

# **Extra-judicial Executions in Pakistan: Killing with impunity**

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# Abbreviations

AHRC	Asian Human Rights Commission
BBC	British Broadcasting Corporation
CrPC	Code of Criminal Procedure, 1898
DIG	Deputy Inspector General of Police
DSP	Deputy Superintendent of Police
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FIR	First Information Report
HRC	Human Rights Committee of the United Nations
HRCP	Human Rights Commission of Pakistan
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IG	Inspector General of Police
IHL	International Humanitarian Law
IO	Investigating Officer
LHC	Lahore High Court
PPC	Pakistan Penal Code, 1860
RPO	Regional Police Officer
SC	Supreme Court
SHO	Station House Officer
SI	Sub-Inspector
SMG	Submachine gun
SP	Superintendent of Police
UDHR	Universal Declaration of Human Rights
UN	United Nations

# Glossary

Arsh	means the compensation specified to be paid to the victim or his heirs; see section 299(b) PPC
Culpable homicide	is an offence which involves the illegal killing of a person either with or without an intention to kill and is defined variously across jurisdictions.
Daman	means the compensation determined by the court to be paid by the offender to the victim for causing hurt not liable to arsh; see section 299 (d) PPC
Customary international law	is defined as a general practice of law under article 38(1)(b) of the ICJ Statute, which states follow out of a sense of legal obligation.
Diyat	means the compensation payable to the heirs of the victim. See section 299 (e) PPC
International Human Rights Law	is a set of international rules, established by treaties, agreements between states and customary international law, rules of law, on the basis of which individuals and groups can expect and/or claim certain behavior or benefits from governments.
International Humanitarian Law	“is a set of international rules, established by treaty or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts. It protects persons and property that are, or may be, affected by an armed conflict and limits the rights of the parties to a conflict to use methods and means of warfare of their choice”.
Army Jawans	soldiers

Kalima	specifically refers to Islamic holy verse recited to affirm one's belief in Allah and his prophet Muhammad (pbuh) any time or just before death
Qatl	means causing death of person. Section 299 (j) of PPC
Qatl shibhi-i-amd	is said to be committed when a person causes death of another with an act, by means of a weapon, which was intended to cause harm to body or mind of that person and which in the ordinary course of nature is not likely to cause death. Section 315 PPC
Qatl-i-amd	is said to take place when someone "with the intention of causing death or with the intention of causing bodily injury to a person by doing an act which in the ordinary course of nature is likely to cause death or with the knowledge that his act is so imminently dangerous that must in all probability cause death causes the death of such person". Section 300 PPC
Qisas	(or retaliation) means punishment by "causing similar hurt at the same part of the body of the convict as caused by him to the victim, or by causing his i.e. convict's, death if he has committed qatl-iamd in exercise of the right of the victim or a wali". See section 299 (k) PPC; Qisas as provided under section 302 PPC is punishable with death as Qisas or death or imprisonment for life as ta'zir or imprisonment, of either description, up to twenty five years; see section 302 PPC
suo motu	on its own motion
Ta'zir	means punishment other than qisas, diyat, arsh , or daman; see section 299 (l) PPC

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# Introduction

The video capturing the brutal murder of twenty-five year old Sarfaraz Shah by six Rangers and a civilian shocked the world. Demands for bringing the perpetrators of the heinous crime to justice were vigorously raised. An anti-terrorist court convicted the accused and sentenced them to life imprisonment, while the Ranger who had pulled the trigger and killed Shah was sentenced to death. Even though the defendants have appealed against the convictions, the disposal of the case in two months is remarkable given Pakistan's record of long, tardy court proceedings and low conviction rates, especially against agents of the state.

However, the extra-legal killing of Shah is not a one-off incident of blatant violation of the right to life and fair trial by law-enforcement agencies, a vast majority of which do not see the perpetrators brought to justice. Rights-based non-government organisations have revealed alarming number of extra-legal killings by members of armed forces in the Federally Administered Tribal Areas (FATA) and Malakand, as well as extra-legal killings and enforced disappearances in the insurgency-infested Balochistan. Further, even though unnatural deaths in custody of the police and in prisons seem to have declined in recent years, extra-judicial killings in so-called encounters by police have once again seen a surge, resulting in hundreds of lives being lost every year. The present study focuses on the extrajudicial killings perpetrated by the police.

Extra-legal killings are a flagrant violation of the fundamental right to be treated in accordance with law and more importantly, the inherent right to life of every human being. The right to life is enshrined in Universal Declaration of Human Rights (Article 3), and is defined in International Covenant on Civil and Political Rights, which was ratified by Pakistan in 2008, in the following words:

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” (sub-article 1 under Article 6)

And while stress is on curbing arbitrary deprivation of life, other sub-articles under Article 6 of ICCPR make it abundantly clear that right to life may only be derogated in extraordinary circumstances and only as an exception to the rule of preservation. There is today a global trend towards abolition of death

penalty. It is in acknowledgment of the right to life that there are more abolitionist countries in the world today than retentionist.

In recent years, the media has started probing cases of extra-judicial killings and bringing them to public attention. However, media coverage of such incidents is usually superficial and a serious dialogue to influence law and policy does not take place.

There is an urgent need to focus attention on extra-legal killings, analyse the causes and demand an end to such practices. This paper attempts to tackle the issue by enhancing understanding of the nature of the problem, obligations of states under relevant domestic and international legal frameworks, and internationally recognised principles, and makes some recommendations.

# Methodology

The paper is mainly concerned with extra-judicial killings perpetrated by the police in encounters or otherwise. Words extra-judicial killings and extra-legal killings have been used interchangeably. The study is divided into four main sections. It starts with the definition of extra-legal killings, followed by a discussion on the extent of the problem in terms of statistics and state policy, moving on to state obligations under the domestic constitutional and legal regime as well as international law, and ending with recommendations for the state to rectify the problem.

The methodology primarily involves a survey of reported cases of extra-legal killings, especially at the hands of the police, in recent years in Pakistan. Though an attempt was made to seek information from official sources, it did not come in time. In fact, no relevant and systematic data is maintained by any police department, provincial or otherwise. In the absence of any reliable officially maintained data and other primary sources, reports by rights-based, non-government organisations and newspapers have been used as secondary sources.

Interviews with lawyers and prosecutors pursuing criminal litigation, researchers of non-government organisations, journalists, police officials, and retired and former judges were also conducted.

Further, an attempt has been made to make references to available international jurisprudence, reports of the UN Special Rapporteur on extrajudicial or arbitrary executions. References are also made to the emerging case law from superior courts of Pakistan. The paper concludes with recommendations based on the understanding of domestic and international legal obligations of the Pakistani state and the various sets of principles adopted by international community to protect the right to life and guarantee due process of law.

# Understanding extra-judicial killings

## 1.1 Defining extra-judicial killings

Broadly speaking, the term “extra-judicial killings” covers executions which violate domestic penal, or human rights or humanitarian law. Common forms of extra-judicial killings include killing caused by excessive use of force by police, indiscriminate killings of civilians during an armed conflict, and murder by state security forces or paramilitary groups, when these are not adequately investigated, prosecuted or punished.

As is evident from the above examples, the most fundamental characteristic of extra-legal killings is that they are carried out outside the ambit of law. The Supreme Court of Pakistan (SC) also emphasised this characteristic by defining extra-legal executions as killings “which have no sanction or permission under the law or which cannot be covered or defended under any provision of law.”<sup>1</sup>

But would an execution not be extra-legal if under national law, a summary procedure bypassing the due process of law was made permissible for executions in a certain category of offences? The answer to this question can be found in the definition provided by Mr. Amos Wako, the first UN Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions (1982-92), who defined extra-legal executions as killings committed outside the judicial or legal process, and at the same time, illegal under relevant national and international laws.<sup>2</sup> Thus, a killing may also be extra-legal when it is in violation of international law.

Another authoritative definition has been provided by Sir Nigel Rodley, UN Commission on Human Rights Special Rapporteur on Torture (1993-2003),

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<sup>1</sup>Benazir Bhutto versus the President of Pakistan (PLD 1998 SC 388). It may be noted that words extra-judicial and extra-legal have been used interchangeably.

<sup>2</sup>See Report - Summary or Arbitrary Executions, UN Doc. E/EC.4/1983/16, para. 66 referred to by Katja Luopajarvi, EXTRA-JUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS THE SCOPE OF THE MANDATE OF THE SPECIAL RAPPORTEUR, INSTITUTE FOR HUMAN RIGHTS, ÅBO AKADEMI UNIVERSITY (2001): [www.abo.fi/institut/imr/norfa/katja2\\_extra-judicial.pdf](http://www.abo.fi/institut/imr/norfa/katja2_extra-judicial.pdf)

who defined extra-judicial executions as “killings committed outside the judicial process by, **or with the consent of, public officials, other than as necessary measures of law enforcement to protect life** or as acts of armed conflict carried out in conformity with the rules of international humanitarian law.”(Emphasis added)<sup>3</sup>

Amnesty International in a 2003 report characterised an extra-judicial execution as “an unlawful and deliberate killing carried out by order of a government or with its acquiescence”. The report further says that “Extra-judicial killings are killings which can reasonably be assumed to be the result of a policy at any level of government to eliminate specific individuals as an alternative to arresting them and bringing them to justice. These killings take place outside any judicial framework.”<sup>4</sup>

In the initial paragraphs of this paper extra-legal killings at the hands of the armed and paramilitary forces were also referred to. Such killings take place in situations which are at times distinguishable from the situations in which the police encounters take place, where human rights law is deemed not applicable. In armed conflicts, whether of an international or non-international character, safeguards provided by international humanitarian law become applicable which are primarily found in the Geneva Conventions and their Additional Protocols. Legal safeguards differ depending on how an armed conflict is characterised; however, all executions that violate the protections accorded by the relevant rules of international humanitarian law can be termed as extra-judicial killings.

Extra-legal killings in the FATA and surrounding regions and the situation in the insurgency hit areas, such as what is happening in Balochistan, may be categorised as a non-international armed conflicts or “internal tensions and disturbance”, respectively.<sup>5</sup> In both these situations non-state actors confront

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<sup>3</sup> Nigel S. Rodley (with Matt Pollard), *The Treatment of Prisoners under International Law*, 3rd ed., Oxford University Press, Oxford (2009) at page 252

<sup>4</sup> Amnesty International, *ISRAEL AND THE OCCUPIED TERRITORIES: ISRAEL MUST PUT AN IMMEDIATE END TO THE POLICY AND PRACTICE OF ASSASSINATIONS*, 4 July 2003; AI Doc. Index: MDE 15/056/2003 see footnote 1 : <http://www.amnesty.org/en/library/asset/MDE15/056/2003/en/16f1eef4-d6bd-11dd-ab95-a13b602c0642/mde150562003en.html>

<sup>5</sup> There is no specific legal definition of internal disturbances and tensions; these are terms used in international humanitarian law treaties to distinguish situation from international armed conflict. For example, they are used in this way in article 22(2) of the Second Protocol of 1999 to the Hague convention of 1954 for the protection of cultural property, and points (d) and (f) of article 8(2) of the Statute of Rome of 1998.

the state armed forces and pose a direct challenge to the state from within. But the state has never acknowledged that the situation is such that international human rights law would apply.

## 1.2 Forms of extra-judicial executions

According to the UN Special Rapporteur on extrajudicial executions, the most common forms of police killings occur due to excessive use of force in law enforcement operations, including during attempts to arrest suspected criminals,<sup>6</sup> crowd or riot control,<sup>7</sup> and purported “shoot-outs” with alleged armed criminals (sometimes called “encounter killings”).<sup>8</sup> Some killings are motivated by personal monetary gain: the Special Rapporteur has reported on police killings occurring at police checkpoints, where attempts at extortion can escalate into extrajudicial executions. For example, in the Kharotabad incident in Quetta on 17 May, 2011, the Frontier Corps (FC), a federal law enforcement agency, mistook five Russian citizens including three women, two men and a baby, as a threat and reacted with utterly disproportionate force even when it had become clear that they posed no threat to the lives of the members of FC.<sup>9</sup>

The incident was apparently a result of combination of the aforementioned factors.<sup>10</sup>

Some incidents of extrajudicial killings occur in the context of poorly planned and unlawful policing policies and operations, for example, where police engage in heavily militarised operations without adequate safeguards

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<sup>6</sup> E/CN.4/2006/53/Add.4, paras. 42-44.

<sup>7</sup> A/HRC/11/2/Add.6, para. 72.

<sup>8</sup> A/HRC/11/2/Add.1.

<sup>9</sup> Saleem Shahid, “Five Chechens killed in Quetta” Dawn, 18 May, 2011: <http://www.dawn.com/2011/05/18/five-chechens-killed-in-quetta.html>; also see Express Tribune, June 5, 2011, Kharotabad firing incident: foreigners had little else except shampoo bottles; <http://tribune.com.pk/story/182692/kharotabad-firing-incident-foreigners-had-little-else-except-shampoo-bottles/>; and Kharotabad Killings (Editorial), Dawn, 30 October, 2011: <http://www.dawn.com/2011/10/30/kharotabad-killings.html>; Pictures of the incident are available on Youtube website see, 5 Innocent Chechens killed in Kharotabad Quetta, at <http://www.youtube.com/watch?v=NbgsXNi2-M8>

<sup>10</sup> Express Tribune, June 5, 2011, Kharotabad firing incident: foreigners had little else except shampoo bottles; <http://tribune.com.pk/story/182692/kharotabad-firing-incident-foreigners-had-little-else-except-shampoo-bottles/>

or community support.<sup>11</sup>

Police engage in “social cleansing”, intentionally killing suspected criminals or members of poor or marginalised communities.<sup>12</sup>

In extreme cases, the police operate as part of a formal death squad or militia.<sup>13</sup> Killings also occur as a result of torture or the denial of life-saving treatment while the victim is in police custody.<sup>14</sup>

Other killings by police occur outside the context of any purported official police activity, and result from off-duty police officers acting as vigilantes or hired killers.<sup>15</sup>

Little needs to be said that these forms of extrajudicial executions identified by the Special Rapporteur are all too familiar in the Pakistani context.

### **1.3 Some statistics**

Gathering reliable statistics for incidents of extra-judicial killings is a difficult task as state authorities do not proactively reveal such violations. However, despite the absence of statistics at the state level, media reports and efforts by some rights based organisations are useful and have been utilised for the discussion below.

#### ***1.3.1 Police encounters***

Extrajudicial executions and other grave human rights abuses by members police forces have been described as an issue of concern and basis for communication between the UN Special Rapporteur and the Government of

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<sup>11</sup>Human Rights Council's Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Addendum: “Study on police oversight mechanisms” (28 May 2010) Doc. No. A/HRC/14/24/Add.8

<sup>12</sup>Ibid, reference has been made to Doc. No. A/HRC/4/20/Add.2.

<sup>13</sup>Ibid, based on Doc. No. A/HRC/11/2/Add.6.

<sup>14</sup>Amnesty International, Killing at will: Extrajudicial executions and other unlawful killings in Nigeria (December 2009), p. 12.

<sup>15</sup>A/HRC/4/20/Add.2.

Pakistan.<sup>16</sup> The Human Rights Commission of Pakistan (HRCP) recorded 338 executions in police encounters in 2010, an alarming 50% increase from the 226 executions that took place in 2009. Investigations were launched only in 25 of the 338 cases, following protests by families of the victims.

One of the most horrific of recent extra-judicial killings, also referred to above, is that of Sarfaraz Shah, who was killed by Rangers personnel on 8 June 2011 in Karachi. The killing was captured on camera and later on aired on many news channels. A spokesperson for the Sindh Rangers claimed Shah was a criminal and was killed in an “encounter”, very obviously a lie as the video clearly shows that Shah was unarmed and was begging the accused not to shoot him.<sup>17</sup>

After widespread public outcry, an anti-terrorist court in Karachi deliberated on the matter and on 12 August 2011, it convicted the seven accused persons. The Ranger who shot Shah was sentenced to death, while the others were sentenced to life imprisonment. Earlier, the provincial head of the paramilitary Rangers and the Sindh police chief were fired by authorities in compliance with a Supreme Court order on the incident.

However, a closer look at reported news and case law emerging in the high courts reveals that the convictions in such cases as Sarfraz Shah's are a rarity at best as most cases of extra-legal killings are not properly investigated; not surprisingly, the police resist registration of cases against their fellow policemen even when the legal heirs of the deceased “criminals” press for charges of murder.

A case in point is the extra-legal killings of three young men whose dead bodies were returned to their families a day after they were picked up from a wedding party in Pakpattan, (Punjab). The police claimed the deceased were dacoits and had tried to escape from their custody when they were killed. No prompt inquiry was conducted to determine the veracity of the police claim. It was only after the families moved the court that a case against 26 police officers was registered on 12 November, 2010 nearly two months after the alleged executions.<sup>18</sup>

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<sup>16</sup> See UN Human Rights Council document no. E/CN.4/2006/53/Add.1

<sup>17</sup> See report of Asian Human Rights Commission available at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-076-2011>

<sup>18</sup> See Dawn, 13 November, 2010, page 4 Lahore Edition: Encounter killings: DSP among 26 booked



Another shocking incident is the alleged revenge killing by the police of a lawyer and human rights defender's son, which shows the hurdles faced by the families of victims of extra-judicial killings. (See Box No. 1 below)

### **Case No. 1<sup>19</sup>**

Mr. Muhammad Yousuf Butt, an advocate and political activist, was punished by the police and land grabbers with the killing of his son in a fake police encounter. Mr. Butt was very vocal against the grabbing of government plots by the police and land grabbers. On many occasions he and his sons were implicated in cases which later on proved to be false.

On December 28, 2010, at 22.05, when Mr. Butt and his son, Mr. Muhammad Ali Butt, a constable in the reserved police, were sitting with some other persons outside their house in the chilly night in Manzoor colony, Karachi, two police vehicles from Firozabad and Baloch Colony police stations in Karachi (Sindh) followed by two vehicles arrived at the scene. Eleven persons, six policemen and five in plain clothes came out and took Muhammad Ali, the son of the lawyer, towards the police vehicles. The Assistant Sub Inspector (ASI) Faisal Jaffery, who was leading the police party, told the witnesses that Ali Butt's was required at the police station. They also took away his motor bike. ASI Jaffery told Mr. Butt to come to Firozabad police station.

When Ali's father and friends went to Firozabad police station they were not allowed to enter the police station and were told that ASI Jaffery was busy interrogating the victim and they should return the next day. The next day when Mr. Butt went to see his son he was told that he had been killed the previous night in a police encounter and that the body could be collected from the mortuary run by Edhi Foundation, an NGO. When Mr. Butt saw the body; he counted six bullet wounds above the torso and many torture marks. He contacted the Baloch Colony police station, in whose jurisdiction the alleged police encounter occurred, but the police refused to register an FIR. He also tried to lodge an FIR at Firozabad police station against the police officials who had abducted his son but he was told that the police could also kill him in a fake encounter. The concerned Deputy Superintendent of Police (DSP) received his application for an FIR but did not act according to the law.

After finding no support from police officials Mr. Butt filed an application in

<sup>19</sup> Excerpts from a report by Asian Human Rights Commission AHRC-UAC-051-2011 (7 March, 2011): <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-051-2011> (last accessed 15 September, 2011); also see The State of Human Rights in Pakistan in 2011 by the Asian Human Rights Commission at pages 35-36 available at [http://reliefweb.int/sites/reliefweb.int/files/resources/Full\\_Report\\_3065.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3065.pdf)

the court of the additional sessions judge South Karachi, on 12 January 2011 for lodging an FIR and investigation into the killing of his son. The next day the court ordered the police to file an FIR against the accused persons. During the court proceedings the police claimed that Mr. Butt's son had died in a police encounter. But the postmortem examination report proved the report of police to be false.

The court also ordered that as the case was very serious, an enquiry must be conducted by an officer of no less a rank than Senior Superintendent of Police. Before the court order, the provincial minister of interior affairs, Dr. Zulfiqar Mirza, also had ordered an inquiry on 31 December, 2010 by high officials. However, no serious progress has been made in the investigation of the case so far resulting in delay of submission of police report. Instead the police have reportedly threatened the victim's family to withdraw the case or face serious consequences.

Earlier in January 2010, a case against 26 police officials was registered only after the matter was brought before the Supreme Court. The police officials had killed a youth in an encounter in 2007.<sup>20</sup> Again, it was only after a long struggle by the family of the victim that a case was registered. In most cases, the victims' families cannot go that far and such cases go unreported and without a proper enquiry. Even when a case is registered, the mere registration of a case does not ensure that an impartial inquiry will be conducted.

The aforementioned figures and cases confirm a disturbing pattern of encounter killings observed over the past many years. For instance, in 1999 HRCP recorded 350 encounters in which 527 “suspects” were killed across Pakistan. Approximate numbers of extralegal killings from 2000 to 2003 were as follows: In 2000,<sup>23</sup> killings in police encounters were 192,<sup>21</sup> and 107 in 2001<sup>22</sup> and 236 in 2002. 195 people were reported to have lost their lives in encounters with police during 2003.<sup>24</sup> One hundred and five people were

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<sup>20</sup> <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/murder-case-against-26-410> (last accessed 2 November 2010)

<sup>21</sup> Human Rights Commission of Pakistan, State of Human Rights in 2000

<sup>22</sup> Human Rights Commission of Pakistan, State of Human Rights in 2001, page 107

<sup>23</sup> Human Rights Commission of Pakistan, State of Human Rights in 2002, page 96

<sup>24</sup> Human Rights Commission of Pakistan, State of Human Rights in 2003, page 111

killed in 134 encounters in Punjab alone during 2004.<sup>25</sup>

The pattern continued during 2005-2008. The data at HRCP collected from newspapers revealed that 166 encounters took place during November, 2004 to August, 2005 with 252 killings and 35 police officials killed. Media reports put the death tolls in police encounters for 2006, 2007<sup>26</sup> and 2008 at 171, 234 and 259, respectively. According to newspaper reports in August 2005 the Punjab police had communicated to Federal Ministry of Interior the following encounter figures for 15 years (up to mid-August 2005).<sup>27</sup>

Police encounters in Punjab (According to the Punjab police)	Period:1990-2005
No. of encounters	3,424
No. of suspects killed	2,246
Average per year	150 (approx.)
Highest encounter killings in a year	413 in 417 encounters in 1998 (excluding police officers)
No. of police officials killed	493
Police officers to suspects killed ratio	1 to 5 (approx.)

The official report put the number of alleged suspects killed in the encounters in Punjab<sup>28</sup> alone in 15 years till mid-2005 at 2,246.

Newspaper reports and the pattern followed over the years suggest that extra-legal killings by the police are an accepted policy among the high political offices. For example, a newspaper report appearing on 22 April, 2009 revealed that around 260 police encounters took place across Punjab since the election of the incumbent chief minister in June 2008, leading to the elimination of more than 270 “criminals”. The report further revealed that

<sup>25</sup> Human Rights Commission of Pakistan, State of Human Rights in 2004, page 73. The available figures are for the first nine months for Punjab alone.

<sup>26</sup> Human Rights Commission of Pakistan, State of Human Rights in 2007, page 59: <http://www.hrcp-web.org/pdf/Archives%20Reports/AR2007.pdf>

<sup>27</sup> Human Rights Commission of Pakistan, State of Human Rights in 2005, page 78: <http://www.hrcp-web.org/pdf/AR2005.pdf>

<sup>28</sup> Ali, Muhammad Faisal, “Encounters: 270 outlaws killed in 10 months”, Dawn, 22 April 2009: <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/encounters-270-outlaws-killed-in-10-months> ((last accessed 28 October 2010)

according to the Punjab police, 73 criminals and two police officials were killed in 77 encounters in the first three months of 2009, while during the governor's rule in the province from Feb 25 to March 31, only one encounter took place in which two alleged robbers were killed by the Elite Force in Lahore.<sup>29</sup>

The UN Special Rapporteur has noted: “The most common forms of police killings occur due to excessive use of force in law enforcement operations, including during attempts to arrest suspected criminals, crowd or riot control, and purported “shoot-outs”, with alleged armed criminals. Some killings are motivated by personal monetary gain: the Special Rapporteur has reported on police killings occurring at police checkpoints, where attempts at extortion can escalate into extrajudicial executions.

In a recent incident of a fake encounter in Lahore's Nishtar Colony,<sup>30</sup> the special officer inquiring into the incident noted in his report submitted before the Lahore High Court that the officer in charge of investigation informed him that he had recovered about 8 empties of bullets used in the incident. However, report on forensic material gathered from the scene of encounter showed that 235 rounds of SMG had been used.<sup>31</sup>

The practice of aiming guns at the heads and chests of victims and the use of firearms that are not registered at the police stations concerned offer strong evidence that contradicts the police version of encounters. Besides, it has been observed, *“the story most commonly offered that the encounter took place when the criminals tried to escape or fired the first shots is not taken seriously by anyone.”*<sup>32</sup>

This opinion is widely shared and has been substantiated in a number of

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<sup>29</sup> Ali, Muhammad Faisal, “Encounters: 270 outlaws killed in 10 months”, Dawn, 22 April 2009: <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/encounters-270-outlaws-killed-in-10-months> ((last accessed 28 October 2010)

<sup>30</sup> An alleged criminal who was killed in a 'police encounter' near Rohi Drain in Lahore's Nishtar Colony late on Friday suffered not less than eight bullets from a point-blank range and bruises on his body, sources privy to autopsy had informed the Dawn reporter. See Mohammad Faisal Ali, “Death in 'encounter' Bullets fired at youth from close range”, Dawn, 12 June, 2011, at <http://www.dawn.com/2011/06/12/death-in-encounter-bullets-fired-at-youth-from-close-range.html>

<sup>31</sup> Enquiry Report Ref. no. 4466/I.E/PTS dated 13 June, 2011 submitted before the Lahore High Court by the IG, Punjab Police, prepared by Maj. (rtd.) Mubashar Ullah, DIG, Inquiry Officer, at Page 4

<sup>32</sup> I.A Rehman, , Extra-legal Killings, Dawn, 25 March, 2010 ((last accessed 28 October 2010)

incidents, including the one that occurred in the EME Society, a residential locality in Lahore. (See Box No. 2 below)

## Case No. 2

A so-called police encounter with robbers which occurred in January 2009 in a residential area (the EME Society) of Lahore was electronically recorded by an anonymous and later aired on a TV channel. After the encounter, the police informed the media that they had killed two dacoits who were hiding at the place of encounter. The police had gone to arrest them on tips received from informants. The so-called dacoits resisted and attacked the police team.

The footage clearly shows that the encounter was staged by the police. So much so that one of the 'criminals' killed in the encounter is shown being brought by the police at the site of the encounter. His hands are obviously tied at his back. He is taken inside the house which was declared by the police as the abode of the 'hardened criminals'. Heavy firing is 'exchanged'. Both the 'dacoits' are killed but not a single police official is hurt in the 'attack' on the police.<sup>33</sup>

The Supreme Court of Pakistan has taken notice of the incident. An Assistant Advocate General, Punjab (AAG) appearing on behalf of the Punjab Government on 8 November 2010 informed the court that a judicial magistrate was conducting an inquiry into the EME Colony police encounter (even after about 22 months). The police version of the encounter was also presented before the apex court.

According to a Superintendent Police (SP) appearing for the Punjab police, Lahore, two robbers broke into the house of an army major in the EME Colony and murdered him. They also took the whole family hostage at gunpoint but one woman managed to slip out to report the incident to the police. Police arrived at the scene and arrested one of the robbers standing guard outside the house. Later the police entered the house along with the arrested robber for negotiations with his accomplices but in an exchange of fire all the three burglars were killed.

One of the judges of the Supreme Court hearing the case remarked: "The men were arrested outside the house and then taken inside where they were

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<sup>33</sup> The recorded video footage has been posted at Youtube website titled as Fake Police encounter in Pakistan available at <http://www.youtube.com/watch?v=UFDIEh75T8w>

murdered in a fake encounter. It's a big tragedy". The case was adjourned till 8 December 2010 for appearance before the court of the officer in-charge of the encounter.<sup>34</sup> At the next date of hearing an Additional Advocate General, Punjab informed the court that the district and session judge had completed the inquiry on the fake police encounter which occurred in EME Colony Lahore. However, no disciplinary action or conviction against the officers involved has so far been reported in the case.<sup>35</sup>

### ***1.3.2 Internal disturbances, rebellions and insurgencies***

The Pakistan Army has been accused of using excessive force in its operations against militants in the Swat valley. Mass graves have been found which the army said were filled with the bodies of militants killed in army operations. However, the Human Rights Commission of Pakistan (HRCP) and other human rights groups believe that these mass graves could be of suspected Taliban fighters who have been victims of extra-judicial killings. At least one militant commander was reported by eyewitnesses to have been captured alive, but he turned up in a mass grave later. Police allege he was killed in an encounter.<sup>36</sup> Many of the bodies recovered from mass graves reportedly showed signs of torture.<sup>37</sup> Human Rights Watch (HRW) has alleged that the security forces have carried out around 238 summary executions.<sup>38</sup> A video released in October 2009 also showed Pakistani soldiers beating up suspected Taliban militants or sympathisers.<sup>39</sup>

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<sup>34</sup> Kaiser Zulfiqar, *The Express Tribune*, 9 November 2010, "SC to grill Punjab Police: <http://tribune.com.pk/story/74381/sc-to-grill-punjab-police-on-staged-encounters/>

<sup>35</sup> *The Nation*, 29 January 2011 Supreme Court dismayed over police's inaction: <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Islamabad/29-Jan-2011/SC-dismayed-over-polices-inaction>

<sup>36</sup> Dawn.com, "Extra-judicial killings in Swat: HRCP seeks probe by parliamentary body" (18 August 2009) at <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/extra-judicial-killings-in-swat-hrcp-seeks-probe-by-parliamentary-body-889> (last accessed 2 November 2010); BBC News, "More bodies in Pakistani valley" (31 August 2009) at <http://news.bbc.co.uk/2/hi/8230267.stm> (last accessed 2 November 2010);

<sup>37</sup> *New York Times*, "Pakistan army said to be linked to Swat killings" (14 September 2009) at <http://www.nytimes.com/2009/09/15/world/asia/15swat.html?pagewanted=2&r=1> (last accessed 2 November 2010)

<sup>38</sup> Reuters, "Pakistan accused of killings, torture" (6 April 2010) at <http://www.taipetimes.com/News/world/archives/2010/04/06/2003469841/2> (last accessed 12 October 2010)

<sup>39</sup> *The Hindu*, "Pakistan probes torture video" (2 October 2009) at <http://beta.thehindu.com/news/international/article28072.ece> (last accessed 14 November 2010)

### Case No.3

A video on YouTube (seemingly filmed with a mobile phone camera) shows men wearing Pakistan army uniforms executing six young men, blindfolded and hands tied behind their backs. The video shows army jawans bringing six young men to an unidentified location.

The men are lined up, and a soldier, who is bearded and without a moustache, inspects them and seemingly asks each one of them to recite Kalima (apparently following the practice of providing opportunity to recite kalima to prisoners on death row just before they are executed). The soldier returns toward the other soldiers who then stand in a line and straighten their rifles; then one sees all the six men falling back as one hears shots. The men fall and one can then hear cries of the victims. Two soldiers then walk up to the bodies and fire shots to confirm deaths beyond doubt.<sup>40</sup>

According to journalist Ejaz Haider, “While these men are being led to the spot where they are shown to be killed, one can hear birds chirping and then a voice saying, “Tanvir saab, 2IC [second-in-command] saab bula rahay hain [Mr. Tanvir, the boss is calling you].” Apparently, Tanvir saab doesn't hear him and this man then calls out and says, “Abid, Tanvir saab ko bulao; 2IC saab bula rahay hain...[Abid, call Mr. Tanvir; 2IC is asking for him] To anyone who has seen the army from close quarters, it is hard to believe that this is a set-up, given the soldiers' movements and mannerism...It is crucial for the army to openly and transparently investigate this video and, if it is found to be genuine, to proceed against the officers and men involved for murder. And it is the task of the media and the society to debate these issues without losing the many nuances that underlie them.”<sup>41</sup> Findings of the enquiry, if any, reportedly ordered by the Army chief have not been made public so far.

HRW has corroborated 50 such suspicious killings from local sources.

<sup>40</sup>Part of the five-and-a-half minute video is available at <http://www.youtube.com/watch?v=zHjIPh0Cja4> (last accessed 2 November 2010). The video was first denied by the Pakistan Army; Also see Jane Perlez, The New York Times, Global Edition (Asia Pacific), “Video Hints at Executions by Pakistanis”, 30 September, 2010: [http://www.nytimes.com/2010/09/30/world/asia/30pstan.html?\\_r=1](http://www.nytimes.com/2010/09/30/world/asia/30pstan.html?_r=1) ; Later, the Army Chief, General Ashfaq Pervez Kiyani reportedly ordered for an internal inquiry, Jane Perlez, Pakistani Army Chief Orders Video Inquiry: <http://www.nytimes.com/2010/10/08/world/asia/08islamabad.html> . However, no findings have so far been made public.

<sup>41</sup> Ejaz Haider, “Line them up and execute”, The Express Tribune, 4 October 2010: <http://tribune.com.pk/story/58011/line-them-up-and-execute/> (last accessed 4 October 2010)



HRCP, which provided a list of 249 suspected extra-judicial killings from July 30 2009, to March 22 2010, stated that most of these executions took place in Swat, and that independent journalists and locals widely believed security forces were behind the killings.<sup>42</sup>

"Killing terrorism suspects and their relatives in cold blood is vicious, illegal, and constitutes an appallingly bad counterterrorism practice that just creates more enemies", said Ali Dayan Hasan, Senior South Asia Analyst at Human Rights Watch.<sup>43</sup>

Incidents of extra-legal killings at the hands of security forces are also not a new phenomenon. For example, such incidents have been recorded during the civil war in the then East Pakistan (now Bangladesh) in 1971, and during the insurgency in Balochistan in the 1970s, and when the armed and paramilitary forces were called in aid of the civil authorities in Sindh during the 1980s and 1990s.

Even today, the pattern of extra-judicial killings continues in Balochistan. According to the Asian Human Rights Commission , as many as 25 journalists, writers, human rights defenders, students, and political activists have been killed extrajudicially during the first four months of 2011 alone.<sup>44</sup> Human rights defender Naeem Sabir Baloch, the district coordinator of Human Rights Commission of Pakistan, was killed outside his house by unknown persons. He was compiling, among other things, a list of victims of forced disappearances, intended for the Supreme Court of Pakistan and the High Court of Balochistan. Furthermore, on 13 May, 2011, the bodies of five disappeared people including a prominent leader of the Baloch Students Organisation (BSO), were found in different locations in Balochistan, all bearing signs of torture and bullet wounds. All these deaths were suspected by human rights defenders and family members of the deceased to have been

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<sup>42</sup> Human Rights Watch (16 July 2010) Pakistan: Extra-judicial Executions by Army in Swat: <http://www.hrw.org/en/news/2010/07/16/pakistan-extra-judicial-executions-army-swat> (last accessed 13 November 2010); Also see Army accused of extra-judicial killings in Swat, HRCP website: <http://www.hrcp-web.org/shownews.asp?id=45>

<sup>43</sup> Syed Shoaib Hassan, "Pakistan army accused of extra-judicial killings in Swat", BBC News South Asia 16 July, 2010; <http://www.bbc.co.uk/news/world-south-asia-10667545>

<sup>44</sup> Extrajudicial killings in Balochistan, at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-057-2011>. It may be mentioned here that protection of journalists engaged in professional missions in areas of armed conflict is guaranteed under Article 79 of the 1977 Additional Protocol I to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts thus entailing a positive obligation on the state to provide them the protection they need. See <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079>



caused by state agencies because of the manner and circumstances in which the deceased disappeared only to be found dead.<sup>45</sup>

### ***1.3.3 Custodial deaths***

There are two kinds of death in custody: one, in the custody of the police before and during trial, and the other, during trial and after conviction in prisons.

As many as 54 prisoners died or were killed in the country's prisons during 2009. They included Fanish Masih, a Christian youth accused of showing disrespect towards the Quran, Muslim holy book. The police alleged he committed suicide in prison, while his family maintains he was tortured to death.<sup>46</sup>

The reporting of incidents of unnatural deaths in custody, and thus extra-legal killings in custody, seem to have declined over past two decades. At least 75 people died in police custody and another 16 people died in prisons in 1992 (due to both natural and unnatural causes), compared to 15 deaths in police custody and less than half a dozen suspect deaths due to unnatural reasons reported in 2009.<sup>47</sup> The reasons include: one, that death in custody brings immediate and direct blame on the custodians. Two, such deaths cannot stay away from the media attention as the victim and perpetrators are immediately identifiable. This often leads to official action, though not necessarily always.<sup>48</sup>

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<sup>45</sup> "Five more disappeared person bullet riddled bodies are found in Balochistan" Asian Human Rights Commission, May 13, 2011 at <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-094-2011>, last accessed 15 May, 2011. Also see Asma Jehangir expresses alarm at target killings in Balochistan, The Express Tribune, 6 June 2011, at: [www.pakistantoday.com.pk/2011/06/asma-jehangir-expresses-alarm-at-target-killings-in-balochistan/](http://www.pakistantoday.com.pk/2011/06/asma-jehangir-expresses-alarm-at-target-killings-in-balochistan/); I. A. Rehman, "Listen to the people" Dawn, 9 June, 2011, at <http://www.dawn.com/2011/06/09/listen-to-the-people.html>

<sup>46</sup> Human Rights Commission of Pakistan, State of Human Rights in 2009 (2010), page 101

<sup>47</sup> At least 75 people died in 1992 in police custody; another 16 people died in prisons in Pakistan: See Amnesty International's document (1993) titled Pakistan: Torture, Deaths in Custody and Extra-judicial Executions available at <http://www.amnesty.org/en/library/asset/ASA33/005/1993/en/79e1da46-ec31-11dd-8d9d-a7825928c0bf/asa330051993en.html> (last accessed 2 November 2010); For 2009 figures see, State of Human Rights in 2009, Human Rights Commission of Pakistan, pages 85-86 and 101-102

<sup>48</sup> In the case of death of a youth in police custody Investigating Officer inserted Section 302 (punishment for pre-meditated murder) in place of a lesser kind of offence and punishment Section 316 (punishment for qatl shibhi-i-amd) of the PPC in the report under section 173 of CrPC on 2 September 2009. It was done only after the complainant party took the matter to the SC. See Dawn.com, Policemen face murder charge in custodial death case, available at <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/metropolitan/04-policemen-face-murder-charge-custodial-death-case-qs-02> (last accessed 8 October 2010). Qatl shibhi-i-amd is said to be committed when a person causes death of another with an act, by means of a weapon, which was intended to cause harm to body or mind of that person and which in the ordinary course of nature is not likely to cause death,

However, all cases of death (natural and unnatural) in custody are still not reported in the media. At the beginning of March 2005 the government informed the National Assembly that 14 custodial deaths had taken place over the preceding six months while the number of such cases reported by newspapers was smaller. This lowering number of deaths in police custody and in prisons could be result of official attention. HRCP's report (2005) noted that 'there was little doubt that a determined campaign to end death (by unnatural causes) in custody remained a high priority objective before the custodians of law and order'.<sup>49</sup> This shows that where there was determination among the concerned authorities, positive result could be obtained.

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<sup>49</sup> Human Rights Commission of Pakistan , State of Human Rights in 2005, page 76 available at <http://www.hrcp-web.org/pdf/AR2005.pdf>

## Chapter 2

# Legal Framework

### 2.1 Understanding the right to life

Article 9 of the Constitution of Pakistan provides that “no person shall be deprived of life or liberty save in accordance with law”. The Supreme Court of Pakistan has held that extra-legal executions “violate Article 9 of the Constitution which confers, protects and preserves life, liberty and property of the citizens”.<sup>50</sup>

International human rights standards, including the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), the UN Code of Conduct for Law Enforcement Officials (Code of Conduct), the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles) and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, are particularly relevant to the protection of the right to life.

UDHR sets common standards of achievement for all peoples and all nations. Article 3 sets the general standard for the right to life in the following words: 'Everyone has the right to life, liberty and security of person'.

Article 6 paragraph 1 of the ICCPR establishes respect for the right to life as a primary obligation of the state. It states that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. In the ICCPR there are clauses acknowledging the permissibility of restricting some rights on the grounds such as the need to maintain public order such as articles 18(3), 19(3), and 21; however, arbitrarily depriving even the most hated “terrorists” of their life is never justified.

Article 4 of the ICCPR provides for the possibility of derogations from rights under the Covenant "in time of public emergency threatening the life of the nation". The right to life, however, cannot be derogated from even during public emergencies, a protection accorded to a very limited number of rights.<sup>51</sup>

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<sup>50</sup> Benazir Bhutto versus the President of Pakistan supra note 1

<sup>51</sup> Rodley, see supra note 3, page 247

The Human Rights Committee established to monitor compliance with the ICCPR has described the right as “the supreme human right”.<sup>52</sup> In the words of the UN Special Rapporteur on Summary or Arbitrary Executions, the right to life “is the most important and basic of human rights. It is the fountain from which all human rights spring. If it is infringed the effects are irreversible...”<sup>53</sup>

## **2.2 Extra-judicial killings under international law**

While the protection of the right to life under international law is common knowledge, the legal status of extra-judicial killings warrants a deeper discussion.

The due process rights or the minimum safeguards required for an execution by the state to be lawful under international law are found in Articles 6 (right to life) and 14 (right to a fair trial) of the International Covenant on Civil and Political Rights (ICCPR). They include the following:

- i) Capital punishment must not be imposed except pursuant to a final judgment of a competent, independent and impartial court established by law;
- ii) The accused has the right to be presumed innocent until proven guilty;
- iii) The accused has the right to have adequate time and facilities to prepare a defence and to communicate with counsel of the accused's choosing;
- iv) The accused has the right to be tried in his or her presence, to defend him or herself in person or through legal assistance of his or her own choosing; to be informed of this right; and to be provided legal assistance where the interests of justice require;
- v) The accused has the right to have his or her conviction and sentence reviewed by a higher tribunal according to law.

Extra-judicial killings in police encounters are by definition a violation of due process and the afore-mentioned safeguards; they presume that the accused is guilty, they bypass the judicial system, and they do not allow any

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<sup>52</sup> General Comment 6(16), Report of the Human Rights Committee, GAOR, 37th Session, Supplement No. 40(1982) Annex V. See Rodley *supra* note 3

<sup>53</sup> Summary or Arbitrary Executions, Report by the Special Rapporteur UN doc. E/CN.4/1983/16, at paragraph 22 quoted in Rodley, *supra* note 3

room for the accused to defend him/herself. Encounter killings, therefore, even if the accused is a suspected terrorist or leader of a gang, fundamentally violate the right to life and to be tried in a fair manner by an impartial tribunal.

### **2.3 International humanitarian law**

International humanitarian law (law applicable during international, non-international armed conflicts, and internal disturbances) also requires basic due process guarantees. The imposition of the death penalty in non-international armed conflicts is regulated by Common Article 3 of the Geneva Conventions, which prohibits “the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognised as indispensable by civilised peoples.”

The International Court of Justice (ICJ) has held that Common Article 3 of the Geneva Conventions was the “specific expression” of “the general principles of humanitarian law” and that the rules expressed in Common Article 3 constituted a “minimum yardstick” and reflected “elementary considerations of humanity.” It is therefore applicable in all conflicts and obligatory for all States.<sup>54</sup>

In a more recent development, ECtHR has held that human rights law applies in both times of peace and armed conflict with limited permissible derogations, whereas international humanitarian law is applicable specifically to armed conflicts. ECtHR seems to be applying human rights law where humanitarian law on the point differs, calling for proportionate use of force (ECHR Article 2) even when faced with combatants.<sup>55</sup> In humanitarian law, on the other hand, the principle of proportionality disallows use of force when there is a likely degree of collateral damage (Additional Protocol I).

### **2.4 Investigation of extra-legal killings**

In *Benazir Bhutto v. The President of Pakistan* (supra), the Supreme Court of

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<sup>54</sup> Geneva Conventions, common Article 3; ICJ, Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States), Merits, Judgment, 27 June 1986, ICJ Reports 1986, p. 114, § 218

<sup>55</sup> See ECtHR judgment in *Isayeva v Russia* (Application no. 57950/00) Judgment 24 February, 2005 at <http://www.unhcr.org/refworld/category,LEGAL,,,RUS,4223422f6,0.html>; also see William Abresch, A Human Rights Law of Internal Armed Conflict: The European Court of Human Rights in Chechnya, *The European Journal of International Law*, Vol. 16 no.4 (2005), at <http://www.ejil.org/pdfs/16/4/316.pdf>

Pakistan declared that it was the state's responsibility "to explain as to how that person, who was in their custody, met his death and whether that death was natural or unnatural and in what circumstances it had come about. Custodial killings are to be explained satisfactorily as is required under the law."<sup>56</sup>

Under section 154 of the Code of Criminal Procedure, 1898 (CrPC) the officer in-charge of the concerned police station is bound to register a case based on all the information relating to the commission of a cognisable offence. This is called First Information Report (FIR). Following the FIR, necessary investigation must be carried out for submission of a report under section 173 of CrPC.

All incidents of police encounters, genuine or fake, must therefore be registered in the form of an FIR that would then be followed up by a fair and independent inquiry. In case the legal heirs/family or any one comes forward with information different from the police version thus making a separate independent case, it must be recorded in a separate/independent FIR. This does not happen.

In practice what happens is that cases are registered in a biased fashion including only the version of the police which is involved in the encounter killing under sections 186 (**punishment for obstructing public servant in discharge of public functions**) of the Pakistan Penal Code, 1860 (PPC), section 353 (**punishment for Assault or use of criminal force to deter public servant from discharge of his duty**) read with section 100 (enumerates the occasions **when the right of private defence of the body extends to causing death**), section 34 (**provides for acts done by several persons in furtherance of common intention**).

On receipt of information, the officer in-charge of the police station -in purported compliance with the provisions of Sec. 154 of CrPC- records the information and enumerates certain provisions of the PPC. All the enumerated provisions of the substantive law implicate the alleged criminal conduct of private individuals killed in the encounter -wherever Sec. 100 PPC is enumerated in the FIR, it is a reflection of the plea of self-defence claimed by the police party. Rarely, if ever, is the criminal conduct of member(s) of the police party mentioned.

In a large number of cases a uniform feature thus appears to be that police

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<sup>56</sup> Benazir Bhutto versus the President of Pakistan, supra note 1

officials convey initial information to the jurisdictional Police Station. The information conveyed is usually limited to standard summaries such as the following:

*“Reliable information was received as to a meeting of criminals/gangsters and a posse of police officers was deputed to the location to apprehend members of the group [or an individual]. As the police party was approaching the criminals, they fired upon the police party. In the return of fire by the police officers, which was in self-defence, the death(s) occurred.”*

Alternatively, the explanation may be that a police party was carrying the criminal(s) to the site of the crime in order to retrieve the instrument of crime when other members of the gang attacked the police. Firing in self-defence by the police officers caused the death(s).

#### **Case No. 5**

The practice in general is that when an encounter death takes place, the leader of the police party engaged in the encounter furnishes information to the police station about the encounter and the persons that died. The stand taken by the police in all such cases is that the deceased persons on sighting the police opened fire at them with a view to killing them and were, therefore, guilty of the offence of attempt to murder under Section 302 PPC. The police justify their firing and killing as done in exercise of their right of self-defence. This information is recorded in the police station describing the persons killed by the bullets fired by the police as accused and FIRs are drawn up accordingly. Without any more investigation, the cases are closed as having abated, in view of the death of accused. No attempt whatsoever is made to ascertain if the police officers that fired the bullets resulting in the killings, were justified in law for having done so.

#### **Case No. 6**

Under the criminal law, the police have not been conferred any right to take away the life of any person. The scheme of criminal law prescribes that it would not be an offence if the death were caused in the exercise of the right of private defence. Another provision, under which police officer can justify the causing of death of another person, is Section 46 of the Code of Criminal Procedure (CrPC) which has to

be read with section 100 of PPC. Section 46 allows the police to use force, extending up to the causing of death only where the person to be arrested *is accused of an offence punishable with death or with imprisonment for life*. It is, therefore, clear that when death caused in an encounter is not justified as having been caused in exercise of the legitimate right of private defence, or in proper exercise of the power of arrest under Section 46 of the CrPC read with section 100 of PPC, the police officer causing the death would be guilty of the offence of culpable homicide.<sup>57</sup> Whether the causing of death in the encounter in a particular case was justified as falling under any one of the two conditions can only be ascertained by proper investigation and not otherwise.<sup>58</sup>

Any attempt to record counter versions of the family or friends is resisted by the police, even in cases of death in police custody as illustrated by the example cited in the Box No.1 above. Thus, the only remaining option available to the victims' families is to approach a court of magistrate under section 190 of CrPC, which provides that magistrates so empowered may take cognizance of any offence *upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed which he*

<sup>57</sup> The Pakistan Penal Code (PPC) in its older form included the offence of *culpable homicide* for acts of homicide resulting from the infliction of intentional harm upon a person i.e. section 299 *Culpable Homicide* and section 301 *Culpable Homicide by causing death of person other than person whose death was intended*. Amendments during 1980s replaced the specific phrase "culpable homicide" and introduced terms from Islamic Law. Current equivalent sections are section 300: *Qatl-e-Amd* and 301: *Causing death of person other than the person whose death was intended; and the following sections in Chapter XVI of PPC which deal with Culpable Homicide not Amounting to Murder*.

*Section 300*: Whoever, with the intention of causing death or with the intention of causing bodily injury to a person, by doing an act which in the ordinary course of nature is likely to cause death, or with-the-knowledge that his act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit qatl-e-amd.

*Section 301. Causing death of person other than the person whose death was intended*: Where a person, by doing anything which he intends or knows to be likely to cause death, causes death of any person whose death he neither intends nor knows himself to be likely to cause, such an act committed by the offender shall be liable for qatl-i-amd.

<sup>58</sup> Section 46 of CrPC reads as: **46. Arrest how made:** (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there, be a submission to the custody by word or action.

(2) **Restating endeavour to arrest:** If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other-person may use all means necessary to effect the arrest.

(3) *Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.* [emphasis added]



*may try or send to the Court of Session for trial.*

However, even in cases where families of victims who have been extra-legally killed take such extraordinary recourse to legal action, they face serious obstacles in getting justice. For instance, most judicial magistrates dispose of such petitions in a mechanical manner upon receiving the report from an Investigating Officer (IO) belonging to the police.

#### ***2.4.1 United Nations principles on the Effective Prevention and Investigation of extra-legal, arbitrary and summary executions***

The United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted in 1989 to make recommendations on how to make the protection of the right to life possible, are also extremely relevant. The Principles state that extra-judicial, summary and arbitrary executions shall “not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or *with the consent or acquiescence of such person*, and situations in which deaths occur in custody.”<sup>59</sup> Although the Principles are not legally binding, they are relevant in determining the scope of what constitutes unlawful extinction of life.<sup>60</sup>

The Principles provide guidance regarding the investigation of extrajudicial executions where government officials such as police are involved. Principle 9 provides that:

- There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary

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<sup>59</sup> *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, Ecosoc Resolution. 1989/65 24 May 1989 at para. 1:

<sup>60</sup> <http://www2.ohchr.org/english/law/executions.htm> Rodley, supra note 3 ;

executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

**Further, Principle 10 provides:**

- The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summons to witnesses, including the officials allegedly involved and to demand the production of evidence.

***2.4.2 Duty of the Judicial Magistrates in Pakistani law***

In cases where the police do not act on their own to probe the matter, the concerned magistrate may also initiate inquiry of extra-legal killings under section 176, read with section 174 of CrPC that provides:

(1) When any person dies in the custody of police, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in Section 174, clauses (a), (b) and (c) of sub-section (1), any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

Section 174 of CrPC enumerates instances where an officer in-charge of a police station (Station House Officer or SHO) is under obligation to intimate the nearest magistrate of any information received that a person:

- *has been killed by another, or by an animal, or by machinery, or by an accident, or*
- *has died under circumstances raising a reasonable suspicion that some other person has committed an offence. [emphasis added]*

However, it has been observed that most magistrates feel powerless before the police and conclude cases in a mechanical manner. Magistrates mostly wait for the police to come up with a report and they accept the police's version of events. This assertion is supported from the cases and incidents cited herein (see Box No. 7 below).<sup>61</sup>

### Case No. 7

Five policemen were accused of custodial killing of a young man, Krishan Chand, in Karachi. Krishan Chand had died at the Shara-e-Faisal police station on 4 Nov 2008 during the investigation of a murder case. A case (FIR 915/08) was registered against the policemen at the Shara-e-Faisal Police Station in Karachi on the complaint of the deceased's brother under Sections 302 (murder) and 34 (acting with common intention) of the Pakistan Penal Code (PPC).

In March 2009, a judicial magistrate exonerated all the five policemen of murder in the case. **The magistrate decided so** on the basis of a report filed by the Investigating Officer (IO) of the case who recommended deletion of section 302 of the PPC from the charge-sheet (report under section 173 CrPC) and inserted Section 337-K (punishment for **causing hurt to extort confession, or to compel restoration of property**) against the accused police officers. The then public prosecutor had also recommended cancellation of the case against the officers. Had the prosecutor carefully studied the medical reports and evidence of four witnesses placed in the original report under section 173 CrPC. Such a decision could be avoided, or at least an honest opinion on behalf of the prosecutor would be in record.

The IO had resisted investigation along the lines of suspicion of murder under section 302 PPC despite the fact that the medical reports and evidence of four witnesses placed in the original report under section 173 were said to be enough to prosecute the accused under Section 302 of the PPC.

<sup>61</sup> This observation was made by a lawyer specialising in criminal litigation in an interview with the writer. The observation gets support from the case law and news reports referred to in this paper.

However, the counsel for the complainant (brother of the deceased victim) filed an application in the court in Aug 2009 in which he stated that Chief Justice Iftikhar Mohammad Chaudhry had taken notice of the impugned order passed by a judicial magistrate acquitting all policemen in the case and had ordered the police to file a report/charge-sheet under Section 302 against them.

**A judicial magistrate in September 2009** directed the investigating officer to insert **Section 302 (punishment for *qatl-i-amd*)** instead of Section 316 (punishment for *qatl shibh-i-amd*) **of the Pakistan Penal Code against five police officials in a case pertaining to the death of a young man in police custody.** The Magistrate then transferred the case to the court of district and sessions judge for trial.

The case shows that it was not until the Chief Justice of Pakistan, the highest judicial authority, intervened that the local magistrate changed the course of trial. However, even the Chief Justice's intervention is no guarantee that the matter will reach its logical conclusion.<sup>62</sup>

Sections 60 (arrest without warrant) and 81 (arrest with warrant) of the CrPC read with Article 10(2) of the Constitution of Pakistan require that every person arrested and detained shall be produced before a magistrate no later than a period of twenty four hours of arrest. The magistrate then has to assess the necessity for remand in police custody. This requirement of 24 hour is frequently ignored by the law enforcement agencies and the custody also remains unacknowledged, in violation of law. The police, while holding the alleged accused or persons on mere suspicion, use torture that sometimes leads to death of the person in custody. The police in some instances later try to legitimise such killings as genuine encounter killings.

## **2.5 Internal affairs of the police**

None of the police departments in the country has an effective internal mechanism to check unlawful killings. The Punjab Police has formed a ten member board on the instructions of the Lahore High Court to check staged encounters in addition to the already existing Inspection and Vigilance Cells in 10 police Regions of the Punjab.<sup>63</sup> Clearly, the so-called Inspection and Vigilance Cell already in place was not working well and the need to form yet another board was felt. However, no information is available on the Punjab

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<sup>62</sup> Ishaq Tanoli, "Policemen face murder charge in custodial death case" *Dawn*, 4 September 2009: <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/metropolitan/04-policemen-face-murder-charge-custodial-death-case-qs-02>

Police's website,<sup>64</sup> on the cases the board is monitoring or has monitored so far.

## 2.6 State obligation to investigate and punish in International Law

International human rights law requires that police killings are thoroughly investigated, and that the police officials responsible for unlawful actions are prosecuted and convicted. According to the UN Special Rapporteur, this is required in order, both, to:

"(a) fulfill the state's obligations to provide accountability in the individual case and justice for the victim and their family;

(b) as well as to fulfill the state's due diligence obligations to prevent future violations: if violations are left unpunished, a culture of impunity forms, which in turn encourages further violations."

In 1986, the UN Special Rapporteur on Summary or Arbitrary Executions considered measures to be taken when a death occurs in custody in his report to the Commission on Human Rights. Paragraph 209 of the report states:

*"One of the ways in which Governments can show that they want this abhorrent phenomenon of arbitrary or summary executions eliminated is by investigating, holding inquests, prosecuting and punishing those found guilty. There is therefore a need to develop international standards designed to ensure that investigations are conducted into all cases of suspicious death and in particular those at the hands of the law enforcement agencies in all situations. Such standards should include adequate autopsy. A death in any type of custody should be regarded as prima facie a summary or arbitrary execution, and appropriate investigation should immediately be made to confirm or rebut the presumption. The results of investigations should be made public."* [emphasis added]

As the quote shows, the Special Rapporteur highlights the need to fight impunity, which he considers to be the principal cause of the perpetuation and encouragement of violations of the right to life. It is extremely important, therefore, to end impunity with States investigating all instances of alleged violations of the right to life, prosecuting and punishing the perpetrators accordingly and granting adequate compensation to the victims.

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<sup>63</sup> Each province is divided into Regions as provided in the Police Order, 2002; See Dawn, June 29, 2011, IG forms board to check staged encounters; <http://www.dawn.com/2011/06/29/ig-forms-board-to-check-staged-encounters.html>

<sup>64</sup> See Punjab Police website at <http://www.punjabpolice.gov.pk/15062011news> (last accessed on 25 October, 2011)

The European Court of Human Rights (ECtHR), which hears complaints of violations of the European Convention of Human Rights (ECHR), has produced the most developed body of jurisprudence on the state's duty to investigate extra-judicial killings. According to case law of the ECtHR, Articles 1 and 2(1) of the ECHR compel States to carry out effective investigations and a failure to do so constitutes a violation of these articles. Article 1 of the European Convention of Human Rights states: "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

As can be seen, Article 9 of the Constitution of Pakistan (reproduced above) closely mirrors the right to life enumerated in the European Convention the right to life enumerated in Article 1 of the European Convention and Article 6 of the ICCPR. The interpretation of the right to life by the ECHR, therefore, sheds light, and is a persuasive authority, on the ambit of the right in international law.<sup>65</sup>

In *Finucane v, the United Kingdom*, the ECtHR described the duty to investigate as follows:

*"The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within its jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force...The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances."*<sup>66</sup>

The Human Rights Committee, a United Nations treaty monitoring body formed under Article 28 of the ICCPR, is authorised to issue general comments on the interpretation of the ICCPR, make observations on the

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<sup>65</sup> The Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by Council of Europe in 1953, is commonly known as European Convention on Human Rights. Council of Europe is an international organisation promoting co-operation between all countries of Europe in the areas of legal standards, human rights, democratic development, the rule of law and cultural co-operation.

<sup>66</sup> *Finucane v. The United Kingdom* (Application no. 29178/95) Judgment, Strasbourg, 1 July 2003 available at <http://www.patfinucanecentre.org/pf/echr0307.html>

observance of States of their ICCPR obligations, and to examine individual complaints where it is alleged a State party has violated the ICCPR. Its comments, observations and jurisprudence assist with the interpretation of ICCPR rights and obligations. In its comments on Article 2 of the ICCPR, the HRC stated that the duty to investigate violations of human rights protected by the covenant is the essence of the state's obligations under the treaty:

“There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”

The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (also discussed above) recommend that “there shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death...”

Article 1 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions states:

*"Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognised as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions.*

*Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.”*

According to the Principles, “Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible and any pattern or practice which may have brought about the death. It shall include an adequate autopsy, collection and analysis of all



physical and documentary evidence and statements from witnesses.”<sup>67</sup> The result of such inquiry should promptly be made public and the alleged perpetrators be brought to justice.<sup>68</sup>

Aside from obligations under human rights treaties, it also seems that states have a duty to investigate violations of the right to life, in particular extra-judicial killings, under customary international law. The right to life is among the most strongly protected among all fundamental human rights and is widely recognised as having reached the status of customary international law. It seems logical, therefore, that the duties to take effective measures to protect the right and to investigate and punish violation, which are so essential for the right to be realised, are also part of customary international law.

### **Case No. 8**

In a recent case titled Muhammad Asif versus Umer Farooq Khan, Station House Officer (2010 MLD 128) the Lahore High Court has held that the SHO had committed an illegality in not registering a second FIR as the case prima facie had two versions. The Petitioner claimed that his brother had been killed in an illusory police encounter, while the police claimed that he had died in a genuine police encounter. The petitioner had sought registration of an independent F.I.R. on the basis of the facts entirely different from the facts narrated in the F.I.R. lodged by the Police Inspector. The parties were at variance regarding the place of occurrence of the incident. Grievance of petitioner was that his brother was picked up from his house by the police in the presence of witnesses and kept in captivity at the Police Station. Subsequently, the police demanded Rs. 200,000 for his release. A habeas corpus petition filed by the petitioner thereafter had apparently supported his plea that his brother had been murdered in a fake police encounter. The concerned Station House Officer (SHO) was under a statutory duty to register the case on the basis of an entirely different version. In refusing to do so the SHO had committed an illegality. Registration of a second FIR regarding the same occurrence was not barred under the law, if a distinct and separate cognisable offence was disclosed and it was not a mere amplification of the first version. The SHO was accordingly directed to register a case on the written application of the petitioner.

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<sup>67</sup> Principle 9 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

<sup>68</sup> Ibid



## 2.7 Rights of victims and their families

Victims of extra-judicial, summary or arbitrary executions are entitled to adequate compensation from the state where the violation was committed. Granting compensation is separate from the obligation on states to conduct investigations and punish perpetrators.

Principle 20 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, endorsed by the General Assembly in its resolution 44/162 of 15 December 1989, states:

"The families and dependants of victims of extra-legal, summary or arbitrary executions shall be entitled to fair and adequate compensation within a reasonable period of time."

Further, the UN General Assembly resolution on extra-legal killings recognised the duty of all states to provide compensation to the victims of extra-judicial killings:

*"...Reiterates the obligation of all States to conduct exhaustive and impartial investigations into all suspected cases of extra-judicial, summary or arbitrary executions, to identify and bring to justice those responsible, while ensuring the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law, to grant adequate compensation within a reasonable time to the victims or their families, and to adopt all necessary measures, including legal and judicial measures, to put an end to impunity and to prevent the further occurrence of such executions, as recommended in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions."*<sup>69</sup>[emphasis added]

Also, Article 9 (5) of the ICCPR provides for an enforceable right to compensation for victims of unlawful arrest or detention, and Article 2 (3) (a) makes it mandatory for states to ensure that effective remedies are available to victims whose rights have been violated, even if the culprits were acting in an official capacity.

It is, therefore, clear that international law recognises the right of families of victims of extra-judicial executions to receive an adequate compensation from the State when the violation of the right to life is committed by a public official or other agents acting in an official or quasi-official capacity.

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<sup>69</sup> UN General Assembly Resolution 55/111, March 2001

Compensation, along with proper investigation of the killing and punishment for those who are found guilty together provide the “effective remedy” mandated by the ICCPR and other international treaties.

While in Pakistan granting compensation to the families of victims of extra-judicial killings is unknown, Indian courts are steadily developing a robust jurisprudence on the state's duty to provide compensation for the breach of fundamental rights by the state's agents in the form of “constitutional torts”.

Article 32 of the Constitution of India empowers the Supreme Court to enforce Fundamental Rights and guarantees every citizen the right to move the Supreme Court for the enforcement of those rights. The Supreme Court is also empowered to issue appropriate writs for this purpose. Using these powers, the Indian SC has developed the concept of “constitutional tort”, which occurs when an act or omission by the State violates a constitutional right. In cases of relief on account of fundamental rights' violations, the courts applying the “constitutional tort” doctrine have done away with some of the doctrines generally applicable in law of torts that make liability dependent on fault and have made them actionable per se.

The breakthrough judgment on compensation for fundamental rights violations came in *Rudul Sah v. State of Bihar*,<sup>70</sup> which dealt with the illegal incarceration of the petitioner in jail for 14 years after his acquittal by a criminal court. The Court, hearing a habeas corpus petition, awarded damages against the State for breach of the petitioner's right of personal liberty. The Court observed that the case revealed “a sordid and disturbing state of affairs” for which the State was accountable, and instead of taking a passive, traditionalist approach, the Court awarded compensation in favour of the petitioner, stating that “...not doing so would be doing a mere lip service to the Fundamental Right to liberty which the State Government has so grossly violated”.

Further, in the case of *D.K. Basu v. State of West Bengal*,<sup>71</sup> the Supreme Court of India has held:

“It is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometime perhaps the only suitable remedy for redressal of the established infringement of the fundamental right of life to a citizen by the

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<sup>70</sup> AIR 1983 SC 1086

<sup>71</sup> 1997 1 SCC 416

public servants and the State is victoriously liable for their acts”.

In *People's Union for Civil Liberties v. Union of India and Another*,<sup>72</sup> the Supreme Court of India for the first time awarded compensation to the families of victims of a “fake encounter”. The case involved shooting of two men in the state of Manipur, which the police claimed was an encounter killing but the judicial inquiry into the incident showed that the police had kidnapped the victims, taken them to a far-flung area and brutally killed them. The Court awarded the families of each of the victims 1 lakh (one hundred thousand) rupees in compensation, rejecting the defense of sovereign immunity. The Court further stated that even if the victims were alleged terrorists, due process of law had to be respected as the right to life and fair trial were fundamental rights protected by the Indian Constitution.

It can be seen, therefore, that both internationally as well as in India, the rights of families of extra-judicial killings are recognised.

Pakistan's Code of Criminal Procedure, 1898 contains a general provision, section 544-A (Compensation of the heirs to the persons killed, etc.) prescribing that whenever a person is convicted of an offence in the commission whereof the death of another person is caused, the Court shall, when convicting such person order the convicted person to pay compensation to the heirs of the person whose death has been caused. But this provision is not frequently put to use by judicial authorities in Pakistan. And since no effective investigation and prosecution of unlawful killings by the police take place in an overwhelming number of cases, the question of application of this provision hardly ever arises in cases of extrajudicial killings.

As an external oversight agency for human rights violations, India's National Commission for Human Rights has the power to inquire, suo motu or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any court, into complaint of, among other things, violation of human rights and to direct responsible state agency to make payment of compensation or damages to the members of the victim's family.<sup>73</sup>

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<sup>72</sup> AIR 1997 SC 1203

<sup>73</sup> For example, India's National Commission for Human Rights (NHRC) frequently orders compensation in cases of human rights abuses. NHRC recently ordered for payment of 500,000 (five lac rupees) to the heirs of a person killed in fake police encounter. See NHRC asks police to compensate family of fake encounter victim, 21 October, 2011; <http://ibnlive.in.com/generalnewsfeed/news/nhrc-asks-police-to-compensate-family-of-fake-encounter-victim/871576.html>. The NHRC is so empowered under section 18(a) (i) of the Human Rights Act, 1993.

# Reasons for prevalence of extra-judicial killings by the state agents

### 3.1 Regime of impunity

A pervasive regime of de facto impunity is the single most important reason for rampant use of extralegal killings by the police and other state authorities as a means of bringing alleged criminals to justice. According to the Asian Human Rights Commission (AHRC), extralegal killings were widespread in Pakistan partly due to the fact that police and other law enforcement agencies enjoy impunity because of the support they receive from provincial heads.<sup>74</sup> Even when action is taken, only the lower ranking staff is punished. The case of extrajudicial killings by paramilitary forces, such as the Frontier Corps, is even worse. This is evident from the fact that while low ranking police staff, i.e. Station House Office (SHO) and Sub-inspector have been dismissed from service as a result of the recommendation in the inquiry report of the Kharotabad's extra-legal killings, the Frontier Corps' officer and a high ranking police officer remain unpunished so far.<sup>75</sup> The Tribunal's report has not been made public.<sup>76</sup> Lack of transparency in such matters often leads to results which bolster unlawful conduct on part of the law enforcement agencies.

The UN Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions has noted the numerous factors that contribute to the commission of these killings. One of the most important is impunity for past police killings.<sup>77</sup> The Special Rapporteur has noted:

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<sup>74</sup> Asian Human Rights Commission, Supra note 65

<sup>75</sup> The inquiry tribunal had reportedly held both the police officers including the high ranking capital City Police Officer, as well as Lt. Colonel of the Frontier Corps. See “Kharotabad inquiry puts blame on Frontier Corps, police”, supra note 67. Also see, Dawn, 27 October, 2011, Kharotabad Killing, two police officer sacked; <http://www.dawn.com/2011/10/27/kharotabad-killing-two-police-officers-sacked.html>

<sup>76</sup> Dawn 1 July, 2011, Kharotabad inquiry report: Action recommended against FC, policemen, at <http://www.dawn.com/2011/07/01/kharotabad-inquiry-report-action-recommended-against-fc-policemen.html>

<sup>77</sup> “Study on police oversight mechanisms”, supra note 11

*“Impunity can result from poorly structured and ineffective police internal affairs mechanisms, non-existent forensic capacity, inadequate witness protection programs for those reporting abuse, inept criminal justice systems, and deficient commissions of inquiry.”<sup>78</sup>*

According to the Special Rapporteur, one crucial factor contributing to impunity that stands out is the lack of any effective, dedicated external civilian oversight of the police forces. The Special Rapporteur further states:

“Without external oversight, police are essentially left to police themselves. Victims are often reluctant even to report abuse directly to police, for fear of reprisals, or simply because they do not believe a serious investigation will result. Especially in cases of intentional unlawful killings, purely internal complaint and investigation avenues make it all too easy for the police to cover up wrongdoing, to claim that killings were lawful, to fail to refer cases for criminal prosecution, or to hand down only minor disciplinary measures for serious offences”.

### **3.2 Disproportionate use of force by the police**

It can be seen from the available data and cases referred to above (see Box No. 9 below) that in many instances the police target alleged criminals or suspects with the clear intention of killing. However, there will be situations when the police may indeed have to act in self-defence. In such cases the police have to act responsibly. Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials recommends:

"Law enforcement officials shall not use firearms against persons except in self-defence or in defence of others against the imminent threat of death or serious injury... and only when less extreme means are insufficient to achieve these objectives... In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

The need to follow the principle cannot be over-stated. As mentioned before the Principles are not legally binding. There is no legal provision in criminal law which expressly prohibits disproportionate lethal use of arms. Section 46 CrPC, which prescribes the method of arresting, provides only that the police officer arresting an accused has no right “to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for

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<sup>78</sup> Ibid; here 'police internal affairs' includes, and specifically refers to, internal accountability mechanism in police organisations

life". The concept of proportionate use of arms is almost alien to the police and other security forces in Pakistan, especially in situations where they have to genuinely encounter armed men. This has also been made amply evident by the leaked parts of the report on the Kharotabad firing and killings incident by the Inquiry tribunal.<sup>79</sup> Therefore it is necessary that the UN Principles should be incorporated in the criminal procedure and excessive and disproportionate use of force per se made punishable under the substantive criminal law.

## Case No. 9

On the night between 30 and 31 December, 2008, four young men visiting city of Karachi from Chaman were chased by a police unit of Anti-Car Lifting Cell and killed in Bahadurabad area of the city. It was reported that in the incident that led to the murder of the four traders, the officers involved had fired several shots at close range at the traders resulting in their death. It was also reported that the police officers on the other hand were not injured in the incident, which the police had claimed to be an incident of 'encounter' and that they were acting in self-defense.

According to the medico-legal report prepared at the Jinnah Postgraduate Hospital, three of the four victims were hit with four projectiles each, while the fourth victim was hit three times. The officers responsible for the incident had claimed that the deceased, whose car they had intercepted, opened fire at the police officers resulting in the shootout.

An enquiry conducted by the Superintendent of Police (Investigation), Mr. Niaz Ahmed Khoso, revealed "criminal negligence" on the part of the police officers and concluded that "there was no mala fide intent on part of the police party". The report however did state that the police exceeded the power of self-defense permitted in the law. The plea of self-defence appeared to have been accepted in the enquiry report. The report, however, ignored that except for two officers, the other ACLC officers who were members of the police party were in plain clothes when they allegedly intercepted the vehicle, a vital fact which might have caused the victims to react in a trash manner.

The recommendation and the dilution of charges will only result in providing

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<sup>79</sup> The Express Tribune, July 1, 2011, Kharotabad inquiry puts blame on Frontier Corps, police: <http://tribune.com.pk/story/200056/quetta-killings-kharotabad-inquiry-puts-blame-on-frontier-corps-police/>

impunity to the police officers. The question however remained whether the police were allowed to use fatal force and that whether such use of unwarranted force was justified. The enquiry report has apparently failed to consider whether there is any evidence to substantiate the excuse of self-defense by the police officers.

According to Asian Centre for Human Rights, it appeared that the enquiry report was an attempt to cover-up of the atrocities committed by the Sindh police. The police officers in Sindh province, like their counterparts in other provinces, enjoy impunity because of the support they receive from provincial heads.<sup>80</sup>

### 3.3 Flawed legal framework

Pakistan Penal Code, 1860 makes the offence of murder open to compromise as a private matter between two parties by providing for or diyat (blood-money). The heirs of the victim can forgive the murderer without receiving any compensation or diyat (Section 309), or compromise after receiving diyat (Section 310).<sup>81</sup> As a consequence of these legal provisions, many cases of police brutality end up in compromise between the heirs of the victims and the police.

In such cases, the police are able to coerce the victims' heirs to compromise even without any compromise. The Supreme Court of Pakistan had taken notice of reports of a fake encounter in which the police had killed one Tariq. During the proceedings before the SC, the court expressed its annoyance when it was revealed that the police had reached a compromise with the heirs without paying any diyat. The Chief Justice of Pakistan was reported to have said: "It seems that police have forced the victim's family to compromise." Another judge on the bench was reported to have wondered if the poor aggrieved family had any option but to agree to a compromise when the entire police ganged up to protect their companions.<sup>82</sup> The judges' remarks, however, didn't help the victims.

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<sup>80</sup> Asian Human Rights Commission (AHRC), "Police officers must be charged" (9 January 2009) at <http://www.scoop.co.nz/stories/WO0901/S00172.htm> (last accessed 20 October 2010); Muhammad Faisal Ali, "Encounters: 270 outlaws killed in 10 months", Dawn, 22 April 2009: <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/encounters-270-outlaws-killed-in-10-months> ((last accessed 28 October 2010)

<sup>81</sup> The Qisas and Diyat laws were first introduced in 1990 through an Ordinance and were later passed by the Parliament as the Criminal Law (Amendment) Act, 1997 (Act II of 1997)

### **3.4 Poor administration of justice**

Some police officials interviewed for this study justify the encounter killing of alleged notorious criminals in view of flaws in the criminal justice system. A Punjab Police official was reported to have said in 2009 that the police followed the policy of encounters due to poor conviction rate, lack of evidence, absence of identification parade and release of arrested criminals on bail by the courts. The police official further said that the police were allowed to kill the arrested suspects involved in murdering victims in cases of kidnap for ransom, robbery and attempted robbery.<sup>83</sup>

Once encounter killings are accepted as a legitimate means of dealing with hardened criminals, the subordinate staff is emboldened to administer this policy for reasons including personal gain/satisfaction and also to show "good performance".

One of the fundamental causes of poor administration of justice is the inadequate training of police. Police are not trained in modern methods of forensic evidence gathering and investigation. They have poor resources at their disposal.<sup>84</sup> The courts are over-burdened and poorly resourced.<sup>85</sup> As a result, prolonged delays occur in trial courts and the conviction rate remains poor. Extra-judicial killings of suspects may, therefore, appear a more viable option to the authorities for short term gains.

### **3.5 Extra-legal killings as an official policy**

Killing suspects or alleged criminals in police encounters with the blessing of high offices is not a new practice. There is a history to such policies as noted by former Inspector General of Police and former Federal Secretary (Interior) M. A. K. Chaudhry in his memoirs:

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<sup>82</sup> Dawn, 6 January, 2011, SC criticises compromise deal in fake encounter case available at <http://www.dawn.com/2011/01/06/sc-criticises-compromise-deal-in-fake-encounter-case.html>

<sup>83</sup> Muhammad Faisal Ali, "Encounters: 270 outlaws killed in 10 months", Dawn, 22 April 2009: <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/encounters-270-outlaws-killed-in-10-months> ((last accessed 28 October 2010))

<sup>84</sup> Crisis Group Asia Report no. 157, *Reforming Pakistan's Police* (July, 2008); also see Hassan Abbas, *Reforming Pakistan's Police and Law Enforcement Infrastructure: Is It Too Flawed to Fix?*, United States Institute of Peace, February, 2011

<sup>85</sup> Crisis Group Asia Report no. 196, *Reforming Pakistan's Criminal Justice System* (December, 2010)



*“Before the murder of Kalabagh [then Governor West Pakistan], when Ayub considered himself under threat of assassination, the new governor of West Pakistan, the retired general Muhammad Musa, ordered the wholesale arrest and disposal of violent criminals in the Punjab region. The IGP proceeded accordingly and fake encounters between police and criminals mushroomed. Hundreds of so-called criminals were rounded up and killed in cold blood during different kinds of encounters.”<sup>86</sup>*

In an interview for this study, a high ranking police official disclosed that it was as a result of such policy adopted by the provincial governments in late 1990s that various criminal minded police officers formed 'gangs' with like-minded police officers to extort money from alleged criminals and even non-criminals by threatening them of death in encounter. One such group of police officials was later found to have committed offences of kidnapping for ransom. Police officers have also been found to have indulged in such practices to settle personal scores.

Yet another high ranking police official admits on the condition of anonymity that the Sialkot incident<sup>87</sup> took place because of the official policy of looking the other way while the police acted criminally. This senior police official, who has studied the Sialkot case, is of the opinion that what happened in Sialkot on 15 August, 2010 was a direct result of the policy of killing alleged criminals/suspects adopted by the then Regional Police Officer (RPO). The police officers on duty stood by and watched the two young men being lynched and hanged till death by the mob because they were following the policy instructions of zero tolerance for suspects. In January, 2011 the Supreme Court in a suo motu proceeding on the killing of a citizen in a fake police encounter in Gujranwala, expressing disapproval of the method adopted by the Punjab Police for reducing the crime rate by resorting to fake encounters, observed that such incidents had developed a culture of slaying people with impunity.<sup>88</sup>

Pakistan's constitution and international human rights law require the

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<sup>86</sup> Chaudhry, M A K, *Of All Those Years*, pages 54-55, (Classic: Lahore; 2006). Nawab of Kalabagh, Malik Amir Muhammad Khan, was Governor of West Pakistan (1960-66) while General Ayub Khan ruled Pakistan.

<sup>87</sup> On 15 August, 2011, two young men were killed by a mob for alleged robbery in the presence of police officers in Sialkot (Gujranwala region). See “Sialkot brothers' death: justice catches up with lynchers”, *Express Tribune*, 20 September, 2011: <http://tribune.com.pk/story/256571/verdict-seven-given-death-sentence-in-sialkot-lynching-case/>; The reasons for the conviction of the police officers in the case included recorded film of the incident which was relayed on the electronic media and the consequent prominence it received due to the heinous nature of the incident.

governments to provide accountability for unlawful killings and other human rights abuses committed by the police and other law enforcement agencies. Those responsible for rights' violations must be investigated, prosecuted, convicted and punished.

Systems of police accountability generally include police internal mechanisms, the criminal justice system, and legislative oversight as well as external civilian oversight. The last mentioned might include an external complaints body, a police or general ombudsman, a police oversight board or a national human rights commission, or a combination of any two or more of such institutional setups. The mechanisms for external oversight bodies provided in the Police Order, 2002, though legally still effective in the Punjab and Khyber Paktunkhwa, have remained dysfunctional since the Order's promulgation. And where they worked, they did not have enough powers to be effective. The case of the Ombudsman's office, which has to refer the matter back to the police for further action, is no different.<sup>89</sup> There is practically no external accountability of law enforcement agencies including the police in Pakistan.

Without external oversight, the police are essentially left to police themselves and “Victims are often reluctant even to report abuse directly to police, for fear of reprisals, or simply because they do not believe a serious investigation will result. Especially in cases of intentional unlawful killings, purely internal complaint and investigation avenues make it all too easy for the police to cover up wrongdoing, to claim that killings were lawful, to fail to refer cases for criminal prosecution, or to hand down only minor disciplinary measures for serious offences.”<sup>90</sup>

According to a newspaper survey, most of the cases lodged against policemen on courts' orders pertained to custodial killing of suspects, wrongful detention of citizens, non-compliance with court orders, killing in fake encounters and registration of false cases. It was found by the surveying reporter that in such cases against the police officers investigating officers (IOs) submit reports under Section 173 of CrPC in favour of their

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<sup>88</sup> In a suo motu notice issued on the killing of a citizen in a fake police encounter in Gujranwala, the SC bench directed the Punjab advocate general to take up the matter with inspector general of police for strict action against those who may be found guilty of having carried it out. See “Police encounters giving rise to mob violence” The News, 29 January, 2011 available at <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=3624&Cat=13&dt=5/3/2011>

<sup>89</sup> See *Annual Report 2010* of the Punjab Ombudsman constituted under the Punjab Office of the Ombudsman Act, 1997 pp. 28-32

<sup>90</sup> *Study on police oversight mechanisms*, see supra note 11

colleagues/superiors in “B” (bogus) or “C” (cancel) class, and only in a few cases the accused police officers are properly indicted and that too half-heartedly under irrelevant and minor sections.<sup>91</sup> But if the police investigation is not just and fair, so are the proceedings in the magistrates' courts. Even the magistrate's courts are not reliable especially in matters involving police excesses as it became obvious during proceedings initiated suo motu by the Lahore High Court (LHC) regarding an encounter killing case in Nishtar Town, Lahore when the court ordered inquiry by high ranking police officials rather than rely on a judicial inquiry by a judicial officer. The court's insistence on inquiry by a police officer betrayed lack of confidence in the lower courts' ability to deal with matters involving the police as the accused.<sup>92</sup> The main reason for this inability is said to be obstructions raised by the police but corruption amongst the judicial officers also plays an important role.<sup>93</sup> According to a senior Punjab Police official, about 75 per cent of the encounter killings are staged.<sup>94</sup>

Major (R) Mubashar Ullah, DIG and Principal Police Training School (Lahore), has recently conducted inquiries into police encounters and cases of torture, including several high profile cases, in his report on the Nishtar Colony encounter.<sup>95</sup> In a report submitted before the LHC, while expressing his inability to conduct a comprehensive probe in a short time, he said that several police officers were either actively involved in staging the encounter or were negligent in acting in accordance with law. He notes with

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<sup>91</sup> Ishaq Tanoli, Dawn, “IOs mostly protect colleagues in cases against policemen” at <http://www.dawn.com/2011/09/05/ios-mostly-protect-colleagues-in-cases-against-policemen.html>

<sup>92</sup> Dawn 15 June, 2011, Fake encounters: CJ warns police against killings : <http://www.dawn.com/2011/06/15/fake-encounters-cj-warns-police-against-killings.html>

<sup>93</sup> Rana Yasif, “Inquiry into extra-judicial killing dropped”, The Express Tribune, 19 August, 2011: <http://tribune.com.pk/story/234663/inquiry-into-extra-judicial-killing-dropped/>; Also see “Encounter probe: Submit report in 10 days, says LHC”: The Express Tribune, 9 December, 2011: <http://tribune.com.pk/story/303687/encounter-probe-submit-report-in-10-days-says-lhc/>. Also see Jamal Khurshid, “Corruption in lower courts eroding confidence of litigants”, The News, 25 June, 2011: <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=6986&Cat=13>

<sup>94</sup> Anwer Sumra, The Express Tribune, 7 July, 2011, “Staged encounter: Suspects made witnesses to protect high ups”: <http://tribune.com.pk/story/204173/staged-encounter-suspects-made-witnesses-to-protect-high-ups/>

<sup>95</sup> Major (ret.) Mubashar Ullah, DIG, is the Principal of the Police Training School at Chuhng, Lahore and heads the Inspection and Vigilance Cell of Punjab Police as well as the 10-member board formed on the directions of the Lahore High Court to check staged encounters. See the Punjab Police website, Press Releases, 28th June, 2011 available at <http://www.punjabpolice.gov.pk/29062011pr>; Also see Dawn, 29 June, 2011, “IG forms board to check staged encounters” at <http://www.dawn.com/2011/06/29/ig-forms-board-to-check-staged-encounters.html>

disappointment that the Deputy Superintendent of Police (DSP) of the Kot Lakhpat Circle was the mastermind of the encounter. The DSP's service record is tainted and he has been dismissed from service before. Despite this kind of initial findings by a senior police official, no serious progress has been made for the resolution of the case. Allegations have since surfaced that senior police officials are trying to protect officers involved in the killing of the victims. In fact, Major Mubashar Ullah's report itself is an indictment of some senior police officers. It has also been alleged that in fact some senior police officers might have allowed the sub-ordinate staff to go ahead with the killings.<sup>96</sup>

According to senior police officials, in most of the cases where some serious disciplinary action is taken through the departmental inquiries, punishments are set aside in appeal process within the department. In many other cases, punishments are set aside by the courts of law due to poor investigation or lacunae left in the disciplinary action and proceedings at the department level.

### **Role of prosecutors**

The role of prosecutors is also important and cannot be overemphasized as may be seen from the case stated in Box. No. 7 above. The “Guidelines on the role of prosecutors” adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders at Havana, Cuba (27 August to 7 September 1990) are instructive in the context of extra-judicial killings.

While article 14 of the Guidelines requires the prosecutors not to initiate or continue prosecution when an impartial investigation shows the charge to be unfounded, it specifically requires them to give due attention to the prosecution of crimes committed by public officials especially in cases of “grave violations of human rights and other crimes recognized by international law and, where authorised by law or consistent with local practice, the investigation of such offences”. The case stated in Box No.7 above demonstrates that the prosecutors need to be well versed in the domestic laws as well as international human rights law and standards of prosecution. Had the prosecutor carefully studied the medical reports and evidence of four witnesses placed in the original report under section 173 CrPC, he would have played his due role.

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<sup>96</sup> Pakistan Today, 24 August, 2011 “IGP fails to re-probe encounter”  
<http://www.pakistantoday.com.pk/2011/08/igp-fails-to-form-team-to-re-probe-%E2%80%98encounter%E2%80%99/>

Public prosecutors, like judicial officers, are also easily manipulated by the police. This happens due to various reasons including the fear of the police, for monetary gain, lack of understanding of law applicable in such cases and a general lack of sense of duty to protect and preserve human rights, arising out of poor education and training and ignorance of human rights law, low standards of work ethics, low salaries, and lack of accountability mechanisms.

**Article 17 of the Guidelines reads as follows:**

“In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.”

Clearly, the role of prosecutors needs to be reconsidered and an emphasis needs to be placed on the fact that their role is not that of the postman between the court of law and the police.

# Conclusions and Recommendations

The phenomenon of impunity i.e. the de facto exemption from punishment is one of the main factors contributing to the continuing pattern of extralegal killings. By bringing criminal charges against perpetrators of violations of the right to life the government will send a clear message that such violations will not be tolerated and that those found responsible will be held accountable. When investigations into such violations are not pursued and the perpetrators are not held to account, a self-perpetuating cycle of violence is set in motion resulting in continuing violations. It is therefore recommended:

## 4.1 External civilian oversight

Because of the inevitable bias inherent in internal police investigations and available internal disciplinary mechanisms, government should consider creating an effective external police oversight agency which should have the power to enforce its recommendations and decisions. A strong external oversight agency, either in the form of office of police ombudsman or complaints authority or commission with necessary powers, some of which are listed below, will be able to enforce the proposed disciplinary measures.

Some of the powers enumerated by the UN Special Rapporteur<sup>97</sup> are worth incorporation into the legislation for such an external oversight agency. These are as follows:

- The mechanism should be authorised by legislation to receive complaints from any person.
- Police should be required by law to report all deaths in police custody or due to police action to the external oversight agency, and there should be penalties for delayed reporting or non-reporting.

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<sup>97</sup> Ibid.

- The agency should be required to record and track complaints and abuses and keep comprehensive records.
- The agency should be authorised to undertake investigations into complaints received.
- The agency should have the power to compel police cooperation with its investigations, and should have full investigatory powers, similar to those of a police investigator.
- The agency should have the power to refer cases for criminal prosecution to the public prosecutor and suggest binding disciplinary measures to the police department.
- The agency should be able to provide security or refer witnesses to witness protection where necessary.
- The agency should be able to propose general reform measures on policing to the police force and the government.

### **Resources**

- The agency should be adequately resourced and funded, and provided sufficient funds to allow it to carry out comprehensive investigations and hire skilled staff.

### **Independence**

- The mechanism should have full operational and hierarchical independence from the police, and be free from executive or political influence.
- The agency's members should be democratically appointed following consultation with or approval by the legislature, and have security of tenure.
- Financial independence should be secured by having the agency's budget approved by the legislature, with statutory guarantees for the size and disbursement timing of the annual budget.

## **4.2 Adopt and implement UN principles**

The provincial governments should adopt and implement the preventive measures recommended by the Principles for the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions.

## **4.3 Adopt and implement Minnesota Protocol**

The provincial governments should also adopt and implement Model Protocol for the Legal Investigation of Extralegal, Arbitrary and Summary Executions (the “Minnesota Protocol”) that was drafted to supplement the UN Principles and also emphasises the need for thorough and impartial investigations; it also provides guidelines on how to conduct such investigations, including information on, for example, gathering evidence at the crime scene and the processing of evidence.

## **4.4 Adopt and implement the UN Code of Conduct**

The Government of Pakistan and provincial governments must ensure that all law enforcement personnel are clearly instructed to act in accordance with international standards contained in the Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly on 17 December 1979, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in September 1990. These principles stipulate that lethal force may not be used except in genuine life-threatening circumstances and only as a last resort.

## **4.5 Implement UN Guidelines on the role of prosecutors**

The UN Guidelines on the role of prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 1990, must be seriously followed by formulating detailed procedures to hold the prosecutors accountable, among other things, by reducing their discretion.

## **4.6 Compensation to the heirs of the victims of extra-judicial killings**

Specific comprehensive legislation should be introduced to enable the courts



and/or external oversight body, as suggested above, to order for grant of compensation to the heirs of the victims of extra-judicial killings.

#### **4.7 Amend the Qisas and Diyat laws**

While the need for forgiveness, pardon and reconciliation cannot be over-emphasised in any civilised society, the need to reconsider the whole framework provided under the qisas and diyat laws is overdue. As an immediate step the law of diyat should be made inapplicable in cases of human rights' violations, especially of the right to life, by eliminating the possibility of compromise between the heirs of the victims and the police or any other law enforcement or intelligence agency.

#### **4.8 Implement existing framework**

So long as elaborate systems as aforementioned are not adopted the following should be the minimum the governments can do in order to curb the continued pattern of extralegal killings at the hands of the police:

#### **4.9 Registration of cases**

Where a police officer causes the death of a person, acting or purporting to act in discharge of official duties or in self-defence as the case may be, there is commission of a cognisable offence (including in an appropriate case the offence of culpable homicide). The information relating to such circumstances requires to be registered as a First Information Report obligating investigation in accordance with the procedure prescribed by the Code of Criminal Procedure. Telephone help lines should be introduced to help complainants to register complaints.

#### **4.10 Investigation**

The existence of circumstances bringing a case within any of the exceptions in the Pakistan Penal Code, 1860, including exercise of the right of private defence, can only be conclusively determined during a fair and impartial investigation. The final report submitted by the police to the Magistrate on completion of the investigation should not be considered conclusive and such cases should not be disposed of in class 'C' as cancelled. The existence of the circumstances coming within the exceptions should be determined only in appropriate judicial proceedings.

#### **4.11 In case of armed conflicts**

A parliamentary committee should oversee the military and para-military operations in the Khyber Pakhtunkhwa, the tribal areas, Balochistan and elsewhere, in order to look into the complaints of extralegal killings against the security forces and their collaborators.

#### **4.12 Better training and resources**

The police should be better trained and educated in humane investigative techniques and in human rights protection. They should be introduced to concepts of human rights considered essential to present day societies. Police should also be better resourced and equipped in order to fulfill their duties.

#### **4.13 Strengthen legal safeguards**

Existing legal safeguards should be fully and meticulously adhered to. Further, the legal safeguards need to be strengthened and brought in line with international standards against extra-judicial executions.

# Key relevant international instruments/documents

- 1) Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly on 17 December 1979  
available at <http://www2.ohchr.org/english/law/codeofconduct.htm>
- 2) Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders Havana, Cuba, 27 August to 7 September 1990, available at  
<http://www2.ohchr.org/english/law/firearms.htm>
- 3) Principles for the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, available at  
<http://www2.ohchr.org/english/law/executions.htm>
- 4) United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/.12 (1991), at  
<http://www1.umn.edu/humanrts/instree/executioninvestigation-91.html>
- 5) Model Protocol for the Legal Investigation of Extra-legal, Arbitrary and Summary Executions (the “Minnesota Protocol”)
- 6) Guidelines on the role of prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990; available at  
<http://www2.ohchr.org/english/law/prosecutors.htm>
- 7) International Covenant on Civil and Political Rights; at  
[http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)
- 8) Universal Declaration of Human Rights, at  
[http://www.un.org/events/humanrights/2007/hrphotos/declaration%20\\_eng.pdf](http://www.un.org/events/humanrights/2007/hrphotos/declaration%20_eng.pdf)

9) European Convention on Human Rights; available at <http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/The+Convention+and+additional+protocols/The+European+Convention+on+Human+Rights/>