

**EVIDENCE SUBMISSION BY REPRIEVE TO THE INTERNATIONAL DEVELOPMENT COMMITTEE'S
INQUIRY INTO UK AID TO PAKISTAN**

Reprive is a legal action charity which seeks to uphold the rule of law and the rights of individuals around the world. Reprive has worked in Pakistan alongside local partners for over a decade, providing legal and investigative support to individuals facing the death penalty and the families of those killed in lethal drone strikes. Reprive is contracted by the Foreign, Commonwealth and Development Office (FCDO) to provide support to British nationals facing the death penalty in Pakistan.

EXECUTIVE SUMMARY

- Reprive's submission concerns the UK Government's Counter-terror Associated Prosecutorial Reforms Initiative (CAPRI), a programme of assistance of Pakistan's Anti-Terrorism Courts (ATCs) which ran from 2013 to 2020. Until 2020, the CAPRI programme was funded through the Rule of Law programme in Pakistan, which is funded through the Conflict, Stability and Security Fund (CSSF). In 2018/19, the Rule of Law programme amounted to £9 million of Overseas Development Assistance (ODA),¹ and available documentation suggests it also used £1.07 million non-ODA funds over the years 2015-16 and 2017-18².
- In May of this year, the FCDO stated in answer to Parliamentary Questions that the CAPRI programme is no longer receiving allocated funding. The FCDO did not give an explanation for why the programme's funding was ended, or whether it has been replaced in any form.³
- This submission provides evidence that the CAPRI programme, over its seven years in operation, may have enabled the use of the death penalty through its support for deeply flawed prosecutions which have resulted in hundreds of death sentences. In the Government's own words, the CAPRI programme aimed to "increase Pakistan's civilian capacity to investigate, detain, prosecute and try terrorists." During the period these types of prosecutions were receiving UK assistance, they resulted in 378 death sentences.⁴ This attracted significant Parliamentary and media scrutiny in light of concerns that UK taxpayers may be "funding 'torture and executions'".⁵
- While funding to the CAPRI programme has now been withdrawn, we nevertheless believe it is vital that lessons are learned from this seven year programme of assistance, which has been linked to hundreds of death sentences. While it may be right that the programme does not receive further funding, it is also important that the Government undergo a transparent and objective accounting for its serious flaws.
- With this in mind, our submission sets out three concerns around the operation of the CAPRI programme:
 - In supporting these prosecutions, the CAPRI programme was misaligned with the UK's wider policy aims of discouraging use of the death penalty, strengthening the rule of law, and supporting Pakistan's fight against terrorism;
 - The programme was not subject to sufficient safeguards to ensure it did not end up enabling death sentences, as the FCDO's policy intended to mitigate these risks – the policy on Overseas Security and Justice Assistance, or 'OSJA' – has not functioned effectively and has been described by the Independent Commission on Aid Impact (ICAI) as "inconsistent" and resulting in assessments that "were incomplete or of low quality".⁶
 - The CAPRI Programme was not subject to sufficient performance monitoring, lacking the transparent scrutiny needed to ensure the assistance is effective and safe.
- Further, after seven years in which very little was published about the work of the CAPRI programme, it remains unclear whether it has been replaced in any form. We urge the Government to publish the full extent of the CAPRI programme between 2013 and 2020, and give a full account of any similar assistance which continues today.



OVERVIEW OF 'THE CAPRI PROGRAMME'

1. Until 2020, FCDO's the Rule of Law programme £10 million Rule of Law Programme in Pakistan funded a programme entitled 'Counter Terrorism Associated Prosecutorial Reforms Initiative' (CAPRI), which, as described in the CSSF's 'programme summary' for 2018-19, aimed to "increase Pakistan's civilian capacity to investigate, detain, prosecute and try terrorists."⁷ In response to Parliamentary Questions, the Government stated that the programme "ran in Pakistan from 2013 to 2020". It appears the programme's funding was then ended and the Government has confirmed to Parliament that there is now "no allocated funding for the 2021-22 financial year".⁸
2. While the UK Government published only minimal information about the CAPRI programme, Reprieve has been able to establish through media reporting in Pakistan, published reports from Pakistani agencies, published speeches from UK officials, and other sources, that the CAPRI programme involved the following activities or plans:
 - Extensive forensics training;⁹
 - Direct training of prosecutors;¹⁰
 - Training of judges;¹¹ and
 - Plans for legislative reform to loosen evidential standards.¹²
3. All of these activities were self-evidently designed to support prosecutions under Pakistan's anti-terror laws. This is gravely concerning given that Pakistani courts frequently hand down the death penalty to those convicted under these laws, many of whom are charged with offences bearing no resemblance to terrorism. In the seven years CAPRI has been in operation, Pakistan's civilian ATCs have sentenced at least 378 individuals to death.¹³
4. While the CAPRI programme ran, the Government gave contradictory public statements as to its aims, outcomes, and links to convictions and death sentences within ATCs. While it claimed that "[n]o aspect of the Rule of Law programme supports the operation of the Anti-Terrorism Courts in Pakistan",¹⁴ ¹⁵ it is evident that the programme supported prosecutions in these courts. According to the Government's own description from as early as 2013, the programme was specifically designed "to increase terrorist convictions"¹⁶, taking place in Pakistan's Anti-Terrorism Courts, and "improve the ability of Punjabi agencies to successfully investigate, prosecute, convict and detain terrorists".¹⁷
5. The CAPRI Programme's focus on securing convictions under Pakistan's anti-terror laws was again made clear in 2016, when the UK's then-High Commissioner to Pakistan directly credited the CAPRI programme with a tenfold increase in such convictions. Specifically, the High Commissioner said: "Thanks to the UK-backed CAPRI programme conviction rates in terrorism cases have increased from 5% to over 50% in Punjab and from 3% to over 30% in KPK."¹⁸
6. Given that anti-terror prosecutions in Pakistan frequently result in death sentences, and that at least 378 sentences were handed down by Pakistan's civilian anti-terror courts during the period they were receiving funding, the CAPRI programme clearly carried a high risk that it may have contributed to the imposition of the death penalty on a significant scale.¹⁹

MISALIGNMENT OF THE CAPRI PROGRAMME AND UK OBJECTIVES

7. The terms of reference for the IDC's inquiry into UK aid for Pakistan ask "are the UK's strategic aims for its Pakistan aid programme clear and appropriate?" and "To what extent is there effective joined up strategy and delivery across the country portfolio"?²⁰ Reprieve's research suggests the CAPRI programme was significantly misaligned with the aims of the UK's Pakistan aid programme and wider diplomatic efforts.
7. By supporting deeply flawed anti-terror court prosecutions which frequently result in death sentences, the CAPRI programme has appeared to work against a number of the UK's stated objectives in Pakistan, including the UK's efforts to discourage Pakistan's application of capital punishment, its support for Pakistan's fight against terrorism, and its support for good governance and the rule of law.

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8. The FCDO's 2018 Human Rights and Democracy Report identified "the continued imposition and use of the death penalty" as one of the six main human rights problems in Pakistan in 2018.²¹ In its latest report, the FCDO states that while there was "some progress on death penalty reform", "[t]he imposition and use of the death penalty continued".²² More broadly, the FCDO has pledged to "play a leading role in pressing to reduce the use of the death penalty overseas". Supporting prosecutions which have led to hundreds of death sentences quite clearly works against this objective and undermines the UK's moral authority on this issue.
9. Further, the FCDO has also explained that the UK is "ideally placed to support" the Government of Pakistan's focus on "addressing the terrorist threat within its borders".²³ However, there is strong evidence that UK funds in fact supported the prosecution of crimes which were unrelated to terrorism and in many cases were politically motivated. As the UN Human Rights Committee criticised in 2017, Pakistan's Anti-Terrorism Act (ATA) uses a "very broad definition of terrorism",²⁴ one that leaves individuals potentially facing death sentences for offences that appear to have very little, if any, connection to terrorism.
10. Cases tried in Pakistan's ATCs frequently involve offences which do not fit within any traditional definition of terrorist crimes. These include:
 - An individual sentenced to 18 years in prison for throwing his shoe at a judge while being tried for robbery in a separate case. In handing down the sentence, the judge referred to reports the accused's act had terrorised the people present in the court that day, "particularly the court staff".²⁵
 - Six trade union leaders sentenced to life imprisonment for allegedly attempting to burn down a factory, having been arrested alongside more than 100 other demonstrating workers, who had been calling for increased wages and protesting the killing of a labour leader.²⁶
 - An individual who was sentenced to death for his involvement in a botched burglary in which the homeowner was murdered.²⁷ The individual in question was 17 at the time of the crime, to which he confessed after brutal torture by police. The individual was sentenced to death on the basis his crime had supposedly caused "terror, a sense of fear and insecurity in the people of [the] locality."
11. Section 6 of the ATA defines terrorism as any crime or threat designed to create a 'sense of fear or insecurity in society', while subsection 2 of the ATA is framed to include any crime that 'involves grievous violence against a person or grievous bodily injury or harm to person' or 'doing of anything that is likely to cause death or endanger a person's life.' This leaves a very wide range of conduct as potentially falling within the definition of terrorism, far wider than, for example, equivalent legislation in the UK.²⁸
12. Because of this broad definition of terrorism, the ATA allows death sentences to be handed down for offences which clearly do not meet the threshold of "most serious crimes", which are the only offences for which the death penalty can be permitted under the standard set out in Article 6 (2) of the International Covenant on Civil and Political Rights,²⁹ to which both the UK and Pakistan are signatories. In effect, Pakistan's ATCs are therefore using the ATA to hand down death sentences which are not permitted under international law.
13. As a 2016 study found, the ATC is used to place offences already punishable in ordinary courts on a "fast track, and for enhancing punishments".³⁰ As the study reports, an "overwhelming proportion of cases tried in the ATCs" concern crimes unrelated to terrorism,^{31 32} as well political activity "including political parties calling strikes or 'shutter downs'"³³ and local "enmities, land or family disputes, or blood feuds."³⁴ As another study concluded in 2018, the ATC system is used simply to fast-track cases in the interests of expediency, even where the cases had no connection to terrorism.³⁵
14. Further, the FCDO has described UK support to Pakistan in this area as designed to "help strengthen democracy and human rights institutions, and to support the justice system become more accountable to citizens."³⁶ However, the CAPRI programme appears to have supported a system rife with rule-of-law violations such as torture and the application of the death penalty for juvenile offenders. The UN Committee against Torture (UNCAT) has warned that Pakistan's ATA "eliminates legal safeguards against torture", provides for extended detention without trial, and allows confession evidence in circumstances where it would otherwise not be admissible in ordinary civilian courts.³⁷ The US State Department also

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reported in 2018 that “Both the new law [the Juvenile Justice System Act] and the previous 2000 Juvenile Justice System Ordinance ban the use of the death penalty for minors, yet children were sentenced to death under the Antiterrorism Act”.³⁸ In 2019, the US State Department again reported for that year that “courts sentenced convicted children to death under the Antiterrorism Act.”³⁹

A LACK OF EFFECTIVE POLICY SAFEGUARDS

15. The UK’s assistance to courts which hand down scores of death sentences every year has raised serious questions as to the effectiveness of the Government’s human rights risk assessment process, the Overseas Security and Justice Assistance, or OSJA.⁴⁰ This chimes with the available evidence on the efficacy of the OSJA process, which has been severely criticised by the Independent Commission on Aid Impact and Parliament’s Home Affairs Committee.^{41, 42}
16. The OSJA policy requires all Government Departments to conduct a human rights risk assessment when seeking to provide “security and justice assistance” to “countries, institutions or units” whose “adherence to and respect for human rights and democracy” is called into question.⁴³ Unfortunately, since the policy’s introduction in 2011, it has repeatedly failed to stop the UK becoming mixed up in abuses which the UK fundamentally opposes.
17. Whilst it is clear that Ministers are bound by separate legal and policy requirements not to authorise actions which they know or believe will result in the death penalty, torture or other abuses, the OSJA policy notably fails to explicitly state that UK officials should not authorise action which will contribute to such abuses and fails to provide any legal or policy guidance to Ministers in making their decision whether to allow or refuse the assistance. This leaves decision-makers without a clear steer as to where lines should be drawn with respect to UK action.
18. The OSJA policy is also applied inconsistently. The Independent Commission for Aid Impact (ICAI) found in its 2018 report that OSJA assessments carried out for CSSF initiatives such as the Pakistan Rule of Law Programme are “inconsistent” and programme monitoring “often weak” – with an “absence of results monitoring”.⁴⁴ As a result, it said that “we do not know if CSSF programming is causing harm.”⁴⁵ This is the despite the real danger, as ICAI found, that working with security forces accused of human rights violations “risks legitimising them and their actions, or even becoming complicit in violations”.⁴⁶ In its examination of the use of OSJA for CSSF programmes, ICAI found OSJAs that “were incomplete or of low quality”, focusing on “reputational risks” rather than human rights risks, and assessments that in all examples “gave the green light” for the proposed activity.⁴⁷
19. Notwithstanding these concerns, the Government continues to refuse to disclose OSJA assessments which have been used to approve UK assistance in circumstances where there is a real risk of human rights abuses, including in respect of the Pakistan Rule of Law programme.⁴⁸ Parliament’s Home Affairs Committee has previously described this secrecy surrounding OSJA assessments as “totally unacceptable” and queried whether the policy is therefore “fit for purpose”.⁴⁹
20. As noted above, both the FCDO and, historically, DIFD refused to make public any assessment in relation to the CAPRI programme, and in the case of the FCDO refused to confirm or deny that one was conducted at all. In addition, both the FCDO and DFID refused to provide information on human rights risk assessments for CAPRI following requests under the Freedom of Information Act, with both FCDO and DFID in fact refusing to confirm or deny whether any such assessments had been carried out at all, despite this being later disclosed in evidence to the Joint Committee on the National Security Strategy (JCNSS). Subsequent FOI requests, including to other bodies such as the CPS, faced very significant delays during which the bodies continue to determine what information, if any, they will provide.⁵⁰
21. Adding to the confusion over what safeguards are in place, the Cabinet Office subsequently admitted in a letter to the JCNSS, that “[b]oth Mark Field, [former] Minister for Asia, and Lord Ahmed, Minister for Counter Terrorism approved the Rule of Law Pakistan programme, including a consideration of the relevant OSJA.”⁵¹ But this raises a further concerning question. Despite the CAPRI programme beginning in 2013, there remains no information available from Government to suggest that any OSJA assessment was

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conducted between 2013 and 2017, and this includes an entire year – 2016-17 – in which the programme was conducted through the CSSF.

22. There are further doubts as to whether OSJA assessments were properly conducted. DFID reported in response to FOI requests that it had “no record” of any OSJA assessments requiring Ministerial approval for the years 2015-16, 2016-17, and 2017-18.⁵² At the same time, the Cabinet Office has reported that DFID’s (now historic) threshold for conducting an OSJA assessment is simply whether the programme has “a value of £5m or more” over its lifetime.⁵³ This suggests DFID may have been failing to undertake OSJA assessments for programmes under this financial threshold, regardless of the level of human rights risk they might pose, leaving Ministers without oversight of programmes that may have carried serious risks.
23. The Cabinet Office has responded to criticism of OSJA by having the Joint Funds Unit (JFU) commission what it called an ‘independent audit’ of the use of OSJA within CSSF programming. The Cabinet Office also confirmed that all programmes in Pakistan – of which there are five in total – were assessed as part of this audit.⁵⁴ However, the Cabinet Office subsequently refused to publish this review, providing only an ambiguous summary that states that the “majority of programme teams have a good understanding of the human rights risks” with “a realistic view of the extent to which risks can be mitigated” – while identifying “areas where the process could be improved.”⁵⁵ It remains unknown what improvements the review found to be necessary to ensure UK programmes are aligned with UK human rights objectives, nor in what ways some programme teams are failing to understand human rights risks, possibly leaving their programmes unsafe or ineffective.

A LACK OF MEANINGFUL PERFORMANCE MONITORING

24. Meaningful performance monitoring requires robust, transparent scrutiny. However, the level of secrecy surrounding the activities conducted and outcomes delivered by the CSSF’s Rule of Law programme in Pakistan has hindered the scrutiny needed to ensure such efforts are effective in achieving their aims.
25. As to specific performance assessments, the only concrete statements published by Government as to the success of the Rule of Law programme have raised real concern over the quality of performance monitoring. For example, the remarks of then-UK High Commissioner to Pakistan in 2016, citing the tenfold increase in conviction rates for terrorism within the ATCs as an important outcome of the CAPRI programme, suggest that convictions in the ATCs – which often equal death sentences – have been as a measure of performance monitoring.
26. The Rule of Law Programme’s annual review summaries have provided little concrete detail to demonstrate the quality of the programme’s monitoring arrangements.⁵⁶ This document provides only a limited, generalised summary of progress, citing “[g]ood progress “ on “some of the components”, while providing ambiguous descriptions of ongoing concerns, with “[c]ontinued close management of human rights risks...a concern which we continue to stress in this report”. Further, no specific results relating to the work of the CAPRI programme have been listed among the ‘Key results’ for 2018-19 in the annual review for that year, and the programme was in fact listed as one of the areas of work requiring further ‘Support’ to “enable them to evidence achievements and lessons learned”.⁵⁷
27. In part, this may be a result of a systemic lack of meaningful performance monitoring. Reviewing available CSSF evaluation documents, ICAI found an “absence of results monitoring”, and revealed that “evidence required to verify the portfolio’s value for money does not exist.”⁵⁸ As ICAI concluded, “The lack of meaningful results data means that neither the CSSF nor external reviewers such as ourselves can ascertain whether CSSF investments are effective and achieving good value for money.”⁵⁹
28. A particularly stark example of what appears to be a serious monitoring gap can be found in Cabinet Office evidence to the JCNSS in 2019 which states that “[a]lthough Pakistan has had a state of the art forensics laboratory in Punjab for the past 6 years, the scientific basis for the use of forensics has been poorly understood”.⁶⁰ This fails to mention the fact that the UK appears to have provided substantial assistance in establishing the Lahore forensics laboratory in 2013, at the very beginning of the CAPRI programme,⁶¹ suggesting that there is a real lack of clarity even internally over what the programme has been doing.

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29. Most importantly, evidence from independent observers in Pakistan raises questions as to the effectiveness of UK assistance to the justice system in Pakistan over the seven years in which the CAPRI programme was funded. The FCDO's own Human Rights and Democracy Report for 2019, published in June last year, found that Pakistan's anti-terrorism courts "continued to operate with long delays and low prosecution rates".⁶² This concerning assessment is also made by the US State Department, which reported in 2019 that "Authorities continued to expedite high-profile cases by referring them to ATCs, even if they had no connection to terrorism. The frequent use of ATCs for nonterrorism cases, including for blasphemy or other acts deemed to foment religious hatred, led to significant backlogs, and despite being comparatively faster than the regular court system, ATCs often failed to meet speedy trial standards."⁶³

QUESTIONS FOR THE FCDO

30. We urge the FCDO answer the following questions about the CAPRI programme:
- i. On what basis did the FCDO withdraw funding from the CAPRI programme for the current financial year?
 - ii. Has the FCDO made any specific assessment of the effectiveness and impact of the CAPRI programme, either prior to or since its loss of funding; if so, will the FCDO publish that assessment?
 - iii. When was the last assessment of the CAPRI programme made under the Overseas Security and Justice Assistance (OSJA) guidance, and will the FCDO publish its findings?
 - iv. Will the Government publish the JFU's OSJA review, and in particular its findings on the UK's support to Pakistan?
 - v. Is the UK Government continuing to provide counter-terror-focused assistance to Pakistan's justice system; if so, will the Government publish the details of that assistance?

RECOMMENDATIONS

31. In light of these serious concerns, Reprieve recommends that the International Development Committee urge the Government to:
- i. Publish all OSJA assessments completed for the CSSF's Rule of Law programme in Pakistan;
 - ii. Release the findings of the JFU audit as they relate to UK assistance to Pakistan, including the CSSF's Rule of Law programme in Pakistan and the CAPRI programme;
 - iii. Publish details, with redactions where there is any demonstrated risk to national security, of the remaining secret CSSF programmes in Pakistan;
 - iv. Conduct a transparent, independent review of the seven years of counter-terror assistance in Pakistan, ensuring that the lessons of the CAPRI programme are fully learned and the mistakes not made again;
 - v. Publish whether any further counter-terrorism assistance is being conducted in Pakistan on the same or similar model, and publish the details of any assistance being conducted on the same or similar model in other countries, including using the Counter Terrorism Programme Fund;
 - vi. Introduce a presumption that OSJA assessments be disclosed to Parliament and the public with redactions being made only where necessary;
 - vii. Introduce a clear statement of policy principle that the UK should not provide overseas security and justice assistance in cases where there is a real risk that assistance may enable abuses such as the death penalty and torture.

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- ⁵⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810719/CSSF_-_PAKISTAN_RULE_OF_LAW_PROGRAMME_2017-2018.odt.
- ⁵⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875496/Pakistan_Rule_of_Law_Annual_Review_Summary.odt
- ⁵⁸ ICAI, March 2018, p. 23.
- ⁵⁹ ICAI, March 2018, p. ii.
- ⁶⁰ Supplementary written evidence submitted by Rt Hon David Lidington MP, Chancellor of the Duchy of Lancaster, 'Information Note on the Pakistan Rule of Law Programme', 11 March 2019, available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/national-security-strategy-committee/conflict-stability-and-security-fund-annual-report-201718/written/97533.pdf>.
- ⁶¹ British High Commission Islamabad, 'Foreign Secretary visits UK-supported mobile forensic lab in Lahore', 18 July 2013, available at: <https://www.gov.uk/government/news/foreign-secretary-visits-uk-supported-mobile-forensic-lab-in-lahore>.
- ⁶² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902494/FCO1414_FCO_AHRR_2019_-_accessible.pdf, p. 53.
- ⁶³ <https://www.state.gov/wp-content/uploads/2020/03/PAKISTAN-2019-HUMAN-RIGHTS-REPORT.pdf>