



**Submission to the United Nations Committee
against Torture (CAT)**

Alternative Follow-up Report to the Concluding
Observations of the Committee against Torture on
the Initial Report of Pakistan

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Justice Project Pakistan (JPP) is a non-profit, human rights law firm based in Pakistan that provides pro-bono legal advice, representation and investigative services to the most vulnerable prisoners facing the harshest punishments. JPP was the winner of the 2016 Franco-German Human Rights Prize for the Rule of Law and the 2016 National Human Rights Award awarded by the President of Pakistan.

The World Organisation Against Torture (OMCT) is the catalyst of the SOS-Torture network, a coalition of more than 200 international and national non-governmental organisations fighting torture, summary execution, enforced disappearances and all other cruel, inhumane or degrading treatment and punishment.

With offices in Geneva, Brussels and Tunis, OMCT runs programmes to favour State compliance with international law and national anti-torture legislation, provide urgent assistance to victims of torture and seek justice for them, advocate greater protection for children in detention, women, and human rights defenders worldwide.

A. Introduction

1. The following report comments on the Priority Recommendations issued by the Committee against Torture (Committee) in its Concluding Observations on the Initial Report of the Islamic Republic of Pakistan under the United Nations Convention against Torture (UNCAT), (CAT/C/PAK/CO/1). The Priority Recommendations selected for this report are the following: Recommendation 7 (a,b,c): Allegations of widespread use of torture by the police; Recommendation 13 (a): Torture in the context of counter-terrorism efforts; and Recommendation 14: Definition and criminalization of Torture.
2. As part of the Concluding Observations, the Committee requested the Government of Pakistan to provide follow-up information on the recommendations in its state follow-up report by May 12th, 2018, which remains pending.

B. Recommendation 7 (a,b,c), Allegations of Widespread Use of Torture by the Police

3. In its Concluding Observations, the Committee expressed deep concern regarding consistent reports of the use of torture by the police. The Committee recommended that the Government of Pakistan:
“ (a) ensure that officials of the State party at the highest levels unambiguously reaffirm the absolute prohibition of torture and publicly condemn all practices of torture, and issue a clear warning that anyone committing such acts or otherwise complicit or participating in torture will be held personally responsible before the law and will be subject to criminal prosecution and appropriate penalties;

(b) take measures to ensure that all police officers in the State party are prohibited by law from engaging in torture, as under the 2002 police order applicable in certain provinces of the State party;

(c) ensure that police officers who engage in torture are prosecuted and punished with penalties that are commensurate with the gravity of the offence of torture, as required under article 4 of the Convention.”
4. The use of torture by the police is systemic and prevalent across Pakistan. The police routinely employ torture and Cruel, Inhuman and Degrading Treatment (CID) to obtain confessions or witness statements that often form the basis of convictions and harsh sentences including the death penalty. Torture is also

employed by police to intimidate and coerce political opponents at the behest of local politicians or landowners.¹

5. The police enjoy virtual impunity in the exercise of torture and CID. A study by the Justice Project Pakistan (JPP) and the Allard K. Lowenstein International Human Rights Clinic discovered 1,424 confirmed cases of torture out of a sample of 1,867 Medico-Legal Certificates (MLCs) compiled by a government-appointed District Standing Medical Board (DSMB) during the period of 2006-2012 in the Faisalabad District.² None of the cases resulted in punishments for perpetrators or redress and rehabilitation for the victims. Victims who filed complaints were forced to withdraw them, following harassment from the Faisalabad police. This was confirmed during the CAT state review in March 2017, when the state delegation was unable to provide any evidence of measures taken to punish perpetrators or provide redress and rehabilitation to the victims identified in the report. Additionally, in March 2018, the National Commission of Human Rights (NCHR), through a letter to the Additional Deputy Commissioner of Faisalabad, sought an update in investigation of a sample of 19 cases out of the 1,424 confirmed cases discovered in the JPP and Allard L. Lowenstein International Human Rights Clinic report *Policing as Torture in Faisalabad*.³ The response to the letter from the Additional Deputy Commissioner detailed that in all 19 cases the victims dropped their cases, often in response to compromises being brokered with perpetrators.⁴ Follow-up interviews with the concerned victims showed that the cases were dropped on account of reprisals by the police in response to filing the complaint.
6. In a follow-up investigation to the *Policing in Faisalabad* report, conducted in 2018, JPP discovered that at least three new Medico-Legal Certificates confirming instances of torture by police were recorded by the DSMB in the Faisalabad District.⁵
7. Action taken in response to torture complaints against police primarily constitutes of administrative inquiries. Punishments resulting from such inquiries range from dismissal and removal from service to withholding of increment of salary and demotion. Official statistics published by the Punjab Police show that **56** police officers were faced with administrative inquiries in response to allegations of torture between 2014-2017.⁶ In 2017, 15 faced administrative penalties, which

¹ "This Crooked System" Police Abuse and Reform In Pakistan. Human Rights Watch, 2016,

<https://www.hrw.org/report/2016/09/26/crooked-system/police-abuse-and-reform-pakistan>.

² *Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan*. Justice Project Pakistan & Allard K. Lowenstein International Human Rights Clinic Yale Law School, Mar. 2014, <http://www.jpp.org.pk/report/policing-as-torture/>

³ National Commission on Human Rights (NCHR). Letter to Additional Deputy Commissioner. No. 8 (1)/2016-admn-NCHR. 05.03.2018. Letter available on file with JPP.

⁴ Addl. Deputy Commissioner Faisalabad. Report on 19 MLC's of DHQ Faisalabad. 12.04.2018. Available on file with JPP.

⁵ Details of the latest cases are attached in a Confidential Annexure.

⁶ *Accountability Mechanism*, Punjab Police. Government of The Punjab, https://punjabpolice.gov.pk/accountability_mechanism (last accessed on 03/07/2018)

included 11 forfeitures of approved service and only 1 dismissal. **Annex A** below details the designation of police officer, year and penalties given in internal inquiries in the Punjab Police.

(i) Inquiry by the National Commission for Human Rights against the Faisalabad Police

8. On 3rd May 2018, as a result of a complaint submitted by JPP, the National Commission for Human Rights (NCHR), initiated an inquiry under the National Commission for Human Rights Act, 2012 on allegations of widespread police torture in the district of Faisalabad.⁷ The inquiry was based on the 1,424 MLC's from the *Policing as Torture* report by JPP, and the three cases of torture found during the follow-up investigation in 2018.
9. Oral testimonies of 9 victims were recorded in a closed hearing held in Faisalabad on 28th May 2018 by the NCHR, headed by the Chairman Justice (Ret.) Ali Nawaz Chowhan. The victims in their testimonies described enduring various forms of torture by the Faisalabad police including being beaten with sticks and leather straps; being forced to witness the torture of their family members; being stomped on their faces and being stripped and beaten publicly. The victims who testified during the hearing included 4 juveniles, 3 women, and 2 men. The victims explained that the police subjected them to torture for not paying bribes, questioning them and their actions, and even appealing to their seniors to convince them to withdraw from the hearing. They stated that the physical and mental suffering they entailed continued to plague them.
10. Despite the initiation of the NCHR inquiry, complainants continue to face harassment and abuse at the hands of the Faisalabad Police. The victims have been subjected to threats of arrest and the filing of malicious First Information Reports (FIR) stating that there is a suspicion that the victim has committed an offence. This has resulted in the issuance of show-cause notices to the concerned officials to appear before the commission and respond to the allegations of harassment.
11. Medical Professionals who documented the MLC's confirming the torture have also been subjected to multiple instances of intimidation and harassment. These instances include phone calls from unknown numbers asking them to withdraw from the NCHR inquiry or disavow the MLC's.
12. Provided the widespread use of torture by the police, the continuous silencing of victims exposing cases of torture, the lack of prosecution of torture cases and the lack of unambiguous reaffirmations of the absolute prohibition of torture from the

⁷ "We will take action against police officials who commit torture": NCHR." *Daily Times*, 29 May 2018, <https://dailytimes.com.pk/246061/we-will-take-action-against-police-officials-who-commit-torture-nchr/>.

highest political levels, Pakistan cannot be considered having implemented follow-up recommendation number 7 (a,b,c) and should therefore be assessed with a **C**.

C. Recommendation 13 (a), Torture in the context of counter-terrorism efforts

13. Through Concluding Observation 13 (a), the Committee urged the Government of Pakistan to:

“repeal or amend the Anti-terrorism Act (ATA) and other relevant legislation to ensure that all persons deprived of their liberty have access to legal safeguards against torture, including prompt presentation before a magistrate and the possibility of a habeas petition, and to ensure that confessions obtained without the presence of a magistrate are inadmissible as evidence.”

14. The ATA is Pakistan’s principal counter-terrorism legislation. As a result of the broad and vague definition of terrorism contained under Section 6 (1) (b), **88%** of those convicted under the ATA and **86%** of those sentenced to death were tried for crimes with no link to “terrorism as it is traditionally defined”⁸ - such as acts that causes death or serious bodily injury to any person, or serious damage to public or private property, with the purpose to intimidate a population or to compel a government to do or abstain from doing any act.⁹ Section 6 of the ATA is exceedingly broad, vague and covers essentially any violent crime. Section 6(1) includes within terrorism the “use of threat or action” that “create a sense of fear or insecurity.”¹⁰ As a result of the broad definition, virtually all violent crimes are tried under the special regime established by the ATA. This has resulted in a backlog of over 17,000 cases in some districts.¹¹
15. The ATA also grants police excess powers¹² and waive key procedural safeguards that protect privacy, security, due process, fair trial and protection from torture enshrined under the Constitution of Pakistan and international human rights law under the International Covenant on Civil and Political Rights (ICCPR) and the UNCAT.

⁸ *Counting Executions*. Justice Project Pakistan, July 2017, <http://www.jpp.org.pk/wp-content/uploads/2017/07/2017.07.04-Death-Penalty-Fact-Sheet1.pdf>.

⁹ UNGA, Measures to eliminate international terrorism - Letter dated 3 August 2005 from the Chairman of the Sixth Committee addressed to the President of the General Assembly, A/59/894, 12 August 2005.

¹⁰ Anti-Terrorism Act, 1997[ATA], Sec.6. Available at: <http://www.ppra.org.pk/doc/anti-t-act.pdf>.

¹¹ JPP and Reprieve. Terror on Death Row. December 2014. URL: https://www.reprieve.org.uk/wp-content/uploads/2014/12/2014_12_18_PUB-Pakistan-Terror-Courts-Report-JPP-and-Reprieve.pdf

¹² Ibid at Sec. 19, 5.

16. Under Section 21-H of the ATA, confessions made under police custody remain admissible as evidence.¹³ This is contrary to the Qanun-e-Shahadat Order, 1984 (or The Evidence Act) which renders any confessional statements made under police custody inadmissible as proof.¹⁴ The ATA allows police to detain a person for up to thirty days without review or the possibility of a habeas petition. Additionally, Section 21-E of the ATA allows the remand to be extended by another 90 days on application to the courts “if further evidence may be available.” These provisions are relied upon extensively by police to extract confessions and statements from accused persons through resorting to heinous forms of torture.¹⁵ As a result of the suspension of fundamental guarantees and safeguards under the counter-terrorism regime, there is a heightened risk of torture for suspects under the ATA.
17. Despite the Committee’s recommendations, the Government of Pakistan has not taken any steps to repeal or amend the Anti-Terrorism Act, 1997 (ATA). The Committee’s recommendations continue to be reiterated by the Pakistani civil society, and the NCHR at various forums but to no avail.¹⁶ For example, on June 6th, 2018, the NCHR along with JPP, held an expert consultation on reforming the ATA. The experts included members of civil society, lawyers, retired police officials and representatives of the government from the National Counter Terrorism Authority. The recommendations issued as an outcome of the event included narrowing the current definition of terrorism under Section 6 of the ATA in order to restrict the ambit of the law to only those crimes traditionally defined as terrorism and repealing section 21-H, amongst others but to no success. The following 2 cases illustrate the loopholes under the ATA that provides impunity for perpetrators of torture.
18. **Amjad Ali** was arrested in 2006 on charges of abduction for ransom, “creating a sense of fear in society” and for impersonating a police officer under the ATA. Following his arrest, Amjad was kept in an undisclosed place for over a fortnight where the police subjected him to severe torture to coerce him into providing evidence. He was subsequently taken to People’s Colony Police Station and presented to the Magistrate the next day. The Special Anti-Terrorism Court, Gujranwala convicted Amjad on 31 January 2007 on the basis of a recovery of PKR 30,000 (\$300) and some jewelry ornaments that the police claim to have discovered from his place of residence. The evidence was not presented under proper procedures and no other forensic evidence proving Amjad’s possession of the money and personal effects was presented.
19. The only witnesses to identify Amjad as part of the kidnapping gang were the complainants and reliance was almost entirely placed upon their identification of

¹³ Ibid at Sec. 21-H.

¹⁴ Qanun-e-Shahadat Order, 1984, Chap. III, <https://punjabpolice.gov.pk/system/files/qanun-e-shahadat-order-1984.pdf>.

¹⁵ ATA, Sec. 21-E.

¹⁶ Myra Imran. “NCHR recommends government to review discriminatory laws.” *The News*, 28 July 2017, <https://www.thenews.com.pk/print/219418-NCHR-recommends-government-to-review-discriminatory-laws>

Amjad in an identification parade. According to Amjad, the complainants were his acquaintances and had personal enmity against him due to a dispute on a piece of land which Amjad had purchased from the complainant and he refused to hand over the possession. The Lahore High Court rejected his appeal and confirmed his death sentence on 2 June 2009. The Supreme Court of Pakistan finally accepted his leave to appeal on 25 October 2016 and his death sentence was converted to life imprisonment after spending over 9 years on death row.

20. **Muhammad Azam** was sentenced to death for murder with no connection to terrorism under the ATA on 8 July 1999 at the age of 17. His appeal to the High Court of Sindh was dismissed on 28 August 1999 and an appeal to the Supreme Court was also dismissed on 12 September 2000. There is plentiful evidence even in the original records of his arrest, trial and detention to demonstrate that he was below the age of 18 at the time of his alleged offence. This includes birth records confirming his date of birth as 18 March 1981. Similarly jail records also show that he was 17 at the time of being admitted into custody. As a result, he was originally held in Youthful Offenders Industrial School Karachi. Azam was one of 6 juvenile offenders whose name was sent by the Office of the Superintendent of Central Jail Karachi, Sindh to the Anti-Terrorism Court (ATC), Karachi seeking an age determination following the President Notification. The ATC, however, denied the request. Sentencing juvenile offenders to death penalty severely violates their inherent right to life, as stipulated in Article 6(5) of the ICCPR and in Article 37(a) of the Convention on the Rights of the Child.
21. The Pakistani government has not taken any steps to repeal or amend the Anti-terrorism Act (ATA) or other relevant legislation to ensure that all detainees have access to legal safeguards against torture. Hence, follow-up recommendation number 13 (a) has not been implemented and Pakistan should therefore be assessed with a **C**.

D. Recommendation 14, Definition and criminalization of torture

22. In its Concluding Observations on the initial report, the Committee urged the Government of Pakistan to take the necessary measures to “incorporate into its legislation a specific definition of torture that covers all the elements of the definition contained in Article 1 of the Convention and to establish penalties that are commensurate with the gravity of the act of torture”. The Committee encouraged Pakistan to review the Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Bill to ensure its full compatibility with the Convention and promote its adoption or propose new legislation to accomplish that.

23. However, the Government of Pakistan has not taken any action to comply with the Committee's recommendation. The Government has not taken any steps to incorporate a definition of torture consistent with the requirements of the Convention into its legislation.
24. Currently, the only mention of torture under Pakistan's legal framework is in the Constitution of Pakistan under Article 14(2).¹⁷ However, the relevant provision fails to comply with the requirements of the Convention as it fails to define its scope and fails to list any adequate penalty or granting of redress. Similarly, the offence of 'Hurt' under Section 337-K of the Pakistan Penal Code (PPC), 1898 only deals with the severest of bodily injuries that result in permanent infirmities and neglects to include any details of mental torture or torture that does not leave lasting physical marks.¹⁸ The current legal regime fails to provide a uniform definition of torture or establish an institutional mechanism for investigations of torture complaints. This leads to impunity for perpetrators.

Update on the Torture Custodial Death and Custodial Rape (Prevention and Punishment) Bill, 2014,

25. The Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Bill, 2014, was passed by the National Assembly Committee on Interior and Narcotics Control,¹⁹ as well as by the Senate of Pakistan.²⁰ However, it was never put in front of the National Assembly to be voted on and made into an Act. Since the recommendations by the Committee were put forth one year ago, no steps have been taken to move this Bill further or to raise it on the floor of Parliament. Additionally, there has not been any new legislation presented regarding the criminalization of torture.
26. In Khyber Pakhtunkhwa, the Police Order, 2002, was replaced with The Khyber Pakhtunkhwa Police Act, 2017, passed in January 2017.²¹ Section 119 (d) of the Police Act states, "*that whoever, being a police officer inflicts torture or violence to any person in his custody shall on conviction be punished and sentenced up to five years imprisonment with fine.*"²² However, the Act does not provide a definition of torture, and only penalizes acts by police officers, not other public officials. Furthermore, the Act does not outline steps for redress for victims of torture by police officials.

¹⁷ The Constitution of the Islamic Republic of Pakistan, Article 14 (2),

http://na.gov.pk/uploads/documents/1333523681_951.pdf

¹⁸ Pakistan Penal Code, Sec. 337-K, <http://www.punjabcode.punjab.gov.pk/public/dr/PAKISTAN%20PENAL%20CODE.doc.pdf>

¹⁹ Fazal Sher. "NA body approves "Torture, Custodial Death and Custodial Rape Bill 2014." *Business Recorder*,

<https://epaper.brecorder.com/2017/01/20/12-page/841370-news.html>.

²⁰ Irfan Haider. "Senate passes bills against rape, honour killing." *DAWN*, 2 Mar. 2015,

<https://www.dawn.com/news/1166907/senate-passes-bills-against-rape-honour-killing>. Accessed 29 June 2017.

²¹ Ibid.

²² The Khyber Pakhtunkhwa Police Act, 2017, Sec. 119 (d)

http://kpcodex.kp.gov.pk/uploads/2017_02_THE_KHYBER_PAKHTUNKHWA_POLICE_ACT_2017.pdf

27. The Pakistani government has not taken any steps to incorporate a definition of torture consistent with the requirements of the Convention into its legislation, as required by follow-up recommendation number 14 and should therefore be assessed with a **C**.

Conclusion

For the reasons stated above, JPP and OMCT submit that Pakistan has yet to implement the Recommendations given by this Committee in its Concluding Observations on Pakistan's initial report under the UNCAT. Pakistan has failed to take any steps to implement follow-up recommendations 13(a), and 14, and 7 (a,b,c).

The Government has not taken any steps to amend or repeal sections of the Anti-Terrorism Act, 1997 that violate domestic and international law. Furthermore, the 2014 Torture Bill is still pending – and no new legislation to criminalize torture has been put forth. The government has failed to make any progress with its own bill despite the government's National Action Plan on Human Rights making anti-torture legislation a priority.²³

Pakistan should therefore be assessed with a **C** on all three follow-up recommendations.

²³ Myra Imran. "Human rights action plan launched." *The News*, 26 Feb. 2016, <https://www.thenews.com.pk/print/101108-Human-rights-action-plan-launched>.

Annex A - Administrative Inquiries of Police Officers in Response to Allegations of Torture Between 2014-2017, Punjab Police

| Year | Sub-Inspectors | Assistant Sub-Inspectors | Head constables | | Constables | Total |
|--------------|------------------------------------|--|---|---|--|-----------|
| 2017 | Nil | 1 – forfeiture of approved service | 4 – (2) forfeiture of approved service (1) withholding of promotion (1) censure | 2 – (1) dismissal (1) forfeiture of approved service | 8 – (7) forfeiture of approved service (1) Censure | 15 |
| 2016 | 2 – forfeiture of approved service | 2 – withholding of promotion | 3 – (1) forfeiture of approved service (1) reduction in pay/rank (1) censure | 1 – withholding of increment | Nil | 8 |
| 2015 | 1 – censure | 3 – (1) withholding of promotion (1) reduction to lower stage or stages in pay scale (1) censure | 5 – (3) forfeiture of approved service (2) censure | 4 – (1) forfeiture of approved service (1) withholding of promotion (2) censure | 8 – (1) reduction in pay/rank (3) withholding of promotion (4) censure | 21 |
| 2014 | Nil | 4 – (2) dismissal (2) censure | 5 – (3) forfeiture of approved service (2) censure | Nil | 3 – dismissal | 12 |
| TOTAL | | | | | | 56 |