencing Project Case Database, supra n. 27.

[48] The Republic v. Clitus Chimwala, Sentence Rehearing No. 39 of 2015, High Court of Malawi, Defense Submissions, p. 3, Jul. 9, 2015.

[49] The Republic v. Ismail Gome, Sentence Rehearing No. 50 of 2015, High Court of Malawi, Defense Submissions, p. 1, Jan. 25, 2017.

[50] Bruce MacFarlane, Wrongful Convictions: The Effect of Tunnel Vision and Predisposing Circumstances in the Criminal Justice System, Prepared for the Inquiry into Pediatric Forensic Pathology in Ontario, to The Honourable Stephen T. Goudge, Commissioner, p. 4, https://www.attorneygeneral.jus.gov.on.ca/inquiries/goudge/policy_research/pdf/Macfarlane_Wrongful-Convictions.pdf, 2008.

[51] The Republic v. Mayamiko Chimphonda, Sentence Rehearing No. 18 of 2016, High Court of Malawi, Defense Submissions, p. 3, Apr. 22, 2016.

[52] The Republic v. Binwell Thifu, Sentence Rehearing No. 18 of 2016, High Court of Malawi, Defense Submissions, pp. 3–4, Mar. 15, 2016.

[53] The Republic v. Gift Ngwira, Sentence Rehearing No. 18 of 2016, High Court of Malawi, Defense Submissions, pp. 2–4, Jul. 8, 2016.

[54] The right to appeal is protected under article 42(2)(f)(viii) of the Constitution of Malawi. Constitution of the Republic of Malawi, supra n. 28.

[55] Malawi Resentencing Project Case Database, supra n. 27.

[56] Ibid. The Republic v. Geofrey Mponda, Sentence Rehearing No. 68 of 2015, High Court of Malawi, para. 19, Mar. 4, 2016.

[57] The Republic v. John Nthara and Jamu Banda, Sentence Rehearing No. 15 of 2015, High Court of Malawi, Mar. 19, 2015.

[58] Malawi Resentencing Project Case Database, supra n. 27.

[59] U.S. v. Marion, 404 U.S. 307, 1971.

[60] Tiwonge Kumwenda, Karonga 'dangerously overcrowded' Prison risk closure: Malawi jails regarded epidemic centres, Nyasa Times, https://www.nyasatimes.com/karonga-dangerously-overcrowded-prison-risk-closure-malawi-jails-regarded-epidemic-centres, Apr. 18, 2017. Medecins Sans Frontieres, In Pictures: Working inside Malawi's overcrowded prisons, https://www.msf.org.uk/article/in-pictures-working-inside-malawi-s-overcrowded-prisons, Aug. 26, 2015. Fidelis Edge Kanyongolo, Malawi: Justice Sector and the Rule of Law, p. 107, AfriMap and Open Society Initiative for Southern Africa, 2006. Achutan (on behalf of Banda) and Amnesty International (on behalf of Orton and Vera Chirwa) v. Malawi (1995), AfrCommHPR, Communication Nos. 64/1992, 68/1992, 78/1992, para. 7, 18th session, Oct. 2–11, 1995.

[61] Andrew Nyirenda, An Overview of Pre-Trial Justice in Malawi, OSISA, speech by Chief Justice Andrew Nyirenda, http://www.osisa.org/sites/default/files/sup_files/Speech%20by%20Justice%20Andrew%20Nyirenda%20-%20overview%20of%20pre-trial%20justice%20in%20Malawi.pdf, last accessed Oct. 31, 2017.

[62] The Republic v. Bisket Kumitumbu, Sentence Rehearing No. 59 of 2015, High Court of Malawi, Judgment, p. 3, Sep. 4, 2015.

[63] Malawi Resentencing Project Case Database, supra n. 27.

[64] Ibid.

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[2] Cornell Center on the Death Penalty Worldwide, Death Penalty Database: Nigeria, www.deathpenaltyworldwide.org/country-search-post.cfm?country=Nigeria, last accessed Sep. 25, 2017.

[3] Amnesty Intl., Death Sentences and Executions in 2016, supra n. 1, at p. 38.

[4] Shariah rules of procedure have very high evidentiary requirements for sexual offenses resulting in the death penalty. Whether these strict evidentiary rules are actively enforced is unclear. Cornell Center on the Death Penalty Worldwide, supra n. 2.

[5] Oluwatosin Popoola, The Death Penalty Is Not The Solution to Kidnapping in Nigeria, Vanguard, www.vanguardngr.com/2016/05/the-death-penalty-is-not-the-solution-to-kidnapping-in-nigeria/, May 24, 2016.

[6] Nigeria Criminal Procedure Act of 1945, art. 367(1), Laws of the Federation of Nigeria, Ch. 80, Jun. 1, 1945, as amended Dec. 31, 2000.

[7] Harmonised Shariah Penal Code, Annotated, p. 52 fn. 67, Mar. 2002. Harmonised Shariah Penal Code, Annotated, ch. III, secs, 41, 44, 93(1)(xviii), 126, 127, 129–132, p. 68 fn. 174, p. 70 fn. 181, Mar. 2002.

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[11] The 2015 federal Administration of Criminal Justice Act aimed to redress many systemic failings, as did a new code of conduct for prosecutors and guidelines for prosecutorial discretion, also issued in 2015. Administration of Criminal Justice Act, 2015.

[12] Chinonye Edmund Obiagwu, affiliated with Legal Defence and Assistance Project Nigeria (LEDAP), interviewed by DPW, Sep. 12, 2017.

[13] Monday Ilada Prosper v. State, Court of Appeal, Benin City, Verdict, Jul. 9, 2014.

[14] Legal Defence and Assistance Project Nigeria, Monday Ilada Prosper, http://ledapnigeria.org/monday-ilada-prosper, Oct. 10, 2016.

[15] Monday Prosper, interviewed by DPW, Nov. 22, 2016.

[16] Ibid.

[17] Ibid.

[18] State v. Monday Ilada Prosper, Suit No. B/18C/2004, Appeal Record, Testimony of Monday Ilada Prosper, Transcript of Hearing, Apr. 6, 2005.

[19] Ibid.

[20] Ibid.

[21] State v. Monday Ilada Prosper, Suit No. B/18C/2004, Appeal Record, Testimony of Boniface Aggrey Agbonifo Guobadia, Transcript of Hearing, Apr. 6, 2005. State v. Monday Ilada Prosper, Suit No. B/18C/2004, Appeal Record, Testimony of Monday Ilada Prosper, Transcript of Hearing, Apr. 6, 2005.

[22] Ibid.

[23] Monday Prosper, interviewed by DPW, Nov. 22, 2016.

[24] Ibid. Monday believes that his former employer may have bribed the police to charge him. Though there is no further evidence to substantiate this claim, his view is plausible given the pervasiveness of corruption in the early stages of criminal prosecutions in Nigeria.

[25] State v. Monday Ilada Prosper, Suit No. B/18C/2004, Appeal Record, Testimony of Boniface Aggrey Agbonifo Guobadia, Transcript of Hearing, Apr. 6, 2005.

[26] State v. Monday Ilada Prosper, Suit No. B/18C/2004, Appeal Record, Testimony of Sgt. Godfrey Akhimien, Transcript of Hearing, Apr. 6, 2005.

[27] Monday Prosper, interviewed by DPW, Nov. 22, 2016.

[28] Ibid.

[29] Ibid.

[30] Ibid.

[31] Ibid.

[32] Ibid.

[33] State v. Monday Ilada Prosper, Suit No. B/18C/2004, Appeal Record, Transcript of Judgment, Oct. 6, 2005.

[34] Monday Prosper, interviewed by DPW, Nov. 22, 2016.

[35] Ibid.

[36] The trial court stated: "It is unprofessional and improper for a Learned Counsel to abandon an accused person his client, charged with a capital offense at any stage of trial." State v. Monday Ilada Prosper, Charge. No. B/18C/2004, Appeal Record, Transcript of Hearing, p. 49, Apr. 6, 2005.

[37] State v. Monday Ilada Prosper, Suit No. B/18C/2004, Appeal Record, Testimony of Sgt. Godfrey Akhimien, Transcript of Hearing, Apr. 6, 2005.

[38] State v. Monday Ilada Prosper, Suit No. B/18C/2004, Appeal Record, Transcript of Judgment, Oct. 6, 2005.

[39] Monday Prosper v the State, Appeal No. CA/B/213C/2007, Judgment, Jul. 9, 2014.

[40] State v. Monday Ilada Prosper, Suit. No. B/18C/04, Appeal Record, Transcript of Judgment, Oct. 6, 2005.

[41] Monday Prosper, interviewed by DPW, Nov. 22, 2016.

[42] At the opening of the trial, the defense informed the Court that the confession had been obtained by torture and should be excluded. Nigerian law requires that in such cases the court conduct a trial within a trial to determine whether the confession was reliable. Instead, the judge decided that the statement did not amount to a confession and allowed it into evidence, declaring that it would decide the issue later—which it never did.

[43] Monday Prosper v. State, Appeal No. CA/B/213C/2007, Judgment, Jul. 9, 2014.

[44] Monday Prosper, interviewed by DPW, Nov. 22, 2016.

[45] Ibid.

[46] Ibid.

[47] Ibid.

[48] Abdulmumini A. Oba, Religious and Customary Laws in Nigeria, 25 Emory Intl. Law Review 882, 2011.

[49] Cornell Center on the Death Penalty Worldwide, supra n. 2.

[50] ICCPR, arts. 6, 14, 999 U.N.T.S. 171, Dec. 16, 1966.

[51] Legal Aid Act, Second Schedule, pt. A, Laws of the Federation of Nigeria, 2011.

[52] Legal Aid Act, pt. 2. ch. 8, Laws of the Federation of Nigeria, 2011.

[53] Chinonye Edmund Obiagwu, affiliated with LEDAP, interviewed by DPW, Sep. 12, 2017.

[54] Chinonye Edmund Obiagwu, affiliated with LEDAP, interviewed by DPW, Oct. 17, 2017. David Ehighalua, Nigerian Issues in Wrongful Convictions, pp. 1131, 1137, 80 University of Cincinnati Law Review 1131, 2012.

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[56] Comfort Chinyere Ani, Reforms in the Nigerian Criminal Procedure Laws, p. 71, 1 NIALS Journal on Criminal Law and Justice, 2011.

[57] Chinonye Edmund Obiagwu, affiliated with LEDAP, interviewed by DPW, Oct. 17, 2017.

[58] Nigeria Police Watch, About The Nigerian Police, www.nigeriapolicewatch.com/resources/about-the-nigeria-police, last accessed Nov. 5, 2016.

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[60] Gabriel Chioma, Corruption: Nigerian Police Under Scrutiny, Vanguard, www.vanguardngr.com/2017/08/corruption-nigerian-police-scrutiny/, Aug. 19, 2017.

[61] Human Rights Watch reported, "[o]ne lawyer described to Human Rights Watch how he saw an officer remove a light bulb from the fixture in a police station, explaining to a second officer, '[I]f you want light, buy your own." Human Rights Watch, "Everyone's in on the Game":

Corruption and Human Rights Abuses by the Nigeria Police, p. 73, www.hrw.org/sites/default/files/reports/nigeria0810webwcover.pdf, Aug. 17, 2010.

[62] Ibid. at 75.

[63] Amnesty Intl., Nigeria: "Welcome to Hell Fire": Torture and Other Ill-Treatment in Nigeria, p. 32, AFR 44/011/2014, 2014. Police detain people for various pre-textual offences ranging from "wandering" (loitering) to robbery, largely in an attempt to extort money. Human Rights Watch, "Everyone's in on the Game": supra n. 61, at p. 47.

[64] Chinonye Edmund Obiagwu, affiliated with LEDAP, interviewed by DPW, Sep.12, 2017.

[65] Human Rights Watch, "Everyone's in on the Game": supra n. 61, at p. 3.

[66] While armed robbery does plague much of Nigeria, the label of "armed robber" has been used to justify the jailing and/or extrajudicial execution of innocent individuals who have come to the attention of the police for reasons ranging from a refusal to pay a bribe to insulting or inconveniencing the police. U.N. Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Mission to Nigeria (4 to 10 March 2007), Addendum, para. 39, A/HRC/7/3/Add.4, Nov. 22, 2007.

[67] State v. Owodo, Suit No. ID/28C/96, High Court of Lagos State, Judgment, Dec. 4, 2003.

[68] Ibid. Legal Defence and Assistance Project Nigeria, Documentary: Innocent and Sentenced to Die: Wrongful Incarceration on Nigeria's Death Row, www.worldcoalition.org/Innocent-and-Sentenced-to-Die-Wrongful-Incarceration-on-Nigerias-Death-Row-.html, Oct. 14, 2016.

[69] State v. Owodo, Suit No. ID/28C/96, High Court of Lagos State, Judgment, Dec. 4, 2003.

[70] Sopuruchi Obed v. State, Appeal No. CA/L/502/2010, Court of Appeal, Judgment, Aug. 26, 2009. Legal Defence and Assistance Project Nigeria, Documentary: Innocent and Sentenced to Die: Wrongful Incarceration on Nigeria's Death Row, www.worldcoalition.org/Innocent-and-Sentenced-to-Die-Wrongful-Incarceration-on-Nigerias-Death-Row-.html, Oct. 14, 2016.

[71] Chinonye Edmund Obiagwu, affiliated with LEDAP, interviewed by DPW, Sep. 12, 2017.

[72] Amnesty Intl., Nigeria: "Welcome to Hell Fire": Torture and Other Ill-Treatment in Nigeria, p. 31, AFR 44/011/2014, 2014.

[73] Open Society Justice Initiative, Presumption of Guilt: The Global Overuse of Pretrial Detention, p. 26, www.opensocietyfoundations.org/sites/default/files/presumption-guilt-09032014.pdf, 2014.

[74] Odita Sunday, 'How poor salary leads to rot, corruption in Nigeria Police,' The Guardian, http://guardian.ng/news/how-poor-salary-leads-to-rot-corruption-in-nigeria-police/, Jul. 28, 2015. In an effort to combat bribery as a means of supplementing low police salaries, the monthly salary for police officers was increased in 2008 from ₦8,000 (US$ 62) to ₦26,158 (US$ 217), but that increase has had little effect on stopping corruption and has also failed to bring the police into the middle class. The average monthly salary of middle class Nigerians is ₦75,000-100,000 (US$ 480–645). Human Rights Watch, "Everyone's in on the Game", supra n. 61, at p. 75. Renaissance Capital, A Survey of the Nigerian Middle Class, p. 3, www.fastestbillion.com/res/Research/Survey_Nigerian_middle_class-260911.pdf, Sep. 28, 2011.

[75] Bribery is an expected cost of doing business for lawyers in Nigeria. In one 2002 study, many lawyers, criminal and civil, admitted to having paid bribes to "expedite . . . the implementation of bail orders, the commencement of trial, and . . . trial proceedings." Although court staff and police receive most of the bribes, about 20% of lawyers say they have made payments to judges. Open Society Justice Initiative, Presumption of Guilt, supra n. 73, at 43.

[76] Chinonye Edmund Obiagwu, affiliated with LEDAP, interviewed by DPW, Oct. 17, 2017.

[77] Ibid.

[78] Amnesty Intl., Nigeria: "Welcome to Hell Fire", supra n. 72, at p. 6.

[79] Open Society Justice Initiative, Presumption of Guilt, supra n. 73, at 43.

[80] Ibid. p. 109.

[81] LEDAP & Justice for All Program of DFiD/British Council Abuja, Report of Rate Compliance with Administration of Criminal Justice Laws in Anambra and Lagos (unpublished), 2014. Copy on file.

[82] Amnesty Intl., Nigeria: "Welcome to Hell Fire", supra n. 72, at pp. 25–26.

[83] Chinonye Edmund Obiagwu, affiliated with LEDAP, interviewed by DPW, Oct. 17, 2017.

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[86] Amnesty Intl. & LEDAP, Nigeria: Waiting for Hangman, p. 10, AFR 44/020/2008, 2008.

[87] Human Rights Watch, Rest in Pieces: Police Torture and Deaths in Nigeria, pp. 49–50, Vol. 17, No. 11(A), July 2005. Amnesty Intl., Nigeria: "Welcome to Hell Fire", supra n. 72, at pp. 6–9. Open Society Justice Initiative, Presumption of Guilt, supra n. 73, at p. 107.

[88] Amnesty Intl., Nigeria: "Welcome to Hell Fire", supra n. 72, at pp. 6–9.

[89] In Nigeria, for example, over 90 percent of criminal prosecutions are based exclusively on confessions. Open Society Justice Initiative, Presumption of Guilt, supra n. 73, at pp. 18, 60.

[90] Amnesty Intl. & LEDAP, Nigeria: Waiting for Hangman, supra n. 93. Chinonye Edmund Obiagwu, affiliated with LEDAP, interviewed by DPW, Oct. 17, 2017.

[91] Ibid. Nigerian Evidence Act, sec. 28 states that "A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person," 1990.

[92] Amnesty Intl., Nigeria: "Welcome to Hell Fire", supra n. 72, at pp. 6–9.

[93] State v. Owodo, Suit No. ID/28C/96, High Court of Lagos State, pp. 94–95, Dec. 4, 2003.

[94] Ibid. at pp.167–177, Exhibits A–E, Dec. 4, 2003.

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[96] Williams Owodo v. State, Appeal No. CA/L/148C/05, p. 24, Dec. 6, 2012.

[97] Nigeria Administration of Criminal Justice Act, 2015.

[98] Joseph Zhiya v. People of Lagos State, Appeal No. CA/L/618C/2015, Court of Appeal, Lagos Division, Apr. 27, 2016. Confession recording provisions are mandatory in Lagos and other states, but implementation has been uneven. Chinonye Edmund Obiagwu, affiliated with LEDAP, interviewed by DPW, Oct. 17, 2017.

[99] LEDAP & Justice for All Program of DFiD/British Council Abuja, supra n. 81.

[100] For a series of documentaries on innocent men sentenced to die in Nigeria, see LEDAP & New Media Advocacy Project, Nigerian Exonerees Use Video to Fight Wrongful Imprisonment and Executions, https://blog.newmediaadvocacy.org/2016/07/22/nigerian-exonerees-use-video-to-fight-wrongful-imprisonment-and-executions, last accessed Nov. 2, 2017.

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[2] Justice Project Pakistan & Yale Law School, A "Most Serious Crime": Pakistan's Unlawful Use of the Death Penalty, p. 2, www.law.yale.edu/system/files/area/center/schell/2016_09_23_pub_dp_report.pdf, Sep. 2016.

[3] Agence France Presse, Pakistan executed 332 after reinstating death penalty, www.news.yahoo.com/pakistan-executed-332-reinstating-death-penalty-report-093928743.html, Jan. 16, 2016.

[4] Justice Project Pakistan, www.jpp.org.pk, last accessed Nov. 17, 2017.

[5] Justice Project Pakistan & Yale Law School, supra n. 2, at p. 28.

[6] Cornell Center on the Death Penalty Worldwide, Death Penalty Database: Pakistan, www.deathpenaltyworldwide.org/country-search-post.cfm?country=Pakistan#f39-3, last accessed Jan. 19, 2018. Recent decisions, however, suggest that judges may be reclaiming their right to exercise discretion. Sarah Belal, affiliated with Justice Project Pakistan, interviewed by DPW, Nov. 20, 2017.

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[96] In July 2015, 11 years after Shafqat's conviction, the Sindh Human Rights Commission issued an opinion recommending his execution be stayed pending further review, "so that a competent body may consider the evidence which could not be produced at the trial." Unfortunately, despite intervention attempts by human rights groups, including the U.N. Office of the High Commissioner for Human Rights (calling the impending execution "unacceptable and in flagrant contravention of Pakistan's national and international obligations"), Shafqat was executed in 2015. Sindh Human Rights Commn. at Karachi, Petition No. 1 of 2015, Jul. 22, 2015.

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CONCLUSION AND RECOMMENDATIONS

[1] In Ontario, Canada, for example, the Attorney General only uses informant testimony "where this evidence is justified by a compelling public interest, founded on an objective assessment of reliability" and requires "a rigorous, objective assessment of the informer's account of the accused person's alleged statement, the circumstances in which that account was provided to the authorities and the in-custody informer's general reliability." Ontario Ministry of Attorney General, In-Custody Informers, www.attorneygeneral.jus.gov.on.ca/english/crim/cpm/2005/InCustodyInformers.pdf, 2005.

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John Nthara and Jamu Banda on the day of their release from Malawi's Zomba Central Prison, with, Officer Andrew Dzinyemba.

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