Shadow Report to the Committee against Torture on the Occasion of the Examination of the Initial Report of Pakistan at its 60th Session

March 2017

By

Human Rights Commission of Pakistan (HRCP)
World Organisation against Torture (OMCT)
Society for the Protection of the Rights of the Child (SPARC)

Table of Content

1. Executive Summary 3
2. Criminalization of Torture 5
a. The Prohibition of Torture in the Constitution and the Criminal Legal Framework 5
b. Draft Anti-torture Bills 6
3. Lack of Investigations and Impunity for Acts of Torture and Extra-judicial Killings 8
4. Prison Conditions and legal safeguards against ill-treatment of persons deprived of liberty 11
a. Overcrowding 11
b. Treatment of prisoners with mental health problems 12
c. Lack of proper administration and poor training of prison staff 12
d. Unexplained or suspicious deaths in prisons and denial of medical treatment and adequate food 13
e. Use of fetters on prisoners 13
f. Solitary Confinement 15
g. Solitary confinement of prisoners accused of blasphemy 15
h. Internment in special internment centres established under the Actions in Aid of Civil Power Regulations 2011 16
i. Monitoring of Detention Centers 17
j. Juvenile Justice and Child Abuse in Prisons 18
5. Countering Terrorism 20
a. Counter terrorism laws and policies 20
b. Actions in (Aid of Civil Power) Regulation 2011 21
6. Individual Complaints and the Right to Redress and Effective Remedies 22
7. Enforced Disappearances 24
a. Inquiry Commission 25
b. Lack of Government Response 28
8. Violence against Women 29
9. Violence against Children 31
a. Child Labour 31
b. Child Marriage 32
c. Corporal Punishment 32

1. Executive Summary

Pakistan ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention) on 23 June 2010. Article 19 of the Convention required Pakistan to submit an initial report within one year of the ratification on the measures taken to give effect to the Convention. The state report was submitted in January 2016 i.e. more than four years after it became due but without consulting the relevant governmental bodies and non-governmental organizations. Although it highlights relevant legislation and practices, the state report falls short in addressing some of the most difficult challenges as well as the steps taken to address its challenges since 2010. In order for the Committee against Torture (CAT) to get a more complete picture the undersigning organisations would like to provide an alternative report. Accordingly, the report sets out some of the key challenges in the fight against torture and impunity in the ongoing political instability and fight against terrorism.

While parts of the legal system are now islamised, Pakistan continues to follow the common law traditions and is a dualist state in so far as the relationship of municipal law and international law is concerned. Most of Pakistan's criminal law regime was inherited from the British rule which ended in 1947. The criminal procedure and a lot of criminal law except the islamisation of offences relating to human body remains essentially the same. However, several new laws including laws to counter terrorism have been enacted and amended in the past two decades and especially since the ratification of the Convention.

The Constitution of Pakistan includes a bill of rights which prohibits the use of torture for the purpose of extracting confession. Dignity of man is declared to be inviolable. The Constitution also guarantees a detainee right to counsel and his production before a judicial magistrate within 24 hours of arrest. Criminal law does not admit testimony recorded by the police to reduce the risk of torture. Unnatural deaths are supposed to be taken judicial notice of, and investigated under judicial oversight. Confessional statements must be recorded by a judicial magistrate under circumstances which minimize the possibility of confession induced by torture.

At the same time, there's no law which specifically defines and criminalizes torture in accordance with the Convention and which provides for a fair and accessible mechanism of redress and reparation. Prohibition of torture is observed more in violation than in compliance.

As this report points out, existing laws as well as the requirements under the Convention are poorly implemented. Incidence of torture and other cruel, inhuman or degrading treatment or punishment remains systematic and has even been on the rise since the government ratified the Convention.

A reason for increased human rights violations is Pakistan's participation in the 'war on terror'. In its attempt to counter terrorism in the past one and a half decade, the government has adopted several policies and laws which are in violation of the established norms of justice both nationally and internationally. For instance, in June 2011 Pakistan adopted a questionable Presidential decree called Actions (in Aid of Civil Power) Regulation 2011 in effect retroactively authorizing, incommunicado detentions of suspects by the state party's military authorities. The military courts established in 2015 have weakened the right to a fair trial and helped strengthen the policy of enforced disappearances by providing cover up to the perpetrators.

It is for the foregoing reasons, as the report further highlights, that with the passage of time the phenomenon of enforced disappearances has not diminished but has in fact seen a rising trend. This has happened despite the fact that the UN Working Group on Involuntary and Enforced Disappearances (WGEID) after its visit to Pakistan in 2012 raised serious concerns about the enforced disappearances and presented a set of steps to be taken by the state in order to fulfill its

obligations under international law, which the government has, however, not taken. A toothless commission established to inquire into hundreds of cases of disappearances has served as nothing more than a post office.

A total lack of commitment on part of the state party can also be seen when it comes to guaranteeing rights and basic legal safeguards to prisoners. As our report points out that contrary to the judicial pronouncements and recommendations made by inquiry commissions and committees, the state party continues to use fetters on prisoners in a way which also violates its own rules relating to prisons. Further, the state's prisons are overcrowded far beyond their sanctioned capacity rendering it impossible to provide humane conditions to the prisoners in accordance with international standards.

The report further highlights the culture of impunity and the almost complete lack of accountability for torture. In its report to the CAT, no data has been presented to substantiate its claim that torture is unacceptable not just constitutionally and legally but also in practice. The state report emphasizes that everyone affected by the excesses of the law enforcement agencies has a right to redress and reparation, is belied by the fact, as described in detail in this report, that in none of the cases of enforced disappearances any compensation has been provided to the victims or their relatives. This is also true for deaths in custody of the armed forces with reasonable inference drawn from circumstances that such deaths occurred due to torture. In fact, there is no systematic, reasonable and respectable mechanism to investigate and hold the perpetrators to account and punish them, and award reparation to the victims of torture. It is for this reason that most instances of the torture go unpunished or even unreported.

The report also notes that the state has shown reluctance to absolutely prohibit corporal punishment. Although the state report refers to corporal punishment in the context of juveniles in conflict with law, it sidesteps the issues of corporal punishment at educational institutions, at work, at home and elsewhere. A bill to prohibit corporal punishment has been stalled in the national parliament on the pretext of religious and cultural grounds. We also note that a committee appointed by a state institution no less than the Supreme Court has recently pointed out that abuse of juveniles lodged in state prisons is frequent and goes unpunished thus unchecked.

We finally want to raise concern about violence against women. Albeit reported more frequently, it is not necessarily a rising trend. However, the state continues to fail half its population by not taking adequately appropriate legislative and administrative steps to eliminate impunity to perpetrators of violence on women especially in the context of crimes of 'honour'.

2. Criminalization of Torture

a. The Prohibition of Torture in the Constitution and the Criminal Legal Framework

Pakistan's criminal law falls far short of the international law obligations under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention). Contrary to the claim made in the state report to CAT (paragraphs 28-34 & 75-79), torture is neither adequately defined nor duly criminalized as required under the convention. Only some aspects of torture are addressed in some of the provisions in the penal code and other statutes. In addition, Pakistani law does not have a specific definition of torture which makes the framework to combat torture flawed and completely inadequate.

While Article 14(2) of the Constitution of Pakistan does prohibit "torture for the purpose of extracting evidence" and certain provisions of the Pakistan Penal Code punish infliction of hurt, it does not provide a definition which complies with the one provided in the Convention. Definition of torture is crucial to be adopted in domestic law because Pakistan is a dualist state.

Reference has been made in the state report[1] to section 332 of the Pakistan Penal Code 1860 (PPC) which defines "hurt" as follows:

> Hurt.- (1) Whoever causes pain, harm, disease, infirmity or injury to any person or impairs, disables, disfigures, defaces or dismembers any organ of the body or part thereof of any person without causing his death, is said to cause hurt.

The definition of *hurt* seems to capture the fundamental element of mental and physical pain and suffering as referred to in the definition of torture but without categorizing it as severe i.e. an aggravated form of pain. At the same time, *hurt* is not an act of torture, it is one possible effect of an act of torture. Clearly, the definition of hurt does not also bring in its fold the purposive element of the definition of torture provided in the Convention. Section 332 PPC is, therefore, a general description of "hurt" in various forms without reference to the element of intention, purpose, and the perpetrator's status as a public official. This is partly taken care of in section 337K PPC which provides that hurt caused for the purpose of extracting confession or to get information or to restore property may be punished with imprisonment of up to ten years in addition to being awarded Islamic punishments of *qisas, arsh* or *daman*.[2] Yet section 337K PPC, too, falls short of the definition of torture which also includes infliction of severe pain or suffering to punish the victim for an alleged offence or 'for reason based on discrimination of any kind'.

Further, an important problem with the prosecution of most of the various kinds of hurt[3] including hurt caused to obtain confession (sec. 337K) is that they are compoundable and /or forgivable under provisions of 'Islamic law' as incorporated in the penal code[4], at the instance of the victim and the perpetrator without a mandatory role assigned to the state so that accountability of state agents could necessarily take place. Compared to this, the Convention envisages mandatory accountability by the state.

---

[1] Initial Report of Pakistan to the Committee against Torture, UN Doc. CAT/C/PAK/1, 11 February 2016, para. 29.

[2] Qisas is identical punishment in equal measure in retaliation as the loss caused by the offender to the body of the victim; arsh is compensation to be paid where qisas is not executable; and daman is the compensation to be determined by the court for the hurt caused.

[3] Sections 332-337 PPC.

[4] Islamic law provisions introduced since 1990, allow compromise between the victim and the offender either in the form of forgiveness without consideration or out-of-court settlement

References to the offences of "wrongful restraint" and "wrongful confinement" in para. 29 and other offences elsewhere in the state report also seem inconsequential insofar as the definition of torture is concerned as both these and other offences are not necessarily forms of torture as defined in the Convention.[5] In all of the PPC offences referred to in the state report, most of the elements present in the definition of torture according to the Convention are absent.

The reference made to section 156 of the Police Order 2002[6] in the state report is flawed for several reasons. One, it prescribes punishment for "torture" without defining it, which renders it wholly misconceived. Two, the Police Order is applicable in only one province out of the four i.e. Punjab. Except for the Khyber Pakhtunkhwa Police Act 2017, the police laws applicable in Balochistan and Sindh do not have any such provision. The state report refers to the Police Order 2002, without pointing out that the accountability measures required to be taken by provincial governments have never been implemented.[7]

The Police Order of 2002 envisaged the establishment of a Public Safety Commissions and Complaints Authority at the federal, provincial and district levels. One of the important functions of the commissions at the provincial and district levels was to take steps to prevent the police from engaging in any unlawful activity arising out of compliance with unlawful or orders tainted with mala fides. Unfortunately, these commissions have never been set up for effective implementation of the law.[8]

b. Draft Anti-torture Bills

At present, there are three similar draft bills on the prohibition and criminalization of torture pending in the parliament; two of them in the Senate[9] and one in the National Assembly[10]. The draft tabled by Sen. Farhatullah Babar[11] has been passed by the Senate in March 2015. But it

---

[5] Section 339 defines Wrongful restraint as 'Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person'. Section 340 desfines wrongful confinement as 'Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person'.

[6] Section 156 of the Police Order 2002 reads as "Penalty for vexatious entry, search, arrest, seizure of property, torture, etc. Whoever, being a police officer –

a) without lawful authority, or reasonable cause, enters or searches or causes to be entered or searched any building, vessel, tent or place;
b) vexatiously and unnecessarily seizes the property of any person;
c) vexatiously and unnecessarily detains, searches or arrests any person; or
d) inflicts torture or violence to any person in his custody;

shall, for every such offence, on conviction, be punished with imprisonment for a term, which may extend to five years and with fine."

[7] See HRCP, *Revisiting Police Laws,* pp. 4–5, available at http://hrcp-web.org/hrcpweb/wp-content/pdf/ff/19.pdf.

[8] For instance, articles 80 (1) (b) (q), & 44 (e), (j), (k), (l), (m) of the Police Order, 2002 at the website of the National Police Bureau http://npb.gov.pk/wp-content/uploads/2014/08/Police_order_2002_with_amendment_ordinance_2006.pdf.

[9] The Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Act 2014 (tabled by Sen. Farhatullah Babar), available at http://www.senate.gov.pk/en/billsDetails.php?type=2&id=-1&catid=186&subcatid=276&cattitle=Bills.

[10] *The Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Act 2014* (tabled by Ms. Maiza Hameed) at http://www.na.gov.pk/uploads/documents/1415360249_881.pdf

[11] See Senator Farhatullah Babar's draft bill to prohibit and punish torture titled as *The Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Act 2014* available at http://www.senate.gov.pk/uploads/documents/1438775288_445.pdf.

remains pending to date before the lower house, the National Assembly.[12] Another almost identical bill which was presented in the National Assembly in 2014 was approved by the sub-committee of the National Assembly's Committee on the Interior in January 2017[13].

The key components of all three bills are the definition of torture, the right to complain, regulations on investigations, compensation, and the absolute prohibition of torture under all circumstances.

While the bill pending in the National Assembly tabled by MNA Maiza Hameed and the one proposed by Sen. Farhatullah Babar are almost identical except in one critical respect where the former almost exempts the armed forces, the third draft bill proposed by Sen. Farooq Naek is different from the other two in four ways. First, it proposes to set up a special agency, called National Crime Agency, to investigate and prosecute torture cases. The other two bills, on the other hand, propose the existing Federal Investigation Agency (FIA) as the agency to investigate and prosecute cases of torture. Assigning the duty of investigation and prosecution to the FIA may prove to be difficult for a couple of reasons. One**,** the FIA already has the mandate to investigate offences committed within the executive jurisdiction of the federal government and legislative jurisdiction of the Parliament. FIA has proven to be an ineffective institution especially where it has to work on the provincial territorial jurisdiction. Two, torture committed by provincial state officials may be better inquired into and prosecuted by an independent agency established at the provincial level for at least one obvious reason that proximity of such an agency will facilitate its operations. Even if the FIA was to be assigned the job of investigation of torture as a federal crime, it must be supervised by an independent body.

Third, the bill proposed by Sen. Farooq Naek also contains due process obligations in extradition cases and it also contains provisions related to victim and witness protection. However, what is fourth worth mentioning is that it does not expressly prohibit compounding of the offence of torture. The other two bills, do expressly declare the offence of torture non-bailable and non-compoundable.

Fifth, all three bills propose that the fine recovered from the perpetrator/offending state officials may be paid to the victims. But it is not proposed what would be done in case fine imposed on the perpetrator is not recovered. This aspect needs serious reconsideration as it may jeopardise implementation of a critical obligation under the Convention.

Further, the bill proposed by Maiza Hameed expressly places the discretion of investigation of torture committed by the armed forces in the hands of the federal government. This seems to be bad idea. There should be no discretion and no exception in this regard. The other two bills do not propose such a course. It would be advisable to assign the National Commission on Human Rights the power to oversee the investigation of allegations of torture against the armed forces and the paramilitary forces. The NCHR may also be given the power to punish accused military officers if charges are proved.

The government should take the initiative to combine the elements of the three bills that provide the maximum protection for torture victims.

All these bills have been pending for consideration for 2 and 3 years respectively. Despite being under an international obligation, the government's position, as it appears from the state report, seems to be that there's no urgency to enact a law to prohibit and punish torture. It is misconceived as the absence of such a law is resulting in a situation where torture goes unpunished and in fact is encouraged. The courts are handicapped: if they use the word "torture" then they do not have enabling legislation to punish it, if they apply provisions relating to

[12] Dawn, "Senate passes bill against rape, honour killing, 2 March 2015, available at https://www.dawn.com/news/1166907 .
[13] http://epaper.brecorder.com/2017/01/20/12-page/841370-news.html.

various kinds of "hurt", the process is derailed because it allows compromises between the parties.

Recommendations:

- Define and criminalize torture in domestic law as an independent crime, that is in full conformity with the Convention and covers all the elements contained in article 1 of the Convention;
- Ensure that acts amounting to torture are not subject to any statute of limitations and compoundability;
- Ensure that penalties provided in this regard are proportional to the seriousness of the acts committed;
- Reaffirm the absolute, non-derogable and intangible nature of the ban on torture;
- establish effective external oversight of the provincial police organisations in addition to making the existing internal disciplinary proceedings under relevant laws effective;
- Take immediate steps to prevent acts of torture and ill-treatment throughout the country and to announce a policy of eradication of torture and ill-treatment by State officials;
- Amend the Constitution to widen the scope of fundamental rights to all parts of the country including the tribal areas as well as to other regions effectively under Pakistan's control including Gilgit-Baltistan.

3. Lack of Investigations and Impunity for Acts of Torture and Extra-judicial Killings

The lack of effective accountability of state agencies is a crucial reason why torture is on the rise in Pakistan. Out-of-court settlements or compromises between victims and offenders i.e. public officials have a negative impact on how official action to hold the delinquent officers accountable proceeds. For instance, despite the fact that torture in police custody is a daily affair and several hundreds of cases are reported in the media every year from across Pakistan, few cases actually result in prosecution and related departmental accountability for misconduct as the information given below shows.

In the biggest province of Punjab, during 2014, the number of cases of torture in which some disciplinary action was taken against the offending officers shows how various factors adversely affect police accountability. For instance, between 01.01.2014 to 31.12.2014, only five police officers of the Punjab Police, the biggest police department in Pakistan with staff strength of over 180,000 personnel, were punished in departmental disciplinary proceedings. Those who were held accountable included two sub-inspectors who were censured (minor penalty) and two who were dismissed from service (major penalty). One sub-inspector was demoted for death in custody during the same period. Only one head constable and not a single inspector or Deputy Superintendent of Police (DSP) was punished during the same period. It is not known if these police officers were charged with any criminal sanctions or not.[14]

[14] See Punjab Police, *Accountability Mechanism* available at https://www.punjabpolice.gov.pk/statistics.

The scale of the problem is, in fact, much bigger as it appears from the media reports and a few carefully done studies.[15] For instance, a study conducted in 2008 on the patterns of police torture over a period of 5 years (1998-2002) in the province of Punjab gives a fairer idea of the scale of the problem of torture. In the said study, cases of 1820 torture victims were examined by the official Surgeon Medico-Legal Punjab, which included 348, 330, 339, 365, 438 victims of torture in 1998, 1999, 2000, 2001, 2002 respectively.[16]

It was observed that persons of both genders were subjected to physical torture by the police, men being the main victims (91.54%). Most victims belonged to the age group between 21 to 25 years (61%), followed by age groups ranging from 26 to 30 years (19%) and 16 to 20 years (16%). According to the study, persons belonging to low socio-economic strata were most frequently victimised by the police; the labour classes were the commonest followed by the men engaged in trade and business. The residents of rural areas were subjected to more physical violence, which showed a pattern of high-handedness of the police towards the poorer classes with little to no say in the society. It was also observed the volume of reporting of cases of police torture on women was very low (8.46%). But the report says that women were more likely to suffer psychological trauma. Further, in the majority of the cases (72.64%) medical examination was undertaken only after orders from either the concerned lower court or the high court. Most of these victims had been arbitrarily detained by the police, for a period ranging between one to weeks weeks, after which they were recovered by the bailiff appointed by the court. In most cases the court had to order for medico-legal examination.

This clearly highlights the need for an independent body to monitor law enforcement agencies more than ever. The aforementioned studies were conducted prior to the counter-terrorism measures like the Actions in Aid of Civil Power) Regulations 2011 which encourage torture or acts amounting to torture and grants unprecedented powers to the army to detain people.[17]

The HRCP has noted in its report[18] that they received 63 cases of deaths, including that of four women and two minors, in police custody in 2014 but criminal proceeding was reported to have been taken only in 14 cases. These are in addition to the extrajudicial killings which take place in fake encounters with the police. In a study conducted, it was found that the scale of extrajudicial killings of suspects or accused persons is a problem of huge scale and adopted as an official policy due to inability of the police to competently investigate and to successfully prosecute crimes.[19] Referring to official figures, it was revealed that the few available provisions on investigations are poorly implemented. For instance, section 176 of CrPC requires mandatory judicial inquiry of every unnatural death in custody by the concerned magistrate. The purpose of the safeguard is to deter future recurrence and to hold the perpetrator accountable.

The state report to the CAT says in paragraph 116 that "a number of 'cover up' cases of torture have been exposed by the judicial inquiry". This is misleading. It is true that some cases are exposed because they are taken up at the high court or the Supreme Court. But such cases are only a miniscule portion of the whole problem. The state report does not mention how many cases of torture were taken up by the various courts in the country: What proportion of such

[15] The Nation, "Police use of brutal torture method continues unabated", 9 May 2016, available at http://nation.com.pk/featured/09-May-2016/police-use-of-brutal-torture-methods-continues-unabated.

[16] Chaudhry MA et al, "Pattern of Police Torture in Punjab, Pakistan", Am J Forensic Med Pathol 29(4), 2008, pp. 309–3011.

[17] See Pakistan Army website for *War on Terror*, available at https://www.pakistanarmy.gov.pk/AWPReview/TextContent.aspx?pId=366.

[18] HRCP, "State of Human Rights in 2014",pp. 80–81, available at http://hrcp-web.org/hrcpweb/annual-report-2014/.

[19] See Asad Jamal, *Extrajudicial killings in Pakistan: Killing with impunity*, 2011, available at http://hrcp-web.org/hrcpweb/wp-content/pdf/ff/10.pdf.

cases actually led to relief for the complainants or victims; in how many cases were the state agents punished; or what actions if any was taken by the courts, or the respective departments i.e. the police or the armed forces. In the absence of statistics supported by evidence, the claim in the state report that 'cover up' cases of torture are exposed by the judiciary does not provide a full picture of the problem.

There are far more cases of torture and extrajudicial killings which are not duly inquired into or even reported. Two recent cases from the province of Sindh are illustrative in this context. In one case, death in police custody was neither reported by the medico-legal officer, who is bound by duty to report any unnatural deaths caused by torture, nor was it put on record by the police officer in charge. Therefore, no action under section 176 CrPC was initiated.[20] In another case, despite there being prima facie evidence in the post-mortem report of torture on the body of the deceased, the district and sessions judge quashed proceedings against the police officers. The high court set aside the order of the sub-ordinate court and asked for evidence to be recorded to reach a conclusion.[21]

The state report further insists that superior courts do provide relief to victims of torture and other excesses by state agents. But more often than not it is after a long battle waged on part of the victims or their heirs. For instance, 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 three years earlier in 2007.[22] 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 inquiry. Even when a case is registered, the mere fact of registration of a complaint with the police, who themselves are the perpetrator in most cases, does not ensure that an impartial inquiry will be conducted.[23]

Monitoring of media outlets reveals that the so-called police encounters and extra-judicial killings remain rampant. In a spate of counter-terror operations by the paramilitary or police authorities in various parts of the country in 2015, HRCP noted killings of 2108 men and seven women in 2015 across Pakistan.[24] The undersigning organizations are not aware of any investigations into these incidents.

It is important to add that if torture has any consequences for the perpetrator it is a mere administrative punishment. A 2009 decision from the Lahore High Court is illustrative in this regard. This case originated in a complaint by a father and his 12-year old son who were illegally detained and torture in order to exert pressure on his other son and brother, who was wanted by the police, to surrender. In the absence of any appropriate specific law or guidelines, the court ordered the payment of 150,000.00 rupees and 100,0000 rupees respectively from the two police officers (about 1500 and 1000 dollars in terms of current exchange rate). The court did not issue direction for any criminal action to be taken but held that the Inspector General of Police should take disciplinary action against the perpetrators under the Punjab Employees Efficiency Discipline and Accountability Act 2006 which could at the most result in dismissal of their service.[25]

Recommendation

- Ensure that all allegations of torture, ill-treatment and extra-judicial killings are investigated promptly, effectively and impartially;

[20] Mst. Yasmeen Shaikh vs. Ayaz Pathan, reported as 2016 PCrLJ 613 Sindh.
[21] Syed Pervaiz Hussain Shah vs. Rafique Ahmed Shah, 2016 MLD 318 Sindh.
[22] Ibid p. 18.
[23] Dawn, http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/murder-case-against-26-410.
[24] HRCP, *State of Human Rights in 2015*, p. 55.
[25] Iftikhar Ali vs. District Police Officer 2009 YLR 1971 Lahore.

- Ensure that the perpetrators are prosecuted and convicted in accordance with the gravity of the acts, as required by Article 4 of the Convention.

4. Prison Conditions and legal safeguards against ill-treatment of persons deprived of liberty

According to the government's report to the CAT, Pakistan's legal framework for prisons is in accordance with the constitution and international law and there are sufficient safeguards against torture or cruel, inhuman or degrading treatment or punishment. The reality, however, is different. As will be shown below, the current legal framework is not only insufficient, certain provisions are also directly violating the Convention. In addition, existing laws lack implementation. Even the current Inspector General of Prisons in the province of Punjab is quoted to have claimed that safeguards for detained persons are poorly implemented.[26]

a. Overcrowding

Prisons in Pakistan are overcrowded amounting to torture or cruel, inhuman or degrading treatment or punishment. The International Crisis Group found the living conditions 'abysmal'.[27] This is a problem which has been acknowledged in official reports, for instance, by the Federal Ombudsman of Pakistan (FOP)[28] and the Law and Justice Commission of Pakistan (LJCP)[29]. Overcrowding is both the result of the policy to detain under-trial prisoners and prescription imprisonment as an effective punishment for offenders. The aforementioned report of the LJCP further acknowledges that overcrowding did not allow separation of prisoners according to the status of their cases.[30]

An HRCP report has found that the Adiala Jail in the city of Rawalpindi was the most over-crowded prison in the Punjab province in 2015. It had a capacity to detain 2,000 prisoners, but housed 5,000 inmates in June 2015. Similarly, the prisons in the province of Khyber Pakhtunkhwa held 10,040 prisoners with a capacity of 6,600 prisoners. The authorised capacity of Karachi Central Prison was 2,400, but it housed around 6,000 prisoners in November 2015.[31]

Although Section 27 of the Prisons Act 1894 and Rule 231 of the Pakistan Prison Rules 1978 (PPR) requires mandatory separation of convicted prisoners, under-trial detainees, male and female prisoner, and juveniles and adults, this is rarely implemented. The HRCP has noted that convicts are often imprisoned together with under-trial prisoners and adult female prisoners shared space with juvenile females. Moreover, an inquiry by FOP found that children and adolescents are often detained with hardened prisoners due to lack of space and as a result suffer

[26] Irfan Aslam, "Between life and death", in Dawn 7 September 2014 available at https://www.dawn.com/news/1130263.
[27] International Crisis Group, "Reforming Pakistan's Prison System", p1, available at https://www.crisisgroup.org/asia/south-asia/pakistan/reforming-pakistan-s-prison-systems.
[28] Federal Ombudsman of Pakistan, *Report of the National Committee on Prisons constituted by the Federal Ombudsman of Pakistan in pursuance of the orders of the Supreme Court of Pakistan,* 2015, available at http://202.83.164.29/wafaqimoh/userfiles1/file/Report%20-%20Supreme%20Court%20-%2014-12-2015.pdf.
[29] Law and Justice Commission of Pakistan, *Jail Reforms*', available at www.ljcp.gov.pk/Menu%20Items/Reports_of_LJCP/03/23.pdf.
[30] Ibid p.7.
[31] HRCP, *State of Human Rights in 2015*, p. 69, available at http://hrcp-web.org/hrcpweb/hrcp-annual-report-2015/.

torture and sexual abuse.[32] Such conditions of detention deny the basic needs of inmates, violate their right to dignity and amount to torture or other ill-treatment.

According to the official statistics, by the end of April 2015 there were 80,169 prisoners as against the sanctioned capacity of 46,705 in country's prisons out of which 69.1% were under-trial.[33]

b. Treatment of prisoners with mental health problems

A majority of mentally ill prisoners go undiagnosed throughout the period of detention and trials and are even awarded harsh punishments for crimes they may, or may not have, committed while they were mentally unwell. The issue of ill-treatment was recently highlighted as a result of a controversial decision rendered by the former chief justice who did not exempt a detainee with schizophrenia, Imdad Ali, from the death sentence. This decision has since then been reviewed and reversed.[34]

The Mental Health Ordinance 2001 establishes a 'Board of Visitors' comprising of a former judge, two psychiatrists, and members of civil society organizations to visit and identify detainees with a mental disorder and to recommend appropriate actions. Section 54 of the Ordinance requires that all "mentally disordered" prisoners must be periodically visited by the board or at least two of its members. But this mechanism has been found to be inadequate as the chief Psychiatrist in the province of Sindh has recently pointed out that it are the prison authorities that identify the detainees with mental heath problems and then organize weekly visits with a psychiatrist.[35] This means that many prisoners with mental health problems remain unidentified and untreated.

Moreover, the prison conditions for prisoner with a mental disorder are not compliant with international standards. For instance, in Pakistan's second most populated province of Sindh, prisons do not have a separate psychiatric ward, as required under rule 435 of the Prison Rules1978, and are yet to be assigned a psychiatric consultant for regular visits.[36]

c. Lack of proper administration and poor training of prison staff

A problem related to the overcrowding and poor management of prisons is the lack of appropriate training of prison staff. The FOP, for instance, has pointed out that the prison staff is not trained to deal with the administration of prisons and are unaware of prisoners' rights.[37] They are not properly trained in dealing with difficult situations including inter-prisoner violence as well as riots which happen periodically.

---

[32] Federal Ombudsman of Pakistan, *Report of the National Committee on Prisons constituted by the Federal Ombudsman of Pakistan in pursuance of the orders of the Supreme Court of Pakistan,* 2015, p. 55, available at http://202.83.164.29/wafaqimoh/userfiles1/file/Report%20-%20Supreme%20Court%20-%2014-12-2015.pdf.

[33] World Prison Brief, *Data – Pakistan,* available at http://www.prisonstudies.org/country/pakistan.

[34] Dawn, "Schizophrenia not a mental illness': SC paves way for Imdad Ali's execution", 21 October 2016, available at https://www.dawn.com/news/1291384.

[35] Dawn, "Plight of mentally ill convicts", 23 October 2016, available at https://www.dawn.com/news/1291599.

[36] The Central Prison Karachi is a notable exception that does have a psychiatric ward, ibid.

[37] Federal Ombudsman of Pakistan, *Report of the National Committee on Prisons constituted by the Federal Ombudsman of Pakistan in pursuance of the orders of the Supreme Court of Pakistan,* 2015,, available at http://202.83.164.29/wafaqimoh/userfiles1/file/Report%20-%20Supreme%20Court%20-%2014-12-2015.pdf.

The lack of specialised training centres for prison personnel has resulted in the use of police training schools. This is considered to be a major reason for the failure to properly enforce the prison rules especially the ones related to prisoner's rights.[38]

Further, the salary structure of the prison staff is poor and demotivating. ICG's report pointed out that each province of the country should have at least one training institution and the pay structure should be resembling those of the ordinary police.[39]

d. Unexplained or suspicious deaths in prisons and denial of medical treatment and adequate food

The HRCP has noted that 65 prisoners died in the country's prisons during 2015. Out of those 65, 46 were stated to have died due to various diseases, while four had died because of torture by prison staff and one succumbed to beating by fellow inmates. 30 of the deceased prisoners were convicted and the remaining were under-trial detainees. Precise information about the remaining victims is not available.[40] To our knowledge, no investigations into torture and death of the four prisoners have been undertaken.

Detainees are regularly reported to die due to poor food and inadequate medication and other related circumstances including inadequate clothing in harsh weather, or lack of immediate access to doctors or medical treatment. Deaths of seven prisoners were reported in Pakistan's province of Sindh between December 2016 and January 2017 when the province experienced a cold wave as prison authorities noted themselves.[41] This indicates that the prisoners were either not given appropriate clothing or food as required under relevant rules, or did not receive proper medication.

Rule 738 of the Pakistan Prison Rules requires that in very case of illness which ends fatally, the medical officer must conduct a post-mortem if there is doubt regarding the cause of death. This has not been done in the case described above.

e. Use of fetters on prisoners

The Prisons Act 1894 and the Prison Rules of Pakistan 1978 permit the use of bar fetters and chains as instruments of restraint and punishment under certain circumstances. The Prisons Act 1894 provides that the superintendent may punish a prisoner for so-called "prison offences", i.e. acts of willful disobedience against prison regulations, including assaulting wardens or fellow prisoners, indiscipline or destruction of prison property and attempts to escape. Accrodign to section 46 (7) of the Orisons Act 1894, the punishments allowed include the imposition of fetters of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the provincial government.

Section 56 of the Prisons Act 1894 states that "whenever the Superintendent considers it necessary for the safe custody of any prisoners that they should be confined to irons, he may, subject to such rules and instructions as may be laid down by the Inspector General with the

[38] International Crisis Group, *Reforming Pakistan's Prison System*, pp. ii and 7, available at https://www.crisisgroup.org/asia/south-asia/pakistan/reforming-pakistan-s-prison-systems.
[39] Ibid pp. ii, 7, 9, 11, and 26.
[40]HRC, *State of Human Rights in 2015*, p.71, available at http://hrcp-web.org/hrcpweb/hrcp-annual-report-2015/.
[41] Dawn, "Alarm over rise in 'natural deaths' in Karachi jail", 11 February 2017, available at https://www.dawn.com/news/1314124.

sanction of the Provincial Government, so confine them". Although the fettering of a prisoner may normally not extend beyond three months, section 57 (2) permits the superintendent to apply to the Inspector General for sanction of more extended fettering of a prisoner if he considers it "necessary, either for the safe custody of the prisoner himself or for any other reason".

Chapter 27 of the Prison Rules (Rules 643 to 655) set forth more precise regulations concerning the use of fetters. Pursuant Rule 644 (i), "no convicted prisoner inside the prison other than a camp or temporary prison shall be fettered except on the ground that he is violent, dangerous or had escaped or attempted to escape". Rule 645 provides that "imposition of fetters and handcuffs requires that the Superintendent, and the Deputy Superintendent or Assistant Superintendent shall not order any prisoner to be put in fetters or handcuffs on his own authority except in the case of emergency in which case a report shall be made to the Superintendent in writing on his next visit to the prison".

In 1995, a division bench of the Sindh High Court ruled that the application of the bar fetters was unconstitutional while observing:[42]

> "The condition of most of the prisoners who were kept in security/bund wards was pathetic and pitiable. The manner in which they were kept was against the dignity of a human being. Many of them were kept in a cell having an area of a few square feet, in solitary confinement with bar fetters on. If a comparison of the conditions of these prisoners is possible, then it can only be made with the animals in a zoo ... [which] are better placed as they have no bar fetters inside their cages and they are provided with better facilities."

The Sindh High Court rightly found that the Prisons Act of 1894 (sects. 46 (7) and 56) and the Prison Rules (Rules 643-655) are unconstitutional. In the decision, the Sindh High Court has observed and concluded:

> "The manner in which the prisoners are kept in the Security/Bund Wards with bar fetters on is humiliating and against the dignity of man. Loss of one's freedom and confinement is in itself a very severe punishment. After locking up a man, to inflict further punishment is not only harsh but inhuman and against the cherished human values."

Accordingly, the High Court held the relevant provisions concerning fetters to be "inconsistent and in violation of Article 14 of the Constitution as well as against injunctions of Islam. As such they are declared as void and as of no legal effect". Article 14 (l) of the Constitution of Pakistan provides: "The dignity of man ... shall be inviolable."[43]

However, this ruling is not implemented and fettering is still common in Sindh as well as other provinces of Pakistan. Thus, fettering was again the subject of a court case in 2006; this time the Supreme Court that prohibited the prison authorities across Pakistan from putting fetters on prisoners in detention without seeking approval from the district and sessions judges and only after it is recommended by the inspector general of prisons.[44] Unfortunately, the Supreme Court

[42] *Majeeda Bibi vs Superintendent of Jail, Karachi*, PLJ 1995 Karachi (Sindh), p.1

[43] The Constitution of Pakistan is available at http://senate.gov.pk/uploads/documents/constitution%20book%204x5.pdf.

[44] Dawn, "Apex court bans use of fetters in prisons", 12 October 2006, available at https://www.dawn.com/news/214490.

did not go as far as the Sindh High Court and did allow fettering as long as not applied unnecessarily.

f. Solitary Confinement

Pakistan's laws that regulate for solitary confinement are not in compliance with the Convention. The Pakistan Penal Code 1860 (PPC) allows the courts to award maximum of three months of solitary confinement as rigorous punishment. Section 73 prescribes the following scale

- a time not exceeding one month if the term of imprisonment shall not exceed six months;
- a time not exceeding two months if the term of imprisonment falls between exceed 6-12 months;
- a time not exceeding three months if the term of imprisonment exceeds one year.

Section 74 imposes further limits on it. In executing a sentence of solitary confinement, such confinement is in no case supposed to exceed fourteen days at a time, and when the imprisonment awarded exceeds three months, solitary confinement should not exceed seven days in anyone month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Further, section 45 of the Prisons Act 1894 prescribes "prison offences" which if committed by a prisoner may be punished by an order of the superintendent of the prison (section 46) including with the sentence of solitary cellular confinement for a period not exceeding 14 days.

Section 29 of the Pakistan Prison Act, 1894 further provides that every prisoner held in solitary confinement for more than twenty-four hours "shall be visited at least once a day by the Medical Officer or Medical Subordinate." This provision is, however, hardly implemented. Moreover, Rule 623 of the Pakistan Prison Rules, 1978, requires that "each cell for solitary confinement shall have a yard attached to it, where the occupant shall have the benefit of fresh air [without the means of communicating with other prisoners.]"

g. Solitary confinement of prisoners accused of blasphemy

Persons accused or sentenced under the blasphemy laws are often kept in solitary confinement on the pretext of their personal safety and security[45]. They typically stay in isolated cells for indefinite periods of time and without a doctor's visit for several days and even weeks.[46]

Asia Bibi[47] and Junaid Hafeez[48] are two such prisoners. The former has been convicted to death and has an appeal pending adjudication before the Supreme Court since 2014. The latter is an

[45] This is because blasphemy cases are considered to be extremely sensitive in nature as the information regarding the allegation against the accused can cause fellow prisoners or even prison staff to physically assault the accused. See The Tribune, "Policeman uses axe to kill blasphemy accused", 6 November 2014, available at https://tribune.com.pk/story/786605/police-beat-man-to-death-with-axes/.

[46] See International Commission of Jurists, *On Trial: The implementation of Pakistan's Blasphemy Laws,* 2015, pp. 53–54, available at https://www.icj.org/pakistan-trials-for-blasphemy-fundamentally-unfair-icj-new-report/.

[47] Ddawn, "Asia Bibi isolated in prison over security concerns", 14 October 2015, available at https://www.dawn.com/news/1213047.

under trial prisoner whose trial is pending since early 2013. Both these prisoners have been charged under section 295-C of the Pakistan Penal Code of 1860[49] and other similar provisions relating to defamation of religion. Both are currently lodged at the Central Prison at Multan, a city in the province of Punjab. Junaid Hafeez has been in solitary confinement since May 2014, whereas Asia Bibi has been isolated since 2011, both without any meaningful human contact. Junaid Hafeez's trial is even being conducted in the prison. He comes out of his cell only on the day of the hearing.[50]

The treatment being meted out to other prisoners accused of blasphemy lodged in other prisons in the country is not radically different. According to Amnesty International, there are more than one thousand prisoners in the province of Punjab alone, mostly under-trial, charged with blasphemy similar to the ones under which Asia Bibi and Junaid Hafeez have been accused. Most of them spend years in prisons before they are acquitted, if at all.[51]

h. Internment in special internment centres established under the Actions in Aid of Civil Power Regulations 2011

Pakistan's counter-terrorism regime includes a special executive order called the Actions in Aid of Civil Power Regulations 2011 ("Power Regulation 2011")[52] which are applicable in the tribal areas[53]. Special internment centres have been established under the Power Regulation 2011 where hundreds, if not thousands, of alleged terrorists or "miscreants"[54] are detained. Though the 2011 Regulations ostensibly provide safeguards but there is effectively no independent external or judicial monitoring of these detention centres. The chief justice of the Peshawar High Court in the Khyber Pakhtunkhwa province observed that

> "We are told in similar cases that the in-charge of the internment centres are government officials. But the government officials would be in-charge of the

---

[48] Dawn, "Junaid Hafeez: Condemned forever?", 18 May 2016, available at https://www.dawn.com/news/1258426.

[49] Section 295C PPC carries mandatory death penalty.

[50] In each one of the two cases high profile assassinations have happened. In Junaid Hafeez's case his counsel Mr. Rashid Rehman was assassinated for choosing to defend the accused.[50] Mr. Salmann Taseer, former Governor of Punjab was assassinated by his bodyguard, an officer of the Punjab Police, for publicly pleading Asia Bibi's innocence and questioning the blasphemy laws of the country.

[51] A study conducted by Amnesty International in 2016 provides statistics of such prisoners. See *As good as dead: the impact of blasphemy laws,* 2016 available at https://www.amnesty.org/en/documents/asa33/5136/2016/en/. For statistics on blasphemy accused see Annex at pages 64–66.

[52] For the Actions (in Aid of Civil Power) Regulation, 2011 see Khyber Pakhtunkhwa Government website at http://kpcode.kp.gov.pk/uploads/Actions_(in_Aid_of_Civil_Power)_Regulation_2011.pdf.

[53] The Constitution of Pakistan divides the tribal areas in two categories one administered by the Khyber Pakhtunkhwa Provincial Government and the other administered by the federal government (article 246). The federal government has the power to impose any law or executive order through the President over both the tribal areas (article 247), information available at http://www.pakistani.org/pakistan/constitution/part12.ch3.html.

[54] "miscreant" means any person who may or may not be a citizen of Pakistan and who is intending to commit or has committed any offence under this Regulation and includes a terrorist, a foreigner, a non-state actor or a group of such persons by whatsoever names called". Reference may be made to AICP Regulations No. 2(l).

interment centres on paper only and practically internment centres are being run by the Pakistan Army,"[55]

Neither government institutions nor the National Commission for Human Rights have access to such detention centres even though the Commission has the power under the relevant law to visit and inspect conditions of detention.[56]

The case of Minar Khan

Deaths of detainees in mysterious circumstances in the internment centres are well-recorded and have been highlighted on several occasions since 2011. One such case is that of Minar Khan whose father, Noor Muhammad, approached the Peshawar High Court to find out the whereabouts of his missing son. It was found out that Minar Khan has been at an internment centre. He thus sought permission to meet him. In response he got a call from the internment centre about the death of his 22 year old son. According to Noor Muhammad he was told by the officials that his son had died a natural death. However, he says, both legs of the deceased were blackened which indicated that he died either because of poisoning or he was given electric shocks.[57]

i. Monitoring of Detention Centers

The state report to the CAT in paragraph 55 claims that a mechanism of 'jail committees' exists in every district to hold accountable the jail administrations. Such committees, it is claimed, comprise of lawyers and civil society members and are headed by District Judge and conduct regular periodic visits to prisons. While these committees do exist, they are only means of soft accountability, if any, without a legislative basis and they are only capable of making recommendations rather than binding orders.[58]

There is no monitoring mechanism of ordinary prisons, let alone detention centers for special or high risk offenders. The state report contends (at para. 54) that the oversight control exercised by the provincial Home Secretaries and provincial inspector generals of prisons ensures accountability and humane prison conditions. The home secretaries exercise such control on the basis of rules of business formulated by the provincial governments and are far from an independent monitoring mechanism.

The total lack of a monitoring system has been reprimanded by the Supreme Court in 2015 in suo moto proceedings initiated on reports received regarding miserable prison conditions for women.[59] The court observed that "No official or body appears to have been effective in regulating the implementation of the prison law and rules to ensure prisoner welfare as required by law." The court further noted that

[55] The News, "Army practically running internment centres, observes Peshawar High Court", available at https://www.thenews.com.pk/archive/amp/503835-army-practically-running-internment-centres-observes-phc.

[56] National Commission for Human Rights Act, 2012.

[57] Dawn, "Deaths at internment centres expose treatment meted out to detainees", 15 September 2014, https://www.dawn.com/news/1132101.

[58] Orders of SC, Ombudsman constitutes Jails Inspection Committees for all Districts and Tehsils, available at http://ombudsmanpunjab.gov.pk/orders-of-sc-ombudsman-constitutes-jails-inspection-committees-for-all-districts-and-tehsils/.

[59] SC Order dated 28-05-2015 issued in CMA No.1313/2015. The order was passed in continuation of the supreme court's earlier proceedings in suo moto jurisdiction ref. SMC case No.1 of 2006 available at http://www.supremecourt.gov.pk/HR_Cases/11th%20final/SMC1of2006.pdf.

> "…the regulatory framework is limited in its scope to inspections to ensure compliance with the law and hearing prisoner complaints. It does not deal with systemic challenges that need to be addressed to effectively implement the statutory mandate."

The court therefore formed a national committee for an extensive review of prison conditions and to assess the reasons for not complying with the statutory and constitutional obligations.[60]

j. Juvenile Justice and Child Abuse in Prisons

In 2015, a child abused in the Peshawar Central Prison complained to the concerned judicial authority to remedy his situation. The victim said other juvenile inmates had not been raising their voice out of fear of torture by the prison officials as well as adult prisoners.[61]

The rules framed under the Juvenile Justice System Ordinance 2002[62] require that juvenile detention centers be established and maintained to accommodate juvenile accused and offenders. Provincial laws also require setting up of juvenile detention centers in every province.

Moreover, Rule 154 of the Prison Rules 1978 provide that all male adolescent prisoners under the age of 18 years with sentences of three months or over shall immediately on conviction be transferred to a borstal institution and juvenile prison. However, these legal requirements are not fulfilled. For instance, there is not a single juvenile detention center in the provinces of Khyber Pakhtunkhwa and Balochistan, and Gilgit-Baltistan. Therefore, the claim made in the state report at para.65 is misleading. According to official data, there are around 105 juvenile prisoners in the Peshawar central prison, the capital of Khyber Pakhtunkhwa. Among them are 95 under-trials and 10 convicts. There are around 338 juvenile prisoners in all the prisons and judicial lock-ups in the province including 311 under trial juveniles and 27 convicts.[63] Because of the lack of a juvenile detention center, all these children are detained in regular prisons.

Recommendations:

- Ensure that the benefit of existing legal provisions is duly enjoyed by the prisoners with mental disabilities;
- Amend the existing legal framework including the Mental Health Ordinance 2001 and relevant rules and regulations to ensure an enhanced role of psychiatrists so that all mentally disabled prisoners are identified immediately upon their arrest after the alleged commission of offence or any time during their detention;
- Guarantee access to an independent counsel of the detainee's choosing.
- Establish permanent independent accountability office for external oversight of prisons through appropriate legislative measures;

---

[60] Federal Ombudsman of Pakistan, *Report of the National Committee on Prisons Constituted by the Federal Ombudsman of Pakistan in pursuance of the orders of the Supreme Court of Pakistan,* 2015, pp. 11–13, available at http://202.83.164.29/wafaqimoh/userfiles1/file/Report%20-%20Supreme%20Court%20-%2014-12-2015.pdf.

[61] Dawn, "Juveniles abused in Peshawar jail, alleges teenage inmate", 13 October 2015, available at https://www.dawn.com/news/1212760.

[62] See Juvenile Justice System Ordinance 2002*,* available at http://www.punjabcode.punjab.gov.pk/public/dr/THE%20JUVENILE%20JUSTICE%20SYSTEM%20ORDINANCE,%202000.doc.pdf.

[63] Dawn, "Juveniles abused in Peshawar jail, alleges teenage inmate", 13 October 2015, available at https://www.dawn.com/news/1212760.

- Establish institutes to educate and train prison staff with the knowledge and skills of administration of prisons;
- Ensure that the training and educational curriculum for the prison staff does include components to understand the constitutional and international human rights standards and obligations;
- Provide the prison staff appropriate education and training including components to sensitise them to the needs of constitutional and human rights standards and international obligations;
- Ensure the law and rules for separation of prisoners;
- Establish more prisons to provide humane conditions to inmates;
- Promote liberal use of legal provisions relating to bail and parole;
- Amend the penal code to abolish solitary confinement; adopt a policy to limit the use of judicial sentencing of solitary confinement to the most exceptional cases till the complete abolition of solitary cellular confinement;
- Amend the Prisons Act 1894 to omit the prison authorities' powers to punish prisoners;
- Amend the law to assign such powers to judicial officers only through recording of evidence in the prison premises or otherwise;
- Stop the use of solitary confinement for prisoner accused of blasphemy on the pretext of their security;
- Ensure special arrangements and protection of prisoners accused of blasphemy to guarantee their security without confining them to solitary cellular confinement;
- Prohibit use of solitary confinement or solitary confinement like circumstances for all under-trial prisoners;
- Ensure that all prisoners get adequate food, medical services and clothing and other facilities according to the weather conditions;
- Ensure that all deaths in prisons are recorded and investigated;
- Amend the law to prohibit use of bar fetters;
- Ensure unconditional access to detention facilities for the National Human Rights Commission;
- Withdraw the Actions in Aid of Civil Power Regulations 2011 and abolish detention centres established thereunder;
- Allow immediate access to the internment centres for the Parliamentary committees on human rights, the Naional Commission for Human Rights as well as the concerned judicial authorities;
- Ensure that all recommendations made by different inquiry committees and in the judgments of superior courts to the extent they comply with international law are implemented in letter and spirit
- Establish juvenile detention centers for under-trial and convict juveniles in all provinces; and
- Separate all children from adults in detention.

5. Countering Terrorism

a. Counter terrorism laws and policies

The Constitution of Pakistan and the criminal law provide a number of safeguards including prohibition against admissibility of confession obtained through torture.[64] The constitution requires that no one arrested shall be detained without being informed of the grounds for such arrest,[65] nor shall they be denied the right to consult and be defended by a legal practitioner of his choice.[66] The Constitution also guarantees that every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours.[67] Similarly, Pakistan's law of evidence clearly excludes confessional statements made before the police.[68]

Under normal circumstances, for a confessional statement to be admissible, it must be recorded before a judicial magistrate[69] or in an independent court of law where the trial is conducted, when the accused is not supposed to go back to police custody. The court must ensure that such a confession is not due to any kind of coercion. The state report rightly celebrates these guarantees. However, these guarantees which were Pakistan's bulwark against torture have become meaningless in the 'war on terror'. The most fatal blow has come in the form of military courts which were first established in January 2015.[70]

In their first phase, between 2015–2016, the military courts tried and convicted 274 people for their alleged involvement in religiously motivated terrorism-related offences, 161 of whom were sentenced to death and 113 people were given prison sentences.[71] By December 2016, according to the ISPR's press statements, 135 out of 144 people convicted in military courts had "confessed" to their crimes[72] i.e. a confession rate higher than 90%. Such a high rate of confessions suggests that confessions were elicited by interrogation methods and in circumstances which most likely qualify for torture.

Article 10A which was added to the Constitution in 2010 expressly guarantees the right to a fair trial. For a long time the superior courts of Pakistan have considered it an element of fair trial that anyone making a confessional statement must not be sent back to the detention in the control of the agency which arrested and/or held him in the first instance.[73] Similarly, a judicial

---

[64] Articles 14(2) reads: No person shall be subjected to torture for the purpose of extracting evidence.
[65] Article 10(1) of the Constitution of Pakistan.
[66] Articles 10(1) of the Constitution of Pakistan.
[67] Article 10(2) of the Constitution of Pakistan.
[68] Article 38 of the Qanun-i-Shahdat Order 1984, available at http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2FwbJs%3D-sg-jjjjjjjjjjjj.
[69] Section 164 of the Code of Criminal Procedure.
[70] There's no scope for military courts in the original scheme of the constitution of Pakistan. In a judgment rendered by the Supreme Court of Pakistan in 1997, courts presided by military officers were declared to be unconstitutional. It was for this reason that the government in order to establish military courts had to introduce the 21st Constitution Amendment to try certain offences categorized as 'religiously motivated terrorism'. As a result of a sunset clause, the life of military courts expired in January 2017. Pakistan has just revived military courts through another constitutional amendment http://www.na.gov.pk/uploads/documents/1490160955_216.pdf.
[71] See Dawn, "The sun has set on Pakistan's military courts—here's why it should never rise again", 6 March 2017, available at https://www.dawn.com/news/1306792. See also the Army Press Release, *Inter Services Public Relations,* available at, https://www.ispr.gov.pk/front/main.asp?o=t-pr_archive&mon=3&yr=2017&styr=2016&cat=army.
[72] See the Army Press Release Archive, *Inter Services Public Relations,* available at https://www.ispr.gov.pk/front/main.asp?o=t-pr_archive&mon=3&yr=2017&styr=2016&cat=army.
[73] See, for instance, State v. Muhammad Naseer cited as 1993 SCMR 1822.

confession is seen with suspicion and inadmissible when the accused has been kept in illegal police custody for six weeks before the confession is recorded.[74] Military courts have disregarded these safeguards. Most recently, The Supreme Court has held that in all the cases tried by the military courts, the accused have admittedly been in the custody of the military authorities before and after they made the confessional statements. They were kept in internment centres set up under the Actions in (Aid of Civil Power) Regulation 2011.

b. Actions in (Aid of Civil Power) Regulation 2011

The Actions in (Aid of Civil Power) Regulation 2011 is a questionable executive decree which has been challenged before the Supreme Court. For instance, one Rashida Ameer, widow of Rana Ameer Ahmad, a former internee of one of the internment centres located in FATA, who lost his life in internment centre, has filed a petition in the Islamabad High Court (IHC) with a prayer to declare regulations as ultra vires of article 247(5) of the Constitution, for having travelled beyond the legislative mandate conferred upon the president.[75]

The law has been widely criticized for its extremely harsh and unconstitutional provisions.[76] The law is an executive decree and grants the army with immunity in an indirect manner for actions since 2008 in tribal areas as described hereafter.

Actions (in Aid of Civil Power) Regulation 2011[77] have been given retrospective effect from the 1 February 2008. The regulations provide that anything done, any action taken, orders passed, powers conferred or assumed or exercised by the Armed Forces before or after the 1 February 2008 shall be deemed to have been validly done.[78] This is clearly an attempt to give 'legal protection or cover' to hundreds of cases of illegal detentions and alleged extra-judicial killings in tribal areas.[79] Once actions taken since 1st February 2008 are deemed to have been taken under these regulation their illegality, the drafters seem to propose, vanishes. It is in this way that the Regulations assign impunity for the illegal actions of detention incommunicado.

The Regulation is vaguely worded and gives sweeping powers to members of armed forces to detain, without charge or trial, any individual whenever it appears that detention of that person is expedient for peace in the area. The regulations make provision for individuals being charged with a punishable offence where there is suspicion that an individual is challenging the writ of the Federal Government. Any attempted actions threatening the 'peace, safety or defence of Pakistan' shall also be punishable.

---

[74] State v. Asfandyar Wali etc. cited as 1982 SCMR 321; For a recent case, see Supreme Court of Pakistan in Criminal Appeal no. 497/2009 decided on 15 October 2015, paras. 14 onwards available at http://www.supremecourt.gov.pk/web/user_files/File/Crl.A._496_2009.pdf.

[75] See Express Tribune, "Aid of Civil power regulation challenged", 20 December 2015, available at https://tribune.com.pk/story/1012944/aid-of-civil-power-regulations-challenged/; It was also challenged in a petition for the recovery of illegally detained suspects. See Rouhaifa vs. The state; see also Dawn, "JI moves court against Fata regulations", 12 August 2011, available at http://dawn.com/2011/08/12/ji-moves-court-against-fata-regulations/.

[76] Pakistan Today, "Another Draconian law", 21 August 2011,available at http://www.pakistantoday.com.pk/2011/08/21/comment/columns/another-draconian-law/.

[77] Two identical sets of regulations, one by the President of Pakistan and the other by the Governor Khyber Pakhtunkhwa were notified for the Federally Administered Tribal Areas (FATA) and the Provincially Administered Tribal Areas (PATA) respectively under Article 247(4) of the Constitution of Pakistan. The ones applicable to FATA are available at http://www.scribd.com/doc/88071275/FATA-Actions-in-Aid-for-Civil-Power-Regulation-2011.

[78] Regulation 26 of the Actions (in Aid of Civil Power) Regulation 2011.

[79] Waseem Ahmad Shah, "New regulations give legal cover to detentions in tribal areas", in Dawn, 13 July 2011, available at http://dawn.com/2011/07/13/new-regulations-give-legal-cover-to-detentions-in-tribal-areas-2/.

The Regulation provides for interning suspects for unspecified periods without production before any court of law.[80] The 'Interning Authority' under the Regulation 2011 may by itself or on a request from the victim or his relatives review the case of the person being held.[81] Even if it is presumed that internment under the Regulation 2011 is a sort of preventive detention, therefore an interned person may not be produced before the magistrate.

Moreover, contrary to Pakistan's law of evidence, the Qanoon-i-Shahdat Order, 1984, the Regulation prescribes that a statement or deposition by any member of the armed forces shall be sufficient for convicting an accused.[82]

Recommendations:

- Ensure the absolute prohibition of torture contained in article 2, paragraph 2, of the Convention: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture";
- Ensure that no one is held in secret detention anywhere under its de facto effective control;
- Take all necessary measures to ensure that its legislative, administrative and other anti-terrorism measures are compatible with the provisions of the Convention, in particular the provisions of article 2;
- Adopt effective measures to ensure, in law and in practice, that all detainees are afforded all legal safeguards from the very outset of the deprivation of their liberty, including the detainees under the Actions (in Aid of Civil Power) Regulation 2011;
- Ensure full implementation of the Convention in all parts of the country including the Federally Administered Tribal Areas;
- Abolish military courts.

6. Individual Complaints and the Right to Redress and Effective Remedies

The state report states that a victim of torture has 'a legal right to redress and adequate compensation from the offender', but it fails to refer to the relevant law. However, it may safely be assumed that the state intended to rely on the Code of Criminal Procedure 1908 (CrPC) which prescribes that upon conviction for 'death of, or hurt, injury or mental anguish or psychological damage, to any person caused, the Court shall direct the person convicted to pay to the heirs of the person whose death has been caused, or to the person hurt or injured, or to the person to whom mental anguish or psychological damage has been caused, as the case may be, such compensation as the Court may determine, having regard to the circumstances of the case'.[83] However, it may not always be possible to obtain adequate compensation from the offending state officials. It is for this reason that the Penal Code provides for additional punishment where fine is not recoverable as the state report points out in paragraph 133.

Further, it may be mentioned here that the state report refers to some of the existing provisions of the penal code such as section 337K (punishment for causing hurt to extort confession) and

[80] Kamran Arif and Christopher Rogers, "Promise of a post-Adiyala Pakistan", in Dawn, 13 March 2012, available at at http://dawn.com/2012/03/13/promise-of-a-post-adiyala-pakistan/.
[81] Regulation 10.
[82] Regulation 19(2).
[83] Section 544A CrPC.

the Police Order 2002 which imposes punishment of imprisonment of up to five years and fine for inflicting torture or violence (section 156). Both these provisions and other provisions referred to in the state report do not provide any scale for the imposition of fines and do not provide that the fine be paid as compensation to the victim.

In order to highlight and stress the availability of means of redress, the state report relies on the judicial institutions at the level of district courts and the provincial high courts. However, the existing framework is poor so far as access to justice for victims is concerned.

The district courts or the magisterial courts are the nearest judicial fora which can provide relief at the district and sub-district level. But cases of torture and extra judicial executions are often stalled due to delay for one reason or the other. Often medical examination of the victim of torture is not conducted within a reasonable period of time. Post mortem of victims of extrajudicial executions are not conducted or those responsible for it act dishonestly and in collusion which is frequently the case due to lack of accountability. Collusion can be observed between the police and the judicial officers as well. Moreover, delays are the norm in court proceedings at the lower levels.

High courts have a principal registry in the respective provincial capital city and benches in one or two other cities. They are competent to provide relief under the constitutional mandate; but they do not record evidence. Therefore, they're constrained to hear a given case with whatever has already been brought on record. It's true that high courts can direct for further investigation and inquiry, but the circumstances limit the court's ability to provide relief in every deserving case. Access to high courts is far more difficult, cumbersome and resource eating, for poor victims of torture that only a small number of them are capable of taking advantage of it. Therefore, registration of First Information Report (FIR) which is meant to trigger the criminal justice system is no guarantee for the victims of torture to be able to get relief.[84]

In addition, access to legal aid is near non-existent in Pakistan. The state is effectively and conspicuously absent from performing this fundamental duty. The existing capacity of legal aid providers is negligible compared to needs of the indigent people. It has been observed that only a miniscule of the population has access to justice system through legal aid.[85]

Furthermore, the medico-legal system is poorly equipped to deal with victims of torture. The poorly trained medico-legal officers at the facilities means that they do not often understand their work and are therefore unable to properly examine and duly record evidence.[86]

It is important to add that the burden of proof lies on the victim if he or she claims redress or compensation for torture. For instance the Lahore High Court dismissed a petition in 2014 on the ground that no medical examination of the alleged victim had been conducted and the petitioner, the mother of the victim, had also failed to apply for a medico-legal certificate and therefore the case was frivolous and the case was dismissed for lack of poof.[87]

---

[84] For more information see Justice Project Pakistan and Yale Law School, *Policing as Torture,* 2014, pp. 25–27, available at https://law.yale.edu/system/files/documents/pdf/JPP_Launch_Report_050514.pdf.

[85] See a report by Pakistan Institute of Legislative Development and Transparency, *Free Legal Aid in Pakistan* p. 21, available at http://www.pildat.org/Publications/publication/ROLR/FreeLegalAidinPakistan_PILDATPositionPaper.pdf.

[86] See Ayesha Khan and Sarah Zaman, *The Criminal Justice System and Rape,* 2012, pp. 27-31 available at http://www.researchcollective.org/Documents/The_Criminal_Justice_System_and_Rape_NEWFINAL.pdf.

[87] Mst. Salla vs. District Police Officer, Sargodha and 7 others, ref. 2014 MLD 1289 Lahore at pp.1290–1.

Recommendations:

- Enact a special law to provide fair and adequate compensation to victims of torture from the state rather than merely converting fine imposed on offenders into compensation;
- Recognize the right of heirs to receive fair and adequate compensation;
- Ensure that the burden of proof lies on state agencies.

7. Enforced Disappearances

Pakistan is reported to have amongst the highest number of enforced or involuntary disappearances in the world.[88] In the region of Balochistan it can even be said that there is "a pattern of enforced disappearances targeting political activists, human rights defenders, journalists and lawyers"[89]. While a rights watchdog claimed to have documented "more than 700 extra-judicial killings and following abductions by paramilitary forces or following enforced disappearances by Pakistan's law enforcement and security agencies",[90] the government itself reported in 2015 that 4,557 dead bodies of missing persons were recovered from all over the country in the last five years and 266 of them were unidentified.[91]

Pakistan's counter-terrorism regime laws and policies encourage and promote enforced disappearances. Effected by law enforcement agencies including its paramilitary and military authorities, enforced disappearances have been a serious problem. Courts and inquiry commissions are occupied with it since 9/11 when the policy of enforced disappearances was adopted. Simultaneously, laws have been enacted to allow prolonged administrative or preventive detention that facilitates enforced disappearance. This included attempts to give legal and constitutional cover and impunity to enforced disappearances. Such laws include the Protection of Pakistan Act 2014, the Actions in Aid of Civil Power Regulation 2011 which is an executive order specifically issued to subject to long term internment for suspects of 'terrorists' acts in the Federally Administered Tribal Areas[92], as well as setting up of military courts under the 21st Constitution Amendment, and the Army Amendment Act 2015. Although, the Protection of Pakistan Act, the 21st Constitutional Amendment and the Army Amendment Act 2015 have

[88] Asian Human Rights Commission, "PAKISTAN: Statement to mark the International Day of the Victims of Enforced Disappearances", 29 August 2014, available at http://www.humanrights.asia/news/ahrc-news/AHRC-STM-167-2014.
[89] The Nation, "Pakistan urged to end abductions by state agencies", 30 August 2014, available at http://nation.com.pk/national/30-Aug-2014/pakistan-urged-to-end-abductions-by-state-agencies.
[90] Report by the Asian Human Rights Commission, "The government must ratify the International Convention for the Protection of All Persons from Enforced Disappearance", 29 August 2014.
[91] The Express Tribune, "Gone without traces: SC urges joint efforts to trace missing persons", 11 February 2015, available at https://tribune.com.pk/story/836387/gone-without-trace-sc-urges-joint-efforts-to-trace-missing-persons/.
[92] There are two kinds of tribal areas. The Federally Administered Tribal Areas (FATA) and the Provincially Administered Tribal Areas (PATA). The federal government through the president can enforce laws in tribal areas, by issuing executive orders. Reference may be made to article 247 of the Constitution of Pakistan.

expired in early 2017 and are currently not in force, the latter two pieces of legislations are about to be re-enacted as this report is being finalised.[93]

a. Inquiry Commission

A 'Commission of Inquiry for Missing Persons' comprising of three former judges of the Supreme Court and several high courts was formed as a result of a Supreme Court direction in 2010. The Commission submitted its report in early January 2011 with the recommendation that there should be an appropriate law to hold the perpetrators of disappearances to account.[94] Pointing out the urgent need to restore the general public's trust and confidence in the institutions responsible for protecting national security, the Commission on Missing Persons observed:

> "We, on our part, tried to persuade the representatives of the agencies in every possible manner, impressing upon them that such illegal detentions for indefinite periods would be counter-productive and not only bring a bad name to the country but would also lower the esteem of these agencies and our armed forces, which is in no way desirable."[95].

It became clear during the proceedings of the Supreme Court in 2011, that state intelligence agencies belonging to the armed forces used enforced disappearances as a means to counter terrorism. In one such proceeding, remarks of one of the judges hinted that the court even intended to summon the chief of the Inter-Services Intelligence of the country, which however was not done.[96] It may be relevant to mention that another commission to inquire into the, incommunicado detention, and death caused by torture of a journalist, Syed Saleem Shahzad, had also recommended enacting a law that would hold the intelligence agency accountable.[97]

It was in this context that Senator Farhatullah Babar tabled a bill in the Senate in 2012 that could hold accountable the Inter-Services Intelligence (ISI). The bill was withdrawn but has recently been tabled again. The Committee of the Whole Senate has recently recommended to the government to adopt the bill which is titled as the Inter Service Intelligence Agency (Functions, Powers and Regulation) Bill. The Bill envisages that the ISI shall be answerable to the Prime Minister and the parliament through an Intelligence and Security Committee established for the purpose. The bill also envisages an internal accountability mechanism to put an end to "enforced

---

[93] Dawn, "View From the Courtroom: Military courts extension bills seek to widen jurisdiction", 13 March 2017, available at https://www.dawn.com/news/1320142.

[94] Dawn, "New law for missing persons' cases urged", 10 January 2011, available at https://www.dawn.com/news/597851/new-law-for-missing-persons-cases-urged.

[95] Quoted in Commission of Inquiry, *Report concerning the Gruesome Incident of the Abduction and Murder of Sayed Saleem Shahzad*, 2012, pp. 129-130. The report is authored by Justice Saqib Nisar, now Chief Justice of Pakistan, available at https://www.scribd.com/document/78130710/Saleem-Shahzad-Report.

[96] See Dawn, "SC warns agencies against taking illegal actions*",* 17 January 2011, available at https://www.dawn.com/news/599524.

[97] Dawn, "Free ride for killers in Shahzad report", 20 January 2012, available at https://www.dawn.com/news/692058/newspaper/newspaper/column. The oblique reference here is to the Inter-Services Intelligence, a subsidiary of the armed forces which works under no regulatory and accountability framework.

disappearances and victimisation of political parties".[98] The bill specifically prescribes that if any member of ISI 'causes disappearance of any person or abets such disappearance shall, on conviction, for every such offence be punished with imprisonment for a term which may extend to fourteen years and with fine'.[99]

The commission on disappearances was constituted anew in 2011 as the Commission of Inquiry on Enforced Disappearances under the Commissions of Inquiry Act 1956, which has since then been generating periodic reports.[100] These reports are a fair guide in assessing the scale of the problem. It is apparent from the reports prepared by the commission continues to receive complaints of disappearances in considerable numbers.[101]

The current Commission of Inquiry on Enforced Disappearances inherited 136 cases from the earlier body. It has received 3,718 complaints since 1 March 2011, when it started working, raising the total number of cases to 3,854. The commission claims to have traced 1,953 people in all. Three 354 cases have been deleted from the list on the ground that information about the disappeared persons was incomplete and another 309 cases were dropped for other reasons.

At the end of February 2017, the commission had cases of 1,240 disappeared persons pending. It is reported that there are about 57 cases reported per month.[102] Unfortunately, the commission's reports do not reveal whether any of the missing persons have returned home, if some had ever been released from authorised or unauthorised custody, whether the cause of their detention was ascertained by the commission, or whether any actions against those responsible had been taken or recommended.

The commission's reports further found that five persons were detained in an internment centre established under the Actions (in Aid of Civil Power) Regulation 2011 – three of them in Kohat, one at Fizaghat and the fifth at Parachinar, all five in the province of Khyber Pakhtunkhwa. They had disappeared in 2012, 2014 and 2015. Unfortunately many questions remain unanswered: When were they sent to the internment centres and on what grounds? Has their trial started? What are their conditions of detention? Clearly, the Commission of Inquiry on Enforced Disappearances is so much handicapped for want of authority and resources. The government has not implemented the advice of the UN Working Group on Enforced and Involuntary Disappearances (WGEID) to increase its powers and give it adequate resources.[103]

---

[98] The News, "Whole Senate body asks govt to adopt ISI-related bill", 8 January 2016, available at https://www.thenews.com.pk/print/88862-Whole-Senate-body-asks-govt-to-adopt-ISI-related-bill.

[99] Section 16(2) (a) of the Inter Service Intelligence Agency (Functions, Powers and Regulation) Bill.

[100] The notification enumerating the powers of the Commission is available at http://coioed.pk/ a cursory glance reveals that the commission's powers are few and less than what it should have to deal with the huge problem.

[101] See Commission of Inquiry of Enforced Disappearances, *Missing Persons List* at *Commission of Inquiry on Enforced Disappearances,* available at http://coioed.pk/missing-persons/.
Also see The News, "Eliminate Enforced Disappearances", 30 August 2016, available at https://www.thenews.com.pk/print/146207-Eliminate-enforced-disappearances; Dawn, "A misery called disappearance", 16 March 2017, available at https://www.dawn.com/news/1320669/a-misery-called-disappearance.

[102] Commission of Inquiry of Enforced Disappearances, *Missing Persons List* at *Commission of Inquiry on Enforced Disappearances,* available at http://coioed.pk/missing-persons/.

[103] Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. A/HRC/33/51/Add.7, 13 September 2016.

It would be relevant to mention that it recently came to light that several people who were reported missing to the Commission of Inquiry on Enforced Disappearances several years ago were in fact convicted by the military courts established under the 21st Constitution Amendment Act 2015. But neither the Commission nor the relatives were aware of this.[104]

The case of Zeenat Shehzadi and Hamid Ansari

The case of Zeenat Shehzadi, a Pakistani citizen, and Hamid Ansari an Indian citizen has been highlighted in the past two years.[105] Hamid Ansari is, or was, a young Indian engineer, who illegally entered Pakistan to meet a Facebook friend. He was arrested in 2012. The relevant authorities denied any knowledge of him for a long time and eventually disclosed in a hearing in the Peshawar High Court that he has been taken into custody by military authorities.

Zeenat Shahzadi belongs to a poor family and had been following Ansari's case at various fora including the commission since 2013 – till she was kidnapped in August, 2015. Her case is pending before the Commission of Inquiry. At each hearing, the law-enforcement agencies come up with one pretext or the other for their inability to trace Zeenat. The commission has proved to be toothless in many such cases.

The case of Adiala 11

The so-called 'Adiala 11'[106] suspects were shifted to internment centres established under Actions in Aid of Civil Power Regulation 2011 after being whisked away from outside the Adiala Jail in the city of Rawalpindi. Their abuse at these internment centres is now well documented. Some of them appeared before courts with their emaciated, ghost-like bodies bearing visible marks of severe physical and mental torture.[107] The mother of one of the victims died due soon after having seen her son's tortured body.[108] And yet, the Supreme Court of Pakistan failed to provide any redress to the victims on the pretext that there was no established evidence of torture.[109]

Pakistani law does not specifically criminalize enforced disappearances in the penal code. The performance of the Pakistanis Inquiry Commission on Enforced Disappearances clearly shows that the Commission doesn't have enough power and political support from the elected institutions to carry out its functions to the best possible manner. Pakistani authorities continue to act with impunity while the Commission is unable to bring responsible persons to justice. The

---

[104] Dawn, "Military courts convicted five missing persons", 8 January 2017, available at https://www.dawn.com/news/1307086.

[105] BBC, "Zeenat Shahzadi: Fears for missing Reporter" 11 May 2016, available at http://www.bbc.com/news/world-asia-36149315.

[106] Dawn, "Case of 'missing' Adiala prisoners far from over", 13 August 2012, available at https://www.dawn.com/news/741861.

[107] Amnesty International, "Press Release: Pakistan Must Account for Missing Victims of Enforced Disappearance", 16 April 2012, available at https://www.amnesty.org/en/press-releases/2012/04/pakistan-must-account-missing-victims-enforced-disappearance/; also see, Express Tribune, "Tracing missing persons: Adiala prisoners kept in detention, agencies admit", 29 February 2012, available at https://tribune.com.pk/story/343252/tracing-missing-persons-adiala-prisoners-kept-in-detention-agencies-admit/.

[108] Express Tribune, "Adiala 'missing' inmates: Heartbreak ends life of prisoners' mother", 15 February 2012, available at https://tribune.com.pk/story/336688/adiala-missing-inmates-heartbreak-ends-life-of-prisoners-mother/.

[109] Rouhaifa (deceased) vs. The State PLD 2014 SC p. 174; Constitution Petition No. 1 of 2012 under article 184(3) available at http://www.supremecourt.gov.pk/web/page.asp?id=1712; The court held that 'Nothing on record substantiated the plea that deceased detainees were tortured.

courts are also unable to ensure investigations and prosecution of those responsible for enforced disappearances and they fail to continue monitoring investigation of cases.

b. Lack of Government Response

Apart from establishing a powerless Inquiry Commission, the government has not taken real steps to afford reparation to victims of enforced disappearances. Although the Supreme Court in 2013 declared that the Constitution under article 9 prohibits the act of enforced disappearance, and section 359 of the Pakistan Penal Code makes abduction and kidnapping unlawful,[110] perpetrators have not been brought to justice. As is revealed from the above, the government failed to empower the Inquiry Commission with the necessary resources and competences.

Not only is there a total lack of cooperation the government even displays a justificatory attitude with regard to missing persons. There is a further a total disregard for the families of those abducted. For instance, in January 2017, five social media activists and bloggers were abducted by state agencies. All of them are reported to have been released after being kept in detention incommunicado. The government has shown total indifference to the plight of the abducted and their families. Due to fear of reprisals, all of them, except Mr. Waqas Goraya, have stayed quiet after their release. Mr. Goraya alleged having been tortured by state authorities for his human rights activism and criticizing the military's influence in the political system.[111]

Also the courts have been very slow in responding to cases of disappearance. Although in 2015 a two member bench of the Supreme Court formulated three questions to the government after it learned about the army's involvement in the enforced disappearance of a person in Khyber Pakhtunkhwa, it had adjourned the proceedings saying that a larger bench needs to hear the case. There has been no development since.[112]

Recommendations:

- Ratify or accede to the Convention on Enforced Disappearance and specifically criminalize enforced disappearances and reinforce the capacities of the Inquiry Commission on Enforced Disappearances in order that the commission can fully carry out its mission;
- Reinforce the Commission of Inquiry's efforts to fight impunity regarding cases of enforced disappearance by bringing all responsible persons to justice as well as by

[110] Mohabat Shah vs. the State PLD 2014 SC 305 (Human Rights case 29388 –K 2013 Supreme Court of Pakistan) available at http://www.supremecourt.gov.pk/web/page.asp?id=1741.
[111] BBC, "Pakistan activist Waqass Goraya: The state tortured me", 9 March 17, available at http://www.bbc.com/news/world-asia-39219307.
[112] The questions to the government were (i) When a person is accused of commission of an offence under the Pakistan Penal Code (PPC) and that person is serving in the Pakistan Army, is it the ordinary criminal courts, set up under the Criminal Procedure Code (CrPC), which are to try him, or is it for the forums under the Pakistan Army Act 1952 to try such an accused?; (ii) Is it the ordinary criminal courts (in the present case, the courts in Malakand, Khyber Pakhtinkhwa) that are obliged to accede to the request made by the army authorities, or is it within the discretion of the ordinary courts to determine whether or not to allow the request of army authorities to transfer the case to them?; (iii) If it is for the ordinary forums to exercise discretion in the matter of a request received from the army authorities, what is the basis on which such a request should be considered, and then allowed or declined? See Missing persons: AG's opinion sought over trial on enforced disappearances available at https://tribune.com.pk/story/819073/missing-persons-ags-opinion-sought-over-trial-on-enforced-disappearances/.

empowering it to recommend penal actions and award compensation/reparation to the victims of enforced disappearances;

- Amend the law, if necessary, to prosecute before civilian courts all those, including members of armed forces, responsible for effecting enforced disappearances;
- Expand the mandate of the Commission of Inquiry on Enforced Disappearances to all security agencies including the armed forces and their subsidiaries;
- Ensure investigations and prosecution of those responsible for abduction and enforced disappearances and encourage the Supreme Court to continue monitoring cases registered with the Commission of Inquiry on Enforced Disappearances;
- Hold the intelligence agencies accountable by enacting appropriate legislation to regulate their operations.

8. Violence against Women

According to crime statistics compiled by relevant police departments of all provinces and reports published by organisations like the HRCP, violence continues to occur at staggeringly high rates. These reports indicate that violence against women, often in extreme forms, is widespread. Each year, a large number of women are murdered, raped, beaten and burnt or subjected to psychological abuse, which mostly goes unreported.
According to the Punjab Gender Parity Report 2016, incidents of torture on women have increased by 20% compared to 2015. In 2013, more than 5,800 cases of violence against women were reported in Punjab. Those cases represented 74% of the national total that year.[113]

According to the statistics available with the Punjab Police, the numbers of 'honour killings' for the province of Punjab from 2011 to 2016 were 256, 184, 275, 312, 242, 248 respectively.[114] These are cases that somehow found their way to the police stations. There could be many more since a lot of honor killings are registered as suicide or not reported or investigated.

According to the Federal Ministry of Law and Justice 933 people were killed across the country in the name of honour during 2013-14. The report said a total of 456 and 477 cases of honour killing were reported in Pakistan in 2013 and 2014, respectively. The greatest number of such cases (602) was reported from Sindh.[115] As per the federal law ministry's data for 2013, 66 cases of honour killing were reported in Punjab, 315 in Sindh, 47 in Khyber Pakhtunkhwa and 28 in Balochistan. Similarly, 477 such cases were reported in 2014. Of these, 80 cases belonged to Punjab, 287 to Sindh, 78 to Khyber Pakhtunkhwa and 32 to Balochistan.[116]

Prosecutions in most of these cases fail due to various reasons. One, poor investigation and collection of evidence; and two, due to the loopholes in the criminal law which allow private parties to compromise or the victims or their legal heirs to compound offences.

---

[113] Commission on the Status of Women, *Punjab Gender Parity Report,* 2016, pp. 128–42, available at http://pcsw.punjab.gov.pk/research_publications.
[114] Punjab Police, *Honour Killings 2011–2016,* available at https://www.punjabpolice.gov.pk/honour-killings.
[115] Express Tribune, "Ministry figures: 933 killed 'for honour' in two years", 9 February 2015, available at https://tribune.com.pk/story/835343/ministry-figures-933-killed-for-honour-in-two-years/.
[116] Ibid.

There's a general trend of low conviction rates for any type of crime due to poor investigation and prosecution but conviction rates in crimes against women are abysmally low. For instance, various kinds of crimes against women in the province of Punjab during 2012, 2013, 2014 and 2015 were 5391, 5387, 5367, and 6505 respectively. The number of convictions at trial for the same period remained 378, 316, 211, and 81 and the acquittals were 2496, 2098, 1956, and 1585 respectively.[117] There's an obvious steep downward trend as far as convictions are concerned.

According to lawyers and women's rights advocates apart from poor investigation and insensitivity on part of the police and prosecutors, one major reason why so many cases of murders of women in the name of "honour" go unpunished is that the family of the victim, ofthen from the same family or clan as the perpetrator, "forgive" the perpetrator and do not become witness against the perpetrator. The police on their part fail to gather adequate independent forensic and circumstantial evidence to successfully prosecute the perpetrators. They often too work towards dropping the prosecution. An amendment to the Criminal Code was introduced in October 2016 ostensibly to strengthen the law to prosecute the perpetrators of violence against women in the name of "honour".[118]

But some practitioners have expressed skepticism over its effectiveness.[119] For instance, it has been argued that there still is a major loophole since the possibility of compounding has been left open. Section 345 of the Code of Criminal Procedure, 1898 which generally allows compounding of certain offences relating to human body including murder may in fact still apply to honor killing if families reach an out-of-court settlement or compromise.[120] Further, no concrete steps have been taken to enhance the ability and capacity of the investigating agencies to ensure adequate evidence is gathered to successfully prosecute. Unless the police investigation is strengthened to hold the perpetrators of violence against women accountable, protection of witnesses is provided and more reliance is placed on forensic and circumstantial evidence gathered with the help of modern scientific methods, violence against women will continue to go unpunished.

While it is too early to assess the effect of the amendment, what can be reported is that hundreds of honour killings have taken place in the six months since the law was passed. In fact, with more than 20 cases of honour killing reported in Khyber-Pakhtunkwa since the start of the year, violence against women has been on the rise in this province.[121]

Recommendations:

- Eliminate the loophole in the criminal law for possible compromise or out-of-court settlement between private parties by amending substantive and procedural

[117] Commission on the Status of Women, *Punjab Gender Parity Report Punjab*, 2016, pp. 128–142, available at http://pcsw.punjab.gov.pk/research_publications.
[118] See Dawn, "Anti-honour killing, anti-rape bills finally passed", 7October 2016, available at https://www.dawn.com/news/1288569.
[119] The News, "How not to legislate", 26 October 2016, available at https://www.thenews.com.pk/print/159850-How-not-to-legislate; For general background information see Asad Jamal, "Revisiting the Law: What protection is there for women?", in The News Line Magazine, October 2016, available at http://newslinemagazine.com/magazine/revisiting-law-protection-women/; The News, "The Dishonour of Compromise", 28 February 2016, available at https://www.thenews.com.pk/print/101537-The-dishonour-of-compromise.
[120] Ibid.
[121] See Express Tribune, "Honour Killing cases on the rise in Khyber Pakhtunkhwa", 10 February 2017, available at https://tribune.com.pk/story/1322211/honour-killing-cases-rise-k-p/; also see ABC, "Pakistan honour killings continue despite though new laws", 12 January 2017, available at http://www.abc.net.au/news/2017-01-11/why-honour-killings-continue-in-pakistan-despite-tough-new-laws/8172756.

provisions in the criminal law and especially section 345 CrPC in a way so as to render it impossible for all crimes against women to be compounded;
- Enhance the ability and capacity of the police to sensitively investigate and prosecute cases of gender-based violence especially crimes related to the so-called "honour";
- Provide protection to witnesses in cases of violence against women;
- Ensure that all cases of violence against women, including domestic violence are registered by the police;
- Take measures to facilitate the lodging of complaints by victims and to address effectively the barriers that may prevent women from reporting acts of violence against them;
- Promptly, effectively and impartially investigate all reports of violence;
- Prosecute and punish all perpetrators in accordance with the gravity of their acts;
- Strengthen public awareness-raising activities to combat violence against women and gender stereotypes;
- Provide specific training for police officers, judges, lawyers, law enforcement personnel, and social workers.

9. Violence against Children

a. Child Labour

A serious concern is child labor and in particular the exploitation of girls and boys as domestic workers in slave-like conditions. In this context, the case of Tayyaba made headlines in January 2017. A Sessions Judge and his wife allegedly hired a 10 year old girl as a maid, beat and burnt her, detained her in a storeroom, and kept her on a terrace for several days without food and blankets. It has been reported that the parents of the child being her natural guardians have reached a compromise with the offenders.[122] This case is far from unique. It is estimated that there are more than 12 million children who are involved in labor, many of them in slave-like conditions.[123]

In most instances, children are trafficked from rural areas to larger cities to serve in well-off families. Their impoverished parents are promising a lump sum or a monthly salary. The mode of sending children as domestic help is sometimes similar to bondage, where a child is forced into a life of servitude after the parents virtually sell the child for a meagre sum.[124]

Pakistan has ratified ILO Minimum Age Convention and most labour laws have set the minimum age at 14 years.[125] However, various federal and provincial laws related to

[122] Dawn, "Pre-arrest bail sought for judge, wife in maid case", 3 January 2017, available at https://www.dawn.com/news/1306103. For more information see Society for the Protection of the Rights of the Child who sends fact-finding missions to such incidents as soon as a report emerges of child rights abuse based on tips from neighbours or based on reports by other child rights groups via email or Whatsapp, see http://www.sparcpk.org/FFR.html.
[123] Dawn, "12.5 million children in Pakistan are involved in labour", 13 June 2016, available at https://www.dawn.com/news/1264451.
[124] Dawn, "Domestic trafficking of minors fuels child labour", 5 February 2017, available at https://www.dawn.com/news/1312772.
[125] With the exception of The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015, which permits 'Light Work' for children at the age of 12 years.

employment of children do not apply to domestic labour and labour in the informal sector and do therefore not set a minimum age for domestic labour. The Constitution of Pakistan prohibits employment of children below the age of fourteen 'in any factory or mine or any hazardous employment'.[126] But none of the laws prohibiting child labour categorises domestic child labour as 'hazardous'.

A study conducted amidst the rising trend in reporting of torture inflicted upon girl child domestic workers in 2014 with a sample 800 child domestic workers between ages 7 and 15 years in seven cities of Pakistan found that working conditions of 79% of respondents were "oppressive" and they were often subjected to unusually long working hours — 16 to 17 hours every day — without adequate breaks.[127] It is worth mentioning that there is a draft Domestic Workers (Employment Rights) Bill, pending before Parliament. Although this bill requires employers to ensure that children under the age of 14 are not employed, it does not provide for any sanctions for an employer who employs a child. The bill does therefore not provide a real protection for child domestic workers.

b. Child Marriage

Early marriage of, mostly, girls remains a serious concern. An estimated 21% of girls marry before they reach the age of 18 years.[128] The 1929 Child Marriage Restraint Act sets the age of marriage at 18 for males and 16 for females.

Several efforts to increase the minimum age to marry to 18 years have been unsuccessful. In 2016, a Member of Parliament submitted a proposal to raise the legal minimum age to 18 and to introduce harsher punishments for those arranging child marriage. However, she withdrew the proposal because of pressure form the Council of Islamic Ideology that criticized the proposal as "anti-Islamic" and "blasphemous".[129]

Moreover, several efforts at the provincial level brought little change. Although the Sindh Child Marriages Restraint Act 2013[130] regulates that the marriageable age of girls and boys is at 18 years, it is not strictly implemented. An attempt to introduce a similar piece of legislation in Punjab has failed and a draft has been withdrawn because of the resistance from religious circles. In Punjab, the current draft amendment bill only proposes enhanced punishments for solemnising marriage of a boy under 18 and for a girl under 16.[131] There's no proposal in Khyber Pakhtunkhwa and Balochistan to enhance marriageable age of girls to 18. The Fedearl government too is reluctant to move ahead on this question.

c. Corporal Punishment

Corporal punishment at home and in school is culturally widely accepted. In addition, the Penal Code exempts from punishment anyone who inflicts corporal punishment upon a child if done in good faith for the benefit of the child (Section 89 PPC).[132] A 2016 amendment to the Criminal

[126] Article 11(3) of the Constitution of Pakistan.
[127] Express Tribune, "Child Domestic Workers: Overworked, underpaid, and abused" 12 June 2014, available at https://tribune.com.pk/story/720513/child-domestic-workers-overworked-underpaid-and-/.
[128] Girls not Brides, *Pakistan*, available at http://www.girlsnotbrides.org/child-marriage/pakistan/.
[129] Dawn, "NA body terms minimum marriage age 'un-Islamic'", 15 January 2016, available at https://www.dawn.com/news/1233131.
[130] Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, Section 33 and 34 available at http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/92232/107301/F1592784103/PAK92232.pdf.
[131] The Punjab Child Marriage Restraint Amendment Act 2015, available at http://wdd.punjab.gov.pk/system/files/THE_PUNJAB_MARRIAGE_RESTRAINT_(AMENDMENT)_BILL_2015.pdf.
[132] Section 89 of the Pakistan Penal Code 1860.

Code prohibits cruelty to children but only covers extreme cases that results in physical or psychological injury.[133] It further does not nullify the above-mentioned section 89 PPC.

It is important to add that a bill prohibiting corporal punishment was passed by the National Assembly in 2013 but has not been passed by the Senate. Debates in the Senate reveal that several members of Parliament found the proposed bill to be against Islamic values.[134]

Although there are several provincial regulations, they remain largely ineffective.[135] In Punjab, the provincial government has prohibited corporal punishment through an executive order instead of proper legislative enactment that would impose a penalty on anyone exercising corporal punishment on children in schools, at home, and other child care institutions. Moreover, provincial laws that exist in Khyber Pakhtunkhwa,[136] and Sindh,[137] remain unenforced in the many religious schools (madrassahs) that are not registered with the government. Balochistan is yet to prohibit corporal punishment in educational institutions including madrassahs.

Recommendations:

- Adopt legislative measures to eradicate all forms of child labor for children under 15 years of age;
- Conduct public awareness-raising campaigns about the harmful effects of child labour;
- Amend the Child Marriage Restraint Act 1929 and prohibit marriage of girls under the age of 18 years; Ensure the application of the existing law
- Prohibit and criminalize all forms of corporal punishment of children in all environments and contexts at the national level as well as in all provinces and regions under Pakistan's control [including Gilgit-Baltistan, Jammu and Kashmir];
- Amend section 89 of PPC to expressly exclude corporal punishment of children of all ages;
- Conduct public awareness-raising campaigns about its harmful effects of corporal punishment, and promote positive non- violent forms of discipline as an alternative to corporal punishment;
- Oblige all madrassahs to register with the government and enforce existing provincial laws and executive order prohibiting corporal punishment;
- Carry out prompt investigation, prosecution and adequate punishment of perpetrators and provide protection, free legal aid, rehabilitation and compensation for children victims of trafficking, abuse, and forced labour;
- Amend the law relating to trafficking of persons to make it applicable to inter-provincial trafficking;
- Amend the laws relating to prohibition of child labour to the effect that domestic labour of children under the age of 15 is criminalised and no compromise between private parties may be allowed in such cases; declare domestic child labour as 'hazardous employment'.

[133] Section 328A of the Pakistan Penal Code 1860.
[134] Dawn, Senators invoke Islam to drop 'scolding' from children protection bill, available online: https://www.dawn.com/news/1251955.
[135] See e.g. Dawn, "In Peshawar, uprooting corporal punishment proves problematic", 6 January 2017, available at https://www.dawn.com/news/1305570.
[136] The Khyber Pakhtunkhwa Child Protection and Welfare Act 2010 at http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/92232/107301/F1592784103/PAK92232.pdf.
[137] Sindh passes law to ban corporal punishment at https://www.dawn.com/news/1311951.