



THE JUSTICE PROJECT PAKISTAN

SUBMISSION FOR THE UNITED NATIONS
COMMITTEE AGAINST TORTURE

Submitted by

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INTRODUCTION

In this submission presented to the United Nations Committee against Torture (the **Committee**), the JPP takes an opportunity to comment on Pakistan's non-compliance with the United Nations Convention against Torture (**UNCAT**) based upon findings from its research, observations while representing its clients and interactions with victims of torture, lawyers, and human rights activists.

Pakistan ratified the UNCAT on 23 June 2010. Since ratification interested parties have repeatedly expressed concerns regarding the lack of effective measures taken by the Government of the Islamic Republic of Pakistan to implement its obligations under the UNCAT.¹ Acting in breach of article 19 of UNCAT, Pakistan has failed to file its State Party report with the Committee on the status of its compliance with UNCAT, originally due on 23 July 2011.

Almost five years after the ratification of UNCAT, Pakistan has also failed to pass law giving effect to its provisions under domestic law, particularly criminalizing torture and penalizing its perpetrators. In 21 January 2015, the Senate Standing Committee on Law, Justice and Human Rights adopted a draft of the Anti-Torture, Custodial Death and Custodial Rape Bill. Since then the draft has been pending in the National Assembly and no progress has been demonstrated on its enactment.

A. WIDESPREAD TORTURE AND ILL-TREATMENT IN PAKISTAN

Torture is endemic and systematic in Pakistan. Through its research and through representing victims of torture, the Justice Project Pakistan (JPP) has observed that: (i) torture is accepted as an inevitable part of law enforcement in Pakistan, and; (ii) perpetrators of torture are granted impunity through a combination of socio-cultural acceptance, lack of independent oversight, widespread powers of arrest and detention, procedural loopholes and ineffective safeguards, including Pakistan's failure to criminalize torture.

'*Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan*', a study conducted by Yale University and JPP on a sample of 1,867 Medico-Legal certificates from the District of Faisalabad from 2006-2012 (attached as **Annex A**), documented an endemic use of torture by the police authorities.² Out of 1,867 cases, the independent medical professionals confirmed 1,424 allegations of police torture with physical evidence. In 96 additional cases physicians found signs indicating injury which needed further testing to confirm the injury. The other 347 cases were, for the most part, not disproven, but rather may have involved abuse methods that do not leave residual marks.

¹ "After signing UN Convention: Pakistan must make law against torture, say experts" *The Express Tribune*. 9 November 2013 available at: <http://tribune.com.pk/story/629206/after-signing-un-convention-pakistan-must-make-law-against-torture-say-experts/>; Human Rights Commission of Pakistan, 'Pakistan: Time for real efforts to eradicate torture and implement the Convention Against Torture'. 26 June 2014 available at <http://hrcp-web.org/hrcpweb/pakistan-time-for-real-efforts-to-eradicate-torture-and-implement-the-convention-against-torture/>; "Govt urged to implement UN Convention against Torture" *Dawn*. 27 June 2014 available at: http://epaper.dawn.com/DetailImage.php?StoryImage=27_06_2014_002_008

²'*Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan*' Justice Project Pakistan and Allard K. Lowenstein International Human Rights Clinic. March 2014, attached as **Annex A**

This evidence confirms that the police often subject victims to multiple forms of abuse.³ Tactics include *strappado*, where police hang the victims by his wrists, with his arms pulled behind his back – a torture method originally used by the Spanish Inquisition. Police use *manji* which involves tying the victim's arms and legs to a bed and stretching them. Police also beat people's feet with clubs and sticks in a method known as *falaka*, notoriously used by the authorities in Saudi Arabia because it is difficult to identify physical sequelae. Sexual assault as a method of intimidation and extortion is also fairly common especially for women and juveniles under police custody.

B. THE LACK OF DEFINITION AND CRIMINALISATION OF TORTURE UNDER DOMESTIC LAW (Articles 1, 2 and 4)

UNCAT makes clear the definition of torture under international law and obliges State Parties to legislate to prevent torture, to criminalise torture and to make torture offences punishable with the appropriate penalties.

(i) Pakistan has not adopted a domestic definition of torture (Articles 1 and 4)

Despite the UNCAT making clear what the minimum scope of any definition should be, Pakistan has failed even to adopt a definition of torture under domestic law. The only mention of "torture" in Pakistani law is the Constitution of Pakistan (**Constitution**) under Article 14(2) which states (in its entirety) "[n]o person shall be subjected to torture for the purpose of extracting evidence". This goes nowhere near to encompassing and criminalizing "torture" as defined in UNCAT Article 1. Additionally, a narrow reading of the text of the Article 14(2) indicates that it only prohibits acts of torture committed by public officials for the purpose of extracting evidence.

Under the UNCAT, the definition of torture, at a minimum, must include three primary elements: (1) the infliction of severe mental or physical pain; (2) by or with the consent or acquiescence of the State authorities; and (3) for a specific purpose. Article 14 of the Constitution therefore fails to provide protection against the range of acts prohibited by the UNCAT under Article 1. The Supreme Court of Pakistan has endeavored to expand the constitutional definition by interpreting it in juxtaposition to the right to dignity and privacy under Article 14(1).⁴ However, the judicially expanded definition only extends the ambit of Article 14(2) to include custodial deaths, permanent infirmities and extrajudicial killing by the police.⁵

Pakistan's failure to provide a definition of torture under domestic law contributes to a culture of impunity and acceptance surrounding its infliction by public officials. As the evidence attached as Annex A shows, torture is socio-culturally accepted as the foremost instrument of evidence collection by the police, such that both victims and public officials view torture with a sense of inevitability.

(ii) In five years, Pakistan has failed to make torture an offence (Articles 2 and 4)

Torture within the meaning provided under UNCAT article 1 is not a criminal offence in Pakistan, as required under article 4(1), nor is the attempt to commit torture or acts that constitute complicity or participation in torture, as required by article 4(2). The Committee has on several occasions held that the insertion of a crime of torture defined in conformity with the definition contained under article 1 is a requirement under UNCAT.⁶

³ **Annex A**

⁴ *Benazir Bhutto v. President of Pakistan* (PLD 1998 SC 388) Supreme Court of Pakistan

⁵ "The approach of the Court while interpreting a Constitutional provision has to be dynamic, progressive and oriented with the desire to meet the situation, which has arisen effectively. Court's effort should be to construe the provision broadly, so that it may be able to meet the requirement of an ever changing society." *Ibid* at para 160

⁶ See, for example, *Initial Report of Armenia* (1995), Official Records of the General Assembly, Fifty First Session, Supplement no. 44 (A/51/44) page 13

There is no mention of torture under Pakistan's two primary criminal codes: the Pakistan Penal Code 1860 (the **Penal Code**) and the Code of Criminal Procedure 1898 (**CCP**). The Penal Code stipulates penalties for certain acts of torture under related offences such as "causing hurt to extort confession or to compel restoration of property",⁷ "wrongful confinement to extort confession or compel restoration of property",⁸ or provisions governing "criminal force and assault."⁹ These offences, however, do not encompass all the components of torture as outlined under article 1 of the UNCAT. The term "hurt" under section 337-K of the Penal Code is legally ambiguous and it is uncertain whether or not it encompasses both physical and mental suffering. The Committee stated in General Comment 2 that UNCAT requires that the offence of torture is named and defined as distinct from 'common assault' in order to alert victims, perpetrators and the general public of the special gravity of torture.¹⁰

Article 156(d) of the Police Order 2002 provides penalties to any police officer who inflicts "violence or torture" upon any person in his custody. However, the statute only penalizes acts by police officers, does not extend to other public officials, and contains no definition of torture. Additionally, it fails to distinguish torture as an offence distinct and more severe than the mere infliction of violence by police officers and, as a result, fails to satisfy Pakistan's obligations under the UNCAT.

On January 21, 2015 the Senate Standing Committee adopted a draft bill titled, the Torture, Custodial Death and Custodial Rape Bill, 2014. Section 3 of the proposed Bill provides a definition of torture that satisfies the ingredients contained in Article 1 of UNCAT.¹¹ Additionally, Sections 3 to 7 of the Bill also criminalizes and stipulates punishments for Torture, Custodial Death and Custodial Rape.¹² However, the delay in the enactment of the law is preventing Pakistan from fulfilling its obligations under the UNCAT.

(iii) The punishment for torture remains woefully inadequate (Article 4(2) and 2)

Signatories of UNCAT have expressed the opinion that torture should receive a sentence that is commensurate to the gravity of the offence.¹³ Article 14 of the Constitution prescribes no penalties for the commission of torture. The Police Order 2002, prescribes a penalty which "may extend to five years" for any police officer who inflicts torture on a person in his custody. The Committee against torture has concluded that a penalty of five years for an act of torture which inflicts bodily injury is too lenient to serve as a deterrent to the commission of the offence.¹⁴

Various concerned actors have routinely brought the detrimental impact of the failure to act to the attention of the authorities¹⁵. Annex A, '*Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan*' was published in March 2015 but, at the time of writing, the fact that no one has been sanctioned for the hundreds of cases of torture in Faisalabad is, sadly, eloquent proof that there is no interest in applying even such *de minimis* sanctions as do exist.

C. PAKISTAN HAS FAILED IMPLEMENT EFFECTIVE MEASURES TO PREVENT AND INVESTIGATE POLICE TORTURE AND CRUEL INHUMAN DEGRADING TREATMENT OR PUNISHMENT (Articles 2, 10, 11, 12, 13 and 16)

⁷ Section 337-K, Causing hurt to extort confession, or compel restoration of property, Penal Code

⁸ Section 348, Wrongful Confinement to extort confession or compel restoration of property, Penal Code

⁹ Section 350, Criminal Force, Penal Code

¹⁰ Committee against Torture. General Comment 2, 'Implementation of Article 2 by State Parties' U.N. Doc CAT/C/GC/2/CRP.1/Rev.4(2007). Para 11

¹¹ Section 3, Torture, Custodial Death, Custodial Rape (Protection and Prevention) Bill, 2014 (Draft). Available at http://www.na.gov.pk/uploads/documents/1415360249_881.pdf [last accessed on 19 August 2015]

¹² Section 3-7, Ibid.

¹³ *The UN Committee against Torture- An Assessment*. Chris Inglese, Kluwer Law International, 2001. p. 196

¹⁴ See UN General Assembly, Report of the Committee Against Torture: Forty Third Session (U.N. Doc. A/65/44) p. 111-112

¹⁵ See Note 1

UNCAT article 2(1) obliges Pakistan to take actions that will reinforce the prohibition against torture and cruel, inhuman or degrading treatment or punishment (**CIDT**) through *effective* legislative, administrative, judicial and other actions. Such provisions as do exist with respect to torture and CIDT in Pakistani domestic law are unwieldy, unworkable and difficult and time-consuming to litigate. Provisions are scattered between various and diverse pieces of legislation, including: the Penal Code; the 1973 Constitution (the **Constitution**); Criminal Procedure Code 1898; Qanun-e-Shahadat 1984; Pakistan Prison Rules 1978 (the **Prison Rules**); Pakistan Extradition Act, 1972; Pakistan Army Act 1952. This legislation has not been amended since Pakistan ratified UNCAT. Some of these provisions are contradictory. Until such significant legal reform takes place (in particular, defining torture under Pakistani domestic law) Pakistan is not taking *effective* legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.¹⁶

The Committee has observed under General Comment 2 that State parties are obligated to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment; and to take positive effective measures to ensure that such conduct and any recurrences thereof are effectively prevented.¹⁷ It is an unfortunate reality that torture in Pakistan is facilitated by several provisions under Pakistan national legal framework that provide vast powers of arrest and detention to law enforcement agencies and provide effective impunity to the perpetrators of torture.¹⁸ Fulfillment of its obligations under UNCAT necessitates the state to remove these procedural loopholes that increase the risk of torture and effectively sanction its use by law enforcement agencies.

(i) Police torture and CIDT on arrest and in pretrial detention(Article 2)

Police in Pakistan operate with little or no external oversight, and this allows them to mistreat suspects with impunity. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has noted that a lack of external oversight of police forces is a crucial factor in a culture of impunity regarding police abuse of power.¹⁹

Under Article 10(2) of the Constitution and Section 60 of the CCP, every person who is arrested and detained in custody “shall be produced before a magistrate within a period of 24 hours... and no person shall be detained in custody beyond the stated period without the authority of the Magistrate.” JPP’s interviews with victims and lawyers have made it clear that this requirement is frequently ignored by police officials, who hold suspects for long periods without any record in the Station Daily Diary or other official record.²⁰ This allows police to deny any allegations of torture and extrajudicial killings that occur in their custody. Police often torture suspects in their custody and then wait for torture marks to heal before making an entry in their records and presenting them before a Magistrate.

Once a detainee is presented to the Magistrate, the latter is vested with the authority under Section 167(2) of the CCP to remand the suspect back to the custody of the police for investigation for an additional 15 days. On presentation to the Magistrate, many torture victims avoid raising allegations

¹⁶ Annex A, pages 23 – 27

¹⁷ Committee against Torture, General Comment 2, op. cit., para 4

¹⁸ According to the AHRC, the absence of proper complaint centers and a particular section in the criminal code to define and prohibit torture contributed to such practices. The AHRC maintained the government undertook no serious effort to make torture a crime, and the state provided impunity to the perpetrators, who were mostly police or members of the armed forces –for more details see the US Department of State Bureau of Democracy, Human Rights and Labor’s Country Report on Pakistan available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper> [last accessed on 27 August 2015]

¹⁹ 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 at III, p. 7-11.

²⁰ Annex A, pages 12 – 22

of torture as they are inevitably going to be sent back to police custody, where they are going to be held by their torturers²¹ – in violation of Pakistan’s obligation under article 13 of UNCAT “to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

Indeed, many victims are not even presented before the Magistrate – they are made to wait outside the courtroom whilst the police officer goes in and obtains the remand, and therefore are not even allowed to make their complaint known.²² Again, this is in violation of the article 13 obligation to ensure that any victim “has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.”

The grant of custody to the police for the period of fifteen days by the magistrate is a mechanical exercise by the magistrates where they generally validate the wishes of the police without taking into consideration the safety of the detained or any available evidence of abuse. In the absence of an independent mechanism monitoring police custody, suspects are detained in police custody for long periods of time which makes them vulnerable to torture and other forms of cruel, inhuman and degrading treatment.²³

Additionally, the requirement that a detainee be presented to a magistrate does not apply to cases of preventive detention. Under article 10(4) of the Constitution, the parliament may make laws on preventive detention without review for a period of 3 months on a number of grounds including maintenance of public order and supplies. The newly enacted Protection of Pakistan Act 2014 (**PPA**) allows the state to detain suspects at undisclosed locations without any grounds and access to family and legal representation thereby putting them at risk for torture and inhuman treatment. Similarly, under section 11E of the Anti-Terrorism Act 1997 (**ATA**), security agencies and civil armed forces can detain any person suspected of committing an offence under the Act for a period of up to 3 months without review or the possibility of a habeas petition. During this time investigation is meant to be completed by a joint investigative team. However, the clause under Section 21E of the ATA allows the remand period to be extended a further 90 days on application to the courts if “further evidence may be available”. Additionally under section 11E of the ATA any person suspected of being involved in the activities of a proscribed organization can be detained for a period of up to a year.

Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan’ (Annex A) documents a systematic failure by Pakistan to conduct a “prompt and impartial investigation” as required by UNCAT article 12:

- there were 1,867 Medico-Legal certificates from the District of Faisalabad from 2006-2012 reflecting a complaint involving torture,
- 1,424 of these allegations were confirmed with physical evidence; not a single one was pursued to a proper investigation and prosecution.
- In 96 other cases physicians found signs indicating injury but needed further testing to confirm the injury; in not a single case was this testing carried out.
- While the other 347 cases were, for the most part, not disproven, but rather may have involved abuse methods that do not leave residual marks. In not a single case was there any

²¹ Annex A, page 27

²² Centre For Public Policy and Governance, Forman Christian College. *Policing Custodial Torture and Human Rights: Designing a Policy Framework for Pakistan*’ January 2013, page 70 available at <http://cpgg.fccollege.edu.pk/wp-content/uploads/2013/01/PB.pdf> [last accessed on 27 August 2015]

²³ Annex A, pages 25-26

follow up investigation to determine, one way or the other, whether the allegations were credible.

While statistics may not tell the whole story, there is nothing so emphatic as ZERO. Here there were nearly two thousand complaints, and in not a single instance did the Pakistan authorities fulfill its investigative duty – even after this evidence was made public in March 2015. The failure to conduct an impartial investigation in a single case is not only a violation of Pakistan’s commitment to UNCAT, but illustrates the fact that torture is accepted by the authorities as part of life in the country.²⁴

It is, therefore, evident that even five years after the ratification of UNCAT, Pakistan has made little attempt to fulfill its obligations under article 1 and article 4 to criminalize torture and punish its perpetrators. Annex A was one study in one jurisdiction in Pakistan. The problem is far larger.

(ii) Pakistan has done nothing to eliminate the notorious “torture cells” (Article 2)

Based on interviews with victims and lawyers, it is clear that the police maintain torture cells off official premises in order to avoid any scrutiny and accountability for torturing suspects in their custody.²⁵ Upon apprehending a suspect, police take him to private premises in order to torture him without attracting any unwanted attention from media or superior officers. According to civil society reports, there is a functional torture cell for each of the 1300 police stations operating in the country, operating either at the station or on private premises.²⁶

Case study: Aslam

Aslam was apprehended by the police at a bus checkpoint for allegedly carrying an illegal weapon. Upon his arrest, the police transferred him to several private detention facilities located off official premises where he was tortured by men specially hired by the police for this purpose. The men tortured him for over a week using strappado, manji, rolaal roller, and chittar.²⁷

In September 2013, a torture cell operated by the Ghaziabad police was discovered at a private residence. A 17-year-old boy was found tied up and tortured at the premises.²⁸ On August 2014, Awal Khan reported to the media that he had been subjected to heinous acts of torture by the police, including given electric shocks and his nails were pulled out. Awal Khan also reported that his friend, Hameed Khan, had undergone torture at the same time as him and had died at the hands of the police. Awal Khan reported that the torture took place in several private torture cells in different locations including the house of a local political activist and the house of a police inspector in Lahore, Gujranwala and Rawalpindi.²⁹

²⁴Annex A, pages 4-5

²⁵ UK House of Commons Foreign Affairs Committee: Human Rights Annual Report 2008: Seventh Report of Session 2008-09. Ev. 71 available here: <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmcaff/557/557.pdf> [last accessed 19 August 2015]; Annex A, Salman (pages 21-22) Aslam (pages 20-21) and Ali’s cases (pages 13-14) for three key examples of police conspiracy.

²⁶*Custodial Abuse: Alleged Torture Cells at Police Stations, internment Centers Condemned*, The Express Tribune. May, 12, 2015, available at <http://tribune.com.pk/story/885289/custodial-abuse-alleged-torture-cells-at-police-stations-internment-centres-condemned/> [last accessed on 27 August 2015]

²⁷Annex A, page 21

²⁸*Hidden Torture Cell Found* Pakistan Today. September, 17, 2013, available at <http://www.pakistantoday.com.pk/2013/09/17/city/lahore/hidden-torture-cell-found/> [last accessed on 27 August 2015]

²⁹*Taxila police torture cell unearthed*, The Nation. August 3, 2014 accessed here: <http://nation.com.pk/national/13-Aug-2014/taxila-police-torture-cell-unearthed> [last accessed on 27 August 2015]

(iii) Pakistan allows a very broad impunity for law enforcement personnel that essentially renders it impossible for them to be held responsible for torture(Article 2)

UNCAT General Comment 2 requires each State party to “*closely monitor its officials and those acting on its behalf and should identify and report to the Committee any incidents of torture or ill-treatment as a consequence of anti-terrorism measures, among others, and the measures taken to investigate, punish, and prevent further torture or ill-treatment in the future, with particular attention to the legal responsibility of both the direct perpetrators and officials in the chain of command, whether by acts of instigation, consent or acquiescence.*”³⁰

The national legal framework in Pakistan, however, allows public officials to operate with impunity and almost invariably avoid any sort of criminal liability. Under domestic legislation pertaining to anti-terrorism and maintenance of law and order, law enforcement personnel are provided with essentially unfettered powers of arrest and investigation combined with impunity for all conduct undertaken in the discharge of their duties, whether that conduct is legal or not. Under section 132 of the CCP no members of law enforcement agencies acting in “good faith” with respect to an offence of unlawful assembly or maintenance of public peace and security shall be prosecuted without the sanction of the Provincial government.

Additionally under Section 197 of the CCP, all members of the judiciary and all public officials are exempt from any criminal and civil liability in the discharge of their duties except with the prior permission of the Government. Similarly Section 39 of the ATA and the PPA provide retrospective impunity to all law enforcement personnel acting in good faith or to fulfill obligations under the respective laws from any criminal or civil liability, including those amounting to violations of fundamental rights. Even the Anti-Torture Bill currently pending in the National Assembly would require the investigating agency to seek directions from the Federal Government before launching an investigation into allegations of torture committed by members of armed forces and intelligence agencies.

Additionally, under article 8(3) of the Constitution, fundamental rights challenges - including the prohibition of torture under article 14(2) - do not apply to the performance of their duties by the law enforcement agencies including the armed forces and police “in the maintenance of public order”. The Supreme Court has also established on numerous occasions that laws pertaining to maintenance of order by law enforcement agents are not subject to challenges on the basis of any violation to fundamental rights. For example, in *Shahida Zahir Abbasi v. President of Pakistan* (PLD 1966 SC 632) the court stated that “*the Army Act 1952 is one of those pieces of legislation which is protected under Article 8(3) of the Constitution from being challenged on the basis of any inconsistency with the provisions contained in Chapter I of Part II of the Constitution.*”

The newly constituted National Commission for Human Rights has been explicitly barred under its establishing statute from inquiring into the practices of intelligence agencies. With respect to complaints of human rights violations pertaining to armed forces the commission’s powers are limited to seeking a report from the government and making recommendations.

(iv) Pakistan maintains outdated prison practices that allow for torture and abuse (Article 11)

The Prisons Act 1894(the **Prisons Act**) and the corresponding Prison Rules1978 (**Prisons Rules**) legitimize the use of outdated methods of restraint and punishment that amount to torture under the UNCAT. Under section 46 of the Prisons Act the jail superintendent may punish a prisoner for a number

³⁰Committee against Torture, General Comment 2, op. cit., para7

of “prison offences” including assaulting warden or fellow prisoners, and destruction of prison property. The Act stipulates that the permissible punishments include hard labour, withholding food, whipping and the imposition of fetters.

According to section 59 of the Prisons Act, the imposition of fetters for a period of up to 3 months may be ordered by the superintendent of the jail whenever he “considers it necessary”. This period may be extended upon application to the Inspector General on identically arbitrary grounds. Such a practice, according to the UN Special Rapporteur on Torture, amounts to “a clear violation of the Standard Minimum Rules” for the Treatment of Prisoners and constitutes “a form of inhuman and degrading treatment”.³¹ The use of bar, link and chain fetters is commonly used by jail authorities for indefinite periods for the most minor violations. New prisoners are confined to punishment cells and bound by fetters to “break them in” as well, unfortunately, as to extort money from their families.

The Lahore and Sindh High Courts have ruled that the use of fetters is in breach of Article 14 of the Constitution.³² However, in 2006 the Supreme Court of Pakistan ruled that the use of fetters is permissible, but requires the prior permission of an Additional and Sessions Judge who is to conduct monthly prison visits to monitor the necessity for the continued use of fetters.³³ Such visits are rarely made and any orders issued as a result of such visits are routinely ignored. Thus, fetters are still permitted under the Prisons Act and Rules with the prior approval of the Inspector General of Prisons. No efforts are made to amend the Prison Rules to bring them in accordance with the Constitution and international obligations under ICCPR and the UNCAT.

Additionally, Corporal Punishment is legal in Pakistan as a criminal sanction and as punishment for prison offences Art 46(12) of the Prisons Act. This provides for whipping for prison offences committed by male prisoners. Despite the enactment of the Abolition of the Whipping Act 1966, detainees are routinely whipped with rubber or leather straps and wooden strips, often in the presence of other prisoners and jail staff. Under the Prison Rules, the superintendent may order up to 15 lashes for prisoners under the age of 16, and up to 30 lashes for prisoners above the age of 16.³⁴

(v) Pakistan has failed in its duty to train the police (Articles 10 and 11)

Despite the laws governing police practice—Police Order 2002; Efficiency and Discipline Rules 1973; Police Act; Police Rules—torture is inflicted by police hands with impunity. One of the primary obstacles changing an institutional culture that legitimizes torture is the hierarchical structure of the police that demarcates the senior police officers from the provincial cadres that are responsible for dealing directly with criminal suspects. Senior police officers are recruited through competitive civil service examinations and receive two years of training which includes specialized and skills based courses on modern investigative techniques and human rights. However, these senior officers serve in managerial capacity and do not engage in arrests, interrogation, investigation - activities that offer opportunities for torture and inhuman degrading treatment. Most of the interaction with criminal

³¹ *Report of the Special Rapporteur*, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37 – Addendum – Visit by the Special Rapporteur to Pakistan, UN Doc. E/CN.4/1997/7/Add.2, 15 October 1996, Para. 57, available at:

<http://www1.umn.edu/humanrts/commission/thematic53/97TORPAK.htm> [last accessed on 27 August 2015]

³² *Keep Your Fetters Bright and Polished: The Continued Use of Bar Fetters and Cross Fetters*, 1 May 1995, Amnesty International, ASA/33/12/95 available here: <http://www.refworld.org/docid/3ae6a98544.html> [last accessed 27 August 2015]

³³ *Fettered Inmates: DS&J reply rejected* Dawn. 28 July 2006 available here: <http://www.dawn.com/news/203466/fettered-inmates-dsj-reply-rejected> [last accessed on 27 August 2015]

³⁴ *Report of the Special Rapporteur on Torture*, Mr. Nigel S. Rodley, submitted to the 53rd session of the Commission on Human Rights, E/CN.4/1997/7/Add.2, October 1996, para. 72

suspects is undertaken by provincial police who are recruited through the provincial cadres. The training of the provincial police largely involves a six month period of shadowing another officer in the field and adopting rudimentary skills. Therefore, the officers learn to emulate the oppressive interrogation and intimidation tactics of their superiors with little or no awareness of the human rights violations inherent in torture.

Jail staff are trained at police training centers despite the different nature of the two jobs. As a result, jail staff receives training geared towards the control and suppression of criminal suspects rather than towards the welfare of the inmates.³⁵

(vi) Pakistan has failed to conduct a systematic review of interrogation and detention rules(article 11)

Pakistan has no method for periodic and systematic review of its interrogation and detention rules.³⁶ The lack of proper, independent medical examination of those detained in police custody and prison is of particular concern. A review of the medical examinations conducted on a number of prisoners is notable for the lack of any notation of the severe injuries inflicted whilst in custody.³⁷ The lack of any such a record may be intentional, so as to render it difficult for a magistrate to make a finding of torture. The lack of proper medical evaluation therefore has implications both for the continued use of torture, and for fair trial guarantees.

There is also a serious concern regarding the psychological evaluation of prisoners.³⁸ This is often not done while a person is in detention, and the mental condition of the prisoner therefore deteriorates in custody. This too has implications for fair trial guarantees.

(vii) Pakistan has wholly failed to ensure an independent and impartial investigation and complainant and witness protection (Articles 12 and 13)

Police in Pakistan operate with little or no independent oversight. This fosters a culture of impunity for the infliction of torture and other abuse of power.³⁹ The Police Order 2002 was enacted to introduce a system of independent monitoring on the operation of the police force. The order provided for the institution of accountability mechanisms for reporting police abuse. At the district level it established District Public Safety and Police Complaints Commissions⁴⁰ and the Provincial Public Safety and Police Complaints Commission at the Provincial level.⁴¹ However, only a few of the commissions have been established and those that were, have done little more than hold a few meetings over the past few five years.

There is a prevailing culture of apathy and disdain towards grievances of torture victims.⁴² In the absence of functioning monitoring bodies that can entertain complaints of torture, victims have to approach police for registration of FIR (First Information Report). This creates a ludicrous situation

³⁵ 'Commando Training for jail warders' *Dawn*. 13 August 2013. Available at <<http://www.dawn.com/news/1035546>>

³⁶ The primary law on detention, The Prison Act was enacted in 1900 and the primary criminal procedure law, CPC was enacted in 1898.

³⁷ Annex A, pages 1, 5, 7, pages 26-27 on legal barriers

³⁸ Annex A, pages 12-22, in particular page 11 on cultural humiliation and sexual violence leading to long term trauma.

³⁹ Annex A, pages 25-6 and Salim's case study on page 22: "*there must be an independent body . . . not under the police to inquire and investigate such incidents of torture.*"

⁴⁰ Section 37. Police Order, 2002.

⁴¹ Section 73. Police Order, 2002

⁴² Annex A, page 27, in particular Noor's case on page 14, Noor tried to file a complaint with the Deputy Superintendent, who told her: "Go commit suicide. No one is going to listen to you."

where the victim must register an FIR with the very people who committed the torture.⁴³ People who have approached police with complaints of police mistreatment have often been jeered at and turned away. Police often refuse to file complaints of torture against their colleagues and threaten and intimidate victims and their families, saying they must withdraw their complaints.⁴⁴ Even if an FIR is registered against a police officer, the court will inevitably rely upon the police to undertake an investigation against itself. In most cases, the accused officers are themselves appointed to undertake the investigation. In order to avoid culpability and reduce the credibility of the victims, the police often then file false charges in retaliation.

Case study: Usman and Bilal

Usman and Bilal were arrested by the police and taken to a private torture cell where they were subjected to heinous torture - including *chittar*, *rollado*, *strappado*, *kursi* and *manji* - over four days. The victims were forced to confess to a number of thefts in the presence of magistrate and as a result were imprisoned for several months. Upon their release, the police threatened Usman's father when he tried to bring a case against the police. The police threatened to file false robbery charges against Usman and his father if he initiated any form of legal proceedings. As a result, they were forced to withdraw their case.⁴⁵

If the police delay the registration of an FIR or refuse to file one, in theory the victim may approach the Justice of Peace of their area under section 22A of the Cr. P. C. However, the Justice of Peace in most cases will only direct the matter to the attention of the concerned station house officer. For example in the case of *Muhammad Umar Tartar v Federation of Pakistan* (2012 YLR 1187), the petitioner approached the station house officer of Faizabad Police station to report the infliction of torture upon a member his family by local police. In response to his complaints, the Petitioner was himself brutally tortured by the Station House Officer (SHO), who stripped him naked and whipped him so severely that he fainted. The Petitioner approached the Justice of Peace seeking registration of an FIR against the SHO. However, the justice of peace directed the local police to submit a report on the incident and upon receiving the report simply directed the accused SHO to determine whether an offence had been made out and take appropriate action. On the admission of a writ to the High court, it was observed that the Justice of Peace dealt with application under section 22A and 22B "in a mechanical manner" and "*without ascertaining whether a cognizable case has been made out or not, direct the SHO concerned to register a case if a cognizable offence is made out and thereby leave the aggrieved person at the mercy of the police which had already compelled him to make (the) application*".⁴⁶

There are currently no effective state-sponsored protective mechanisms in place to provide witnesses security from threats and intimidation. Section 21 of the ATA has a clause to this effect, though it is rarely evoked or enforced. As a result, most witnesses tend to disappear as a case progresses, thereby contributing to the impunity available to perpetrators of crime.⁴⁷ Witnesses to torture, particularly when inflicted by police and security agencies, routinely withdraw their statements as a result of new threats and intimidation by police officers who are protecting their colleagues.

⁴³ Annex A, page 27

⁴⁴ Annex A, page 27, see in particular the cases of Wasif, pages 16-17, Shahbaz, pages 17-18, and Huriya page 20.

⁴⁵ Usman, Interview with Justice Project Pakistan (Real name and location withheld). Such interviews may form a part of a broader evaluation of torture, but there must be affirmative steps taken to protect the witnesses.

⁴⁶ *Muhammad Umar Tartar v Federation of Pakistan* (2012 YLR 1187) at para 6

⁴⁷ *Terrorist acquittals due to lack of evidence/witnesses* Dawn Report available here: <http://www.dawn.com/news/1050293> [last accessed on 27 August 2015]

In September 2013, the Sindh Assembly enacted the *Sind Witness Protection Act 2013*. This includes provisions for government security for witnesses to crime cases, including security, reasonable accommodation and financial compensation to heirs in the event that the person is killed during the trial. However, almost two years after the enactment of the law, the Sindh government has yet to constitute the Witness Protection Advisory Board, the supervisory body that would be responsible for the implementation of the law.⁴⁸

Women who are either witnesses or complainants to incidents of torture by law enforcement agencies are intimidated through use of sexual violence, harassment and cultural humiliation, such as removing their clothes, in their homes and in public spaces.

Case studies: Zahira, Zakia, and Huriya

For example, when Zahira and her mother, Zakia with some other women approached the police to complain of repeated incidents of the Faisalabad police harassing them in their home, they were viciously beaten with sticks and kicked with boots. Zahira told the JPP that the police beat the women with sticks on their head, arms, abdomen, shoulders and necks. They also slapped them several times on their faces. To sexually humiliate the women, the police pulled their hair, kicked them between their legs, and tore off their clothes in the streets, exposing their chests. When Zakia and her mother went to the hospital for a medical examination, the police were already there. To prevent the women from getting a medical certificate, the police took them into custody. On the drive to the police station the police harassed and humiliated them. On arriving at the station, the women were dragged out of the car. Zakia was left on the footpath. Zahira was taken to a dark room where the police tortured her with sticks till late at night. Zakia was in bed for several weeks as a result of her injuries and it took Zahira 2 months to recover from her injuries. Thereafter the police approached the village *panchayat* (the village assembly of elders) to compel the women to forgive the police. As a result no complaint was filed against by the women against the police.⁴⁹

Police barged into the home of Huriya, who was pregnant, and her husband, on suspicion that they had committed theft. The police tortured them by kicking them repeatedly with jackboots. Huriya told the police that she was pregnant, yet they continued to torture her. As a result, Huriya miscarried and remained in a coma for three days following the attack. Huriya filed a complaint with the Magistrate and initiated a criminal investigation. The police initially offered Huriya a bribe to drop charges, however, upon her refusal they filed a false case of theft against her and continued to harass her and her husband. Eventually, Huriya had to drop the charges as a result of her inability to afford the legal costs, including lawyer's fees, associated with the legal complaint.⁵⁰

D. PAKISTAN HAS FAILED TO RESPECT ITS DUTY OF NON-REFOULEMENT (Article 3)

According to the principle of non-refoulement in international law and article 3 UNCAT, no individual can be sent—be it via deportation, extradition or return—to a State where he would be “in danger of being subjected to torture.” JPP’s experience is that, particularly with security-related cases, Pakistan

⁴⁸ *Overview of witness protection in Pakistan and beyond*, 3 January 2015, The News, available here: <http://www.thenews.com.pk/Todays-News-2-294011-An-overview-of-witness-protection-programmes-around-the-globe> [last accessed on 27 August 2015]; *Reports on failure to implement the SWP*, 27 March 2014, <http://tribune.com.pk/story/687739/no-implementation-policy-witness-protection-law-yet-to-see-the-light-of-day/> [last accessed on 27 August 2015]; *Jl submits ‘witness protection bill’ in NA Secretariat*, accessed here: <http://www.thenews.com.pk/Todays-News-2-306160-Jl-submits-witness-protection-bill-in-NA-Secretariat> [last accessed on 27 August 2015]

⁴⁹ Interview with Justice Project Pakistan

⁵⁰ Interview with Justice Project Pakistan

does not take its non-refoulement obligations seriously. The principle of non-refoulement is not found in domestic law in Pakistan.

Since Pakistan first joined the US-led coalition against terrorism it has arrested and extradited several hundred people to US custody in violation of its obligation under the principle of non-refoulement. Pakistan has unlawfully transferred detainees who were subsequently taken to the US Naval Base at Guantánamo Bay (Cuba), to Bagram airbase (Afghanistan) or to secret detention centers in other countries. Such unlawful transfers are a violation of Pakistan's non-refoulement obligations; detainees in such detention facilities face serious human rights violations, such as torture, and other forms of ill-treatment or enforced disappearance.

Additionally, reflecting the general political temperature in Pakistan, it is worth noting that the country has violated its international commitment to non-refoulement by repeatedly pushing for the repatriation of Afghan refugees within its borders by creating harsh conditions for their survival. Pakistan is not a signatory to the 1951 UN Refugee Convention. A tripartite agreement among Pakistan, Afghanistan and the UNHCR regulates the presence of registered refugees. Pakistan has created an environment of fear and persecution to force many refugees out and return to a country with a deteriorating security situation and growing insurgency where they are likely to face human rights violations. The state cut off electricity in refugee settlements, destroyed homes and shut down refugee camps. Refugees are also often victims of harassment and systematic discrimination at the hands of the police on suspicion of being terrorists or criminal suspects. Since the terrorist attack on a school in Peshawar, Afghan refugees have been targets of random search, warrantless arrests and indefinite preventive detention by law enforcement agencies forcing them to return to Afghanistan.⁵¹

E. PAKISTAN HAS FAILED TO CARRY OUT ITS LEGAL OBLIGATION TO PROVIDE REPARATION FOR ACTS OF TORTURE (Article 14)

Under Article 14(3) of the UNCAT and Article 2(3) of the ICCPR, Pakistan is obliged to provide victims of torture with effective remedy and redress. According to General Comment 3 of the CAT, article 14 of the UNCAT requires that the right to reparation should contain five elements: restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition.

In the absence of any legislation criminalizing torture, it is perhaps hardly surprising that there is no specific right to seek reparation available to victims of torture. In theory, victims can seek compensation through a petition alleging violation of a fundamental right to either the High Court or to the Supreme Court. This is an essentially impossible burden, since an indigent victim of torture must pay lawyers and legal fees even to contemplate such a course. Additionally, under section 337-K of the Penal Code, those who cause hurt to extort a confession might be imprisoned, as punishment for the crime. However, these provisions only impose liability on individuals and do not hold the authorities accountable to provide reparation for the violations committed by its agents.

Further, General Comment 3 requires that damages awarded take into account "any economically assessable damage resulting from torture or ill treatment, whether pecuniary or non-pecuniary", including reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible. Under the current system, in the extremely unlikely event that compensation was awarded, it would only take into account physical distress suffered by the victim. There is no recourse for psychological and rehabilitative health care and counselling to the victim, as required by Article 14.

⁵¹ *Most Afghan refugees return home due to fear of arrest, harassment.* Dawn, 15 April, 2015 available here: <http://www.dawn.com/news/1175883> [last accessed on 27 August 2015]

Thus, the stark reality of “reparation” for torture in Pakistan is that it just does not happen. The victim is far more likely to receive additional threats and abuse for bringing torture to the attention of the authorities, than to receive any form of reparation. Fear of retaliation and the weakness of any meaningful judicial respect (particularly the delay involved in the resolution of a case), discourages most victims from seeking reparation through the court system. **Of the 1,867 people who reported being tortured in Faisalabad (see Annex A) there is no evidence that any of these people received reparations.**

Even the Draft Bill on Torture fails to provide meaningful redress as required under article 14. Like existing law, the reparations provided for only constitute of monetary compensation; they contain no mention of other form of redress, including restitution, rehabilitation satisfaction and guarantee of non-repetition. Additionally, the Bill only provides for the grant of compensation if the alleged perpetrator of torture is himself found guilty and fined according to draft section 4(c). Since the fine itself is transferred to the victim, the victim will only be compensated if the perpetrator pays the fine. Under the UNCAT the duty to compensate the victim lies with the State for torture inflicted by its agent. In order for any system to be meaningful, the state is required to compensate the victim, and compensation cannot be dependent upon the perpetrator being convicted and paying a fine.

F. PAKISTAN LAW DOES NOT ADEQUATELY ADDRESS THE EXCLUSION OF THE FRUITS OF STATEMENTS PROCURED THROUGH TORTURE (Article 15)

Police torture is effectively deemed to be an acceptable method of criminal investigation, largely due to a lack of resources and training, as well as a pervasive institutional culture that disregards human dignity. Confessions and testimonials obtained under torture are used as the primary form of evidence in order to “resolve” cases expeditiously.

Article 14(2) of the Constitution explicitly prohibits the “use of torture for the purposes of extracting evidence”. Article 38 of the Qanun-e-Shahadat Order 1984 renders any confessional statement made under police custody inadmissible as proof. Article 39 and 40 of that order make all statements, confessional or otherwise, made in police custody inadmissible in a court of law, unless they are made in the presence of a magistrate. This rule was made in recognition that so many statements are tortured out of people; however, its “implementation” merely ratifies this reality, rather than challenging it.

However, in practice the police find a number of ways to get around the law. First, they torture a prisoner into confessing, and then take the prisoner before the magistrate with the promise that if he does not repeat the confession before the magistrate he will be returned to the station house for more abuse. Second, they torture the prisoner into making a false statement about *physical evidence*, and the physical evidence that is then confected by the police becomes admissible at trial. Thus, the law was not fulfilling its intended purpose at all. Meanwhile, recent legislation has broadened the scope of admissible evidence obtained through torture. Under Section 21-H of the ATA confessions made under the custody of police and/or security forces in terrorism cases are now admissible in evidence.

Case Study: Shafqat Hussain

Shafqat Hussain was sentenced to death under the ATA at the age of 14 for alleged kidnapping and murder. He was convicted on the basis of a solitary piece of evidence - a confession that had been procured over 9 days of savage torture. Shafqat was blindfolded, kept in solitary confinement, beaten, electrocuted and burned with cigarette butts until he gave a false confession of guilt. Shafqat was then subjected to seven execution dates in the first seven months of 2015 – torture enough in and of itself – before he was executed on 4th August 2015.

Case study: Muhammad Akhtar

Muhammad Akhtar, then an illiterate man who was 21 years old, was sentenced to die in December 2000 for his alleged participation in a murder and a rape, and causing “panic, harassment and a sense of insecurity” by these acts in the local community. Upon arrest, Muhammad was brutally tortured by the police to obtain a confession. He was hung upside-down from a metal bar (*kursi*), causing excruciating pain to the arms and legs. He was also stretched whilst tied to a bed – effectively the rack, as used in Medieval Britain. On appeal the Court found that the eye witness accounts against Muhammad were extremely flawed and there was no medical and forensic evidence accrediting his guilt. Despite these loopholes the Supreme Court upheld the verdict against him.

CONCLUSION

Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan demonstrates that Pakistan’s commitment to the UNCAT is characterized by a refusal to honour the legal obligations the nation voluntarily assumed. The tragedy of this is inflicted upon the citizens of Pakistan, who suffer daily under the yoke of torture at the hands of their own law enforcement agents. This must be urgently rectified by an honest and vigorous enforcement of all the rights and obligations under the Convention.

In light of the foregoing, the Justice Project Pakistan urges the Committee Against Torture to recommend the Government of the Islamic Republic of Pakistan to

- A. Ensure, without delay, that the absolute prohibition of torture, as defined under Article 1 of the UNCAT is incorporated in domestic legislation and ensure its strict application. Legislation prohibiting torture should explicitly provide for no justification for torture under any exceptional circumstances, including an order from a superior officer.
- B. Ensure, without delay, that torture, within the meaning under Article 1 UNCAT, is named and defined as a distinct criminal offence within domestic legislation. Penalties for torture should be commensurate to the gravity and severity of the offence.
- C. Ensure that domestic legislation provides a specific right of reparation to the victims of torture against the state for acts committed by the agents. Right to reparation should be independent of whether the perpetrators are convicted and should include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
- D. Establish independent district and provincial monitoring bodies that have the power to entertain torture allegations and initiate investigation into such allegations. Such bodies should not be constituted by members of the police and other law enforcement agencies. Ensure that alleged perpetrators and accomplices to torture, including persons in position of command are duly prosecuted and if found guilty given punishment that is commensurate to the severity of the offence.
- E. Institute legal safeguards for the protection of witnesses and victims of torture from any form of intimidation, reparation or repetition.
- F. Investigate and eliminate the private torture cells operated by law enforcement agencies and prosecute and punish perpetrators involved in their operation.
- G. Repeal provisions pertaining to police remand under the CPC or decrease the permitted time period from 15 days to 48 hours.
- H. Repeal provisions for preventive detention under the Protection of Pakistan Act, 2014 and Anti-Terrorism Act, 1997 and any other domestic legislation.

- I. Ensure institution of strict screening procedures and the provision of regular training in human rights and modern investigative techniques for police in provincial cadres.
- J. Ensure that all statements or confessions procured under custody of law enforcement personnel including those procured through torture are inadmissible as evidence and repeal all provisions under the ATA, 1997 and PPA, 2014 that allows such admissibility.
- K. Repeal the provisions allowing corporal punishment and the use of fetters under the Prison Act and Prison Rules for prisoners.