



GOVERNMENT OF PAKISTAN

**PAKISTAN'S INITIAL REPORT ON UNITED NATIONS CONVENTION AGAINST
TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT (CAT)**

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List of Abbreviations

<u>S.No.</u>	<u>Abbreviations</u>	<u>Details</u>
	AC	Assistant Commissioner
	AG	Attorney General
	AHRC	Asian Human Rights Commission
	DSMB	District Standing Medical Board
	CJP	Chief Justice of Pakistan
	CoP	Constitution of Pakistan
	Cr.CP	Code of Criminal Procedure, 1898
	CSOs	Civil Society Organisations
	DHQ	District Headquarter Hospital
	DIG	Deputy Inspector General of Police
	DSP	Deputy Superintendent of Police
	FIR	First Information Report
	FSC	Federal Shariat Court
	HRC	Human Rights Committee of the United Nations
	HRCP	Human Rights Commission of Pakistan
	HRW	Human Rights Watch
	ICJ	International Court of Justice
	ICT	Islamabad Capital Territory
	ICRC	International Committee of the Red Cross
	IGP	Inspector General of Police
	IHL	International Humanitarian Law
	IO	Investigating Officer

JJSO	Juvenile Justice System Ordinance 2012
KPK	Province of Khyber Pakhtunkhwa
LHC	Lahore High Court
LHV	Lady Health Visitor
MLC	Medico-Legal Certificate
MO	Medical Officer
NGOs	Non-Governmental Organisations
PLD	Pakistan Law Digest
PO	Police Order 2002
PPC	Pakistan Penal Code, 1860
RPO	Regional Police Officer
SC	Supreme Court
SHO	Station House Officer
SI	Sub-Inspector
SCMR	Supreme Court Monthly Review
SP	Superintendent of Police
SSP	Senior Superintendent of Police
TIC	Treaty Implementation Cell
UDHR	Universal Declaration of Human Rights
UN	United Nations
WAPDA	Works and Power Development Authority
WP	Writ Petition
YLR	Yearly Law Reporter

INTRODUCTION

1. Pakistan ratified Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (hereinafter referred to as CAT or Convention) on 23rd June 2010. In accordance with Article 19 of the Convention, the Government of Pakistan is pleased to present its initial Report on the implementation of the Convention before the Committee against Torture which summarizes the existing laws, policies and measures taken for implementing the Convention. While preparing the report, every effort has been made to adhere to the Guidelines regarding the Form and Content of Initial Reports (CAT/C/4/Rev.3).

2. At the very out-set, Pakistan would like to reaffirm its commitment to the implementation of CAT. We would like to further inform the Committee that Pakistan's commitment to rejection of torture and protection of human rights precedes its ratification of the Convention. Chapter I of the Constitution of Pakistan guarantees and lays down the framework for the protection of Fundamental Rights of all its citizens without any discrimination, as does Chapter II that lays down Principles of Policy which also outlines substantive framework for the protection of rights. Protection from torture is part of the Human Rights guarantees provided in the Constitution. Since ratification of the Convention, Pakistan has accelerated its efforts to strengthen and develop mechanisms for its implementation.

3. Pakistan is also party to a number of international treaties that give effect to the implementation of CAT. The International Covenant on Civil and Political Rights (ICCPR) was ratified at the same time as CAT, while the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was ratified in 1969, the Convention on the Rights of the Child (CRC) was ratified in 1990, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was acceded to in 1996. The United Nations Convention against Transnational Organized Crime (UNTOC) and the United Nations Convention against Corruption (UNCAC) were ratified in 2007 and 2010 respectively. The obligations reflected in the Convention are also present in ICCPR's Article 7, UNCAC's Article 44, and UNCTOC's Article 16, which are also being implemented.

4. We would like to state that most of the rights embodied in the CAT as well as in other international human rights instruments ratified by Pakistan, have always been part of the substantive law of the country and have, thus, been enforced by the administrative and the judicial arms of the state accordingly.

5. While ratifying the Convention, Pakistan had initially entered reservations on ten Articles but later it withdrew all reservations except one, i.e., on Article 8, as Pakistan makes extradition conditional to the existence of a treaty. The withdrawal of reservations demonstrates that as a state party, Government is fully committed to implementation of various provisions of the Convention. Two declarations were also made, i.e., one on

Article 28 (1), as Pakistan does not recognize the competence of the Committee provided for in Article 20, while the other one is on Article 30 (1) as Pakistan does not accept arbitration and jurisdiction of ICJ in this respect.

i) Reporting Methodology

6. This report has been prepared in close coordination with relevant line ministries and departments of the Government at the national and provincial levels. A number of key stakeholders, relevant Non-Governmental Organizations (NGOs)/Civil Society Organizations (CSOs), individual experts, and academia were consulted and their contribution was sought through an inclusive and participatory approach.

7. In compliance with the Convention's Reporting Guidelines, a series of extensive provincial and national consultations were conducted with a broad range of relevant stakeholders including the respective government departments, civil society, experts and academia. Detailed questionnaires were developed and circulated by the Reporting Unit of the Ministry of Human Rights with the view to seek required information from all relevant quarters within the government departments and organisations. The received responses to the questionnaire were consolidated and shared with the stakeholders during consultations. Subsequently, the information gathered during consultations and the feedback of the participants has been duly reflected in the Report.

8. Besides, it may be pertinent to apprise the Committee that the reporting on compliance and implementation of all Human Rights Conventions ratified by Pakistan has been further strengthened and institutionalized by setting up of "Treaty Implementation Cells (TICs)" at the provincial level, that are coordinated and monitored by the National Treaty Implementation Cell at the national level. TICs are mandated to monitor and ensure treaty implementation, coordinate information, and undertake data collection for the country reports. This measure has been taken for making the reporting mechanism more prompt and effective.

ii. Overview of the Existing Legal Framework

9. As mentioned earlier, torture or acts amounting to torture stand criminalized in the domestic laws through Constitutional and other existing legal frameworks whether committed by private individuals or by an official of the government. The state's official policies neither allow nor condone torture in all its forms and manifestations. Under the law, public servants, under no circumstances, are permitted to engage in any act that may amount to torture, nor are they allowed to abet or permit anyone else to do so. Acts and omissions of any nature condoning torture, by any public servant, are unlawful. The law does not permit any exceptions to prohibitions regarding acts amounting to torture. Likewise, no official or un-official orders, even during a state of emergency, can be justified as a defense to the commission of any such act amounting to torture.

10. As the supreme law of the land, the Constitution of Pakistan guarantees fundamental rights to the citizens (Arts. 8-28)¹ and discourages all kinds of parochial, racial, tribal, sectarian and provincial prejudices among the citizens of Pakistan (Art. 33).

11. Both Federal and Provincial Governments of Pakistan are equally committed to implement the Convention. An individual's rights to life, liberty and dignity are inviolable under Art. 9 and 14 of the Constitution of Pakistan (CoP), and there is zero tolerance to the infringements of these provisions. The Supreme Court of Pakistan, in the light of the two mentioned provisions of the Constitution, has condemned extra-judicial killings or custodial death, arrests and torture. The apex court specifically pronounced that: "such acts by the State machinery violate Fundamental Rights under which a person is entitled to be treated according to law and equally before law."² The Government firmly believes that the Convention is an effective tool for improving its legal and administrative structures to more effectively safeguard the rights of its citizens which gives effect to compliance of its national and international obligations.

12. The Constitution of Pakistan further provides for specific prohibitions against torture and ensures elimination of all forms of exploitation (Art.3). It provides for a legal framework in which individuals have the right to protection of the law. (Art.4) which states that no action detrimental to life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

13. Article 9³ guarantees that no person shall be deprived of life or liberty save in accordance with the law. Article 10 states that no person who is arrested shall be detained in custody without being informed of the grounds for such arrest nor will he/she be denied the right to consult and be defended by a legal practitioner of his choice. Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest. Most important is Article 8, an over-arching provision, which provides that the state shall not make any law that takes away or abridges the rights so conferred by the fundamental rights enshrined in the Constitution and any law made in contravention shall, to the extent of such contravention, be void.

14. The dignity of individuals as citizens of Pakistan is of prime importance under the Constitution. Article 14 (1) provides that the dignity of man subject to law, and the privacy of home, shall be inviolable, while Article 14(2) states that no person shall be subjected to torture, for the purpose of extracting evidence.

15. A number of statutory guarantees provide protection against police brutality and torture in Pakistan. For example, the Pakistan Penal Code (PPC) prohibits a public servant from knowingly disobeying the law and acting in a way that would injure another person.⁴ The Penal Code also prohibits wrongfully confining someone or injuring someone in order

¹ Constitution of Islamic Republic of Pakistan, 1973. Chapter 2 "Fundamental Rights"

² Benazir Bhutto vs. President of Pakistan (PLD 1998 388)

³ Ibid

⁴ Pakistan Penal Code (1860), ch. XV, § 166 (Pak.).

to extort a confession.⁵ Anyone found “using torture to extort a confession can be imprisoned for up to ten years”.⁶ The Criminal Procedure Code (Cr.PC) requires police to conduct house searches in the presence of two or more witnesses.⁷ Any confession made in police custody can be challenged in the courts.⁸

16. The Police Order of 2002 imposes penalties, including fines or imprisonment for up to five years, on police officers who torture or abuse a person in their custody.⁹ The Police Order 2002 provides safeguard to the prisoners and detainees in the police custody.¹⁰ It ensures that any police officer, regardless of any rank, is liable for punishment if he inflicts torture.¹¹

17. In Pakistan, the law enforcement is primarily the function of the respective provincial governments. Offences catalogued within the Pakistan Penal Code (PPC) are investigated by provincial law enforcement agencies and brought to trial by provincial prosecution services. Greater emphasis on law enforcement establishes increased accountability within the community and allows provincial governments to strategize and design criminal justice programs responsive to cultural particularities of each province.

18. The Supreme Court, established under the Constitution of Pakistan (COP), is the apex court of law in the country. At the provincial level, the highest court of law is the respective High Court in each of the provinces and one for Islamabad Capital Territory. The Constitution also provides for such other courts as necessary. Besides being the ultimate appellate courts at the provincial level, the High Courts are also tasked with supervising all subordinate courts, including the District and Sessions Courts, where results of investigations on First Information Reports (FIRs) relating to any incidents of torture are to be deposited.

19. The judiciary is mandated to uphold the fundamental rights enshrined in the Constitution. The Supreme Court, through its original jurisdiction, can consider questions of public importance with reference to the enforcement of any fundamental right (Article. 184(3) of CoP) as well as take up any case of human rights violation by exercising its *Suo Moto* powers. Similarly, the respective High Courts also retain jurisdiction to issue orders, upon application, for the enforcement of fundamental rights (Article. 199 of CoP).

20. Besides, Human Rights Cell of Supreme Court is also pursuing cases of torture. Reference of few such cases, where relevant, has been provided in this report.

⁵ Pakistan Penal Code (1860), ch. XVI, §§ 337-K, 348 (Pak.).

⁶ Pakistan Penal Code (1860), ch. XVI, § 337-K (Pak.).

⁷ Code of Criminal Procedure (1898) (Pak.); S.103

⁸ Qanun-e-Shahadat Order (1984) (Pak.); Art. 37

⁹ Police Order of 2002, Ch. XVII, § 156 (d)

¹⁰ *Ibid.* S. 4. (1) (c)

¹¹ *Ibid.* S. 114 & 156

iii. **Constraints and Challenges**

21. Like many other developing countries, resource constraints remain a constant challenge for Pakistan. However, every possible effort has been made to overcome some of the challenges by introducing police and judicial reforms as well as strengthening legal and administrative framework in the country.

22. The Government of Pakistan continues to fulfill its responsibility to create an enabling environment for the exercise and enjoyment of basic human rights across the board. Through its National Internal Security Policy 2014-2018, the government endeavors to maintain a secure law and order environment whereby the rule of law continues to prevail and the various fundamental rights and safeguards guaranteed by the constitution remain intact, freely exercised and accessed by the citizens.

IMPLEMENTATION OF SPECIFIC PROVISIONS OF THE CONVENTION

Article 1: Definition of Torture

23. As stated earlier, Torture continues to be prohibited in various legal instruments in Pakistan even before it ratified the CAT. It is embodied in various provisions of the Constitution and in a number of existing laws and judicial orders. Cumulatively, they adequately give effect to Article 1 of the Convention. Therefore, Constitutional provisions as well as laws assist in the implementation of various aspects of torture defined in the Convention.¹²

24. Article 14 of the Constitution protects the “dignity of man” as well as prohibits the “use of torture against any person for the purpose of extracting evidence”.¹³ Read together with Article 9 of the Constitution,¹⁴ which preserves the life and liberty of a person, the prohibition on torture may be construed as quite extensive. This implies that the word ‘life’ does not refer solely to being physically alive but denotes all facets of human life including the right to enjoy life with dignity¹⁵

25. The Supreme Court of Pakistan, in one of its judgments, observed that the word ‘Life’ is quite vast and includes all such amenities and facilities which a person born in a

¹² Other relevant sources of law regarding torture include The Rules and Orders of the Lahore High Court, Lahore: Instructions to Criminal Courts (1996) (Pak.); The Chief Executive’s Order No. 22 (2002) (Pak.) [hereinafter Police Order of 2002]; The Punjab Police Rules of 1934 (Pak.); The Prisons Act of 1894 (Pak.); Pakistan Prison Rules of 1978 (Pak.), Pakistan Extradition Act of 1972 (Pak.); The Pakistan Army Act of 1952 (Pak.); Parliamentarians Commission for Human Rights, Torture in Pakistan: A Lawyer’s Handbook 6 (2012).

¹³ Ibid. Art. 14. Inviolability of dignity of man, etc. (1) the dignity of man and, subject to law, the privacy of home, shall be inviolable. (2) No person shall be subjected to torture for the purpose of extracting evidence.

¹⁴ Art.9: Security of person. No person shall be deprived of life or liberty save in accordance with law

¹⁵ Shehla Zia and Others vs. WAPDA (Works and Power Development Authority) (PLD 1994 SC 693)

free country is entitled to enjoy with dignity, legally and constitutionally.¹⁶ Moreover, the court further observed ‘the fundamental right to preserve and protect the dignity of man under Article 14 is unparalleled and could be found only in few Constitutions of the World’. Thus, an appropriate interpretation of the prohibition on torture as provided in the Constitution of Pakistan is that the restriction implies a complete prohibition of torture, especially regarding torture used for extracting false evidence.

26. Corresponding to Article 14 of the Constitution is Article 7 of the ICCPR that provides protection from torture, inhuman or degrading treatment or punishment, in particular, being subjected to medical or scientific experiment without his or her free will. It protects the dignity, the physical and mental integrity of an individual and holds it sacred.

27. Similarly, Article 11 (4) (b) of the Constitution cautions against inhuman penalty of any individual serving a compulsory service. The sub-Section of the Article states that “...no compulsory service shall be of a cruel nature or incompatible with human dignity.” It is, therefore, in line with Articles 14 and 11 of the Constitution.

28. All other legal frameworks in Pakistan criminalize and prohibit torture committed by anyone, whether at the public or private level. There is an intrinsic link between Art. 14¹⁷ and Articles 8, 9, 10, 11, 12, & 13 of the Constitution¹⁸ and all other legal frameworks. For instance, Chapter XVI of the Pakistan Penal Code (Sections 299-338-H) deals with “Offences Affecting the Human Body [Of Offences Affecting Life]” and provides severe penalties to various kinds of injuries inflicted by anyone to another person. Similarly, Chapter XVI-A of PPC deals with “Wrongful Restraint & Wrongful Confinement” (Sections 339-377), while Chapter XXII deals with “Criminal Intimidation, Insult and Annoyance.”

29. The Pakistan Penal Code (PPC) criminalizes several acts, ancillary to torture. Section 332 of the PPC, for instance, defines “Hurt” as: Whoever causes pain, harm, disease, or injury to any person or impairs, disables or dismembers any organ of the body or part thereof of any person without causing his death, is said to cause hurt. This definition is further expanded to include more specific types of hurt including: itlaf-i-udw, itlaf-i-salahiyat-i-udw, shajjah, jurh¹⁹ and any other classification of hurt not included in the given list.

¹⁶ Ibid

¹⁷ Constitution of Islamic Republic of Pakistan 1973.

¹⁸ Ibid. Art. 8 deals with Laws inconsistent with or in derogation of fundamental rights to be void; Art. 9 deals with Security of person whereby No person shall be deprived of life or liberty save in accordance with law; Art. 10 deals with Safeguards as to arrest and detention; Art. 11 deals with Right to fair trial; Art. 12 deals with Protection against retrospective punishment; and Art. 13 deals with Protection against double punishment and self incrimination;

¹⁹ Definitions of these terms are given in Annex I.

30. Chapter XVI-A of the PPC²⁰ specifically and comprehensively deals with core issues pertaining to torture, including:

- Wrongful Restraint & Wrongful Confinement,
- Criminal Force and Assault,
- Kidnapping, Abduction, Slavery and Forced Labour,
- Rape

31. It may be underscored that the provisions of this Chapter make the use of criminal force unlawful, a technique by which the perpetrator intends to cause or is aware that his or her action would likely to cause the intentional infliction of injury, fear or annoyance to anyone. Force itself is defined very broadly. Criminal force, thus, conceptually relies upon the intentional criminality of any act which results in or which will likely result in injury, fear, or annoyance.

32. The definition of torture provided in the Convention specifies that torture is the harm inflicted in some fashion by or at the instruction of a public official or person acting in an official capacity. Chapter IX of PPC deals with ‘Offences By or Relating To Public Servants’, and includes specifically Sections such as Public Servant Disobeying Law, With Intent To Cause Injury To Any Person (166), and Public Servant Framing an Incorrect Document With Intent To Cause Injury (167) prohibiting any such actions by the public servants. Section 166 of PPC, for instance, provides that a public servant shall be deemed to have committed a criminal offence if she/he knowingly disobeys any direction of the law as to the way in which she/he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that she/he will, by such disobedience, cause injury to any person.

33. In a judgment, the Supreme Court took Suo Moto notice of such an incident reported in a local press regarding clipping off the hair of three jail inmates by jail staff. The jail authorities held departmental proceedings against the responsible staff who had committed the offence. The apex court decided that the jail authorities had no right to inflict any such punishment that is beyond the scope of Prison rules, and the responsible staff should have dealt with in accordance with law, as ‘merely initiating a departmental proceeding against them would not serve the purpose of justice.’²¹

34. Apart from the provisions of the PPC and specifically in relation to torture of detainees, the Police Order 2002 also makes it an offence for police officials to inflict torture on any person in their custody.²² Art. 156 (d) of the Police Order 2002 states that whoever being a Police Officer, “inflicts torture or violence to any person in his custody; shall, for every such offence, on conviction, be punished with imprisonment for a term,

20 PPC Chapter XVI-A. Sections 339 - 377

21 Human Rights Case No. 1061 of 2007. http://www.supremecourt.gov.pk/HR_Cases/4rth%20final/1061of2007.pdf

22§ 156 of the Police Order, 2002. Penalty for vexatious entry, search, arrest, seizure of property, torture, etc.

which may extend to five years and with fine.” In *Muhammad Amin v. State*,²³ a case in which police functionaries were charged with, among other offences, causing hurt contrary to provisions of the PPC, as read with § 156 of the Police Order, the Sindh High Court took serious notice of the allegations against the accused who were public functionaries and pertained to maltreatment, unlawful confinement and torture of a citizen, which the court held could not be treated as a minor offence, but was to be taken very seriously. Accordingly, a plea of bail, in circumstances where prima facie material was available on record to connect a public functionary with the crime, was rejected and bail applications of the accused functionaries were dismissed in the circumstances. It is pertinent to mention that courts in Pakistan have not been reluctant to hold police functionaries to account for illegal actions.²⁴

Article 2: Prevention of Torture

35. The provisions regarding torture in the Constitution of Pakistan make abundantly clear that it is prohibited. Acts of torture are also subject to criminal penalties, including fines and incarceration. Prosecutions of this nature do occur frequently in the appropriate circumstances. In this regard, the justice system holds the perpetrators accountable. The Supreme Court of Pakistan in one of its judgements defined extra judicial executions as killings “which have no sanction or permission under the law or which cannot be covered or defended under any provision of law”.²⁵

36. Pakistan, under no circumstances, promotes any policy that allows or condones the use of torture as a tool of the state’s law enforcement agencies. Torture is neither encouraged nor justified even in exceptional circumstances. Despite the serious ongoing security threats due to terrorism, Pakistan remains firmly committed to preserve the framework of fundamental rights enshrined in the Constitution.

37. The current criminal law, both federal and provincial, clearly prohibits all acts of violence that may amount to torture. These acts may be prosecuted under a number of provisions within the PPC including assault, murder, rape, wrongful confinement, criminal force, kidnapping etc., as mentioned in earlier paras. Thus, ensuring that acts amounting to torture are criminalized in Pakistan.

38. The Anti-Terrorism Act (ATA) of 1997, the prime legislation covering the investigation and adjudication of acts of terrorism provides protections in accordance with human rights norms and standards. The ATA requires a person detained to be produced within twenty-four hours of arrest before a magistrate. Law enforcement agencies may seek further remand from the magistrate, but there is no extension for any investigating agency, unless the circumstances are sufficiently serious to warrant such an action and the court is satisfied that no harm has or will come to the accused. The law also gives witness protection.²⁶

²³[2007 PCrLJ 1303].

²⁴See e.g., *Masood Ahmad Javed v. State* [2006 MLD 855].

²⁵Benazir Bhutto vs. the President of Pakistan. (PLD 1998 SC 388)

²⁶ The Anti-Terrorism Act (ATA) of 1997. S. 21

39. While in the custody of the Armed Forces acting in aid of civil power, the Action (in Aid of Civil Power) Regulation 2011 ('AACPR') makes it clear that no person may be abused or mistreated. Military personnel that violate the law shall be investigated by the Armed Forces. Further, if civilian law enforcement agencies are allegedly involved in any act of abuse or misuse, they shall be reported to the respective Provincial Government for further investigation and action. For the Armed Forces, the AACPR specifies that "any conduct" that is criminalized "under any existing treaty or convention" is considered an offence under the regulation. This provision not only alludes to the Convention and various other treaties that ban torture, but the Regulation also explicitly prohibits torture. The Regulation, takes great care in ensuring that aspects of Human Rights are preserved while invoking the law, and thus lays down complete protocol in exercising the Regulation as well as envisions an oversight body to check any human rights violations in the Process"²⁷. It states, "No person interned under this regulation, shall be subject to torture."²⁸

40. Regarding orders of superior officers, subordinates, whether they exist within law enforcement agencies or the armed forces, are only required to comply with lawful orders given by superior officers. Under the Police Order of 2002, even in times of emergency, it is the duty of a police officer to "obey any lawful order" provided by a senior.²⁹ The Army Act 1952, the Frontier Corps Ordinance, the Rangers Ordinance, the Air Force Act, etc., all employ similar language. Although there is no specific law which explicitly states that an illegal command should be disobeyed, the language of the legislation is clear and sufficient that an unlawful command may be refused.

41. Article 10 of the Constitution provides safeguards regarding arrest and detention. It guards against unlawful detention and codifies the right to be informed of the grounds for arrest. The prevention of torture heavily depends upon the stringent implementation of this Article. In addition, Article 10-A explicitly entitles individuals to a fair trial and due process in the course of civil matters and criminal proceedings.

42. Habeas corpus: The Constitutional remedy of habeas corpus available through Art. 199 of the Constitution, requires a detainee to be produced immediately before the Court to determine the legality of his confinement, and, where appropriate, to order his release.³⁰ This requirement, implemented strictly, significantly reduces the chances for undocumented detention and acts amounting to torture. Article 10(2) of the Constitution further requires that every person who is either arrested or detained in custody be produced before a magistrate within twenty-four hours.

²⁷ The Action (in Aid of Civil Power) Regulation 2011 ('AACPR') . Chapters III & VI

²⁸ Ibid. Chapter VI. S.15

²⁹ Police Order 2002. S. 4 (m)

³⁰ Muhammad Azam Malik v. A.C. Karachi, P.L.D. 1989 S.C. 266

43. In a judgment, the Lahore High Court stressed that no person may be detained longer than twenty-four hours without the permission of the magistrate.³¹ The direction of habeas corpus is elaborated in Section 491 of the Code of Criminal Procedure 1898 (Cr.PC), specifying further the manner in which persons detained in custody must be presented before the Court to be dealt with in accordance with law. The superior courts in Pakistan are consistent on censuring unlawful practices by public officers that inflict torture and transgress limits prescribed by law.

44. In another case, where a habeas corpus petition was filed in order to recover a person in police custody, the appointed bailiff recovered the detainee from a private residence. He reported that the detainee was handcuffed and bound by an iron rod at the time of recovery. The Court determined that the individual held in illegal custody was denied the due process of law, which is guaranteed to all citizens including criminals. “No individual, entity or organization can be allowed to transgress the limits defined by the law and the Constitution.”³² Not only were the rights of the criminally accused upheld but inquiries into inappropriate police behavior were also ordered. There are many other cases in which, under similar circumstances, the judiciary has taken effective measures to prevent the use of torture.³³

45. Arrest: Chapter XXXIX of the Cr.PC provides thorough safeguards regarding to arrest and detention guaranteed under Article 10 of the Constitution. These provisions are designed to prevent abuses during arrest or detention that would curtail the liberty of any person. With respect to the fundamental nature of these rights, it is clear that the liberty of a person is too precious to be arbitrarily interfered with and without engaging judiciary in strict conformity with the law.

46. It may be underscored that the law enforcement officials, at the time of arrest, are required to refrain from the use of any force, which if used at all, must be no more than is necessary to prevent further harm or escape. For this purpose, the law provides for women to be searched by women officials, thereby upholding their dignity.³⁴ The law also makes it clear that in the course of making an arrest, law enforcement personnel must not cause death or injury to a person.³⁵

47. Right to be informed: Those subject to arrest and detention retain the right to be informed of the grounds for arrest. Such grounds must be communicated either at the time of arrest or during the grant of remand at the latest. Non-compliance with this requirement renders the order of detention illegal. The grounds should provide information that would allow the detainee to make an effective representation against the detention.

³¹ Ch. Zahoor Illahi vs. The State and 4 others (P.Cr.L.J 1975 1413)

³² Mst. Rana Bibi vs S.H.O (2010 P.Cr.L.J LHC 1)

³³ Rana Muhammad Afzal v. Home Secretary, Government of Punjab, (PLD 1996 Lahore 325); Ali Abbas v. S.H.O., (PLD 2008 Lahore 564); Zoor Talab v. S.H.O., (2001 P. Cr. L.J. 115 Lahore); Mst. Sughran v. S.H.O., (2008 YLR 2603 Lahore); Mushtaq Hussain v. S.H.O., (2001 P. Cr. L.J. 1847); Mehr Muhammed Hafeez v. D.I.G., (2001 P. Cr. L. J. 363 Lahore); Maqbool Ahmad v. S.H.O., (2001 MLD 1695 Lahore)

³⁴ Section 52 of Code of Criminal Procedure, 1898

³⁵ Section 46 (3) of Code of Criminal Procedure, 1989

48. Fair trial and due process: Article 10A of the Constitution guarantees the right to a fair trial as well as due process.³⁶ Sections 177 to 365 Cr.PC lay down the procedures to be followed to ensure a fair trial. These procedures curtail the possibility of torture to be used as a tool of law enforcement.

49. Conditions of detention: The application of the Convention extends beyond temporary custody or the interrogation and investigation process. Torture may not be employed in any manner in the course of a prison sentence. In addition, the conditions within a prison must be of such a standard that they may not amount to torture or cruel and inhuman or degrading treatment.

50. The legal framework governing the administration of the prison system in Pakistan is laid down in the Prisons Act of 1894 as well as in the Prisoners Act of 1900, that govern the Inspectorates of Prisons of each province. Amongst a range of provisions, the two Acts regulate the care and treatment of prisoners, along with discipline and the punishment of further offences. Further regulations are provided by the Pakistan Prison Rules 1978, commonly referred to as the "Jail Manual." The courts ensure that the governments are held accountable in any deviation from law in cases of torture. In *Benazir Bhutto v. The President of Pakistan* (supra), the Supreme Court of Pakistan declared that it was the state's responsibility "to explain as to how that person, who was in their custody, met his death and whether that death was natural or unnatural and in what circumstances it had come about. Custodial killings are to be explained satisfactorily as is required under the law."³⁷

51. Under the criminal law, the police have not been conferred any right to take away the life of any person, other than in any exceptional case under the law, in case otherwise, the police officer causing the death would be guilty of the offence of culpable homicide.³⁸ Whether the causing of death in the encounter in a particular case was justified as falling under any one of the two conditions can only be ascertained by proper investigation and not otherwise.³⁹

³⁶ Article 4 of Constitution of Pakistan 1973

³⁷ *Benazir Bhutto v. The President of Pakistan*, Supra, (PLD 1998 SC 388)

³⁸ The Pakistan Penal Code (PPC) in its older form included the offence of culpable homicide for acts of homicide resulting from the infliction of intentional harm upon a person i.e. section 299 Culpable Homicide and section 301 Culpable Homicide by causing death of person other than person whose death was intended. Amendments during 1980s replaced the specific phrase "culpable homicide" and introduced terms from Islamic Law. Current equivalent sections are section 300: Qatl-e-Amd and 301: Causing death of person other than the person whose death was intended; and the following sections in Chapter XVI of PPC which deal with Culpable Homicide not Amounting to Murder. Section 300: Whoever, with the intention of causing death or with the intention of causing bodily injury to a person, by doing an act which in the ordinary course of nature is likely to cause death, or with-the knowledge that his act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit qatl-e-amd. Section 301. Causing death of person other than the person whose death was intended: Where a person, by doing anything which he intends or knows to be likely to cause death, causes death of any person whose death he neither intends nor knows himself to be likely to cause, such an act committed by the offender shall be liable for qatl-i-amd.

³⁹ Section 46 of Cr.PC reads as: 46. Arrest how made: (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there, be a submission to the custody by word or action. (2) Restating endeavour to arrest: If such person

52. The mandate of the Inspectorate is generally referred to as the 4Cs. These are explained as follows:

- a. Custody – referring to keeping inmates in a safe place of confinement.
- b. Care – indicating meeting basic needs (accommodation, food, health care, and other amenities) of the inmates.
- c. Control - maintaining order and discipline within the prison premises.
- d. Cure - motivating inmates through ethical, moral and vocational teachings to become useful and law-abiding citizens.

53. Drawn from the legal frameworks mentioned earlier, these principles are a gist of those laws, and are taught as part of the training in National Academy for Prison Administration. Within the principles of these 4Cs, the provincial governments are constantly striving to improve and align the system of prisons and the living conditions of the inmates in line with the international best practices.

54. The executive oversight of the prisons and prisoners is built into the institutional and management structure. The Home Secretary exercises executive oversight over the Inspector General (IG) Prisons who reports to him and is accountable as head of the attached Directorate/ Department. The IG Prisons directly manages and supervises all the prisons. The Superintendent of each prison is accountable to the IG Prisons. Under the Rules, the Superintendent Jail is responsible for providing the necessities to inmates, including food and clothing, and must ensure that their treatment is in accordance with the law. Any complaints regarding assault or ill treatment may be immediately communicated to the Superintendent or Deputy Superintendent Jail. The Deputy Superintendent is responsible for taking all necessary measures to ensure the safe custody of prisoners along with maintaining discipline and sanitary conditions of residence.

55. Under the prison rules, there are “Jail Committees” operating in every Jail/prison comprising lawyers and Civil Society and headed by the District Judge that conduct regular periodic visits to the jail to inquire about the state of inmates, ensure provision of quality and adequate food and basic necessities. The inmates can freely share their views and problems with the committee which recommends measures to the Jail Authorities for the redressal of grievances of the inmates.

56. In addition, the Prison Rules require the officials and functionaries of prisons to treat the prisoners in a humane manner. The Rules make it mandatory for the functionaries to

forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other-person may use all means necessary to effect the arrest. (3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.[emphasis added]

refrain from any act or gesture that might irritate or annoy any prisoner,⁴⁰ and prevent the prison staff from using any form of force on them.⁴¹ For instance, in response to a complaint received by the Human Rights Cell of the Supreme Court, regarding gross violation of Prison Rules at Lahore District Jail, the Chief Justice of Pakistan (CJP) issued directives to the Jail authorities through the Attorney General (AG) Punjab, as well as the IG Prisons to ensure that the plight of prisoners is redressed by taking necessary steps by ensuring strict implementation of the Prison Rules.⁴²

57. The Prison rules also provide for investigating unexplained injuries. These state that when a prisoner with injuries on his body is admitted into a prison from police custody he shall be examined immediately by the Medical Officer. If the examination reveals unexplained injuries not already recorded in the medico-legal report accompanying the prisoner, a report shall immediately be made to the Sessions judge and officer In charge of the Prosecution and the Superintendent of Police.⁴³

58. The prisoners/ inmates also avail the opportunity to access justice by making a complaint in writing to the CJP for prompt redressal of any violation of their rights including torture or mal-treatment by the prison authorities/ functionaries. In a complaint received by the CJP from a prisoner in Muzaffargarh Jail regarding mal treatment and torture by certain functionaries of the jail, the CJP immediately ordered for a judicial inquiry to probe the facts of the case. Upon finding the case valid, the accused were arrested and a case was lodged against them.⁴⁴ Similarly, in response to a news item appearing in a local newspaper regarding an act of torture of an under-trial prisoner in the local jail, the CJP ordered for immediate inquiry. Upon finding the case valid, the CJP ordered for expeditious proceedings of the trial of that prisoner, and also took action against the responsible jail functionary.⁴⁵

59. Juvenile and Women Prisoners: The rules mandate special measures to deal with women and juvenile prisoners. According to the rules, every woman admitted to prison must be examined by a woman warden within 24 hours of admission, under the direction of the medical officer of the prison, to discover unexplained injuries.⁴⁶ If any injuries are discovered they must be reported to the district magistrate and to the police.

60. The rules include provision of specific spaces for women and Juvenile inmates that are independent / segregated from the rest of the prisoners and that cater for the special needs of the two categories. The rules state that all women prisoners serving sentences of two months or more and all juvenile girls must be transferred to a women prison. Women prisoners must be kept separate from male prisoners at all times.⁴⁷

⁴⁰ Pakistan Prisons Rules, [1978]. Rules for the Superintendence and Management of Prisons in Pakistan. Chapter 44. Rule 1065

⁴¹ Ibid. Rule 1066

⁴² 2760/2006.

<http://www.supremecourt.gov.pk/HRCases/4rth%20final/27600f2006.pdf>

⁴³ Ibid. Rule 20

⁴⁴ 57/2009. http://www.supremecourt.gov.pk/HR_Cases/4rth%20final/57of2009.pdf

⁴⁵ 1061/2007. http://www.supremecourt.gov.pk/HR_Cases/4rth%20final/1061of2007.pdf

⁴⁶ Ibid. Rule 21

⁴⁷ Ibid. Chapter 13. Rule 309

61. Women inmates are placed in segregation for greater security as well as freedom within the jails/prisons that have separate women staff. Under the rules, a woman Assistant Superintendent is deputed to run the affairs of the women prison under the direct supervision and control of the Superintendent prison.⁴⁸ She is further assisted by a team of women warders with the similar scope of duties as their male counterparts. No male employed in any capacity or connected in any way with the women prison is allowed to enter any part of prison specified for women other than when called to do so by the female assistant superintendent and only when accompanied by the female assistant superintendent or a female warder.⁴⁹ The facilities offered by the prison are equally provided to the women section without discrimination, but subject to the availability of women resource persons/facilitators. In case of non-availability, special efforts are made to provide facilities on need basis, such as a lady doctor or a woman para-medical staff.

62. Under the rules, whipping or other corporal punishment may not be inflicted on women. Furthermore, a female prisoner who delivers a child while incarcerated may keep the child with her until it reaches six years of age. Women are also barred from receiving disciplinary measures beyond handcuffs.

63. Juvenile offenders, i.e. children under the age of eighteen who are involved in various offences and crimes, are provided additional protection during incarceration. All issues of Juvenile prisoners are regulated through the Juvenile Justice System Ordinance (JJSO), 2000, passed on July 1st 2000 and later amended in 2012.⁵⁰ The main objective of the JJSO is “protection of children involved in criminal litigation, their rehabilitation in society, re-organization of Juvenile Courts and matters connected therewith”⁵¹

64. The JJSO contains important provisions regarding bail for juveniles and their pre-trial detention including the production of arrested children for non-bailable offences before the Juvenile court within 24 hours of arrest.⁵² The courts also ensure that optimum care is taken and relief granted to the juveniles in ‘the best interest of the accused child’. In a case where the accused fell within the definition of a ‘child’ was granted bail with orders of the court which stated in its judgment that “*a child falling within the definition of child was entitled to bail, even if involved in a case punishable with death and such concession was subject to limitations contained in the JJSO.*”⁵³ While protecting the best interest of the arrested/accused child, the law further seeks his/her release on bail, with or without surety, unless there are “reasonable grounds” for believing that a release would “bring him into association with any criminal or expose the child to any danger.” Besides, JJSO specifically states that no child may suffer any corporal punishment while in custody and routine restraint methods may only be used as necessary.

⁴⁸ Jail Manual Rule 1180 (i)

⁴⁹ Ibid. Rule 1183 (i)

⁵⁰ Juvenile Justice System (amendment) Ordinance 2012

⁵¹ Preamble to the JJSO 2000

⁵² JJSO2000. S. 10 (2)

⁵³ Mehar Alias Mehaar v. The State, 2009, PCr.LJ 47, Karachi

65. Section 399 of the Cr.PC provides that youthful offenders instead of being imprisoned in a criminal jail may be confined in reformatories established by the provincial governments where they can be given suitable education and vocational training. The Juvenile prisoners are kept in separate barracks while in the central prisons adolescent facility centres are provided to them. For instance, in Haripur Central Prison, in the province of Khyber Pakhtunkhwa (KPK), basic education facilities, such as computer courses, library, teaching facilities upto 10th class, religious teaching facilities, and basic recreational facilities are being provided in partnership with NGOs.⁵⁴

66. Right to Medical Cover for the Prisoners: The role of the medical officer is crucial to the proper implementation of the Convention and the Prison Act and Jail Manual extensively delineate that role. Medical officers are tasked with examining newly admitted prisoners and keeping a record of their current health, appearance and physical capabilities. They must also regularly monitor the health of prisoners working while completing their sentence and those in solitary confinement. Medical officers are required to certify the fitness of a prisoner sanctioned, within the scope of the law, with disciplinary actions. Without the approval of the medical officer, no punishments may be discharged. Special arrangements are made for the on-call lady doctors for women inmates. Similarly, psychological counseling is also provided for all male, female and juvenile inmates by women and men psychologists.

67. Rules 776 to 809 of Pakistan Prison Rules, 1978 mandate the prisons departments to facilitate and provide medical cover to all inmates. The rules seek each prison to establish a hospital to treat sick prisoners.⁵⁵ In case of illness, the prisoners should be admitted in hospital for proper treatment. The Rules also provide for proper medical care and special diet to the patients during their illness. In case of illness, the prisoners should be admitted in hospital for proper treatment. The Rules also provide for proper medical care and special diet to the patients during their illness. In a case where adequate medical attention was not being given under the rules, the court ordered the jail authorities for taking necessary measures to provide adequate and better health facilities in the prison.⁵⁶

68. Healthcare facilities for prisoners are the responsibility of the District Health Department. Its provision remains a priority for Inspectorate of Prisons. Full time medical doctors and facilities are provided. In prisons where permanent doctors are not available, arrangements have been made for on call/visiting medical officers from the District Headquarters Hospitals (DHQs), who visit the prisons at least once a week. Access to healthcare includes arrangements for medical specialists, general practitioners and all other required tests / treatment on need basis.

69. In some Prisons, there are small hospital wards built with boarding facility, as well as psychiatric wards, and small scale laboratories etc. In Central Prison Peshawar, for instance, the medical care including dental care is provided around the clock. There is a well-equipped 19 bed hospital ward and a psychiatric ward made for the inmates. The

⁵⁴ Juvenile Justice System (amendment) Ordinance 2012

⁵⁵ Pakistan Prisoners Rules 1978. Rule 787

⁵⁶ 2760/2006. http://www.supremecourt.gov.pk/HR_Cases/4rth%20final/2760of2006.pdf

Medical staff includes, on the male side one Senior Medical Officer and two Medical Officers, one dental surgeon, one psychologist, 8 junior technicians and one dental technician. On the female side there is one Woman Medical Officer, one nurse, one Lady Health Visitor (LHV), and three psychiatrists.

Article 3: Non-refoulement

70. Pakistan continues to fulfill its obligations with respect to Article 3 of the Convention in refraining from expelling, returning or extraditing persons to another state where they may be subject to torture. The Extradition Act 1972 adheres to the principle of non-refoulement.

71. Sections 5 - 14 of the Extradition Act comprise the core provisions that govern the surrender of fugitive offenders from Pakistan. For the purposes of the Act, the Government may apprehend and surrender fugitive offenders for offences that may or may not be punishable within Pakistan. However, this power is constrained by several factors, including the length of the penalty, statutes of limitations and the nature of the offence. Section 5(2)(g) of the Act states that if it is found that a fugitive offender is likely to be prejudiced at trial or punished, detained or have his liberties restricted by reason of race, religion, nationality or political opinion, he may not be surrendered.

72. Article 13 of the Extradition Act provides that if the request for extradition is not made in good faith, or it is not “in the interest of justice,” or if it would be unjust or inexpedient to surrender the offender, the proceedings may be discharged. It is within this principle that implementation of Article 3 of the Convention may be illustrated. Though the Act does not explicitly prohibit surrender of a fugitive offender on the grounds that the individual may be subject to torture, the purpose of Article 13 is to incorporate all bars to extradition that would be unjust. Thus, the law indirectly bars extradition of a fugitive offender to any state where he is likely to be subjected to torture.

73. A judicial officer appointed by the federal government completes a determination of the validity of the request for extradition. The appointed officer is tasked with issuing warrants and compiling all data from inside and outside of Pakistan for his assessment. If the request for extradition would lead to an unjust outcome, Section 13 of the Act covers it. Extradition occurs only if the prima facie case is satisfied in light of the request for surrender.

74. There are additional laws that regulate the departure of persons from Pakistan in light of any potential criminal charges. The Foreigners Order 1951 restricts, in certain instances, the departure of foreigners from Pakistan for reasons including criminal charges, preventing prejudice in relations with foreign states and when it is in the public interest.

Article 4: Torture as a Criminal Offence

75. As mentioned earlier, torture is prohibited, with penalties ranging in severity. While there is no single law that ensures the implementation of the Convention, a combination of criminal statutes and other laws establish the framework for the criminalization of torture.

76. Criminal laws in Pakistan that constitute torture include criminal force, assault, hurt, murder, rape and wrongful restraint or confinement (PPC Sections 300, 332, 339, 340, 350, 351 and 375). Conspiracy, abetment and attempt to commit these acts are also criminalized (PPC Chapters V, V-A, XXIII).

77. There are laws that specifically criminalize acts amounting to torture committed by state officials. A public servant who conceals the commission or an attempt to commit an offence, which he is duty bound to prevent, is criminally liable. Likewise, a public servant who disobeys the law with intent to cause injury to any person is punishable by law (PPC Sections 119 and 166). Section 156(d) of the Police Order 2002 penalizes the infliction of torture or violence on any person within the custody of a law enforcement agent. The Police Order 2002 also addresses procedures regarding the misconduct of law enforcement personnel, their punishment and the code of conduct for them (Police Order 2002 Sections 44, 109, 113, and 114).

78. Under Pakistan's domestic legal system, for Qatl-i-Amd (purposefully/intentionally causing the death of a person), the punishment may be either life imprisonment or death penalty. Punishment for varying degrees of hurt caused intentionally range from one year with compensatory damages determined by the court for rupturing of the skin or bleeding to ten years with compensatory damages specified within the PPC for dismemberment, amputation or the severance of organs or limbs. Additionally, any intentional act that would amount to Qatl-i-Amd if completed is criminal attempt and may be punishable with imprisonment for ten years, along with fine. Further, any hurt caused to any person in the attempt to commit Qatl-i-Amd is also punishable separately under the law of hurt.

79. In order to further strengthen existing legal mechanisms, the bill "Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Bill 2014", after being passed by the Senate has been sent to the National Assembly for its review and passage. It may be underscored that the drafting process of this draft bill was extensive and inclusive with intensive inputs from the major stakeholders. It was reviewed by a number of relevant public and private stakeholders, including parliamentarians, representatives of legal fraternity, the police and law enforcement agencies, civil society, non-governmental organizations, academicians and jurists.

Article 5: Jurisdiction

80. There is uniformity in the application of laws dealing with rights and obligations of the people of Pakistan. There is also uniformity in the application of laws in all territories relating to the enforcement of human rights.

81. The criminal jurisdiction for federal and provincial law, generally, extends to the four provinces, the capital territory and to the Federally Administered Tribal Areas, as outlined in Article 1 of the Constitution of Pakistan. This is applied without prejudice to the nationality of the victim or offender.

82. Only under certain limited circumstances criminal jurisdiction may be extended to make it applicable outside the physical territory of Pakistan. For example, the PPC applies to any offence committed by “any citizen of Pakistan or any person in the service of Pakistan”⁵⁷ whether or not they are in Pakistan’s territory at the time of commission.⁵⁸ It also applies to “any person on any ship or aircraft registered in Pakistan” and this includes those vessels and aircrafts beyond Pakistan’s demarcated territory.

83. The Cr.PC which extends to the whole of Pakistan also provides that when a citizen of Pakistan commits an offence outside of Pakistan, when a public servant commits an offence in the tribal areas, or when any person commits an offence on any ship or aircraft registered in Pakistan, that person or public servant may be treated in a manner identical to if he had committed the offence within Pakistan.⁵⁹

84. The Extradition Act of 1972 defines “extradition offence” as an offence, act, or omission constituting which falls within any of the descriptions set out in the Schedule and, if it took place within the jurisdiction of Pakistan, would constitute an offence against the law of Pakistan and also in the case of a treaty State, an offence a person accused of which is, under the extradition treaty with that State, to be returned to or from that State.”

Article 6: Detention and Preliminary Inquiry in Cases of Extradition

85. The Extradition Act of 1972 allows a person identified as a fugitive offender to be apprehended and taken into custody for the purposes of extradition.⁶⁰ This is prompted by a request by a diplomat or the government of another state requesting surrender of the offender.⁶¹ When this request is made, the federal government, through an appointed Magistrate, may issue an order to inquire into the matter.⁶²

⁵⁷ Pakistan Penal Code (PPC). Section. 4

⁵⁸ Ibid. Sections. 2 & 3

⁵⁹ Criminal Procedure Code (Cr.PC). Sections 1, 186 & 188

⁶⁰ Ibid. S. 4

⁶¹ Ibid. S. 6

⁶² Ibid. S. 7

86. The Magistrate then issues a summon or a warrant for the fugitive offender if the request appears to be valid in the first instance. At the preliminary hearing, the Magistrate inquires into the case with the same powers and duties as those allotted to judges of the Sessions Courts. Evidence may also be produced at that time both in support of the request for extradition and in support of the alleged offender.⁶³

87. Evidence that may be presented includes any authenticated exhibits and depositions, official certificates of fact, judicial documents attesting facts and such other certified documents as may be relevant. Warrants, depositions or statements taken under oath that are issued, received or taken by a court outside of Pakistan may also be used as evidence if properly authenticated. The rule is followed by the judiciary, and pieces of various evidences, including documents and others, are considered by the courts of law in Pakistan after due verification, in order to establish the facts.⁶⁴

Article 7: Prosecution of Individuals, not Extradited

88. The Constitution of Pakistan contains several provisions that secure the right to a fair trial. These include: Articles 9 (Security of a person); Art.10 (Safeguards as to arrest and detention); Art.10-A (Right to fair trial); Art.12 (Protection against retrospective punishment); Art.13 (Protection against double jeopardy and self-incrimination); Art. 14 (inviolability of the dignity of man), and Art 25 (1) (equal before law and equal protection of law).

89. It is clear that Pakistan has the jurisdiction to prosecute individuals for acts amounting to torture committed within and outside its territory. Section 2 of the PPC provides that every person is liable to punishment under the Code for every act and omission committed within Pakistan and deemed criminal there under. Section 3 of the PPC applies this principle equally to any person liable for an offence committed outside Pakistan.

90. In addition, the Investigation for Fair Trial Act and the corresponding Investigation for Fair Trial Rules were codified in 2013. The Investigation for Fair Trial Act promulgates additional guidelines for the fair application, issue and execution of warrants. It also governs the admissibility of evidence obtained under the warrants and provides for committee oversight of cases in which warrants were not issued or issued and misused. The corresponding rules provide for greater transparency in the investigation process. This includes the registration of cases and the review of the admissibility of evidence.

Article 8: Extraditable Offences

91. As mentioned earlier, although Pakistan has withdrawn all other reservations to the Convention, it continues to maintain its reservation on Article 8. The reservation states, “The Government of the Islamic Republic of Pakistan declares that pursuant to Article 8,

⁶³ Ibid. S. 8

⁶⁴ Umar Ahmad Ghumman Vs. Government of Pakistan, 2002 PLD 521

paragraph 2, of the Convention, it does not take this Convention as the legal basis for cooperation on extradition with other States Parties.” International extradition is a federal subject. Under the laws of Pakistan, the Government may not extradite a person in the absence of an extradition treaty except for under those circumstances outlined in Section 4 of the Extradition Act, 1972.

92. It may be underlined that Pakistan has 28 bilateral extradition treaties currently in force: with Algeria, Argentina, Australia, Austria, Belgium, Columbia, Cuba, Denmark, Ecuador, Egypt, France, Greece, Iran, Iraq, Italy, Liberia, Luxembourg, Monaco, the Maldives, Netherlands, Portugal, San Marino, Saudi Arabia, Switzerland, Turkey, the United States, Uzbekistan and Yugoslavia. Agreements on the exchange of convicted nationals are in place with Hong Kong, Spain, Sri Lanka and Thailand.

93. Section 5(2) of the Extradition Act places certain restrictions on those offences for which an individual may be extradited. A fugitive offender may not be extradited if:

- a. The offence with which he is sought is of a political nature;
- b. The offence is not punishable by death, imprisonment for life or a term not less than twelve months;
- c. The prosecution of the offence, according to the law of the state, is barred by time;
- d. The fugitive offender may be tried for an offence other than the offence for which they were extradited;
- e. The offence does not amount to an offence based on double punishment laws within Pakistan, in respect of previous acquittals or convictions;
- f. The fugitive offender was charged with another offence in Pakistan or is undergoing a sentence for another criminal conviction, until they are acquitted or discharged; or
- g. The Federal Government, on the recommendation of the reviewing Magistrate, decides that the fugitive offender’s surrender shall result in a prejudiced trial or punishment, detention or restriction in personal liberty because of race, religion, nationality or political opinion.

94. An extraditable offence also requires dual criminality. The definition of “extradition offence” refers to an offence that falls within the Schedule attached to the Extradition Act committed within Pakistan’s jurisdiction and that constitutes a criminal act under Pakistan’s law. The offence must also be reflected within an existing extradition treaty or, under Section 4 of the Act, demonstrate the result of an arrangement approved by the Government of Pakistan.

95. In addition, the Extradition Act requires prima facie evidence of the offence before granting extradition. Without such evidence, the request for extradition of the fugitive offender may be discharged.

96. Similarly, the ‘Transfer Of Offenders Ordinance, 2002’ which aims at providing for transfer of a citizen of Pakistan convicted of an offence in a foreign country to Pakistan

and a citizen of a foreign country convicted of an offence in Pakistan to that country, also provides that where an agreement for mutual transfer of offenders has been entered into between Pakistan and any specified country, whether before or after the commencement of this Ordinance, the Competent Authority shall declare that the provisions of this Ordinance shall apply in respect of such country, by notification in the official Gazette.⁶⁵

Article 9: Mutual Legal Assistance

97. Several federal laws in Pakistan permit law enforcement agencies to provide mutual legal assistance in criminal cases pursuant to the Convention against Torture. Pakistan currently maintains a bilateral treaty regarding mutual legal assistance with Sri Lanka and Kazakhstan.

98. The agreement for mutual legal assistance with Sri Lanka, for example, reflects generally the provisions of the Extradition Act, 1972. The Ministry of Interior is appointed as the central authority in order to provide assistance in criminal matters. The mutual legal assistance may include: service of documents; recording statements; requests for search and seizure; providing information, documents and records; addressing the proceeds and instrumentalities of criminal activities; delivery of property; and restitution.

99. It may be underlined that mutual legal assistance may be refused on certain limited grounds. If the request is perceived to damage state sovereignty, security or public order, or if the assistance requested does not reflect a crime within the requested state, mutual legal assistance may be refused. Like the Extradition Act, agreements on mutual legal assistance account for double punishment and a statute of limitations on the offence.

100. The Investigation for Fair Trial Act, 2013 incorporates provisions on mutual legal assistance. In corruption cases, the National Accountability Ordinance of 1999 provides for mutual legal assistance mechanisms. Pakistan intends to enter into more mutual legal assistance agreements with other states in the future as part of its ongoing efforts to strengthen its counter-terrorism legal regime.

Article 10: Education and Information Regarding Prohibition of Torture

101. The Constitution of Pakistan, the Police Order, Police Rules, and the Qanun-e-Shahadat Order (The Law of Evidence) all prohibit infliction of torture. Therefore, it has been made mandatory that all law enforcement personnel should be provided with necessary training to prevent torture.

102. The National Police Academy established in 1978 is the premier police training institution of Pakistan. The Academy provides specialized training to newly recruited Assistant Superintendents of Police and is also responsible for in-service training to the

⁶⁵ The Transfer of Offenders Ordinance, 2002 (XXXVII of 2002). Section 3

senior management of all police forces. The training provided to the officers equips them to meet the challenges of modern day policing. The Academy remains committed to uphold the rule of law and human rights values including prohibition of torture.

103. The Academy has provided training to officers of a number of countries, including, among others, Palestine, Maldives, Afghanistan and Nigeria. Moreover, Saudi Arabia, Indonesia, Yemen, Dubai and Sri Lanka have also expressed interest in having their officers trained at the Academy. This demonstrates that the training provided by the Academy not only meets international standards but is also widely recognized.

104. According to the Punjab Code of Conduct for Punjab Police Officers 2011, notified under The Police Order, 2002, no police officer may inflict, instigate or tolerate any act of torture or other cruel, inhuman, or degrading treatment or punishment nor any police officer may invoke superior orders on the pretext of a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman, or degrading treatment or punishment. Clause H of the Code states that officers must obey all lawful orders and abide by the provisions of the Police Order. It further states that Officers should support their colleagues in the discharge of their lawful duties and oppose any improper behavior and report it where required. Besides, the Code mandates that in performance of their duties the police shall respect human dignity and maintain and uphold rights of all individuals. Similar Codes of Conduct are prescribed for Police Officers in the other provinces of Pakistan.

105. In 2006, the Law, Justice and Human Rights Division's Access to Justice Program management unit introduced Police Reforms in Pakistan with the view to ensure training of police officials in all capacities. Focused initial and continued training is provided to the police officers at all levels. While dealing with the citizens, they are trained to base their actions on the principles of equality, justice and respect for all members of the community without discrimination. In case an officer commits a wrong doing in the exercise of his duty, he is liable for prosecution of such an offence provided the complaint is made within a period of six months from the act committed. Police officials are taught that nobody is above the law including the police officers. Further, if a police officer is involved in misconduct, vexatious entry, search, arrest, seizure of property, torture and unnecessary delay in producing the arrested persons in the courts, he can be punished with both fine and imprisonment for a term ranging between one to five years, depending on the severity of the offence.

106. The Police Order 2002 transformed the Police culture from a "force" to "service". Specific measures, including revamping the training curriculum were introduced and SOPs were developed for various aspects of policing to ensure that the Police "Service" is people friendly and upholds human rights codes including demonstrating respectful treatment with women, elderly and the children.

107. Pakistan's judicial academies have independent and extensive training programs for their officials as well as police staff. Government as well as civil society organizations lay special emphasis for training and educating members of the judiciary and prison staff in

order to build their capacities and improve efficiency to prevent human rights violations. Series of workshops, lectures and seminars are routinely organized to orient them about their responsibilities with respect to the promotion and protection of human rights including prevention and prohibition of torture.

Article 11: Interrogation Rules and Methods

108. It may be reiterated that the use of torture for the purposes of extracting evidence is unequivocally prohibited under Article 14(2) of the Constitution. The law regulates the interrogation of a suspect in custody through a combination of constitutional provisions and federal laws.

109. Law enforcement officers are instructed to refrain from the use of any acts that may amount to torture and face consequences as a result of their failure to follow such instructions. The adherence to the implementation of such provisions is reflected in the strict regulation and supervision of the interrogation of suspects and their custody and treatment during arrest and detention.

110. According to the Police Order, 2002, police is required to “ensure that the rights and privileges, under the law, of a person taken in custody, are protected.” Police is also prohibited from either vexatiously and unnecessarily detaining, searching or arresting any person or inflicting an act amounting to torture on any person in custody. The High Court of Lahore observed in a case that, “The police has entered the premises without observing the formalities of law, hence the evidence so far collected is open to objection”.⁶⁶ The heads of district or federal law enforcement agencies are required to report any incident or complaint of rape, death or serious injury of a person in custody to the respective complaint authority.

111. In another case, the Supreme Court of Pakistan struck down certain provisions of Anti-Terrorism Act, 1997 which were in conflict with Article 14 of Constitution providing that the concerned Officer of Police, Armed Forces of Civil Armed Forces shall record in writing his reasons for such belief and serve on the person of premises concerned a copy of such reasons before conducting such search.⁶⁷

112. The Jail Manual provides further protections to those in custody. In conjunction with the Prison Act, it provides a framework guarding against mistreatment of prisoners and securing their fundamental rights within the domestic system of incarceration. The Jail Manual also provides for additional oversight within the prison system through the provisions on visitors and inspections by inclusive Jail Committees to ensure compliance. The Law & Justice Commission of Pakistan, in its report on the rights and privileges of prisoners, has stated that the District and Session Judges in all the four provinces are mandated to regularly visit the prisons within their respective jurisdictions.

113. In May 2008, the federal government instituted a jail reforms committee and after extensive deliberations, several recommendations were provided to provincial governments for

⁶⁶ Manzoor Ahmad vs. The State MLD 1990 1488

⁶⁷ Mehram Ali and Others vs. Federation of Pakistan and Others (PLD 1998 SC 1445)

further action. The Ministry of Interior has recently prepared a new draft of the Jail Manual and it is currently under review for finalization.

114. Pakistan's domestic law also takes into account special protections for women and children, pursuant to Article 25(3) of the Constitution. The law prohibits the pursuit of criminal charges against children under a certain age.⁶⁸ The Cr.PC also allows for crimes not punishable by death or imprisonment for life committed by persons under the age of fifteen to be tried under the scope of the Reformatory Schools Act, 1897. Women are meant to be arrested and searched by female law enforcement officials. They must also be segregated from male prisons, inmates, and officials (Details of rules for detention have been provided under implementation of Article 2).⁶⁹

Article 12: Prompt and Impartial Investigation

115. In Pakistan, competent authorities at the federal and provincial levels of government must conduct a prompt and impartial investigation after allegations of torture are made within their jurisdiction. In the course of these investigations, law enforcement agencies must fulfill their responsibilities to conduct unbiased investigations into allegations of abuse and to monitor the situation as needed. The Sindh High Court in a judgment declared that an investigating agency could not be allowed to make mockery of law and keep sword of proceedings/ prosecution hanging on the head of accused for a prolonged period, as dignity, honor, reputation and fundamental rights of accused were violated.⁷⁰ The accused had suffered agony through inquiry and investigation for a period of six years for no fault on his part due to mala fide acts of authorities.⁷¹ It is crucial that investigations of all acts amounting to torture are conducted with a level of seriousness equal to that of other grave offences.

116. Once a case of police high handedness comes to light, an impartial judicial inquiry is conducted immediately in order to determine the allegations. As stated earlier, the mechanism in the legal and judicial framework facilitates access to justice in Pakistan. Torture or the high handedness of the law enforcement cannot be proved until a thorough investigation is undertaken by the judiciary. In Pakistan, a number of "cover up" cases of torture have been exposed by the judicial inquiry. For instance, in a case of death occurring in alleged "police encounter" 2012, when investigated by the judicial magistrate under Section 30 in Faisalabad, it was determined that it was a fake police encounter and that the victim had been tortured to death by the police.⁷² As a result of this report submitted to the

⁶⁸ Section 82 of Pakistan Penal Code, 1860

⁶⁹ Article 27 (1) of The Prisons Act, 1984

⁷⁰ Muhammad Irshad Khan vs. Chairman, National Accountability Bureau (PCRLJ 20017 1957 Karachi-High-Court-Sindh)

⁷¹ Ibid

⁷² FIR. No. 778 Dated 24-06-12, under S.324/353/186 13/20/65 of A.O Police Station, Sargodha Road, Faisalabad. Report of the Judicial Inquiry by Meher Sarfraz Hussain, Judicial Magistrate Section 30, Faisalabad

District and Session Judge by the magistrate, directives were issued to the IGP to deal with the responsible police officials under the law.⁷³

117. During the course of an investigation, law enforcement agencies and prosecutors work together on several aspects of the pre-trial investigation. Law enforcement officials are required to immediately notify the District Public Prosecutor of the registration of a First Information Report (FIR), and provide him a copy. Moreover, all police reports must also be transferred to the appointed prosecutors as specified by law.

118. A prosecutor is required to “perform his functions and exercise his powers fairly, honestly, with due diligence, in the public interest and to uphold justice.” Prosecutors are trained and tasked with upholding the rule of law and furthering the enforcement of fundamental rights guaranteed by the Constitution. The Code of Conduct for Public Prosecutors in Punjab, under Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006 as well as identical laws in other provinces, emphasize that “While providing advice, assistance and support at the investigation stage” it is imperative that the prosecution, “ensure that the investigating services respect legal precepts and fundamental human rights.” The Code of Conduct also requires prosecutors to verify that evidence was lawfully obtained and that victims and witnesses are informed of their rights. Further, the prosecutors must also ensure that appropriate action is taken against law enforcement officials if it is ascertained that unlawful methods were used in the course of investigation.

119. Those taken into custody maintain the right to engage legal counsel on their own behalf. This right is preserved in Article 10(1) of the Constitution. Commencing from the moment of arrest, persons are entitled to and may freely choose their desired legal representation. Legal counsel may also be provided by the state for those indigent individuals unable to afford personal representation. The High Court of Sindh observed that this is the constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer.⁷⁴

120. The Pakistan Bar Council Rules provide for extending legal aid/assistance to the needy/poor litigants.⁷⁵ Special Permanent Committees on Free Legal Aid have been notified by the Bar Councils across Pakistan at the provincial, district and Tehsil levels. The sole objective of these Committees is to examine and approve applications seeking free legal services and provide legal aid to the required extent. The Committees also determine the “Voluntary Legal Services Panel” that consists of lawyers who volunteer to extend free services to the needy litigants as approved by the Committees. The mechanism has an oversight and accountability

⁷³ Ibid

⁷⁴ Faisal vs. The State (PLD 2007 Karachi 544)

⁷⁵ Legal Practitioners and Bar Councils Act 1973 [Act XXXV of 1973]. Section 9 (2) read with S. 56.

element as a core component that ensures that the objectives of free legal aid by the bar councils are served.

121. According to the JJSO, every child, whether an accused or a victim of an offence is entitled to legal assistance.⁷⁶ The law further obligates the state to appoint a legal practitioner for the child at State's expense. Legal assistance is also provided to the juveniles accused of any criminal offence and protection from any maltreatment or torture is also granted. The Sindh High Court in one of its judgements stated that "No child would be charged with or tried for an offence together with an adult, and the child would have the right of legal assistance at the expense of the state."⁷⁷ In this regard, the District & Sessions Judges have been empowered to constitute a panel of lawyers to provide free legal aid to the Juvenile inmates. Besides, Helplines, at national as well as provincial levels, have also been set-up that extend legal advice and counselling services to women and children.

Article 13: Right of Complaint

122. The Constitution of Pakistan states that it is the inalienable right of all individuals to enjoy the protection of and to be treated in accordance with the law.⁷⁸ The Cr.PC, in line with the Constitution, further mandates that any person with knowledge of an offence or of an intention to commit an offence is required to inform the Magistrate and police without unreasonable delay.⁷⁹ In addition, all information relating to the commission of a cognizable offence is meant to be recorded by the attending law enforcement agent. The information provided to the police shall be verified and attested by the complainant and retained by the law enforcement agent to be dealt with in accordance with the law.⁸⁰

123. Victims of torture in Pakistan have the right to bring a complaint and to have their case proceeded promptly and impartially through the criminal adjudication process. If a public servant has committed any act that amounts to torture, the victim or his or her associates have the explicit right to complain to a competent official and to solicit an impartial investigation. The Constitution explicitly states that all citizens are equal before the law and are entitled to equal protection of the law (Art.25). Therefore, there are no restrictions on who may bring a complaint against an act amounting to torture. Complaints are, thus, lodged against the high handedness, excesses, and torture committed by the law enforcement agencies including the police, that are probed under judicial inquiry and relief is provided accordingly under the law. In a case of custodial killing, the mother of the victim accessed the court of law to seek justice, and after conducting a thorough judicial inquiry, the Additional & District Sessions Judge directed the RPO to receive and admit the application of the complainant and to register the FIR in accordance with law for further action.⁸¹

⁷⁶ Preamble to the JJSO 2000

⁷⁷ Raja Ammanullah v. The State, 2002, MLD 1817, Karachi

⁷⁸ Article 4 of Constitution of Pakistan, 1973

⁷⁹ Section 42 of Code of Criminal Procedure, 1898

⁸⁰ Section 154, 156 and 157 of Code of Criminal Procedure, 1898

⁸¹ Haleema Bibi vs. RPO Faisalabad

124. Justices of Peace⁸² are empowered to initiate action for law enforcement, in case of refusal of police officials to register a complaint. Under Sections 22-A and 190 Cr.PC, the judiciary may take cognizance of any alleged offence after receiving a complaint. The competent authority also has the power to prompt any member of law enforcement agency to perform his duty in aiding the judicial officer on the complaint received.

125. The Police Order of 2002 also provides for a number of Commissions exercising oversight on the activities of law enforcement personnel, including the registration of complaints of misconduct against them.⁸³

126. Laws also provide for the protection of witnesses. For example, Section 21 ATA provides that a Special Court may give orders regarding the protection of witnesses upon application. Failure to comply with orders regarding witness protection or issuing a threat to or harassing a witness is a criminal offence punishable with two years imprisonment and fine.

127. It may be underlined that the law on witness protection is evolving. In this context, the province of Sindh passed a Witness Protection Act in 2013, which provides a comprehensive regime for witnesses providing evidence in criminal proceedings. It provides special law enforcement for their protection and secures their well-being through additional measures designed to secure their safety. Similarly, there is a national law extending to the whole of Pakistan that mandates the government to take appropriate measures to provide adequate security to the prosecution witness and investigation officers besides others.

Article 14: Right of Redress, Fair and Adequate Compensation and Rehabilitation

128. An individual subjected to any act amounting to torture has a legal right to redress and adequate compensation from the offender. Pakistan's domestic law provides a regime for compensation for those acts amounting to torture that are more heinous in nature. A victim of torture has several possible options for redress, depending on specific circumstances.

129. Legal redress and compensation is addressed in the Cr.PC, which provides that on convictions for death, hurt, injury, mental anguish or psychological damage, a court along with other punishment and fine, may also order payment of compensation. The court may direct that either a separate compensation be paid for causing the death or injury to a person or that the compensation be subtracted from the fine imposed on the offender.

130. In certain cases, Cr.PC also allows courts to exercise criminal jurisdiction in suits of a civil nature. While certain indemnity clauses bar lawsuits against public officials for acts done in an official capacity, in good faith or under instructions or directions made under

⁸² Cr.PC. Ss. 22 - 25: Justices of Peace are usually the District & Sessions Judges who have all the powers of a Police Officer referred to in section 54 and an officer in-charge of a police-station referred to in section 55

⁸³ Section 37, 44, 73, 80, 97 and 100 of Police Order of 2002

the law, their ambit does not extend to those acts falling outside the scope of official capacity such as acts that amount to torture.

131. For victims of torture who successfully prove in a court that the police has abused them, court remedies the situation by awarding punishment to the perpetrator. A judge may order any of three remedies: (1) reinvestigation of any criminal charges against the victim (for victims who were formally charged with a crime); (2) monetary compensation; and (3) criminal charges against the accused police officers.⁸⁴

132. Regarding alleged abuse by the police, a victim may bring a complaint before a magistrate and ask to be referred to the District Standing Medical Board (DSMB). The DSMB conducts medical examinations into allegations of torture or death of detainees while in police custody. The DSMB is made up of four physicians, who are government employees. These physicians evaluate the victim's allegations of abuse and document any physical or psychological signs of abuse in a Medico Legal Certificate (MLC).

133. It may be underscored that in cases of torture victims have been provided redress by punishing the perpetrators. For instance, in a judgment of 9 December 2015, district and sessions court of Karachi sentenced a man, Jaffar to 10 years imprisonment after convicting him of raping a 14 years old teenage girl who lived in his neighbourhood. The convict was also ordered to pay a fine of Rs25,000 or else face an additional imprisonment of two months. It may be mentioned that the trial continued for around two years, during which the suspect applied for bail twice, once before the trial court and then before the appellate court, which was rejected both times due to evidence against him. This demonstrates that judiciary in Pakistan is impartial in dispensing justice and convictions have been made in cases of rape-one of the worst forms of torture.

Article 15: Statements obtained as a Result of Torture

134. Article 14(2) of the Constitution clearly lays down the prohibition of torture as a method of extracting evidence or confessions. Similarly, the Qanun-e-Shahadat Order 1984 (Law of Evidence) contains a whole chapter on the prohibition of extracting evidence or statements through torture.

135. Article 37 of the Qanun-e-Shahadat Order (QSO) clearly provides that a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise of some favour or any advantage.⁸⁵

136. As per Article 38 QSO, no confession made to a police officer shall be used against a person accused of any offence.⁸⁶ Under Article 39 QSO, subject to Article 10 of the Constitution, no confession made by any person whilst he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate, shall be used as a proof

⁸⁴ Cr.PC and CPC

⁸⁵ Ibid. Muhammad Pervez and others v. State, 2007 SCMR 670

⁸⁶ Manzoor Ahmad & another v STATE (PLJ 2010 FSC 1)

against the person.⁸⁷ In a judgment, the Lahore High Court declared that the alleged confession by petitioner during police investigation while in custody has no evidentiary value and the same cannot be used against him.⁸⁸

137. Section 348 of the PPC provides for punishment of the officers who are alleged to have confined or harassed any person for extracting confessional statement. Also, Sections 164, 364 and 533 Cr.PC extensively deal with the powers and procedures to record statements, confessions, and examination of accused.

138. Those accused of criminal offences are constitutionally protected against self-incrimination (Art. 13). A defendant may not be required to bear witness against himself, nor may he be compelled to respond to inquiries damaging to his claims in the proceedings. This prohibition, to the extent that it is implemented properly, contributes to the deterrence of abuses by law enforcement officials. Coupled with the Constitutional prohibition of torture, this bar on self-incrimination prevents the government from seeking or extracting unlawful evidence.

139. It may be underlined that in a judgment, the Supreme Court of Pakistan struck down Section 26 of Anti-Terrorism Act, 1997, which was in conflict with Article 13 of the Constitution declaring that the said provision appears to be violative of Articles 13(b) and 25 of the Constitution. The judgment stated that a judicial confession is recorded by a Magistrate which is admissible as a piece of evidence. Additionally, there are very strict requirements which a Magistrate is required to comply with before recording a judicial confession of an accused person. These requirements do not find place in section 26 of the Act.⁸⁹

140. In another case, *Muhammad Pervez and others v. State* (2007. SCMR 670), it was found that the accused, after their arrest, were subjected to torture and thereafter confessional statement was recorded before Magistrate. Trial Court mainly relied upon the confessional statement of accused and convicted and sentenced them to life imprisonment. However, the review by Supreme Court highlighted that the accused remained in police custody before and after recording confession for 24 hours and Magistrate had taken only one hour to record confession of the accused and stated that such type of confession would not fall in the category of voluntary confession. Therefore, Supreme Court converted petition for leave into appeal and set aside the conviction and sentence awarded to accused by the subordinate courts.

141. In recent years, the government has focused on establishing forensic labs and providing the police with modern investigative tools and techniques. Reliance on forensic evidence is increasing exponentially in criminal investigations, which is resulting in a significant decrease in the incidences of custodial torture for extracting evidence.

⁸⁷ *Mir Hazar v State* 2002 PCRLJ 270 Quetta-High Court Balochistan para 198

⁸⁸ *Nosher Ali vs. The State and 2 others* (YLR 2014 877)

⁸⁹ *Mehram Ali and Others vs. Federation of Pakistan and Others* (PLD 1998 SC 1445)

Article 16: Acts of Other Cruel, Inhuman or Degrading Treatment or Punishment

142. Similar to acts amounting to torture, other acts that amount to cruel, inhuman or degrading treatment or punishment are criminalized under the PPC which deems unlawful several acts amounting to cruel, inhuman or degrading treatment or punishment including: wrongful restraint (Section 339); wrongful confinement (Section 340); hurt (Section 332); criminal force (Section 350); and assault (Section 351).

143. The PPC also takes into account those measures that may amount to these acts during incarceration. Sections 73 and 74 of the PPC regulate the use of solitary confinement for offenders sent to prison. A convicted offender may not, under the guise of rigorous imprisonment, be subject to solitary confinement for greater than a period of three months of the whole duration of incarceration. This applies to those individuals incarcerated for longer than one year. Those convicts with sentences not exceeding one year are restricted to even lesser time on the whole in solitary confinement. Further, the Code specifies that under no circumstances shall the use of solitary confinement exceed more than fourteen days at a time in accordance with the law. The Prisons Act provides that no cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate.⁹⁰

144. The most direct prohibition of these acts is found in the Provincial Codes of Conduct for Police Officers, which stipulate that no police officer may inflict, instigate or tolerate any act of torture or other cruel, inhuman, or degrading treatment or punishment and no justification or exception may be made to allow for the same. The Human Rights and Gender Sensitization Policies adopted by the provinces in 2007 provide for training on Gender sensitivity and special police procedures pertaining to female suspects, complainants and witnesses. These emphasize that “torture or degrading or inhuman treatment may not be used in any form or for any reason whatsoever.”

145. It may be emphasized that courts in Pakistan have prosecuted perpetrators of cruel, inhuman or degrading treatment or punishment. For instance, in a case in which a woman Ms. Farzana Iqbal was killed by bricks in a cruel and inhumane manner by her family members, the Lahore High Court in a judgment of 18 November 2014 sentenced Farzana’s father Iqbal, brother Zahid Iqbal and cousin Jahan Khan to death. Another suspect Ghulam Ali was also sentenced to 10 years in prison and a fine of Rs 1 million. The ruling for the death penalty was awarded under three different provisions, i.e., i. the Anti-Terrorism Act Section 7; ii. Section 302 of CR.PC which outlaws murder; and iii. Section 338C which outlaws murder of a pregnant woman.

146. In conclusion, Pakistan as a State party wishes to reiterate its commitment to prohibition of torture in all forms and manifestations in accordance with the Convention. In the last decade, adoption of pro-human rights legislation has been instrumental in

⁹⁰ Section 29 of The Prisons Act, 1894

strengthening the overall human rights framework in Pakistan. The role of a vibrant and active media, civil society and independent judiciary has also been pivotal in this regard.

Definitions of kinds of “Hurt”

Itlaf-i-udw is caused by the dismemberment, amputation or severing of any limb or organ of the body of another person.

Itlaf-i-salahiyyat-i-udw is caused by the destruction or permanent impairment of the functioning, power or capacity of an organ of the body of another person or the disfigurement of that person.

Shajjah is any hurt on the head or face of a person, which does not amount to either itlaf-i-udw or itlaf-i-salahiyyat-i-udw. Shajjah itself is further divided into harms that vary in degrees of severity in relation to the exposure or fracture of bones and skull.

Jurh is a hurt, which leaves a temporary or permanent mark on the body of a person, in a place other than the head or the face. Jurh further divides into various harms known as Jaifah and Ghayr-jaifah. Jaifah includes harm to the mid-section of the body and Ghayr-jaifah includes varying degrees of harm to flesh and bone.