



## **POLICY BRIEF:**

**Pakistan's implementation of the Convention against Torture**

# The Torture and Custodial Death (Prevention and Punishment) Act, 2022

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## Executive Summary

Pakistan signed the United Nations Convention Against Torture (UNCAT) in 2008 and ratified it in 2010 to strengthen its candidacy for GSP+ status. The UNCAT requires Pakistan to eliminate torture and other forms of inhumane treatment.<sup>1</sup> As one of nine core UN human rights treaties, ratifying the UNCAT was imperative for Pakistan to receive the GSP+, which it was eventually granted in 2014. GSP+ status allows approximately 20 percent of Pakistani exports to enter the EU market at zero tariff and 70 percent at preferential rates.<sup>2</sup> Pakistan's GSP+ status is subject to strict requirements to uphold and implement international law.

The **Torture and Custodial Death (Prevention and Punishment) Act, 2022** (hereinafter, the Act) was passed in October 2022 and received presidential assent on November 1st 2022. It is imperative that this positive legislation reach its full potential in curbing the rampant practice of torture in Pakistan.

This policy brief provides an overview of torture in Pakistan, describes the state's obligation to curb it, assesses the effectiveness of current mechanisms to prevent and address it, and offers recommendations for advancing a rights-based approach to the investigation, documentation and prosecution of torture which is in line with international best practices.<sup>3</sup>

After an analysis of the steps taken by Pakistan to eradicate torture and to provide redress to victims, the policy brief concludes by proposing key recommendations across a range of stakeholders, including legislative amendments to the Act, the framing of rules under the Act which fully reflect the principles established in the Mandela Rules, Istanbul Protocol, Mendez Principles and Minnesota Protocol, the establishing of specialised tribunals under Article 212 of the Constitution, or through an Amendment in the Prisons Act, 1984, to serve as a one-stop forum for prisoners for the redressal of their grievances, and the capacity building of all stakeholders, particularly police, judiciary, lawyers, the Federal Investigative Agency (FIA) and the National Commission for Human Rights (NCHR), and medico-legal professionals in order that they may play their roles effectively in eliminating the practice of torture in Pakistan.

## Torture as a Practice: Pakistan's State Report and The Situation on the Ground

Torture by police and other law enforcement agencies is endemic in Pakistan.<sup>4</sup> In 2008, the Asian Human Rights Commission reported a finding of 52 illegal torture cells operating in Pakistan.<sup>5</sup> In 2014, a report by Justice Project Pakistan, in collaboration with Yale Law School, 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

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<sup>1</sup> List of Conventions to qualify for 'GSP Plus' [https://www.commerce.gov.pk/wp-content/uploads/pdf/UN\\_conventions.pdf](https://www.commerce.gov.pk/wp-content/uploads/pdf/UN_conventions.pdf)

<sup>2</sup> "EU grants GSP Plus status to Pakistan" Dawn News, Published December 12, 2013 <https://www.dawn.com/news/1072051>

<sup>3</sup> See Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2022 edition) | OHCHR and New Principles on Effective Interviewing for Investigations and Information Gathering | Association for the Prevention of Torture

<sup>4</sup> Justice Project Pakistan, World Organisation Against Torture (2021) *Criminalising Torture in Pakistan: The Need for an Effective Legal Framework*. [https://www.jpp.org.pk/wp-content/uploads/2021/03/2021\\_03\\_11\\_Criminalising-Torture\\_JPP-OMCT-final.pdf](https://www.jpp.org.pk/wp-content/uploads/2021/03/2021_03_11_Criminalising-Torture_JPP-OMCT-final.pdf)

<sup>5</sup> 'Statement: PAKISTAN: 52 illegal torture and detention centres identified' Asian Human Rights Commission, 2008 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-158-2008/>

Medical Board in the district of Faisalabad between 2006 and 2012.<sup>6</sup> This shocking discovery, compounded by the fact that no official inquiry was ever launched by either the Federal or Provincial Governments, and none of the police officers responsible had even been removed from the force, point to the systemic acceptance of police torture as an inevitability.

In 2015, the NGO, the Human Rights Commission of Pakistan (HRCP) reported over 2,000 people were killed in encounters with the police, most of which are believed to be staged in order to use disproportionate force.<sup>7</sup> Moreover, their media tracker indicated that despite approximately 71 reported cases of custodial torture during the period January 2014 and May 2016, First Information Reports (the first step to register a case with police) were only registered for 16 such cases.<sup>8</sup>

In May 2018, the National Commission for Human Rights (NCHR), a statutory body established as an independent National Human Rights Institution under the Paris Principles, initiated a ground-breaking inquiry based on a complaint filed by JPP on the 1,424 confirmed cases of torture by the Faisalabad police.<sup>9</sup> In February 2019, the NCHR released 'Police Torture in Faisalabad', the first-ever comprehensive report on torture by a state body in Pakistan,<sup>10</sup> confirming that little to no action had been taken against the police officers alleged by JPP's investigation to have committed acts of torture.

In 2022, in connection with the Imtiaz Bibi case before the Islamabad High Court, the NCHR's inquiry report highlighted an ineffective state response and weak accountability and redress mechanisms. During the inquiry, the NCHR came across numerous instances of torture against the inmates of the Rawalpindi Jail. Of the 35 prisoners interviewed, 26 spoke about instances of torture— a staggering 74%. All of them spoke about financial extortion for provision of basic necessities in jail. Methods of torture ranged from physical beatings with a rubber tire to solitary confinement.<sup>11</sup>

Pakistan's latest state report to the Committee Against Torture highlighted the Government of Pakistan's recent efforts to prevent torture by public officials.<sup>12</sup> The report lists steps that have been taken in response to the 2017 Concluding Observations issued by the UN Committee Against Torture as a part of Pakistan's UNCAT review. These steps range from police initiatives to adopt modern, forensic investigative techniques and accountability mechanisms, to capacity building relevant stakeholders including the judiciary, police officers and prosecutors.

The report mentions the zero tolerance policy towards torture adopted by the Government, highlighting the fact that accountability and punishments were handed out to officers found guilty of torture. For example, it highlights the fact that in 2021 alone, 624 police officials were punished for offenses of 'torture or misbehaviour' in Punjab.<sup>13</sup> It further states that in 2019, 20 cases of torture in police custody were reported. The report does not adequately acknowledge the lack of implementation of many of the listed initiatives, and fails to account for the under-reporting of cases of torture due to fear of reprisals and a lack of accessible complaint mechanisms and accountability frameworks.

By and large, Pakistan's state report paints a picture of torture by public officials having been greatly reduced through a combination of strong accountability mechanisms in law enforcement agencies, independent monitoring bodies such as the National Commission for Human Rights, easy access to redress for victims and capacity building of the judiciary and police. Reports by civil society and independent press are more revealing

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<sup>6</sup> *Abuse of juveniles by the Faisalabad Police*, Justice Project Pakistan and Allard K. Lowenstein International Human Rights Clinic, Yale Law School [https://law.yale.edu/sites/default/files/documents/pdf/JPP\\_Abuse\\_of\\_Juveniles\\_Follow\\_Up\\_Report\\_053014.pdf](https://law.yale.edu/sites/default/files/documents/pdf/JPP_Abuse_of_Juveniles_Follow_Up_Report_053014.pdf)

<sup>7</sup> Human Rights Watch, 2016. *The Crooked System: Police Abuse and Reform in Pakistan*. Retrieved: <https://www.hrw.org/report/2016/09/27/crooked-system/police-abuse-and-reform-pakistan>

<sup>8</sup> Human Rights Commission of Pakistan, "HRCP Stats", <http://hrcpmonitor.org/search/?id=29>.

<sup>9</sup> As part of the inquiry, the NCHR recorded testimonies of witnesses and survivors, conducted a hearing at the Faisalabad police headquarters with police officers named in complaints, and surveyed a random sample of 350 MLCs from the 1,424 categorised by gender, age, and religious affiliation to uncover systemic flaws.

<sup>10</sup> National Commission on Human Rights 'Report on Torture at Adiala Jail NCHR Inquiry Report on Torture Allegations by Prisoners Incarcerated in Central Jail Rawalpindi' <https://www.nchr.gov.pk/wp-content/uploads/2022/11/Report-on-Torture-at-Adiala-Jail.pdf>

<sup>11</sup> *Id.*

<sup>12</sup> The report was due in 2021 and submitted on the 16<sup>th</sup> of June, 2023, a few days before the European Commission's GSP+ monitoring mission visited Pakistan.

<sup>13</sup> Government of Pakistan (2022). *Second periodic report submitted by Pakistan under article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Henceforth known as 'Pakistan 2022 State Report to UNCAT'. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CAT%2FC%2FPAK%2F2&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CAT%2FC%2FPAK%2F2&Lang=en)

of the situation on the ground, with routine reports of abuse by police surfacing with regularity.<sup>14</sup> The US Department of State's Bureau of Democracy, Human Rights and Labour Affairs in its 2022 Country Reports on Human Rights Practices noted that 31 people were killed in police custody from January to October, in Pakistan. Moreover, the report noted that police used disproportionate force against citizens, operated with impunity, and torture remained significantly underreported.<sup>15</sup>

In its 2022 report on Pakistan, Amnesty International stated that the practice of torture remained routine in Pakistan.<sup>16</sup> Nevertheless, the numerous trainings listed in Pakistan's state report are noteworthy and deserving of praise. By engaging the judiciary, police officers and the legal community, Pakistan has taken an important step in raising awareness about torture prevention. However, to bring tangible reduction in the practice of torture in Pakistan, there is a need for specialised legislative action and capacity building regarding the implementation of the Torture and Custodial Death (Prevention and Punishment) Act 2022, outlining the duties and responsibilities of the wide array of stakeholders, the process of holding perpetrators to account, and most importantly, wide-reaching awareness among citizens of their rights under the Act. Additionally, the State is also duty-bound to record disaggregated data on torture and make it publicly available so as to identify systemic gaps and inform future policy change.

## Pakistan's trajectory towards implementing international law

Pakistan signed the UNCAT in 2008 and ratified it in 2010 to strengthen its candidacy for GSP+ status. As one of nine core UN human rights treaties, ratifying the UNCAT was imperative for Pakistan to receive the GSP+, which it was eventually granted in 2014. As such, Pakistan is obligated to take every possible step to prevent torture in its jurisdiction. For more than a decade after the ratification, Pakistan was urged by treaty bodies and the international community to incorporate the Convention into its domestic law. The European Commission's report on GSP+ from 2014-2015 highlighted the various shortcomings of Pakistan's application of the UNCAT despite its 2010 ratification.<sup>17</sup> Torture was also one of the priority areas for action identified under Pakistan's 2018-19 GSP+ assessment.<sup>18</sup> The report noted that Pakistan's legislation fell short of a law specifically defining torture and failed to explicitly criminalise torture as required under the UNCAT. In 2017, both the UN Committee Against Torture and the UN Human Rights Committee in their Concluding Observations urged Pakistan to incorporate into its legislation a specific definition of torture that covered all the elements of the definition contained in Article 1<sup>19</sup> of the UNCAT; and to amend its laws to ensure that all the elements of the crime of torture were prohibited in accordance with Article 7 of the the International Convention on Civil and Political

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<sup>14</sup> Human Rights Watch. (2022). *Pakistan: Make Torture A Crime*. Retrieved from: [https://www.hrw.org/news/2022/08/23/pakistan-make-torture-crime#:~:text=Methods%20of%20torture%20include%20beatings,watch%20other%20people%20being%20tortured.](https://www.hrw.org/news/2022/08/23/pakistan-make-torture-crime#:~:text=Methods%20of%20torture%20include%20beatings,watch%20other%20people%20being%20tortured.;); Human Rights Commission of Pakistan (2023). *State of Human Rights in 2022*. Retrieved from: <https://hrcp-web.org/hrpweb/wp-content/uploads/2020/09/2023-State-of-human-rights-in-2022.pdf>

<sup>15</sup> Bureau of democracy, human rights at labour, US Department of State, 2022 Country Reports on Human Rights Practices: Pakistan. Retrieved from: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/pakistan/>

<sup>16</sup> Amnesty International, ed. *Amnesty International Report 2022/23: The State of the World's Human Rights*. London: Amnesty International Ltd, 2023.

<sup>17</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." See 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>18</sup> The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') assessment of Pakistan covering the period 2018 - 2019 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0022&qid=1675785438745&from=EN>

<sup>19</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 commensurate with the gravity of the act of the torture.", UN Committee Against Torture (CAT), Concluding observations on the initial report of Pakistan, 1 June 2017, CAT/C/PAK/CO/1, available at: <https://www.refworld.org/docid/596f52784.html>

Rights.<sup>20</sup>

Between 2014 and 2022, the legislature of Pakistan made five separate attempts to pass legislation criminalising torture.<sup>21</sup> While none of these bills were able to successfully pass in both houses of Parliament, the consistent efforts reflected the uniform commitment of all major political parties to criminalising torture in Pakistan. See Annex 'A' for a timeline showcasing the milestones between the ratification of the UNCAT and the passing of legislation criminalising torture.

Pakistan's efforts to comply with its obligations under the GSP+ program in passing legislation criminalising torture, as well as other key initiatives have received recognition from the European Union. In the 12<sup>th</sup> Joint Commission meeting held between Pakistan and EU in 2022, the EU welcomed Pakistan's adoption of the Torture and Custodial Death (Prevention and Punishment) Bill 2022 (which has since become the law) and stressed the need for effective and speedy implementation of the 27 international conventions related to GSP+.<sup>22</sup>

The latest GSP+ assessment report also acknowledged Pakistan's compliance with reporting obligations under CAT. Pakistan had submitted its first report to the Committee Against Torture in January 2016 after attaining the GSP+ status. Pakistan submitted its second periodic report under Article 19 of UNCAT to the UN Committee Against Torture in June 2022, coinciding with the arrival of the EU GSP+ mission in Pakistan.

Pakistan's Universal Periodic Review (UPR) process has also served as a powerful advocacy tool to shape steps towards criminalising torture, with the international community keeping the pressure on Pakistan to implement the changes it promised regarding curbing the use of torture.

Figure 1 shows the themes covered by recommendations made to Pakistan over 4 UPR cycles. While initially, a majority of the recommendations related to ratification of the UNCAT, more recently, they addressed various road blocks to curb torture, including problems with prosecution, violence against women, and the application of international standards relating to the investigation of torture.

Figure 2 indicates to what extent Pakistan supported these recommendations.

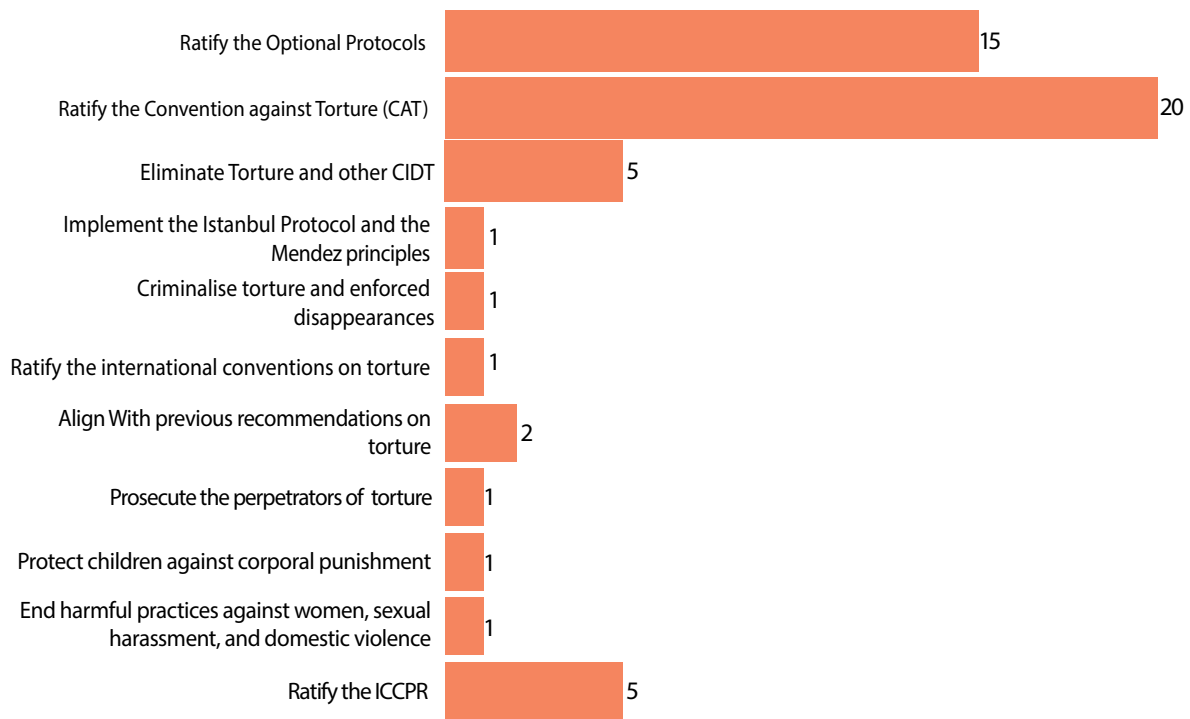
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<sup>20</sup> "a) amend its laws to ensure that all the elements of the crime of torture are prohibited in accordance with Article 7 of the Covenant and to stipulate sanctions for acts of torture that are commensurate with the gravity of the crime", International Covenant on Civil and Political Rights (ICCPR), Concluding Observations on the Initial Report of Pakistan, 23 August 2017, CCPR/C/PAK/CO/1.

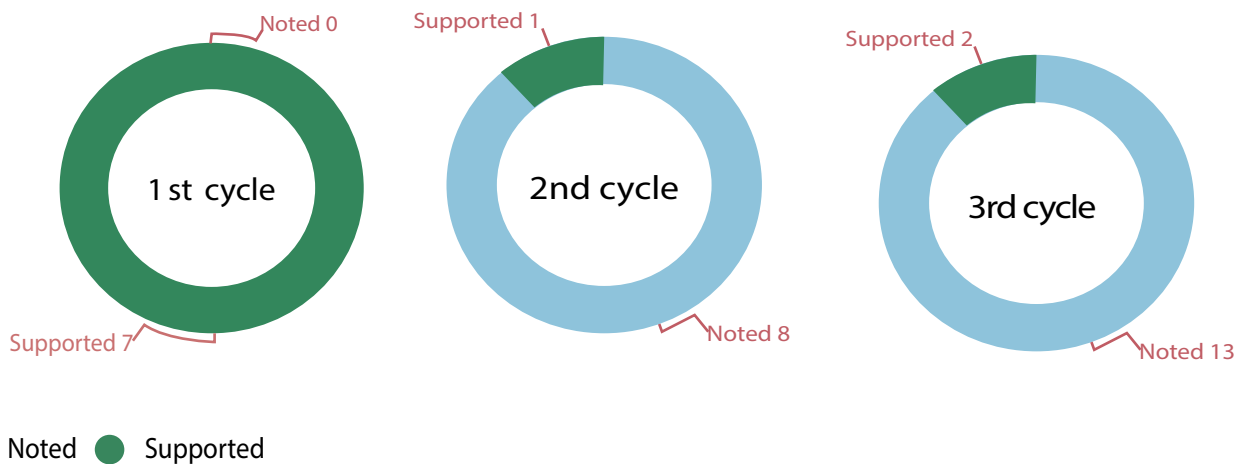
<sup>21</sup> In 2014, PPP's Farhatullah Babar moved a bill criminalizing torture in the upper house marking Pakistan's first attempt to criminalise torture. In the same year, PMLN's Maiza Hameed moved a bill criminalising torture in the lower house which got referred to the concerned Parliamentary Committee. In 2020, The Torture and Custodial Death (Prevention and Punishment) Bill 2020 was tabled in the Senate by opposition PPP Senator Sherry Rehman. In 2020, PTI moved a bill to criminalise torture in the National Assembly, presenting an amended version of the opposition Bill in front of the Interior Committee.

<sup>22</sup> EU and Pakistan hold 12th Joint Commission meeting [https://www.eeas.europa.eu/eeas/eu-and-pakistan-hold-12th-joint-commission-meeting\\_en](https://www.eeas.europa.eu/eeas/eu-and-pakistan-hold-12th-joint-commission-meeting_en)

**Figure 1: Theme-wise Breakdown of Recommendations on Torture & other CID Treatment**



**Figure 2: Pakistan’s Position on Recommendations on Torture (Cycle-wise Breakdown)**



## The Road to Eradicating Torture: Empowering Stakeholders to Play Their Part

The Act's promulgation marks a significant milestone towards eradicating torture, yet much work lies ahead to bring this law into implementation. The subsequent phase is pivotal and requires movement on various levels, including legislative amendments to bring the law in compliance with the UNCAT, formulating comprehensive rules under the Act that effectively outline investigation protocols and complaint mechanisms, and the

specialised training of key stakeholders within the framework, including medical professionals, the FIA and the NCHR.

#### 4.1. Legislative Amendments

The Torture and Custodial Death (Prevention and Punishment) Act 2022 is undoubtedly a historic enactment, and complies with Pakistan's obligations under the UNCAT to a large extent. While Pakistan's Constitution already prohibited the use of torture for extracting evidence, the Act further defines and criminalises torture, custodial death, custodial rape, and cruel and inhuman treatment and sets up a complaint and investigation procedure whereby the FIA is authorised to investigate under the supervision of NCHR and the session court has the jurisdiction to try cases. The Act also renders evidence extracted through torture inadmissible in judicial proceedings.<sup>23</sup> Under the Act, public officials accused of an offence face both criminal charges and departmental inquiries. (See Annex 'B' for a flowchart laying out the proceedings under the Act.)

However, there remain key aspects in which the Act falls short of meeting the international norms on torture prohibition which can be addressed through legislative amendments and rule-making.

##### a. Definition of Torture and Cruel, Inhuman or Degrading Treatment

The most glaring deficiency in the Act is in the definition of torture itself, which falls short of the international standard. Though the definition has been taken almost verbatim from the UNCAT, it leaves out the term 'psychological torture'. Domestically, the judiciary has maintained that psychological torture is just as much torture as physical, while interpreting Article 14 of the Constitution.<sup>24</sup> In *Saifuddin Saif v. Federation of Pakistan*, the Lahore High Court held that blindfolding, confinement in dark, underground cells, and being held incommunicado amount to mental torture and are violative of Article 14(2) of the constitution.<sup>25</sup>

Thus by leaving out psychological torture, the definition of torture under the Act falls short of the mark. Furthermore, the Act does not criminalise cruel, inhuman or degrading treatment, despite defining it, which constitutes treatment that causes suffering but does not amount to torture.

##### b. Prosecuting And Punishing For Custodial Death

There is a lack of clarity under the Act as to how deaths in custody will be reported and how investigations will be carried out. It does not create an obligation to conduct a post mortem in the event of custodial death, however, a provision for conducting inquiry into any death occurring in police custody is contained in the Code of Criminal Procedure.<sup>26</sup> Moreover, the Act prescribes the death penalty for the perpetrator of this offence. In practice, it is foreseeable that the stipulation of the death penalty may result in fewer convictions as the investigating body (FIA) and judiciary may be reluctant to give death sentences to police officers. Moreover, research has shown that there is no clear deterrent effect of the death penalty, which renders the penalty useless in curbing torture.<sup>27</sup>

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<sup>23</sup> This has huge consequences for criminal law. As Pakistan's undertrained and under resourced, police rely heavily on confessions as evidence of guilt, and the use of torture is widespread. Demonstrated in JPP's 'A Most Serious Crime: Pakistan's Unlawful Use of Death Penalty' [https://law.yale.edu/sites/default/files/area/center/schell/2016\\_09\\_23\\_pub\\_dp\\_report.pdf](https://law.yale.edu/sites/default/files/area/center/schell/2016_09_23_pub_dp_report.pdf)

<sup>24</sup> Constitution of the Islamic Republic of Pakistan, 10 April 1973, available at: <https://www.refworld.org/docid/47558c422.html>

<sup>25</sup> PLD 1977 Lahore 1174

<sup>26</sup> S 176 CRPC - *Inquiry by Magistrate into cause of death*: (i) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in Section 174, clauses (a), (b) and (c) of sub-section (i), any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer, and if he does so, he shall have all the powers in conducting it which he would have in holding, an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

<sup>27</sup> For some studies in the North American context, see: Lester, D. (1993). The Deterrent Effect of the Death Penalty in Canada. *Perceptual and Motor Skills*, 77, 186. and Cohen-Cole, E., Durlauf, S., & Nagin, D. (2006). Reevaluating the Deterrent Effect of Capital Punishment: Model and Data Uncertainty. 39.

### **c. Punishment for Torture**

Article 4.2 of the UNCAT requires State parties to penalise torture with punishments commensurate to the gravity of the crime.<sup>28</sup> Yet the Act itself does not stipulate standalone punishments, rather it falls back on the existing punishments in Pakistan Penal Code (PPC). Since torture is not an offence in the PPC this creates confusion as to how punishment will be meted out for different degrees of torture. The PPC contains varying punishments depending on the severity of the category of hurt caused, as opposed to a specified punishment for the offence of 'torture'. Additionally, in 'hurt' cases, the courts mete out discretionary punishments, varying from case to case when the nature and seriousness of the crime of torture merits a distinct punishment. Overall, it is unclear how the Act will intersect with the provisions of the PPC in the absence of penal provisions of its own.

### **d. Custodial Rape**

The Act only criminalises custodial rape and not all forms of sexual violence. Moreover, the Pakistan Penal Code's definition of rape, which the Act is adopting, only accounts for the heterosexual, penetrative act of rape committed by a man against a woman and does not recognise the full spectrum of acts of sexual violence. As a result, the law as it stands would not have provided recourse for the sexual violence faced by 61% of the women sampled by JPP's 2014 report on police torture in Faisalabad.<sup>29</sup>

### **e. Malafide Complaints**

If a complaint is found to be mala fide, the Act states the complainant shall be punished with the same penalty as is prescribed for the offence. This provision is in contravention of Article 13 of UNCAT which gives torture victims the right to make complaints and be protected against ill-treatment and intimidation as a consequence of the same.

Penalising "false" complaints can be used as an intimidation tactic to dissuade victims from filing complaints.

### **f. Compensation to Victims**

Both the UNCAT and the ICCPR impose an obligation on States Parties to grant redress and provide adequate compensation to victims of torture or ill-treatment. The Committee Against Torture considers that "the right to an effective remedy for a breach of the Convention underpins the entire Convention, for otherwise the protections afforded by the Convention would be rendered largely illusory."<sup>30</sup>

The Act only provides for criminal proceedings against perpetrators of torture, not the full range of redressal mechanisms which should include pecuniary compensation and rehabilitation measures for the victim, which have some precedence in domestic case law.<sup>31</sup>

### **g. Protections for Vulnerable Groups**

Section 4 of the Act, which provides specific protection for women against being detained for the extraction of evidence and requires them to be dealt with by female staff is a commendable addition to the Act.

However, this section can be further improved by including protections for all vulnerable groups, particularly the transgender community, which has typically suffered severe ill treatment and violence, while perpetrators have operated with impunity. Moreover, a reference to the protection of children, people with psycho-social and

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<sup>28</sup> "Each state party shall make these offences punishable by appropriate penalties which take into account their grave nature." UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <https://www.refworld.org/docid/3ae6b3a94.html> [accessed 18 February 2022]

<sup>29</sup> Justice Project Pakistan, *Abuse of Women by Faisalabad Police*, published 16 Oct 2015, <https://jpp.org.pk/report/abuse-of-juveniles-by-the-faisalabad-police/>

<sup>30</sup> *Agiza v Sweden*, CAT Communication No. 233/2003, 20 May 2005, §13.6.

<sup>31</sup> *Muhammad Sarwar v. Govt. of Sindh and others; Khatoon Bibi v. The State.*



physical disabilities, and members of other minority groups would serve to acknowledge their increased vulnerability to torture, and reiterate the duties to protect them.

## **4.2. Role of the Federal Investigation Agency and National Commission for Human Rights**

The FIA, which is designated as the sole authority to investigate complaints of torture under the Act, is essentially a federal police force with the same powers of search, arrest, detention, seizure of property etc. as provincial police, and its officers derive these powers and their duties from the Criminal Procedural Code. It follows that this force is likely to commit similar acts of torture or cruel, inhuman or degrading treatment by its officers as the provincial police, and the granting of exclusive jurisdiction over investigations of torture complaints represents a clear conflict of interest. Additionally, the fact that many of its members are former members of the provincial police, is highly inconducive to impartial investigations.

The Act is silent regarding dealing with cases where FIA personnel are accused of perpetrating torture. In 2021, 4 FIA officials were arrested in a torture case in Multan (prior to the promulgation of the Act).<sup>32</sup> In 2022, a senator accused the FIA's cybercrime unit of subjecting him to torture.<sup>33</sup>

Moreover, the investigating body (FIA) must possess the full range of investigatory capacity and competence, such as the power to order an autopsy and the power to identify alleged perpetrators and to oblige them to appear and testify. This can only be facilitated by the way of a coded regulatory framework in the form of rules, drafted in line with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol"). At the receipt of a complaint of torture, the investigator should immediately arrange for a medical examination of the alleged victim. Physical evidence of abuse and torture, including sexual abuse and rape, often disappears after a short time, therefore, it is important that the investigations commence promptly.

Additionally, it is a matter of concern that the FIA has neither established a functional wing dedicated to investigating custodial torture, nor created a complaint mechanism on its official website, as it does for all other federal offences falling under its ambit.

The Act gives NCHR the mandate to supervise torture investigations but it is silent as to the specifics of the supervisory mandate and the terms of cooperation between the NCHR and FIA. Moreover, the NCHR does not have a clearly defined mechanism for receiving and disposal of complaints of torture. Although the NCHR has stated that the majority of complaints received by them are related to torture by public officials, the NCHR lacks the capacity and human resources to conduct thorough investigations into these complaints. With proper capacity building and an increased allocation of funds, the NCHR could be a well-placed body to investigate torture cases, considering its status as the national human rights institute independent of influence from any law enforcement agency.

## **4.3. The Need For a Supporting Legal Framework vis a vis Torture in Prisons**

Section 20 of the Act empowers the concerned division to make rules for the purpose of carrying out the objects and purposes of this Act. As such, the next step in Pakistan's journey towards elimination of torture is to ensure that enabling rules and regulations are put into place and so that the new legal framework under the Act can be implemented in letter and spirit.

The Act must be supplemented with a framework to ensure elimination of torture and cruel inhuman or degrading treatment in prisons. As they currently stand, the archaic Pakistan Prison Rules (1978), still in use in Punjab, violate key international instruments and guidelines through provisions that may enable the commission of acts amounting to torture such as the use of bar fetters and provisions for prolonged solitary confinement.

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<sup>32</sup> Dawn News, 'Four FIA Officials Booked Months After Torturing Man in Custody' Published April 25, 2021, <https://www.dawn.com/news/1620255>

<sup>33</sup> Swati asks CJP, COAS to investigate 'torture' November 01 2022 <https://tribune.com.pk/story/2384183/swati-asks-cjp-coas-to-investigate-torture>

Furthermore, the failure of these Rules to meet the minimum standards contained within the Mandela Rules<sup>34</sup>, which provide guidelines for the treatment of prisoners, emphasising their human rights and dignity, and the Bangkok Rules<sup>35</sup>, which specifically address the treatment of women prisoners, can amount to a violation of the prohibition of torture and cruel, inhuman, or degrading treatment as outlined in the UNCAT.

Punjab not only has the highest inmate population in Pakistan, but its prisons are working at 142.3% of their capacity. According to JPP data, there are 43 incarceration facilities across Punjab, with a total capacity of 36,806 individuals, whereas the inmate population in Punjab is 52,376.<sup>36</sup>

Therefore, there is an immediate need to evaluate the existing state of prisons in Punjab. The Draft Punjab Prison Rules 2020 initiated by the provincial government of Punjab formulate a 21st century legal framework for correctional facilities that aligns with global best practices yet is rooted in and informed by the experience of the provincial authorities in the administration of prisons in Punjab. These rules remove the use of bar fetters and replace them with more humane modes of restraint, update the method of search of prisoners upon admission to ensure that female prisoners are searched in a dignified manner, provide for thorough medical examination of prisoners upon admission and prohibit restrictions or disciplinary sanctions amounting to torture or other cruel, inhuman or degrading treatment or punishment.

#### 4.4. Streamlining Forensic Medical Examinations

Rule 25.19 of the Punjab Police Rules 1934 outlines the procedure for examination of police torture cases, "When a medical opinion is required in police cases, the persons to be examined shall be produced before the highest medical authority available on the medical staff of the district".<sup>37</sup>

Similarly, Rule 18 of the Pakistan Prison Rules provides that every prisoner has to be examined by the Senior Medical Officer or the Medical Officer within 24 hours of admission.<sup>38</sup>

Regardless, while intake screenings of each prisoner are performed, prison officials, who lack training to conduct forensic examinations and record information, remain unable to work with a lens that can detect torture.

The Government of Punjab Health Department provides for a three-tier structure for conducting medico-legal work.<sup>39</sup> The initial examination is to be conducted by the Medical Officers/Woman Medical Officers at the Rural Health Centres, Tehsil Headquarters Hospitals, District Headquarters Hospitals and at the Teaching Hospitals, while the second examination is carried out by the District Standing Medical Board (DSMB) headed by the Medical Superintendents, DHQ Hospital, with the District Health Officer and District Surgeon as members. These DSMB's are also empowered to examine cases of police torture under the "Instructions Regarding the Conduct of Medico-Legal and Postmortem Examination, 2015," issued by the Surgeon Medico-Legal Punjab.

As per the Istanbul Protocol, a medical examination should be undertaken regardless of the length of time passed since the torture, but if it is alleged to have happened within the past six weeks, such an examination should be arranged urgently before acute signs fade. The examination should include an assessment of the need for treatment of injuries and illnesses, psychological help, advice and follow-up. Psychological evaluation of the victim is a necessary part of torture investigation.

As the official designated body for confirmation in investigations of police torture, it is imperative that a fresh set of rules of be drafted for provincial medical bodies tasked with examination of cases of alleged police torture to follow when conducting medico-legal examinations, in line with the Istanbul Protocol, in order to ensure accurate

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<sup>34</sup> UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*: resolution / adopted by the General Assembly, 8 January 2016, A/RES/70/175, available at: <https://www.refworld.org/docid/5698a3a44.html> [accessed 2 June 2023]

<sup>35</sup> UN General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)*: note / by the Secretariat, 6 October 2010, A/C.3/65/L.5, available at: <https://www.refworld.org/docid/4dcbboae2.html> [accessed 2 June 2023]

<sup>36</sup> 'FACT SHEET 2022 - Prison Population of Pakistan', Justice Project Pakistan <https://jpp.org.pk/report/fact-sheet-2022/>

<sup>37</sup> Punjab Police Rules, Volume 3. <https://punjabxp.com/wp-content/uploads/Punjab-Police-Rules-III.pdf>

<sup>38</sup> Pakistan Prison Rules, 1978 <https://prisons.punjab.gov.pk/system/files/Pakistan%20Prison%20Rules%201978%20%28Final%29.pdf>

<sup>39</sup> Notification No. SO(H&D)5-5/2002 <https://sys.lhc.gov.pk/appjudgments/2022LHC2305.pdf>

monitoring and reporting of incidents of torture under the Act. Similarly, Medical Officers in prisons must have an outlined set of rules, and proper training, to conduct forensic medico-legal examinations and screenings of prisoners specifically for the detection of torture.

#### **4.5. Capacity-building Criminal Justice Actors in the Fight Against Torture**

Combatting torture requires all actors in the criminal justice system to possess varying degrees of proficiency in the numerous dimensions of the issue, such as technical knowledge, medical standards, legal frameworks, and investigative techniques.

As the system currently stands, there are vast shortcomings in institutions' capacity to effectively implement the law criminalising torture. Custodial torture, colloquially known as "third degree", is prevalent in interrogations because police are not trained in methods of investigation and resort to torture to extract evidence.<sup>40</sup> Similarly, judges and prosecutors bear the responsibility of preventing any unintentional or inadvertent collusion with acts of torture during the execution of their official duties.

##### **a. Law Enforcement**

The Ministry of Human Rights (MoHR) and Pakistan's police and prison academies regularly train law enforcement on modern forensic investigation techniques, evidence collection, and due process rights. Furthermore, Pakistan's state report to the UNCAT outlines measures taken by the Federal and Provincial Governments to sensitise police departments across the country on this issue.

However, in the absence of procedural rules developed in line with the Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles), which are largely accepted as international best practice on investigation methods),<sup>41</sup> torture will continue to be used as a tool for evidence collection.

##### **b. Judiciary**

Pakistan's 2022 state report on the UNCAT highlighted the initiative being taken by provincial judicial academies and the MOHR to carry out capacity building trainings of the judiciary on torture and cruel, inhuman or degrading treatment including the rights of the accused in police custody, medico-legal evidence, forensic awareness and gender-based violence.<sup>42</sup>

In practice, the widespread allegations of torture against political figures and protestors in 2023 and the inability of the judiciary to facilitate the litigation and adjudication of complaints of torture demonstrates the need for continued training, and the development of a benchbook outlining the legal procedure for judges to follow under the Act.<sup>43</sup>

##### **c. Prosecutors**

Similar to the judiciary, there is a lack of knowledge on part of lawyers as to the rules that provide for the medico-legal examination, as well as the procedure to be followed under the Act. Any rules drafted under this Act should provide for the correct procedure to be followed by state prosecutors when prosecuting cases of torture by public officials.

##### **d. Medico-legal professionals**

Interviews with senior medico-legal professionals indicate that the medico-legal personnel that constitutes

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<sup>40</sup> *Reforming Pakistan's Prison System, 2012*, The Crisis Group <https://www.crisisgroup.org/asia/south-asia/pakistan/reforming-pakistan-s-prison-system>

<sup>41</sup> Principles on Effective Interviewing, Association for the Prevention of Torture <https://www.apt.ch/en/mendez-principles-effective-interviewing>

<sup>42</sup> Supra at note 10 (Pakistan 2022 State Report to UNCAT).

<sup>43</sup> 'Prisoners of conscience: Custodial torture remains a problem' Sarmad Sattar, 2023 <https://www.pakistantoday.com.pk/2023/02/12/prisoners-of-conscience/>

DSMBs is no longer being staffed by trained forensic doctors, leading to a failure to meet minimum standards. In furtherance of the positive existing legal framework outlined in Section 4.4. above, it is imperative that resources be allocated to training medico-legal professionals, as they perform a seminal role in identifying and providing evidence in cases of torture.

## Conclusion

While most of the provisions in the newly introduced law are cause for celebration, there are some prominent aspects that must be amended in order for Pakistan to fully comply with its international obligations. Firstly, the definition must be expanded to incorporate psychological torture. The inclusion of the death penalty for the crime of custodial death should be replaced with a sentence of life imprisonment. Having a punishment for mala fide complaints can well be used as an intimidation tactic to dissuade victims from filing complaints. As such, its inclusion could hinder genuine complaints from being filed and investigated, and this punishment should be removed from the law. Perhaps the most important drawback that prevents the legislation from being implemented in the true spirit and in line with the UNCAT is the exclusive jurisdiction of FIA over torture investigations, which needs to be reviewed.

The promulgation of the Act is not the destination itself, but a step in the direction of elimination of torture. The next and most crucial step is framing enabling rules that comprehensively establish investigation procedures and complaint mechanisms, and clearly delineate the roles of the NCHR and FIA.

A fundamental concern when providing redress to individuals for torture is effective clinical and legal investigation, documentation, prosecution and adjudication of cases. The way to address these concerns is espoused in the Istanbul Protocol which establishes that states must ensure that awareness on prohibition of torture is widely disseminated. Technical training on the investigation of cases of torture including assessment of psychological signs of torture must be imparted to investigating agencies and medicolegal professionals. included in the curriculum of training of law enforcement agencies, medical professionals, public officials, lawyers, and judiciary. Torture can only be curbed through multi-stakeholder efforts for which capacity building and human resource development across multiple actors of criminal justice is crucial.

## Key Recommendation

- Improve the Act's compliance with the UNCAT by expanding the definition of torture to include psychological torture, repeal the provision penalising complainants for 'malafide complaints', remove the death penalty for perpetrators, define and criminalise cruel, inhuman or degrading treatment and sexual violence, and provide a mechanism for reparations, compensation, and rehabilitation.
- Frame enabling rules and regulations under the Act which reflect the principles established in the Mandela Rules, Istanbul Protocol, Mendez Principles and Minnesota Protocol.
- Institute a special committee to oversee the implementation of the Act, consisting of members of the Federal and Provincial governments, judiciary, law enforcement agencies, Provincial health departments, and civil society experts.
- Develop torture investigation guidelines for the FIA, the NCHR, medico-legal practitioners, and police in line with the Istanbul Protocol, Mendez Principles and Minnesota Protocol, and offer consistent training on the same.
- Capacity-build the judiciary on evaluating medico-legal evidence and adjudicating cases of torture under the Act through judicial academies and the development of a benchbook to assist them.
- Train lawyers on procedures for prosecution under the Act through bar councils.
- Train prison authorities on which detention practices constitute torture under the Act and ensure jail Medical Officers are fully sensitised regarding international best practices for medical examination through prison academies.
- Create specialised tribunals under Article 212 of the Constitution, or through an Amendment in the

Prisons Act, 1984, to serve as a one-stop forum for prisoners for the redressal of their grievances.

- Pass Draft Punjab Prison Rules 2020 to bring prison administration in line with international standards and prevent cruel, inhuman and degrading treatment of prisoners.
- Amend Section 497 of the Code of Criminal Procedure to designate torture by public officials an exception for granting bail in non-bailable offences to create a further deterrent against torture during custody, and a benefit to victims of torture.
- Ensure close coordination at provincial level to ensure standard application of law across Pakistan from capacity building to monitoring, documentation, investigation, prosecution, and remedy.
- Maintain record of disaggregated data on torture and publish it regularly while protecting the identities of victims. This includes ensuring that all registers in places of detention are properly maintained and keeping record of the complaints received by the NCHR during jail visits and in the normal course of their operation.
- Take steps to ratify the Optional Protocol to the UN Convention Against Torture.





Justice Project Pakistan (JPP), is an award winning legal action non-government organization dedicated to representing the most vulnerable Pakistani prisoners facing the harshest punishments at home and abroad. Our work combines strategic litigation, fierce domestic and international public and policy advocacy campaigns, and building the capacity of stakeholders to bring systemic reform to the criminal justice system in Pakistan.

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