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SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS AND THE HUMAN RIGHTS COMMISSION OF PAKISTAN IN VIEW OF THE EXAMINATION BY THE COMMITTEE AGAINST TORTURE OF THE FIRST PERIODIC REPORT OF PAKISTAN UNDER ARTICLE 19 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Submitted in March 2017

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*The **Human Right Commission of Pakistan (HRCP)** was established in 1987 as an independent non-government organization. Since then it has developed to become an influential country-wide human rights body. The HRCP has established a leading role in providing a highly informed and objective voice on a national level in the struggle for the provision of human rights for all and democratic development in Pakistan. HRCP's role in highlighting human rights abuses has been recognized not only on a national level but also internationally.*

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Introduction

1. During its 60th session, scheduled to take place from 18 April to 12 May 2017, the Committee against Torture ("the Committee") will undertake its examination of Pakistan's implementation of the Convention against Torture and other cruel, inhuman or degrading treatment ("the Convention"), including in light of the State Party's initial periodic report under article 19 of the Convention.¹

2. The International Commission of Jurists (ICJ) and the Human Rights Commission of Pakistan (HRCP) welcome the opportunity to contribute to the Committee's examination of Pakistan's first periodic report.

3. In this submission, the ICJ and HRCP draw the Committee's attention to the following issues:

- Legal framework relevant to torture and other ill-treatment in Pakistan;
- Compatibility with the Convention, as well as other relevant international standards, of draft legislation purporting to incorporate the Convention against Torture into Pakistan's domestic law;
- Allegations of torture and other ill-treatment of individuals facing trials before military courts in connection with terrorism-related offences;
- Prevalence of torture and other ill-treatment documented by HRCP; and
- Enforced disappearances as torture and other ill-treatment.

The submission concludes with a set of recommendations to the Pakistani authorities.

A. Legal framework relevant to torture and other ill-treatment in Pakistan

4. Pakistan ratified the Convention against Torture in 2010, committing to ensuring that all acts of torture be made criminal offences under its laws and be punishable by appropriate penalties that take into account their grave nature. Seven years later, torture and other ill-treatment are still not specifically criminalized in Pakistan, and the legal framework applicable to ill-treatment perpetrated by public officials, including members of security and intelligence agencies, clearly falls short of the requirements under the Convention.

5. Contrary to Pakistan's claim in its first periodic report that "torture or acts amounting to torture stand criminalized in the domestic laws through Constitutional and other existing legal frameworks",² legal provisions relating to torture under Pakistani law fail to incorporate the various elements of torture as defined in Article 1 of the Convention and as required under the Convention, including under Articles 2(1) and 4. For example, Article 14(2) of Pakistan's Constitution prohibits "torture for the purpose of extracting evidence". Not only does the constitutional protection fail to define torture in accordance with Article 1 of the Convention, it also limits the prohibition only to torture perpetrated for the purpose of extracting evidence.

6. In its State report, Pakistan also gives the example of the Police Order, 2002, to demonstrate that torture is adequately penalized in Pakistan.³ Article 156(d) of the Police Order, 2002, prescribes a penalty of up to five years' imprisonment for any

¹ First report of Pakistan on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, for the period from 2010 to 2016, CAT/C/PAK/1; 4 January 2016. Consideration of reports submitted by states parties under article 19 of the convention (State party report).

² State party report, *supra* fn. 1, para 9.

³ *Ibid*, para 34.

police officer who "inflicts torture or violence to any person in his custody". It is important to note that the Police Order is applicable only in the province of Punjab. Following the 18th Amendment in 2010, when criminal laws and procedure were made a provincial subject, the provinces of Sindh and Balochistan went back to variants of the colonial era police law, the Police Act, 1861, which do not contain similar provisions penalizing torture. The province of Khyber Pakhtunkhwa passed its own law governing the police in 2016. The Khyber Pakhtunkhwa Police Ordinance, 2016, contains a similar provision to Article 156(d) of the Police Order 2002.⁴

7. Additionally, this provision does not meet the requirements of the Convention for a number of reasons: first, the Police Order and the Khyber Pakhtukhwa Police Ordinance do not define torture; second, its application is restricted to torture or violence "in custody" of a police officer, whereas the Convention places no such requirement; and third, torture is listed as one of the many unlawful activities by police officers with trespass, improper arrest etc., which fails to take into account the gravity of the crime of torture.⁵

8. The ICJ and HRCJ emphasize that the Convention requires States to define the offence of torture as distinct from common assault or other crimes to ensure the gravity of the crime of torture is adequately understood. As noted by the Committee, codifying torture as a separate crime also: (a) emphasizes the need for appropriate punishment that takes into account the gravity of the offence; (b) strengthens the deterrent effect of the prohibition itself; (c) enhances the ability of responsible officials to track the specific crime of torture; and (d) enables and empowers the public to monitor and, when required, to challenge State action as well as State inaction that violates the Convention.⁶

9. Additionally, the Police Order, 2002, and other provincial laws applicable to the police highlighted above are completely silent on questions of compensation for victims of torture; the applicability of superior or command responsibility; and the requirement of a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.

10. The ICJ and HRCJ further note that in the State party's report, Pakistan highlighted the conviction of the perpetrator, a private individual, in a case of rape of a minor girl as evidence that, generally in Pakistan, perpetrators of torture are adequately sanctioned:

It may be underscored that in cases of torture victims have been provided redress by punishing the perpetrators. For instance, in a judgment of 9 December 2015, district and sessions court of Karachi sentenced a man, Jaffar to 10 years imprisonment after convicting him of raping a 14 years old teenage girl who lived in his neighbourhood.⁷

Similarly, the State party's report referred to the prosecution of other crimes, including the murder of a pregnant woman by a private individual, as examples that

⁴ Section 120, The Khyber Pakhtunkhwa Police Ordinance, 2016, <http://www.pakp.gov.pk/2013/bills/the-khyber-pakhtunkhwa-police-ordinance-2016/>.

⁵ Article 156: "Penalty for vexatious entry, search, arrest, seizure of property, torture, etc.—Whoever, being a police officer— (a) without lawful authority, or reasonable cause, enters or searches or causes to be entered or searched any building, vessel, tent or place; (b) vexatiously and unnecessarily seizes the property of any person; (c) vexatiously and unnecessarily detains, searches or arrests any person; or (d) inflicts torture or violence to any person in his custody; shall, for every such offence, on conviction, be punished with imprisonment for a term, which may extend to five years and with fine."

⁶ UN Committee Against Torture (CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, available at: <http://www.refworld.org/docid/47ac78ce2.html>, para 11.

⁷ State party report, *supra* fn. 1, para 133.

perpetrators of acts of cruel, inhuman and degrading punishment are prosecuted in the country:

"It may be emphasized that courts in Pakistan have prosecuted perpetrators of cruel, inhuman or degrading treatment or punishment. For instance, in a case in which a woman Ms. Farzana Iqbal was killed by bricks in a cruel and inhumane manner by her family members the Lahore High Court in a judgment of 18 November 2014 sentenced Farzana's father Iqbal, brother Zahid Iqbal and cousin Jahan Khan to death. Another suspect Ghulam Ali was also sentenced to 10 years in prison and a fine of Rs 1 million. The ruling for the death penalty was awarded under three different provisions, i.e., i. the Anti-Terrorism Act Section 7; ii. Section 302 of CR.PC which outlaws murder; and iii. Section 338C which outlaws murder of a pregnant woman."⁸

11. The ICJ and the HRCJ are concerned that the State party appears to be conflating the notion of serious violent criminal offences committed by private individuals with the crime of "torture" perpetrated "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." Furthermore, the ICJ and the HRCJ are concerned that that, across the board in Pakistan, from judges to police officers and the media, individuals and institutions display a poor understanding of State torture as a serious human rights violation.

12. As the examples mentioned above illustrate, Pakistan's claim in its State report that "the rights embodied in the CAT...have always been part of the substantive law of the country and have, thus, been enforced by the administrative and the judicial arms of the state accordingly"⁹ is difficult to sustain. In conclusion, the ICJ and HRCJ are concerned that torture as defined in Article 1 of the Convention is still not adequately criminalized in domestic law in Pakistan.

B. Compatibility with the Convention, as well as other relevant international standards, of draft legislation purporting to incorporate the Convention into Pakistan's domestic law

13. Nearly seven years since Pakistan ratified the Convention, its provisions have still not been implemented into domestic law. In 2015, a bill passed by the Senate (upper house of parliament) lapsed because the National Assembly (lower house of parliament) did not consider it within the constitutionally stipulated time period. Another bill, the Torture, Custodial Death and Custodial Rape (Prevention & Punishment) Bill, 2014, tabled by a member of the ruling party too remained a low priority for the Government, and was only passed by the relevant standing committee of the National Assembly in January 2017. The bill, however, still has to be passed by a majority vote in the National Assembly and the Senate to become law.

14. The Torture, Custodial Death and Custodial Rape (Prevention & Punishment) Bill in some ways meets the requirements of the Convention: for example, it prohibits the use of statements obtained through torture as evidence, which is consistent with Article 15 of the Convention; and it expressly removes the "sanction" provision for public servants, provided under Section 197 of the Code of Criminal Procedure, 1898 (CrPC), which is an important step to ensure accountability. Section 197 of the CrPC provides that public servants may only be prosecuted for offences "alleged to have been committed...while acting or purporting to act in the discharge of...official duty" only after prior "sanction" or permission of the President or Pakistan or the principal governors.

15. However, the bill also has many deficiencies, which make some of its provisions incompatible with the Convention. Of particular concern are the lack of adequate provisions for compensation, including by the State, for victims of torture and other

⁸ State party report, *supra* fn. 1, para 145.

⁹ State party report, *supra* fn. 1, para 4.

ill-treatment; the failure to criminalize all acts of torture as defined in Article 1 of the Convention; the failure to criminalize acts that amount to cruel, inhuman or degrading treatment; the failure to provide for preventative measures, consistent with Article 2(1) of the Convention, including express prohibition of incommunicado or secret detention; and the introduction of a punishment, that may extend to one year's imprisonment or with a fine of up to Rs. 100,000 (1000 US Dollars) for so-called *mala fide* complaints.¹⁰ The fear of prosecution under this provision could deter victims from lodging complaints of torture.

16. Additionally, the ICJ and HRCP are particularly alarmed by the proposed requirement for a special procedure for complaints against the security and intelligence agencies, which, in turn, would risk making the proposed law futile and ineffective. Section 15 of the Torture, Custodial Death and Custodial Rape (Prevention & Punishment) Bill provides that where a complaint of torture is made against members of the armed forces or intelligence agencies, the Federal Investigating Agency must first "seek directions" from the federal government before launching an investigation. This proposed provision is the latest in a series of attempts by Pakistani lawmakers to further shield security agencies from criminal proceedings and impede victims' right to remedy when the security forces are accused of perpetrating human rights violations.

17. For example, the National Commission for Human Rights Act, 2012, establishing a commission for the promotion and protection of human rights, provides that where there is a complaint of human rights violations against members of the armed forces, the Commission may only seek a report from the government and make recommendations if it sees fit. The law also states that the Commission's functions "do not include inquiring into the act or practices of the intelligence agencies". Similarly, the 21st amendment to the Constitution and subsequent amendments to the Army Act, 1952, which allowed military courts to try civilians for terrorism-related offences for two years from January 2015 to January 2017, also granted all personnel associated with military courts complete retrospective immunity from prosecution for actions taken in "good faith", which could possibly also include subjecting suspects to enforced disappearance or secret detention.

18. Legal immunities and other measures that shield the security apparatus from accountability lie at the core of the crisis of impunity for human rights violations in Pakistan. In 2014 alone, the Human Rights Commission of Pakistan documented dozens of cases of torture and ill-treatment in military-run detention centres across the country. "Missing persons" who are released from detention frequently report having been tortured and ill-treated in custody, and dead bodies of "disappeared" persons are often found bearing torture marks. In all these cases, it is members of the military and intelligence agencies who are suspected of being responsible.¹¹

19. However, the authorities have not independently investigated the allegations, let alone brought perpetrators to justice. This has enabled, and perpetuated, impunity for human rights violations in Pakistan. Without effective mechanisms to determine the truth behind allegations of gross human rights violations and to ensure accountability of all public officials responsible, public trust and confidence in the security agencies, including with respect to their counterterrorism efforts, will continue to be eroded. It is, therefore, imperative that any legislation on torture and other ill treatment must not shield the security agencies from criminal proceedings.

¹⁰ The bill defines "mala fide complaint" to mean "a complaint filed against any public servant or any person acting in an official capacity, with malafide intentions or other ulterior motives or to harass such person or public servant".

¹¹ See, for example, "HRCP's alarm at missing men in Sindh turning up dead", *Human Rights Commission of Pakistan*, 5 December 2014, accessed at: <http://hrcp-web.org/hrcpweb/hrcps-alarm-at-missing-men-in-sindh-turning-up-dead/> and "HRCP fact-finding mission to Balochistan issues observations", *Human Rights Commission of Pakistan*, June 2013, accessed at: <http://hrcp-web.org/hrcpweb/hrcp-fact-finding-mission-to-balochistan-issues-observations/>

20. Article 2(1) of the Convention obligates each State Party to take "effective legislative, administrative, judicial or other measures to prevent acts of torture", Article 12 states that authorities must carry out "prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed", and Article 14 states that State parties must ensure in their legal systems that "the victim of an act of torture obtains redress". The Committee has expressly stated that to satisfy their procedural obligations, "States parties shall enact legislation and establish complaints mechanisms, investigation bodies and institutions, including independent judicial bodies, capable of determining the right to and awarding redress for a victim of torture and ill-treatment, and ensure that such mechanisms and bodies are effective and accessible to all victims."¹²

C. Allegations of torture and ill-treatment of individuals facing trials before military courts in connection with terrorism-related offences

21. Pakistan faces a real and serious threat of terrorist attacks and has a legal duty to protect people within its jurisdiction against terrorist attacks, and where terrorist attacks occur, a duty to investigate, prosecute and bring alleged perpetrators to justice. However, counter-terrorism measures must respect Pakistan's international human rights obligations, including those under the Convention, as well as relevant international fair trials standards. Article 2 of the Convention provides that the prohibition against torture is absolute and non-derogable. It emphasizes that no exceptional circumstances whatsoever may be invoked by a State Party to justify acts of torture in any territory under its jurisdiction. The Committee has stated that this includes any threat of terrorist acts or violent crime as well as armed conflict, international or non-international.

22. In January 2015, Pakistan empowered military courts to try civilians for terrorism-related offences as part of its 20-point "National Action Plan", adopted by the Government following the horrific attack on the Army Public School in Peshawar in December 2014, which killed nearly 150 people, most of them children. The expansion of military jurisdiction over civilians was accomplished through the 21st Amendment to Pakistan's Constitution and amendments to the Army Act, 1952. These amendments allowed military courts to try offences related to "terrorism", allegedly committed by those who claim to, or are known to, belong to a terrorist organization "using the name of religion or a sect". Both sets of amendments lapsed on 6 January 2017 pursuant to a "sunset clause". Notwithstanding the fact that the Pakistani authorities have failed to address any of the serious human rights concerns, including about torture and ill-treatment, expressed during the two years when military courts were empowered to try civilians for terrorism-related offences, at the time of writing, the Government has tabled fresh bills before Parliament to renew the jurisdiction of military courts to try civilian terrorism suspects in secret trials for a further two years.

23. According to military sources and ICJ's monitoring of military trials in Pakistan since January 2015, military courts convicted 274 people for their "involvement" in terrorism-related offences in the two years they were in operation, 161 of whom were sentenced to death and 113 people were given prison sentences. Details of only seven people sentenced to life imprisonment have been made public. The names, charges, and duration of prison terms for the remaining 106 people have not been disclosed.

24. At least 159 out of 168 people (95 per cent) whose convictions have been publicly acknowledged by the military have allegedly "confessed" to the charges. In the absence of adequate safeguards and independent review mechanisms in military proceedings, this very high rate of "confessions" raises serious questions about their voluntariness, including with respect to the infliction of torture and other ill treatment to extract confessions.

¹² UN Committee Against Torture (CAT), *General Comment No. 3: implementation of article 14 by States parties*, 19 November 2012, UN Doc. CAT/C/GC/3, accessed at: http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3_en.pdf, para 5.

25. The Committee as well as the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment have repeatedly stated that people accused of a crime must be detained and interrogated in officially recognized places of detention, and provision should also be made against incommunicado detention where suspects are deprived of communication with the outside world. However, suspects tried by military courts were often kept in secret detention and family members, lawyers and NGOs did not have access to them; military proceedings were completely secret and closed to the public; and the right to appeal to civilian courts was not available. Without any access to the outside world, the detainees were at high risk of torture and ill treatment. In fact, secret detention is itself completely prohibited by the Convention and other international treaties to which Pakistan is a party, including the International Covenant on Civil and Political Rights (ICCPR).

26. Family members of some of the people convicted by military courts petitioned the Supreme Court of Pakistan challenging, among other things, the lawfulness and voluntariness of the convicts' "confessions". In August 2016, however, the Supreme Court dismissed all petitions without considering the allegations of torture and ill treatment in any detail. The Court reiterated the limitations of its review jurisdiction, and noted that since the "confessions" were recorded by a magistrate and were not retracted, they stood "proved".¹³

27. The ICJ and HRCJ note that the Supreme Court's treatment of questions regarding the veracity and voluntariness of "confessions" in military trials is markedly different from its treatment of the same issues in the context of cases before civilian courts. Pakistani law and jurisprudence spanning decades clarify that in recording confessions, the magistrate has to observe a number of mandatory precautions. The fundamental logic of these precautions, in the words of the Supreme Court, is to shed "all signs of fear inculcated by the Investigating Agency in the mind of the accused"¹⁴ and provide "complete assurance" to the accused that in case they are not making a confession voluntarily, they will not be handed over back to the police.¹⁵ The Supreme Court has also held that the confessions will have no legal or evidentiary worth if these directions are not followed.

28. Civilian courts have also affirmed, for example, that confession statements recorded "after long detention in police custody are viewed with a great deal of suspicion",¹⁶ and in some cases, have discarded judicial confessions made as little as three days after arrest. In addition, magistrates are required to provide suspects the guarantee that even if they decide not to "confess", they will be remanded in custody but "at no occasion shall be handed over to any police official...because such careless dispensation would considerably diminish the voluntary nature of the confession made by the accused."¹⁷

29. Procedures of "military justice", however, made a complete mockery of these safeguards. Suspects were at all times in military custody, even after the magistrate recorded their "confessions". They also had no access to the outside world, further compounding their vulnerability to external pressure and coercion. And reportedly, some of them were subjected to enforced disappearance by military authorities as far back as 2010 and kept in secret detention in internment centres in the Federally Administered Tribal Areas (FATA) for many years before their military trials. In such circumstances, the "confessions" of suspects before military courts raise serious

¹³ Supreme Court of Pakistan, Civil petitions no. 842 of 2016 and others, June 2016, accessed at: http://www.supremecourt.gov.pk/web/user_files/File/C.P. 842_2016.pdf.

¹⁴ Supreme Court of Pakistan, Criminal Appeal No.497/2009 and Criminal Appeal No.496/2009, October 2015, accessed at: http://www.supremecourt.gov.pk/web/user_files/File/Crl.A. 496_2009.pdf, para 15.

¹⁵ *Ibid.*

¹⁶ PLD 1999 Karachi 151, para 12.

¹⁷ 2016 SCMR 274, para 15.

questions about their voluntariness and over the legitimacy of the manner in which they were obtained, including concerns of torture and other ill treatment.

30. The ICJ and HRCP reiterate that Article 15 of the Convention expressly requires states to ensure that statements made as a result of torture shall not be invoked as evidence. This applies equally to ill-treatment falling short of torture by virtue of Article 16 of the Convention.¹⁸ Furthermore, where there are reasonable grounds to believe torture or other ill treatment may have occurred, States are obligated to ensure a prompt and impartial investigation. In the case of the people tried by military courts, these requirements of the Convention were clearly not met.

31. In addition, 161 people were given the death penalty after being convicted on the basis of such confessions by military courts. Out of the 161 people given the death penalty, at least 21 people have already been executed. Under international law, the death penalty can only be carried out pursuant to a final judgment of a competent court and only applied to the most serious crimes. The safeguards to be afforded throughout the legal proceedings to ensure a fair trial in cases in which the death penalty might be imposed should be at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights.

32. Instead, the ICJ has documented how proceedings before Pakistani military courts fall far short of national and international standards requiring fair trials before independent and impartial courts: Judges are part of the executive branch of the State and continue to be subjected to military command; the right to appeal to civilian courts is not available; the right to a public hearing is not guaranteed; a duly reasoned, written judgment, including the essential findings, evidence and legal reasoning, is denied; and the procedures of military courts, the selection of cases to be referred to them, the location and timing of trial, and details about the alleged offences are kept secret.¹⁹ The imposition of the death penalty after clearly unfair trials is a violation not just of the right to life, but also the right to be free from torture and other ill-treatment.

D. Prevalence and trends of torture and other ill-treatment highlighted by cases documented by HRCP

33. On various occasions, courts in Pakistan have expressed concern about the police's widespread resort to torture. For example, in one case the Lahore High Court observed police officers "are in the habit of abusing their powers" by perpetrating torture and other ill treatment.²⁰ In another, it held that torture by police officers had become a "suppurating sore...which requires a major operation."²¹

The Human Rights Commission of Pakistan (HRCP) has documented cases of alleged torture and other ill-treatment in 60 selected districts from across Pakistan. From January 2014 to December 2016, HRCP documented 487 reported cases disclosing evidence of acts that could amount to torture or other ill-treatment.

34. From the reported cases, the ICJ and HRCP have observed the following trends:

- The cases documented indicate that torture and other ill-treatment remain widespread and take place in all parts of Pakistan.

¹⁸ See also general comment no 2 by the committee where it states "the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment" (cat, general comment no.2, cat/c/gc/2, para. 3)."

¹⁹ For a detailed analysis of the incompatibility of military trials with international standards, see International Commission of Jurists, "Military Injustice in Pakistan", June 2016, accessed at: <https://www.icj.org/pakistan-military-justice-system-unjust-and-ineffective-new-icj-paper/>

²⁰ 2009 YLR 1971, para 12.

²¹ PLD 2008 Lahore 564, para 8.

- Absence of a systematic and independent mechanism to promptly and thoroughly investigate all allegations of torture results in the perpetrators overwhelmingly escaping justice.
- Witnesses and victims feel that they are on their own and the perpetrators are in a position of power. They often avoid coming forward for fear of further harm from the perpetrators, including reprisals against themselves or their family members. As a result, there have been instances where victims or their families have asked HRCP to pursue their cases as they were too fearful.
- The main known perpetrators of torture in South Punjab, Khyber Pakhtunkhwa and Gilgit Baltistan are, almost exclusively, the police; in the Federally Administered Tribal Areas (FATA), the military and intelligence agencies; in Balochistan, the paramilitary force Frontier Corps, particularly in the context of enforced disappearances; and in Sindh, Rangers and the police.
- In most cases of torture, the victims and/or their families are unsuccessful in registering their complaint in their first contact with the police at the local police station level. It is usually only when the victims or others acting on their behalf approach senior police officials, the courts, or engage in public demonstrations or use other means such as media coverage that the concerned authorities launch inquiries into torture allegations.
- In cases where professionals such as journalists or lawyers face torture or other ill-treatment, organized efforts and protests from their respective professional bodies create pressure that leads to higher numbers of investigation and registration of cases. However, individuals who do not belong to organised professional bodies/associations and cannot create such pressure have to look for other means to seek relief such as seek court action, write to senior police officers, or try and get media coverage. In most cases, while this may lead to an inquiry, being launched, perpetrators are rarely prosecuted.
- Without exception, inquiries held to investigate complaints of torture or other ill-treatment are departmental affairs. This means that inquiries are departmental/internal inquiries by the departmental colleague of the alleged offender, who (more often than not) tends to influence the proceedings to benefit the alleged offender. This by its very definition lacks independence and often transparency.
- Cases that involve torture or ill-treatment at the hands of the police of people who identify as transgender exhibited a greater degree of bias and contempt for the victims from the police and other authorities.
- Cases of torture reported from rural Sindh showed a discernable trend of almost systematic mistreatment of women and children during raids to arrest people suspected of committing criminal offences.

35. Some of the emblematic cases of torture include:

- On 24 March 2016, a man, who was arrested in a murder case, died after he was allegedly subjected to torture by the police in Gilgit district. Six months prior to the alleged incident, he was convicted by Gilgit court and was imprisoned in District Jail Gilgit. A month before his death, he was shifted to Skardu jail. According to police officials, he was sick for a week before he succumbed to his death. The victim's brother, however, said that he died because of police torture and not because he was sick. He also said that the victim had been shifted to Skardu jail, where he could not even meet his family and the police officials did not inform them that he was in a serious

condition. The brother of the victim also told HRCJ that his brother's post-mortem report has not been shared with his family. Therefore, he is suspicious that his brother was killed extra judicially. He filed a case in the court for inquiry into the matter. He also told HRCJ that he suspects that his brother was killed because he had appealed the verdict of the lower court in the appellate court, where his appeal was under consideration. The deceased has left behind a wife and five children, among whom there is a two-month old baby as well.

- On 14 July 2016, a 40-year-old man, Hussain Bux, was beaten with sticks, slapped and punched by police officers who forced him to resolve land dispute with one of their colleagues, another police officer, in Naushero Feroz, Sindh. According to the victim's statement, he had a dispute over a piece of land with this police officer and it was because of this that the police, including the Assistant Sub Inspector, came to his house, in Abdul Karim Wastro village, in a private van and started beating him. The police hit him on his face and on his back. They also harassed and threatened women and children present there. Thereafter, the police took Hussain Bux with them and forced him to resolve the land dispute. On their way, the victim saw a few people gathered and started shouting for help. To avoid attention, the police left him there. The victim approached a police station to register a criminal complaint, but the police refused to do so. He then petitioned a local court, which directed the police department to issue him a letter for medical treatment and present the accused policemen before the court.
- On 10 February 2016, a reporter of Daily Dunya News, Khalid Hussain, aged 34 years, was beaten up by the police when they entered into an argument over the way he had parked his car near Ramzan Hotel in Gilgit district, in Gilgit Baltistan. When Khalid Hussain was parking his car, a policeman arrived and told him that he should park his car properly. The victim responded that other cars were also parked in a similar way. Two other policemen then came and started arguing with the reporter. The policemen kicked and punched the reporter and beat him up with batons for several minutes. The victim fell unconscious and needed to be hospitalized for two days. It was only after the local journalists protested against the incident that the police chief ordered an inquiry into the incident.

E. The prevalence and impunity for enforced disappearances

36. Under international standards, enforced disappearance or other forms of secret detention always amount to cruel or inhumane treatment, and in some cases, may also amount to torture.²² While there are reports that the practice of forcibly disappearing people has existed in Pakistan since at least the 1970s, such cases have been recorded in significant numbers after Pakistan became a key ally in the US-led "war on terror". Since then, hundreds of people, many of whom are suspected to be associated with terrorism-related offences, have reportedly been "disappeared" and detained in secret facilities. Cases of "disappearances" are also reported in large numbers in Balochistan, where the practice is used against political activists, students and journalists -particularly those who are perceived to be sympathetic to separatist movements in the province.²³ In recent years, there is a rise in cases of enforced

²² See, for example, Committee against Torture, Communication No. 456/2011, UN Doc. CAT/C/54/D/456/2011, para 6.6; Resolution adopted by the General Assembly on 18 December 2013 on Torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/RES/68/156, para 27; and Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, observations on communications transmitted to Governments and replies received, 26 February 2016, UN Doc. A/HRC/31/57/Add.1.

²³ *International Commission of Jurists*, "Authority without Accountability: the search for justice in Pakistan", December 2013, accessed at: <https://www.icj.org/wp->

disappearances in Sindh, where political activists have largely been targeted.²⁴ Enforced disappearances have now become a truly national phenomenon: In August 2015, Zeenat Shahzadi became one of the first women victims of the practice,²⁵ and now, a number of bloggers and activists have been “disappeared” from major cities in Punjab.²⁶

37. There is a wide range in estimates of the overall number of cases. Defence of Human Rights, a non-governmental organization working towards the recovery of disappeared persons, has reported that more than 5,000 cases of disappearances have still not been accounted for. The officially constituted Commission of Inquiry on Enforced Disappearances on the other hand, reports nearly 1,200 unresolved cases of alleged enforced disappearance from 2010 to 2016. The Human Rights Commission of Pakistan, which has documented human rights violations in 60 selected districts in the country, has reported nearly 400 cases of enforced disappearance since 2014. Thus, even taking the most conservative estimates, a significant number of enforced disappearances remain unresolved in the country.

38. The Supreme Court of Pakistan too has acknowledged and condemned the practice of enforced disappearances in the country. In October 2012, the Supreme Court issued an interim order in what is known as the “Balochistan Law and Order case”. The Court held that there was “overwhelming evidence” implicating the Frontier Corps (a paramilitary force) in cases of “missing persons” and acknowledged that at least a 100 people were still “missing” from Balochistan.²⁷ The Court also noted that the issue of enforced disappearances has “become a dilemma as their nears and dears are running from pillar to post spending their energy despite poverty and helplessness but without any success, which aggravated the mistrust not only on law enforcing agencies but also on civil administration.”²⁸

39. A year later, the Supreme Court delivered one of its strongest judgments yet on the practice of enforced disappearances in the case of *Muhabat Shah*.²⁹ Muhabat Shah petitioned the Supreme Court to trace the whereabouts of his brother, Yaseen Shah, who had been “missing” since a joint operation was conducted by the army and police in Mardan in 2010. According to a letter of the superintendent of the Malakand internment center submitted to the Supreme Court, 66 detainees were brought to Malakand internment center in November 2011. Out of the 66 detainees, 31 were declared as “internees” by the “internment authority” and kept at Malakand internment center. The other 35 were removed from the Malakand internment center by the army. A list of the 35 people who were removed from the Malakand internment center was submitted to the Supreme Court. Yaseen Shah was one of them. Despite multiple orders of the Supreme Court, the army authorities only produced seven persons before the Court and the remaining 28 persons, including Yaseen Shah, remained unaccounted for. In December 2013, the Supreme Court ruled that the unauthorized and unacknowledged removal of detainees from an internment center amounted to an enforced disappearance. The Court also held that “no law enforcing agency can forcibly detain a person without showing his whereabouts to his relatives

[content/uploads/2013/12/ICJ-AUTHORITY-WITHOUT-ACCOUNTABILITY-PAKISTAN-FINAL-.pdf](#), pp. 63-70.

²⁴ See, for example, *Human Rights Commission of Pakistan*, “HRCJ’s alarm at missing men in Sindh turning up dead”, 5 December 2014, accessed at:

<http://hrcj-web.org/hrcjweb/hrcjps-alarm-at-missing-men-in-sindh-turning-up-dead/>

²⁵ “What Happened to Zeenat Shahzadi”, 30 August 2016, accessed at: <http://hrcj-web.org/hrcjweb/what-happened-to-zeenat-shahzadi/>

²⁶ See “Pakistan: UN expert calls for return of four disappeared human rights and social media activists”, 11 January 2017, accessed at: <http://www.un.org/apps/news/story.asp?NewsID=55943#.WM8JHIUmQ5U> and “Pakistan activist Waqass Goraya: The state tortured me”, *BBC News*, 9 March 2017, accessed at: <http://www.bbc.co.uk/news/world-asia-39219307>

²⁷ Constitution petition no.77 of 2010, para 14.

²⁸ *Ibid*, para 10.

²⁹ HRC No.29388-K/13, 10 December 2013.

for a long period³⁰ and that currently, there was no law in force in Pakistan that allowed the armed forces to “unauthorizedly detain undeclared detainees”.³¹ Finally the Court condemned the “Kafkaesque working” of the military, and held that armed forces personnel responsible for the enforced disappearances should be dealt with “strictly in accordance with law”.³²

40. The Government responded by filing a review of the judgment, asking the court to delete remarks implicating the security agencies in enforced disappearances as such findings could “demoralize the troops”. In March 2014, after repeated court orders, the defense minister lodged criminal complaints for wrongful confinement against army officers allegedly responsible for the “disappearances”. A few days later, however, reportedly on the request of military authorities, the Khyber Pakhtunkhwa administration referred the matter to the military for further investigation and possible trial under the Army Act, 1952. Since procedures of “military justice” as secret and trials are not open to the public, what became of the case is not known.³³

41. The Government’s failure to bring to account perpetrators of enforced disappearances has led the UN Working Group on Enforced and Involuntary Disappearances to conclude “there is a climate of impunity in Pakistan with regard to enforced disappearances, and the authorities are not sufficiently dedicated to investigate cases of enforced disappearance and hold the perpetrators accountable”.³⁴ Pakistan has still not ratified the International Convention for the Protection of All Persons from Enforced Disappearance and “enforced disappearance” is still not recognized as a distinct crime in the country.

42. Instead of combatting the practice of enforced disappearance and bringing perpetrators to account, the Government enacted new legislation, such as the Actions in Aid of Civil Power Regulations, 2011, the 21st amendment (which lapsed in January 2017) and the Protection of Pakistan Act, 2014,³⁵ (which lapsed in July 2016), that facilitate the perpetration of enforced disappearance, including by explicitly legalizing forms of secret, unacknowledged, and incommunicado detention. As discussed earlier, families of people convicted by military courts have raised concerns that some of the people tried by military courts were subjected to enforced disappearance by military authorities.³⁶

43. The ICJ has also received information about other “missing persons” who are allegedly detained in internment centers in FATA but their detention is not acknowledged. These concerns are exacerbated by the military’s refusal to give family members and civil society monitors, including the ICRC, access to these internment centers.

³⁰ *Ibid*, p. 12.

³¹ *Ibid*. p. 20

³² See *International Commission of Jurists*, “ICJ urges Senate to reject ‘Protection of Pakistan’ Bill”, 14 May 2014, accessed at: <http://www.icj.org/icj-urges-senate-to-reject-protection-of-pakistan-bill/>, p.5.

³³ See, for example, Reema Omer, “Crisis of Impunity”, *Dawn News*, 31 January 2017, accessed at: <https://www.dawn.com/news/1311707>

³⁴ Report of the Working Group on Enforced or Involuntary Disappearances, Follow-up report to the recommendations made by the Working Group, Missions to Congo and Pakistan, 13 September 2016, UN Doc. A/HRC/33/51/Add.7, para 25, p. 35.

³⁵ See, for example, *International Commission of Jurists*, “Protection of Pakistan bill: an affront to human rights”, May 2014, accessed at: <https://www.icj.org/wp-content/uploads/2014/05/Pakistan-Bill-Full-Report.pdf> and “Pakistan: newly enacted counter-terrorism law endangers human rights”, 11 July 2014, accessed at: <https://www.icj.org/pakistan-newly-enacted-counter-terrorism-law-endangers-human-rights/>

³⁶ See *International Commission of Jurists*, “Military Injustice in Pakistan”, June 2016, accessed at: <https://www.icj.org/wp-content/uploads/2016/06/Pakistan-Military-court-Advocacy-Analysis-brief-2016-ENG.pdf>. See also, Reema Omer, “Forgotten Justice”, *Dawn News*, 25 September 2016, accessed at: <https://www.dawn.com/news/1285903>

Actions (in aid of Civil Power) Regulations, 2011

44. In 2011, the President of Pakistan promulgated regulations for the Federally Administered Tribal Areas (FATA) and the Provincially Administered Tribal Areas (PATA). These regulations give the army excessively broad powers to detain a wide range of people without charge and judicial supervision. The armed forces may detain any person in the notified area on grounds as vague as obstructing actions in aid of civil power "in any manner whatsoever"; strengthening the "miscreants'" ability to resist the armed forces or "any law enforcement agency"; undertaking "any action or attempt" that "may cause a threat to the solidarity, integrity or security of Pakistan"; and committing or being "likely to commit any offence under the regulation". They also provide the federal and provincial governments or "any person" authorized by them with sweeping powers of indefinite detention. Section 19 of the Regulations allow any information collected by the internment authority, including "confessions" made by the detainees, to be "admissible in evidence" and be "deemed sufficient to prove the facts in issue or the relevant facts". Retroactively applicable to 1 February 2008, they provide legal cover to the military's gross human rights and other abuses, including illegal detention of hundreds of suspects.³⁷ The ICJ and HRCP have received information that a large number of people tried by military courts for terrorism-related offences pursuant to the 21st amendment had been "disappeared" and secretly detained in the internment centers established under the Regulations.

45. The UN Working Group on Enforced or Involuntary Disappearances noted in its country report on Pakistan that the "compatibility of...AACP Regulations with international standards should be carefully examined, given that they would appear to allow forms of arbitrary deprivation of liberty, which may create themselves the conditions for the occurrence of enforced disappearances."³⁸ The Regulations have been challenged before the Supreme Court of Pakistan in multiple petitions. At the time of the submission, the case was still pending.

RECOMMENDATIONS

Against the background of the information provided within this submission and consistent with its obligations under the CAT, the ICJ and HRCP consider that the government of Pakistan must:

Articles 1 and 4

- Make the offence of torture punishable as an offence under criminal law, in accordance, at a minimum, with the elements of torture as defined in Article 1 of the Convention, and the requirements of Article 4;
- Ensure the Torture, Custodial Death and Custodial Rape (Prevention & Punishment) Bill, 2014, meets the requirements under the Convention and other relevant international standards, including, in particular, by removing section 12, which penalizes *mala fide* complaints; removing section 15, which sets out a separate procedure for investigating allegations of torture by the armed forces and intelligence agencies, potentially shielding them from prosecution; and removing the requirement of "custody" from section 3; and

³⁷ See, for example, *International Commission of Jurists*, "Authority without Accountability: the search for justice in Pakistan", December 2013, accessed at: <https://www.icj.org/wp-content/uploads/2013/12/ICJ-AUTHORITY-WITHOUT-ACCOUNTABILITY-PAKISTAN-FINAL-.pdf>, pp. 71-72.

³⁸ Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Pakistan, Addendum, Mission to Pakistan, 26 February 2013, UN Doc. A/HRC/22/45/Add.2, para 29.

- Carry out broad-based consultations with human rights organizations on the Torture, Custodial Death and Custodial Rape (Prevention & Punishment) Bill, 2014.

Article 16

- Expressly prohibit and criminalize acts amounting to cruel, inhuman or degrading treatment or punishment in line with international standards, including Article 16 of the Convention; and
- Establish a moratorium on the use of the death penalty, with the view of abolishing the death penalty in law and in practice;

Article 12

- Ensure that perpetrators of crimes of torture and other ill-treatment are brought to justice, in proceedings that meet international fair trial standards and that those convicted are punished in a manner that is consistent with the gravity of the crime;
- Take measures to ensure that investigations into allegations of torture and other ill-treatment are independent, impartial, effective and thorough, in a manner consistent with the Istanbul Protocol;
- Ensure only competent civilian courts have jurisdiction over alleged human rights violations and military courts are barred from exercising jurisdiction over human rights violations allegedly perpetrated by the military; and
- Ensure that an individual who alleges torture is not required to prove the occurrence but rather that the burden of proof is shifted to the state.

Article 15

- Take effective measures to ensure that information obtained by means of torture or other ill-treatment is excluded as evidence from criminal proceedings, including military trials, in accordance with Article 15 of the Convention;
- Ensure that the burden of proof lies with the prosecution to show beyond reasonable doubt that evidence was not obtained under any form of ill-treatment; and
- Maintain and publish statistical data regarding granting or denial of motions to exclude evidence obtained by torture or other ill-treatment, including in proceedings of military courts.

Article 11

- Ensure that constitutional, legislative and regulatory provisions related to "preventive detention" are in line with international standards;
- Expressly prohibit incommunicado detention or the detention of people in secret places, including in the Federally Administered Tribal Areas (FATA) and the Provincially Administered Tribal Areas (PATA);
- Make enforced disappearance a distinct, autonomous crime in the Penal Code;
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
- Carry out prompt, thorough, independent and impartial investigations into all allegations of enforced disappearance;
- Repeal Actions (in Aid of Civil Power) Regulations, 2011, or bring them in conformity with international standards;
- Enact clear rules and dedicated institution to ensure the oversight and accountability of law enforcement and intelligence agencies;
- Amend the National Commission for Human Rights Act, 2012, to give the Commission jurisdiction over alleged human rights violations committed by military and intelligence agencies; and

- Ensure that military courts can only try military personnel for military offences and in no manner have jurisdiction over civilians.

Article 14

- Recognize the Committee's competence to consider individual complaints under Article 22 to allow victims to submit communications and seek the views of the Committee;
- Ratify the Optional Protocol to the Convention against Torture in order to strengthen preventive measures against torture and ill-treatment
- Fully cooperate with the UN treaty bodies, including the CAT Committee, and ensure that the obligations under the treaties are implemented bona fide; and
- Extend an invitation to the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to visit Pakistan.