

Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
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22 July 2021

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 43/20.

In this connection, I would like to bring to the attention of your Excellency's Government, my grave concern regarding the lack of legislation in Pakistan for the prevention and punishment of torture. I understand that the National Assembly **is due to consider the Torture and Custodial Death (Prevention and Punishment) bill, 2020, following the unanimous passage of the bill in the Senate.**

Concerns about allegations of torture have been the subject of numerous communications transmitted by my mandate and other UN human rights mechanisms to your Excellency's Government in past years.

According to the information received:

In the current national legal framework, there is no definition of torture. There also lacks in legislation an adequately defined offence or penalty for acts of torture or ill-treatment. The only mention of "torture" in Pakistani law is in the Constitution under article 14 (2) which states, "No person shall be subjected to torture for the purpose of extracting evidence".

Pakistan's two primary criminal codes: the Pakistan Penal Code 1860 (PPC) and the Code of Criminal Procedure 1898 (CrPC), do not contain any provision criminalizing torture. The PPC stipulates penalties for certain acts of torture under related offences such as, "causing hurt to extort confession or to compel restoration of property" (Chapter XV, Section 337-K), "wrongful confinement to extort confession or compel restoration of property or provisions governing "criminal force and assault". Section 166 of the PPC states that a penalty of one year imprisonment or fine or both for an offence with intent to cause injury through an act of disobedience and a penalty for three years imprisonment or fine or both for improper investigation.

Supplementary penal provisions are contained in the Police Order 2002, wherein article 156(d) provides penalties against any police officer who inflicts, "violence or torture" upon any person in his custody. Additionally, the Qaun-e-shadat Order 1984 states that a confession made by an accused under threat or inducement to a police officer or made while in police custody are inadmissible.

Pakistan attempted to elaborate anti-torture legislation in 2014 through the National Assembly, and in the Senate of Pakistan in 2015, but in both instances the process did not result in the adoption of the bill.

In February 2016, the Federal Ministry for Human Rights introduced the National Action Plan for Human Rights, which set a six months deadline to pass the Torture, Custodial Death, and Custodial Rape (Prevention and Punishment) Bill. However, only in January 2019, did the Minister of Human Rights publicly express the intention to introduce the bill to criminalize torture in the next session of the National Assembly. In February 2020, a private members' bill was tabled in the Senate. In July 2020, the bill was approved by the Senate Functional Committee on Human Rights. The report of the Senate Committee was presented in the Senate in February 2021. On 12 July 2021, the bill was passed unanimously by the Senate and supported by the Federal Minister for Human Rights. The bill will now be tabled at the National Assembly and is awaiting review and consideration.

The bill defines and criminalises torture, custodial deaths, and custodial sexual violence, with a prescription of respective penalties, and elaborates a comprehensive complaints and investigative procedure.

Definitions

Section 2(n) defines torture as:

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

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

A public servant is every person who is in actual or purported possession of the public office, whatever legal defect there may be in that person's right to hold that position.

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

Penalties for torture

The bill stipulates express penalties for torture ranging from imprisonment for a term of three to ten years, as well as a fine which may extend to two million rupees.

Complaint and Investigative Procedure

Complainants may lodge the complaint before any court of jurisdictional territory. If the evidence suggests that any form of torture may have occurred, the court must forward the report to the Sessions Court, which has the main role in taking cognizance of allegations of torture and to ensure that investigations are initiated into any complaints. The Court will then direct the investigative agency to conduct the investigation within a set period and with oversight from the court.

Pakistan is a State party to the United Nations Convention against Torture (UNCAT) and to the International Covenant on Civil and Political Rights (ICCPR), since 2008 and 2010 respectively. In this respect, my mandate has repeatedly expressed its concern that the existing normative and procedural framework falls short of meeting Pakistan's obligations under its international human rights law obligations. I welcome the forthcoming discussion by the National Assembly of the long-awaited draft Torture and Custodial Death (Prevention and Punishment) and urge your Government to ensure that there are no further delays in its review, and that its prompt adoption brings Pakistan into full compliance with its obligations under CAT and ICCPR.

In this regard, I wish to refer the Government and the Members of the National Assembly to the Concluding Observations from Pakistan's review by the ICCPR in July 2017 and the recommendation of the Committee against Torture in its concluding observations of April 2017 urging Pakistan, "to take the necessary measures to incorporate into its legislation a specific definition of torture that covers all the elements of the definition contained in articles 1 of the Convention and establishes penalties that are commensurate with the gravity of the act of torture". In addition to this, I further call on your Government to ensure that national legislation include at minimum the key elements that implements the CAT, including that (a) acts of torture are punishable by appropriate penalties taking into account the gravity of the offence, as required by article 4 (2) of the CAT and to ensure that the offence of torture is not made subject to statutes of limitation; (b) prompt and impartial investigations of allegations of torture and the right to redress for victims of torture (CAT articles 7, 8, 9, 12 and 13) are ensured; (c) the exclusionary rule which explicitly excludes evidence derived by torture in all proceedings (CAT article 15) is enacted; and that (d) the law incorporates the principle of *non-refoulement* (CAT article 3). Last but not least, I encourage your Government and the National Assembly to adopt comparable measures also with regard to other cruel, inhuman or degrading treatment or punishment, so as to ensure the effective prevention of such acts as required by article 16 of the CAT.

Overall, this new draft law, if adopted, constitutes an important milestone for the effective prohibition and prevention of torture in Pakistan. I welcome the decision of your Government for having taken this important step and the Senate for its unanimous approval of this bill. I hope that the present letter may prove useful in consolidating and implementing this important piece of legislation with a view to effectively prevent acts of torture and other cruel, inhuman or degrading treatment or

punishment from occurring within Pakistani jurisdiction. I stand ready to offer the expertise of my mandate to assist the Government and the National Assembly with the drafting of this law. I will seek to follow the discussion of that draft bill by the National Assembly, and would welcome a copy of the final text of the law, as adopted.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment