

# CRIMINALISING TORTURE IN PAKISTAN

THE NEED FOR AN EFFECTIVE  
LEGAL FRAMEWORK



# CRIMINALISING TORTURE IN PAKISTAN: THE NEED FOR AN EFFECTIVE LEGAL FRAMEWORK

WORLD ORGANISATION AGAINST TORTURE (OMCT)  
JUSTICE PROJECT PAKISTAN



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An Roinn Gnóthaí Eachtracha  
Department of Foreign Affairs



Permanent Mission  
of the Federal Republic of Germany  
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the other International Organizations  
Geneva

## **ABOUT JUSTICE PROJECT PAKISTAN**

The Justice Project Society, commonly referred to as Justice Project Pakistan (JPP), is a legal action non-government organization representing the most vulnerable Pakistani prisoners facing the harshest punishments, including those facing the death penalty, mentally ill prisoners, victims of police torture, and detainees of the “War on Terror.” JPP was formed in Lahore, Pakistan in December 2009. JPP investigates, litigates, and advocates strategically in the courts of law and the court of public opinion, pursuing cases on behalf of vulnerable individuals with the potential to set precedents and bring systemic change in the criminal justice system.

The key to JPP’s success is our methodology, which combines strategic litigation, led by our lawyers and investigators, with fierce domestic and international public and policy advocacy campaigns led by our communication and advocacy teams. This combined approach educates and informs civil society as well as policymakers to generate effective legislative and policy reform of Pakistan’s criminal justice system.

## **ABOUT OMCT**

Created in 1985, the World Organisation Against Torture (OMCT) is the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With over 200 affiliated organisations in its SOS-Torture Network and many tens of thousands correspondents in every country, OMCT is the most important network of non-governmental organisations working for the protection and the promotion of human rights in the world.

# BACKGROUND

Torture by police and other law enforcement agencies is so endemic and systematic in Pakistan that it is largely a common practice. Torture is accepted as an inevitable part of law enforcement in Pakistan, and perpetrators of torture are granted impunity through a combination of socio-cultural acceptance, lack of independent oversight and investigation mechanisms, widespread powers of arrest and detention, procedural loopholes and ineffective safeguards, including Pakistan's failure to criminalise torture.

The Government of Pakistan ratified the United Nations Convention Against Torture and Cruel Inhuman and Degrading Treatment (UNCAT) in 2010, making it legally binding. The National Action Plan for Human Rights, introduced by the Federal Ministry for Human Rights in February 2016, set a six-month deadline to pass the Torture, Custodial Death, and Custodial Rape (Prevention and Punishment) Bill. Despite these developments, to date, Pakistan has failed to enact comprehensive domestic legislation that defines and criminalises torture by public officials, stipulates penalties for perpetrators and provides effective redress for victims. Additionally, there is no independent investigation mechanism to inquire into allegations of torture and reported cases, which creates impunity for the police, who seldom lodge criminal complaints against their colleagues.

## ***i. LACK OF DEFINITION AND CRIMINALISATION OF TORTURE IN DOMESTIC LAW IN PAKISTAN***

Pakistan's law does not contain any definition of torture. The only mention of the word "torture" in Pakistani law is in the Constitution under Article 14(2) which states "No person shall be subjected to torture for the purpose of extracting evidence". This comes nowhere near to encompassing and criminalising "torture" as defined in Article 1 of the UNCAT. Additionally, the text of the Article 14(2) indicates that it only prohibits acts of torture committed by public officials for the sole purpose of extracting evidence.

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

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

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<sup>1</sup> UN Committee Against Torture, General Comment No. 2: Implementation of Article 2 by State Parties, 24 Jan 2008, Accessed at: <http://www.refworld.org/docid/47ac78ce2.html>

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

In the absence of functioning monitoring bodies that can entertain complaints of torture, victims have to approach police for registration of First Information Report (FIR). Under the existing framework, to enforce the penal provisions which stipulate penalties for certain acts of torture under related offences such as “causing hurt to extort confession or to compel restoration of property”, “wrongful confinement to extort confession or compel restoration of property” or provisions governing “criminal force and assault”, it is the Code of Criminal Procedure 1898 (CrPC) that is applicable for the investigation, trial and other procedural aspects which is conducted by the police and other law enforcement agencies who investigate themselves. Reporting of torture and subsequent investigation is done by the police- given the inherent bias, it is clear that this is not an independent and unbiased mechanism. Police may refuse to register FIRs against other members of the police. Under the status quo, if the police refuse to lodge a First Information Report (FIR), the victim can address the matter before a Justice of the Peace however the Justice of Peace can only order that the police lodge the FIR and it will be the police that further investigate the matter. In effect, the victim will be at the mercy of the police and vulnerable to further harassment, abuse and torture by the police. It is clear that there is no independent, impartial mechanism for investigation of torture.

## **ii. A CULTURE OF IMPUNITY: SOCIO-CULTURAL ACQUIESCENCE AND LACK OF ACCOUNTABILITY MECHANISMS**

A study conducted by Yale University and JPP on a sample of 1,867 Medico-Legal certificates from the District of Faisalabad from 2006-2012, titled “*Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan*” documented an endemic use of torture by the police authorities<sup>2</sup> and a systemic failure by the state to conduct a “prompt and impartial investigation”, as required by Article 12 of UNCAT.

The study discovered conclusive signs of abuse in 1,424 cases out of a sample of 1,867 Medico-Legal Certificates (MLC) compiled by a government-appointed District Standing Medical Board in the district of Faisalabad since 2006 to 2012. In 96 other cases, physicians found signs indicating injury and required further testing to confirm. According to the data, out of the 1,424 cases, 58 of the victims were children and over 134 were women. In addition to severe beating, victims were also subjected to sexual assault and humiliation, which included rape and being forced to strip. Over 61% of the women in the sample had been sexually assaulted, 81% had been subjected to cultural humiliation and 61% had been forced to witness torture of others often family members. Based on the sheer magnitude of the figures, it is evident that police torture is not limited to a few isolated instances but rather systematically employed by police as a matter of practice.

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<sup>2</sup> “Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan. Justice Project Pakistan and Allard K. Lowenstein International Human Rights Clinic. March 2014. <https://www.jpp.org.pk/report/policing-as-torture/>

The marked failure by authorities to conduct an impartial investigation in a single case, even after this evidence was made public in March 2015, is not only a violation of Pakistan's commitment to UNCAT, but illustrates the fact that torture is accepted by the authorities as routine criminal investigation and part of life in the country<sup>3</sup>.

Following a complaint filed by JPP, in May 2018, the National Commission for Human Rights Pakistan (NCHR) initiated a ground-breaking inquiry into the confirmed cases of torture by the Faisalabad police. As part of the inquiry, the NCHR recorded testimonies of witnesses and survivors, conducted a hearing with police officers named in complaints and surveyed a random sample of 350 MLCs from the 1,424 categorized by gender, age, and religious affiliation to uncover systemic flaws.

In February 2019, the NCHR released *Police Torture in Faisalabad*<sup>4</sup>, the first ever comprehensive report on torture by a state body in Pakistan. The report highlighted an ineffective state response and weak accountability and redress mechanisms. As part of its major recommendations, the report emphasized the need to enact a law criminalising torture and the creation of an independent investigative mechanism.

### iii. PAKISTAN'S INTERNATIONAL LAW OBLIGATIONS

#### 2016:

The European Commission's report on GSP+ from 2014-2015 stated:<sup>5</sup>

*"Although Pakistan ratified CAT in 2010, the practice of torture and cruel, inhuman and degrading treatment and punishment persists in the country. The penal code does not define torture in line with the definition of CAT, and legislation to implement CAT has not yet been enacted, although a draft torture, custodial death and custodial rape bill is currently being discussed. Reports from various civil society organisations provide information about torture and cruel, inhuman, degrading treatment and punishment – both absolutely prohibited under the CAT – being widely used during the investigative process to obtain a confession or information, as well as in detention facilities as a form of punishment. Pakistan has failed to provide any substantial information about action taken to address this very serious issue. Investigations into these cases are not always carried out properly or sometimes not at all, which constitutes a violation of Article 12 of CAT."*

#### 2017:

In April 2017, following Pakistan's review on its compliance with CAT, the CAT Committee stated in its Concluding Observations:<sup>6</sup>

*"The Committee urges the State party 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 establishes penalties that are*

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<sup>3</sup> Ibid, pages 4-5

<sup>4</sup> "Police Torture in Faisalabad" National Commission for Human Rights (NCHR)

<sup>5</sup> European Commission, The EU special incentive Arrangement for Sustainable Development and Good Governance (GSP+) covering the period 2014-2015, 28 Jan 2016, Accessed at:

[https://eeas.europa.eu/sites/eeas/files/european\\_commission\\_2016\\_report\\_on\\_the\\_generalised\\_scheme\\_of\\_preferences\\_during\\_the\\_period\\_2014-2015.pdf](https://eeas.europa.eu/sites/eeas/files/european_commission_2016_report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf)

<sup>6</sup> Committee Against Torture, Concluding Observations.

[https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/PAK/INT\\_CAT\\_COC\\_PAK\\_27467\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/PAK/INT_CAT_COC_PAK_27467_E.pdf)

*commensurate with the gravity of the act of torture. The Committee encourages the State party 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.”*

In July 2017, following Pakistan’s review of the ICCPR, the Human Rights Committee in its Concluding Observations directed the Government to:<sup>7</sup>

- a) *amend its laws to ensure that all elements of the crime of torture are prohibited in accordance with article 7 of the Covenant and to stipulate sanctions for acts of torture that are commensurate with the gravity of the crime;*
- b) *ensure prompt, thorough and effective investigations into all allegations of torture and ill treatment, prosecute and, if convicted, punish the perpetrators, with penalties commensurate with the gravity of the offence, and provide effective remedies to victims, including rehabilitation;*
- c) *ensure that coerced confessions are never admissible in legal proceedings;*
- d) *take all measures necessary to prevent torture including by strengthening the training of judges, prosecutors, the police and military and security forces.*

#### 2018:

In its GSP+ assessment report from 2016-2017, the European Commission echoed concerns and recommendations of the CAT Committee and concluded:<sup>8</sup> *“The Government has not taken effective action to address the widespread use of torture.”*

#### 2020:

In its GSP+ assessment report from 2018-2019, the European Commission stated:

*“Pakistan’s legislation falls short of a law specifically defining torture and fails to explicitly criminalise torture as required under the Convention Against Torture (CAT). A draft Torture and Custodial Death Bill (2019) has been presented to the Senate... The Ministry of Human Rights has prepared a draft Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Bill 2018, covering police forces, but not military or security services. A private Member’s Bill has been presented in the Senate, which will be vetted by the Standing Committee on Human Rights and recommended to the National Assembly for discussion if the Standing Committee raises no objection.”*

The Commission concluded that: *“adopting legislation on criminalising torture should be pursued.”*

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<sup>7</sup> ICCPR Concluding Observations 2017.

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssymRLSm3gUSDIntv8Slm%2f%2biSkxSILEnCLYiaWS2Zt2ITOfT1Ihv40HhjfTMf8Nky9O6kLKaSHalcX%2byl7%2ftFUPrUqGm8FbOBvJ6oGjzqQw>

<sup>8</sup> GSP+ Assessment Report 2016-17

# CRIMINALISING TORTURE IN PAKISTAN

## i. TRACING THE HISTORY OF PREVIOUS ANTI-TORTURE LEGISLATIONS PROPOSED IN PAKISTAN

As of 2015, three similar draft bills on the prohibition and criminalisation of torture were pending in Parliament; two of them in the Senate and one in the National Assembly. The salient features of each Bill are delineated below.

Bill presented by Sen. Farhatullah Babar	Bill presented by MNA Maiza Hameed	Bill presented by Sen. Farooq Naek
<ul style="list-style-type: none"> <li>Passed by Senate in March 2015</li> <li>Pending in National Assembly</li> <li>Federal Investigation Agency to investigate and prosecute torture cases</li> <li>Declare offence of torture to be non-bailable and non-compoundable</li> </ul>	<ul style="list-style-type: none"> <li>Presented in National Assembly in 2014</li> <li>Approved by sub-committee of the NA's Committee on the Interior in January 2017</li> <li>Federal Investigation Agency to investigate and prosecute torture cases</li> <li>Expressly places the discretion of investigation of torture committed by the armed forces in the hands of the federal government</li> <li>Declare offence of torture to be non-bailable and non-compoundable</li> </ul>	<ul style="list-style-type: none"> <li>Passed by Senate in 2015</li> <li>Proposes to set up special agency, called National Crime Agency, to investigate and prosecute torture cases</li> <li>Contains due process obligations in extradition cases</li> <li>Includes provisions related to victim and witness protection</li> <li>Does not expressly prohibit compounding of the offence of torture</li> </ul>

The Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Bill 2014 was tabled by PPP Senator Farhatullah Babar in the Senate of Pakistan. In March 2015, the Senate of Pakistan passed the Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Bill 2014.<sup>9</sup> The bill was subsequently sent to the National Assembly which referred it to the relevant committee, but the Bill lapsed due to a failure to pass it within the stipulated 90-day period. It was then referred to the joint sitting of the Parliament in January 2017.

The National Action Plan for Human Rights, introduced by the Federal Ministry for Human Rights in February 2016, set a six-month deadline to pass the Torture, Custodial Death, and Custodial Rape (Prevention and Punishment) Bill. The Torture Bill was amongst the seven bills on the agenda for a joint session of parliament in March, 2016. Despite this, nearly five years have passed but the Bill has not been taken up in a joint session of the Parliament.

A similar draft bill was approved by the sub-committee of the National Assembly's Committee on the Interior in 2017.<sup>10</sup> However, to date, it has not been passed by Parliament. The failure to

<sup>9</sup> [http://www.senate.gov.pk/uploads/documents/1438775288\\_445.pdf](http://www.senate.gov.pk/uploads/documents/1438775288_445.pdf)

<sup>10</sup> <http://epaper.brecorder.com/2017/01/20/12-page/841370-news.html>.

enact anti-torture legislation is in express contravention of the Government of Pakistan's own promise under the National Action Plan, as well as its international law obligations.

## **ii. THE WAY FORWARD: ANALYSING EXISTING ANTI-TORTURE LEGISLATIONS**

### **Torture and Custodial Death (Prevention & Punishment) Bill, 2018**

In the information received from the state on follow-up to the concluding observations of the United Nations Committee against Torture, the Government of Pakistan stated that it has prepared Torture and Custodial Death (Prevention & Punishment) Bill, 2018, in consultation with relevant stakeholders, to harmonize the national legislation with the provisions of the subject Convention. The subject Bill will address the issues pertaining to definitions and punishment for torture.

However, this bill has not been tabled despite commitments made by the Federal Minister of Human Rights January 2019 to table the bill in the next National Assembly session<sup>11</sup>. The National Assembly has had 8 sessions and three joint sessions since then.<sup>12</sup> Stakeholders from civil society were not consulted and have not seen the bill but it is believed that government stakeholders such as jail and police officials were consulted.

Most recently, the Government of Pakistan in its voluntary pledge submitted in June 2020 as part of its candidacy to the United Nations Human Rights Council, stated that the Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Bill 2018 has reached the consideration stage of the National Assembly/Senate.<sup>13</sup>

While the Government of Pakistan's renewed commitment to criminalising torture in light of its re-election to the Human Rights Council is welcomed, it must be emphasized that a Government Bill is yet to be tabled in the Parliament. In contrast, a private members' Bill by Senator Sherry Rehman has already been approved by the Senate Functional Committee on Human Rights in July 2020.

### **Torture and Custodial Death (Prevention and Punishment) Bill 2020**

On 10<sup>th</sup> February 2020, the Torture and Custodial Death (Prevention and Punishment) Bill 2020 was tabled in the Senate of Pakistan by Senator Sherry Rehman, a member of the opposition party, the Pakistan People's Party. In July 2020, the Bill was approved by the Senate Functional Committee on Human Rights. More than seven months later, the report of the Senate Committee was finally presented in the Senate on 1<sup>st</sup> February 2021. If passed by Parliament, this Bill would make torture by law enforcement agencies a criminal offence for the first time. However, a year after it was tabled, the Bill has yet to be presented to the wider Senate for final voting, before it can be tabled in the National Assembly.

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<sup>11</sup> Imran, Myra. "Ministry Plans to Present Anti-Torture Bill in next NA Session." *thenews*. The News International, January 10, 2019. <https://www.thenews.com.pk/print/416877-ministry-plans-to-present-anti-torture-bill-in-next-na-session>.

<sup>12</sup> "National Assembly Debates." National Assembly of Pakistan. Accessed September 18, 2019. <http://www.na.gov.pk/en/debates.php>.

<sup>13</sup> Note verbale dated 18 June 2020 from the Permanent Mission of Pakistan to the United Nations addressed to the Secretary-General

# SALIENT FEATURES OF THE TORTURE AND CUSTODIAL DEATH (PREVENTION AND PUNISHMENT) BILL 2020:

ANALYSING COMPLIANCE WITH THE CONVENTION AGAINST TORTURE (CAT)

## DEFINITION OF TORTURE

This Bill provides a comprehensive definition of torture in section 2(n), delineating its various constituent elements:

*“Torture” means an act committed by a public servant, or at the instigation of or with the consent or acquiescence of such public servant, or any other person, with specific intent to inflict severe pain or suffering, whether physical or mental, not incidental to lawful sanctions, upon another person within his custody, for the purpose of:*

- 1. obtaining from that person or some other person any information or a confession; or*
- 2. punishing that person for any act s/he or a third person has committed or is suspected of having committed; or*
- 3. intimidating or coercing that person or a third person; or*
- 4. for any other reason based on discrimination of any kind; or*
- 5. harassing, molesting, denying due judicial process or causing harm whether physical or mental to a person for any of the above purposes;*

This definition is in line with the elements of Article 1.1 of CAT:

*“For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”*

It encapsulates within its scope both physical and psychological torture, the latter category being one which has traditionally not been ascribed as much significance as physical pain and suffering. Torture refers to acts not only committed by public servants, but also those which are committed at their ‘instigation’, with their ‘consent’ or ‘acquiescence’. In doing so, it envisions a vast set of scenarios in which even if torture is not committed by the accused in question, his ‘consent’ alone is enough to constitute a criminal offence. Importantly, the definition is cognisant of various circumstances in which torture can be committed while a person is in the custody of a public servant. Severe physical or mental pain or suffering inflicted by a public servant for the purpose of ‘obtaining from that person or some other person any information or a confession’ constitutes torture, as does harassing and molesting the person in custody and depriving them of due judicial process.

## DEFINITION OF CUSTODIAL DEATH AND CUSTODIAL SEXUAL VIOLENCE

The Bill expressly criminalises death of a person 'directly or indirectly caused by and substantially attributable to acts committed upon the deceased while in custody or after his release from custody'. It includes death occurring in police, private or medical premises, in a public place or in a police or other vehicle or in jail. It also includes death occurring while a person is being arrested or taken into detention or being questioned.

The Bill explicitly criminalises sexual violence committed in custody, defining the aforementioned as 'rape' or sexual abuse' or 'any kind of sexual violence on a person...irrespective of the sex and gender of the perpetrator or the victim'. In doing so, it encapsulates within its realm all those forms of sexual violence which do not conform to the traditional definition of penetrative rape, in cognisance of the myriad kinds of sexual violence which are inflicted during police custody. Importantly, the definition of sexual violence is gender-inclusive- it explicitly refers to all forms of sexual abuse or sexual violence regardless of the gender of the perpetrator or the victim, creating a sphere of protection for men against custodial sexual violence and combatting the traditional heteronormative definition of rape in the Pakistan Penal Code, for which penetration is a necessary prerequisite.

## DEFINITION OF PUBLIC SERVANT

The Bill defines 'public servant' as 'a person defined under Section 21 of the Pakistan Penal Code, 1860' i.e. every person who is in actual or purported possession of the public office, whatever legal defect there may be in that person's right to hold that position. In doing so, it applies not only to police officials, but to all public servants, and therefore has a wide ambit.

## DEFINITION OF CUSTODY

The Bill defines 'custody' as 'all situations where a person is detained or deprived of his liberty by a public servant, or any person on the direction of a public servant, irrespective of legality, nature and place of such detention'. It expressly states that a person shall be 'deemed to be in custody during search, arrest and seizure proceedings', effectively extending protection against torture to those who are being investigated by police officials. Furthermore, custody 'includes judicial custody and all forms of temporary and permanent restraint'. Therefore, it is clear that the Bill has a wide sphere of protection.

## ESTABLISHMENT OF EFFECTIVE COMPLAINT AND INVESTIGATIVE PROCEDURE

The UN CAT expressly specifies the need for a complaints system in Article 13, where it states:

*"Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."*

In light of the inherent flaws in the existing framework, where reporting of torture and subsequent investigation is carried out by the police, and police may refuse to register FIRs against other members of the police, the Bill establishes a **comprehensive complaints and investigative procedure**: The complainant must lodge the complaint before the Sessions Court. The court will then direct the FIA (primary and not sole) investigative agency to conduct the investigation within a set period and with oversight from the court. The National Commission for Human Rights also has the power of oversight under the National Commission for Human Rights Act 2012. The Torture Bill specifically states in section 10 that:

**“10. Investigation of Offences.-** (1) The Agency shall have the primary jurisdiction to investigate the complaints against offences under this Act, until such time as the Commission is functional with an investigative infrastructure notified for the purpose.”

If a magistrate feels there may have been torture, he orders a Medico-legal certificate and if the results point towards torture, the Sessions Court will be notified and will take cognizance.

This framework effectively removes the possibility of police making arrests without warrant and initiating the investigation into complaints of torture on their own- there is now a layer of scrutiny, oversight and regulation from the court, **to ensure that complaints of torture are actually investigated**. The Sessions Court will now play the main role is taking cognizance of cases and **ensuring that investigations are initiated into complaints of torture**.

## STIPULATION OF PENALTIES

The Bill stipulates express penalties for torture ranging from imprisonment for a term of three to ten years, as well as a fine which may extend to two million rupees. Importantly, it also provides penalties for those public servants who have a duty to prevent the commission of torture and ‘intentionally or negligently’ fail to do so. It also provides penalties for those public servants who incite or instigate the torture of any person.

This complies with Article 4 of the UN CAT, which states:

*“1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.”*

In addition to penalties, Section 3 (4) offers compensation for victims through the collection of the fines laid out as part of the penalties. This is compliant with Article 14.1-14.2 of the Convention, which state:

*“1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.*

*2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.”*

# CONCLUSION

The Government of Pakistan, to date, has failed to fulfil its binding international law obligations under the United Nations Convention Against Torture and Cruel Inhuman and Degrading Treatment (UNCAT) by enacting a comprehensive domestic legislation that defines and criminalises torture by public officials, stipulates penalties for perpetrators and provides effective redress for victims. In doing so, it has also failed to meet its domestic commitments under the National Action Plan for Human Rights, introduced by the Federal Ministry for Human Rights in February 2016, which set a six-month deadline to pass the Torture, Custodial Death, and Custodial Rape (Prevention and Punishment) Bill.

Multiple anti-torture bills which were passed by the Senate and subsequently lapsed due to failure to be passed by the National Assembly within the stipulated time-period represent crucial missed opportunities for the Government of Pakistan to rectify the existing culture of impunity, socio-cultural acquiescence and lack of oversight, to offer countless victims meaningful opportunities for redress and justice. However, Pakistan currently stands at a critical juncture: the existence of both Government and Opposition bills delineates a renewed political impetus to criminalise torture that cuts across partisan lines. It is clear that there is an express recognition of the need to define and criminalise torture, reaffirmed in the Government of Pakistan's pledge submitted in June 2020 as part of its candidacy to the United Nations Human Rights Council. Nearly five years after the Government of Pakistan had pledged to pass the Torture, Custodial Death, and Custodial Rape (Prevention and Punishment) Bill, the Torture and Custodial Death (Prevention and Punishment) Bill 2020 tabled by Senator Sherry Rehman has been approved by the Senate Functional Committee on Human Rights- this a crucial moment for the Government of Pakistan to fulfil the promises it has made to the international community as well as to its own citizens who remain vulnerable to torture by public authorities. In February 2020, Pakistan received an extension of the GSP-Plus status after successfully completing the third biennial assessment, and is approaching reviews under the ICCPR in 2021, the Convention against Torture (CAT) in 2022 and the Universal Periodic Review (UPR) in 2022.

## TIMELINE OF THE BILL

<b>2008</b>	Pakistan signed Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)
<b>2010</b>	Pakistan ratified UNCAT
<b>Aug 2014</b>	PPP Senator Farhatullah Babar moved the Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Bill 2014 in the upper house.
<b>Oct 28, 2014</b>	The Bill was moved in the NA by PML-N MNA Maiza Hameed, which provides for the prevention of all acts of torture, custodial death and custodial rape perpetrated by public servants or any person acting in an official capacity and for the protection of citizens of Pakistan and of all other persons from such acts. National Assembly referred the bill to the concerned Parliamentary Committee.
<b>Jan 21, 2015</b>	The Senate Standing Committee on Interior unanimously adopted the draft anti-torture bill moved by PPP Senator Farhatullah Babar and referred it to the Chairman Senate.
<b>Mar 2, 2015</b>	The Senate passes the Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Bill 2014
<b>Oct 2015</b>	Bill lapsed in the Parliament due to failure to pass it within 90 days.
<b>Feb 2016</b>	Government announces National Action Plan for Human Rights which states June 2016 as a deadline to enact the Torture Bill.
<b>Mar 21, 2016</b>	Joint Session of the Parliament to take place at 5pm to pass the PIA bill. Torture bill was amongst the seven bills on the agenda for the session, however it was never discussed.
<b>Aug 16, 2016</b>	The bill was referred to the NA Standing Committee of Interior for amendments and report be given to that effect.
<b>Sept 19, 2017</b>	The report from the National Assembly Standing Committee of Interior was presented.
<b>Oct 2018</b>	The Minister for Human Rights publicly stated its efforts to work on the Anti-Torture and Custodial Death, Rights of Persons with Disabilities and Prohibition of Corporal Punishment bills. <sup>14</sup>
<b>Jan 2019</b>	The Minister for Human Rights publicly stated that the bill to criminalise torture will be introduced in the next session of the National Assembly. <sup>15</sup>
<b>Oct 2019</b>	Senator Sherry Rehman from the opposition, the Pakistan People's Party, submits The Torture and Custodial Death (Prevention and Punishment) Bill 2019 to be tabled in the Senate of Pakistan
<b>Feb 2020</b>	The Torture and Custodial Death (Prevention and Punishment) Bill 2020 was tabled in the Senate of Pakistan on 10 February 2020 by Senator Sherry Rehman, a member of the opposition party, the Pakistan People's Party.
<b>Jul 2020</b>	The Torture and Custodial Death (Prevention and Punishment) Bill 2020 was approved by the Senate Functional Committee on Human Rights.
<b>Feb 2021</b>	Report of the Senate Functional Committee on Human Rights was presented in the Senate of Pakistan.

<sup>14</sup> <https://tribune.com.pk/story/1834884/1-rights-issues-govt-table-bills-regarding-torture-custodial-deaths/>

<sup>15</sup> <https://www.thenews.com.pk/print/416877-ministry-plans-to-present-anti-torture-bill-in-next-na-session>

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