

TRAINING MANUAL ON
REPORTING ON
TORTURE



TRAINING MANUAL ON REPORTING ON TORTURE

Individualland

Creating space for the individual

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TABLE OF CONTENTS

Acknowledgements	5
Introduction	6
Defining Torture	7
Violence	8
Methods of Torture	10
Physical Torture	10
Sexual Torture	10
Psychological Torture	10
Pharmacological Torture	10
Effects of Torture	11
Physical effects of torture may include	11
Psychological effects of torture may include	12
Effects of Torture on Social Functioning	12
Factors that May Compound Effects of Torture	12
Pakistan and Torture	15
Domestic and International legal framework	17
How to Report on Torture	19
Identification of torture cases	19
Identifying the culprits	23
Identifying the torture survivors(s)	24
Identifying the location	25
Documentation of the Torture cases	26

TABLE OF CONTENTS

Obtaining good quality information	26
Check lists	27
Interviewing the person alleging torture	28
Dealing with people, who are afraid of talking	28
Special considerations while conducting interviews	29
Addressing sensitivity of the subject matter	29
Certain considerations while asking questions	29
Certain techniques to be avoided	30
Some basic questions while getting information on torture case	30
Annexure- A: Sections of Pakistan Penal Code dealing with Hurt	31
Annexure- B: Police Order 2002	43
Annexure - C: Case Studies of Torture on Media Personnel	45
Bibliography	48

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Introduction

IL-Pakistan initiated a twelve months national project on "Engaging print media on the issue of torture" with the help of Foundation Open Society institute (FOSI). After conducting a detailed literature review, different human rights activists, media and legal experts were consulted for guidance, based on their knowledge and experience. The manual was developed after seeking guidance from experts, who provided their valuable inputs. This training manual will now be used to assist national media training workshops being held in twelve cities across the country, namely, Karachi, Hyderabad, Sukkur, Lahore, Gujranwala, Multan, Peshawar, Abbottabad, Mardan, Quetta, Pishin and Islamabad.

This manual starts by addressing the basics first i.e. the definition of torture. First section of the manual deals with definitions of torture in light of international laws and treaties, followed by differentiation between Torture and Violence. Further, different methods of torture practiced by state agencies have been discussed followed by effects of torture on the "torture survivor." By discussing the existing situation of Pakistan in the light of Human Rights violations, the manual further analyses domestic laws of the country. Main focus remains on local or domestic laws that deal with torture in one way or the other such as Constitution of 1973 and Pakistan Penal Code. Then the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) is discussed in the light of Pakistani Laws. The manual then tries to identify the gaps between the UNCAT and the Pakistani Laws. The manual then discusses in detail how a reporter can report on torture. The manual tries to guide a news reporter on how to identify a torture case, differentiating the case from other cruel and inhuman activities and domestic laws in this context. Also the manual tries to guide the reporter on how to ask questions from a torture survivor and what elements to keep in mind while asking the questions. The manual also emphasizes the need to remain extra cautious, objective and accurate while narrating a torture case. It also tries to explain to the reporter to remain unbiased, neutral and state all the facts in their entirety. It is important to mention here that throughout the manual the word "survivor" instead of "victim" has been used consciously.

Defining Torture

Defining Torture

Torture and violence are usually incorrectly used interchangeably. Thus at the onset it is imperative to emphasize that the two are different. According to UN Convention against Torture (CAT), 1984, torture is "Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."¹

"The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" commonly known as the "Istanbul Protocol" implies that one of the central aims of torture is to reduce an individual to a position of extreme helplessness and distress that can lead to deterioration of cognitive, emotional and behavioral functions. Thus, torture is a means of attacking an individual's fundamental modes of psychological and social along with his critical and analytical functioning. Under such circumstances, the torturer strives not only to incapacitate physically a survivor but also to disintegrate the individual's personality, by dehumanizing and breaking the will of the survivors. Torturers set horrific examples for those who later come in contact with the survivor. In this way, torture can break or damage the will and coherence of entire communities. In addition, torture can profoundly damage intimate relationships between spouses, parents, children and other family members and relationships between the survivors and their communities.²

Freedom from torture is absolute. The "absolute and non-derogable" character of the prohibition against torture is articulated in the UNCAT³ and has become accepted as a matter of customary international law.⁴ The UNCAT also requires States parties to prevent "other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture".⁵ UN Human Rights Committee

¹United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

²Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. High Commissioner for Human Rights (1999) p. 43

³United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2(2).

⁴United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment 2, Implementation of Article 2 by States parties, UN Doc. CAT/C/GC/2, 24 January 2008, para.

1. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/402/62/PDF/G0840262.pdf?OpenElement>

⁵United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 16(1).

Defining Torture

elaborated on the absolute nature of the freedom from torture: "The text of Article 7⁶ allows no limitation. The Committee also reaffirms that, even in situations of public emergency such as those referred to in Article 4 of the Covenant, no derogation from the provision of Article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of Article 7 for any reasons, including those based on an order from a superior officer or public authority."⁷

From the definitions and information given above, we can extract three important factors that actually constitute torture and distinguish it from other forms of cruel, inhuman and ill treatments or punishments. These factors are:

- The infliction of severe mental or physical pain or suffering
- By or with the consent or acquiescence of the state authorities
- For a specific purpose, such as gaining information, punishment or intimidation

Torture disturbs the role of an individual in a society and if not dealt with properly can lead to serious implications.

Thus torture can be understood as "the deliberate infliction of severe pain or suffering on a powerless victim, usually detainee, for a specific purpose, such as the extraction of confession or information."⁸

Violence

There are many possible ways to define violence, depending on who is defining it and for what purpose. The World Health Organization defines violence as, "The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, or deprivation."⁹

The definition encompasses interpersonal violence as well as suicidal behavior and armed conflict. It also covers a wide range of acts, going beyond physical acts to include threats and intimidation. Besides death and injury, the definition also includes the myriad and often less obvious consequences of violent behavior, such as psychological harm, deprivation that compromise the well-being of individuals, families and communities.

Violence can be self-inflicted, interpersonal and collective. The nature of violence can be physical, sexual, psychological or deprivation and neglect.

⁶International Covenant on Civil and Political Rights, Article 7 "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

⁷United Nations Human Rights Committee, General Comment No. 20 concerning prohibition of torture and cruel treatment or punishment (Art. 7) : . 03/10/1992.

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument)

⁸M. Nowak and E. McArthur, The UN Convention against Torture, supra note 13, Preface, p. v

⁹World Report on Violence and Health: Summary. World Health Organization. 2002. P. 3.

Following is a comparison between "Torture" and "Violence" for ease of differentiation:

Torture	Violence
<ul style="list-style-type: none"> • It is intentional. • There is a severe degree of pain and suffering involved • Involvement of state agencies is necessary • The infliction of torture is for the extraction of evidence or information 	<ul style="list-style-type: none"> • Violence is not necessarily intentional • It can be carried out on one's own self, on another individual or on a group of individuals • It can done for a number of reasons for instance creating law and order situation, as a pressurizing tactic etc.

Some essential elements of what constitutes torture according to UNCAT can be extracted which could assist in defining a torture case: These are:

- Severe pain or suffering
- Could be mental or physical
- It is intentionally inflicted
- For a purpose
- By or with the consent or acquiescence of the state authorities that can be:
 - Police force
 - Military force
 - Levies
 - Militias
 - Frontier Constabulary
 - Intelligence Agencies (Intelligence Bureau, Inter-Services-Intelligence Agency and others)

Methods of Torture

Torturers continue to develop new and more sophisticated methods of torture and ways to hide evidence of the torture. Following is a list of methods that have been and are still being used:

Physical Torture

- Blunt trauma: beating, punching, kicking, slapping, whipping, truncheons, falling down
- Positional torture: forced body positions, suspension, stretching limbs, constraint of movement, binding
- Crush injuries
- Burning: instruments, cigarettes, scalding liquid, caustic substance
- Stabbing with knife, cutting with knife
- Wires under nails, electric shock
- Mutilating body parts, traumatic removal of body parts
- Amputation of digits and limbs, removal of organs
- Asphyxiations: drowning, smothering, choking, chemicals
- Chemical exposures in wounds, body cavities
- Attacks by animals, dental torture
- Exhaustion, forced labor, starvation

Sexual Torture

- Rape, insertion of objects, sexual humiliation
- Trauma to sexual organs, forced sexual acts, forced nudity

Psychological Torture

- Threatening to harm or kill the survivor or the survivor's relatives
- Forced witnessing or hearing the torture of others
- Mock execution, forced to harm others
- Denigration and humiliations, threats of attacks by animals
- Violations of taboos, violation of religion

Pharmacological Torture

- Hallucinatory drugs, toxic doses of sedatives or muscle -paralyzing drugs

Effects of Torture

Given the extreme nature of the torture experience, any individual exposed to torture is likely to feel a significant impact on that person's attitude. All survivors of torture suffer from some form of physical and/or psychological trauma. Torture is often intended to break the spirit of a person as a method of punishment or control.¹⁰ The increased use of psychological or physical methods, which leave no or little physical evidence, is part of the process of such control. These methods cause long-lasting harm to those who are able to survive torture. The word "broken" is often used by survivors to describe how torture has affected them.

Survivors of torture will always see the experience of torture as a reference point. Life will be described as "before" or "after I was tortured".¹¹ Some survivors of torture experience profound emotional reactions and psychological symptoms. The physical implications of torture, for instance wounds, fire burns, baldness piercing of skin etc, could get healed with proper medical attention. However survivors who undergo psychological trauma may not easily recover. The main psychological disorders associated with torture are Post-Traumatic Stress Disorder (PTSD), depression, adjustment disorder, and anxiety disorders.

Physical effects of torture may include

- musculoskeletal aches and pains
- numbing and weakness
- neurological damage (numbing, weakness, motor function, strength or coordination)
- headaches
- fractures to bones
- skin damage (lesions, contusions, bruises, lacerations, burns, sharp trauma wounds)
- head trauma
- damage to internal organs
- gynecological problems
- vision and hearing loss

¹⁰Mark A. Costanzo, Social Issues and Policy Review, Vol. 3, No. 1, , pp. 179—210 The Effects and Effectiveness of Using Torture as an Interrogation Device: Using Research to Inform the Policy Debate, 2009

¹¹Refugee Protection Division Training Manual On Victims Of Torture Professional Development Branch, April 2004

Psychological effects of torture may include¹²

- re-experiencing the trauma (flashback and intrusive memories)
- psychic numbing (showing no or inappropriate emotion)
- detachment and social withdrawal
- impaired memory/loss of concentration/confusion
- anxiety and depression
- panic disorder/panic attacks
- sleep disturbances and nightmares
- somatic complaints (e.g. pains, headaches, stomach aches, nervousness, fainting, sweating, fatigue, weakness, loss of appetite or weight gain)
- fear (especially fear of authority)/phobias
- mistrust, suspiciousness, paranoia
- feelings of helplessness
- feelings of hopelessness and/or of despair
- feelings of isolation, alienation and disorientation
- damaged self concept (feelings of shame, humiliation, worthlessness, loss of confidence)
- rage, outbursts of anger, aggressive behavior, irritability
- dissociation/detachment and depersonalization
- hyper arousal,
- hypersensitivity
- thoughts of death or suicide

Effects of Torture on Social Functioning¹³

- deterioration of the family structure, impaired ability to interact as a family member, impaired parenting skills
- Deterioration of community ties impaired ability to hold a job and support oneself and one's family.

Factors that May Compound Effects of Torture¹⁴

- overwhelming grief or bereavement due to separation from and/or loss of loved ones
- overwhelming sense of guilt (survivor guilt, blaming themselves for their torture or for the torture of others)
- "culture shock": adjustments problems arising out of resettlement to a new country

¹²Ibid

¹³US Asylum Officer Basic Training Course, Interviewing Part V: Interviewing Survivors (February 1998)

¹⁴Ibid

Effects of torture are not necessarily limited to the survivor, but are equally painful for their relatives, family, friends, communities and societies. Torture breeds insensitivity for fellow beings. People grow cold and don't consider other's pain as their own. In addition to this, torture also contributes towards increasing violence in the society and our society serves as one of the leading examples. Pakistani society has sanctioned torture and as a result, the individual and the society suffer from fractured functioning.

In a society where torture is prevalent, it is not only difficult to enforce the writ of the government but justice cannot be guaranteed as well. All the guarantees to human dignity, defined in law are nullified.

According to UN's former Rapporteur on Torture, Mr. Manfred Nowak, torture is practiced around the globe, even in most civilized countries, with the exception of a few. However, the question still remains that why state uses torture against its own people? Through the passage of time, it has been made obvious that torture is clearly linked to the government structure, whether a democracy or dictatorship. Examples from Pakistan can be sought, which are evident of the fact that torture was prevalent both during the rule of democratic governments and in dictatorships as well. Even today, state agencies are involved in torturing people that they consider against the state. The number of disappeared persons has increased during the past few years. Since Pakistan became a part of the war on terror, numbers of disappeared journalists, political workers, foreign aid workers and people have risen sharply.

As torture is state sponsored, so in order to stop it, there is a dire need to improve the functioning of such agencies. Similarly, all the loopholes in the criminal justice system also need to be filled. Police and other investigating agencies would have to learn new ways of investigation and interrogation, so that the fundamental rights of a citizen, even if he is a criminal could not be taken away from him.

It is understandable that in a country like Pakistan, state agencies that practice torture don't have any regard for law. Torture is not practiced at legal places of detention, but at places that are specially rented or occupied for this purpose. So, this practice becomes altogether illegal. Although there is an insufficiency of domestic laws that punishes torturers, but the law that exist does prohibit this practice, particularly for the extraction of evidence. Laws (Chapter 1 of the Constitution of Pakistan) that ensure basic human rights of a citizen also in a way hinder the practice of torture.

Here the role of journalists comes into play. In addition to highlighting torture cases and torturers that are involved, they can also focus their reporting on how citizens

Defining Torture

can protect themselves from torture under the existing circumstances. So far journalists have played a phenomenal role in this regard. It is through the reporting of such journalists, a number of private torture cells were discovered throughout the country and the accused were arrested.

It is very important that journalists are aware of the existing laws that deal with torture, both nationally and internationally. They must also be aware of Pakistan's international obligations, so that their reporting can keep their readers well informed.

Pakistan and Torture

Pakistan is among those countries, where torture is used as a systematic instrument to extract evidence from suspects of different crimes. Death of 4 out of 11 alleged terrorists under detention of premier intelligence agencies (ISI and MI) started a new debate about missing persons in Pakistan. Pakistan is struggling with numerous incidents of torture, widespread impunity and enforced disappearances. Of 11,000 human rights cases registered within three years, more than 8,000 have not been investigated by the police or have been dismissed.¹⁵ Death of an investigative journalist, Saleem Shehzad was also alleged on intelligence agencies. Umer Cheema, another investigative journalist was allegedly picked up and tortured by Inter-Services Intelligence (ISI).



Image courtesy of Geo News

Amnesty International estimates that more than 100 persons die in police custody each year in Pakistan.¹⁶ The General Secretary of Human Rights Commission of Pakistan (HRCP), I.A Rehman is also of the view that the Pakistani society as a whole has legitimized torture. He observes that for any degree of crime committed no matter how trivial or consequential, the survivor party wants the culprits to either be hanged or dealt with extremity. This shows the orientation of the society towards human rights. The Human Rights Commission of Pakistan, state that some 400 hundred cases of forced disappearances were recorded by them¹⁷ in this regard. In light of the recent report of HRCP 2010 situation becomes grimmer. According to the report as many as 12,580 people were murdered. Whereas 338 people were killed in police encounters, at least 174 people were rescued from illegal police detention.

¹⁵Amnesty International Report 2010, Pakistan.

¹⁶International Humanist and Ethical Union. The World Union of Humanist Organizations. Accessed Online from: Date of Access: March 12, 2012.

¹⁷(Source: Asian Human Rights Commission, Pakistan: The Human Rights situation in Pakistan, 2010)

Pakistan and Torture

According to the statistics, 555 suspects were taken into police custody in 2001, 990 in 2002, 838 in 2003, 1260 in 2004, 1350 in 2005 and 1660 in 2006 were locked up or shifted to private torture cells. Similarly, about 1725 people in 2007, over 1100 in 2008, 1560 in 2009 and 1640 in 2010 have been humiliated by the police department in Pakistan.¹⁸



Image courtesy of The Nation

The prime reason behind torture is the fact that domestic laws fail to address torture. Apart from the mentioning of torture with regard to extraction of confession or evidence, Pakistani laws fail to define torture. Many believe that Pakistani laws comprehensively define different aspects of torture if not its definition. However if this is the case then according to renowned legal expert Hina Jilani, the state should provide elaborate and detailed explanations of existing laws and substantiate that these laws are enough to deal with torture.

Many prisoners and detainees are being subjected to torture for confessions or evidences in order to speed up the process. According to the Human Rights of Pakistan (HRCP), the judicial department is 60 to 70 percent behind its targets. The judicial policy aimed at resolving all the cases pending from the year 2008 in 2010,¹⁹ so that the cases registered in 2009 could then be resolved. Implementation of laws plays a vital role in addressing the issue of torture prevalent in the country. Supreme Court's suo motto hearing of a case of police torture on suspects outside a police station directed the Punjab police to close all torture cells in the province could be seen as a positive step towards eliminating the menace of torture from the society.

¹⁸Punjab tops in extra-judicial killings. The Nation. July 30, 2011. Accessed online from: <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Lahore/30-Jul-2011/Punjab-tops-in-extrajudicial-killings> Date of Access: March 12, 2012.

¹⁹Asian Human Rights Commission, Pakistan: The Human Rights situation in Pakistan, 2010.

Domestic and International legal framework

The 1973 Constitution of Pakistan and the Pakistan Penal Code are two most important legal documents in the country. The Constitution of Pakistan is the supreme document that not only defines rights of an individual, but also defines every course of action to be taken by the government.

Pakistan Penal Code defines penalties for different crimes committed and acts as a resource for the judiciary, lawyers, police and other law enforcement agencies. The Police Order 2002 also attempted to address torture. It was withdrawn after a few years of its implementation. Replacing the colonial era Police Act 1861 which sought the police subservience to the 'Deputy Collector' or the 'District Magistrate', the Police Order 2002 (details in Annexure B) tried to provide safeguard to the prisoners and detainees in the police custody. It declared any police officer regardless of any rank was liable for punishment if s/he tortures.

According to senior retired police officer Tariq Kohsa, the police order clause 156, is enough to address the issue of torture infliction by the police officers. However he reiterates that since there is no proper adherence to the rule of law in Pakistan, the concerned police officers may get away with such crimes. The word torture is only used once in the 1973 Constitution namely Article 14 (1) of Chapter 1: Fundamental Rights.,

Article, 14(2) states No person shall be subjected to torture for the purpose of extracting evidence.²⁰

From Article 14, it is clearly evident that no person living in the territorial boundary of Pakistan shall be subjected to torture for the purpose of extracting evidence. These clauses only discuss one dimension of torture that is for extraction of evidence. However one has to keep in mind that the basic definition is not available in this clause. This creates confusion i.e. it can be used for other purposes, if not for extracting evidence. It doesn't indict the state agencies for practicing this heinous crime and certainly does not define the severity of the crime.

A number of senior human rights activists²¹ and legal experts²² are of the view that there is a dire need of a proper definition of torture in domestic laws.

The Pakistan Penal Code is a combination of British and Islamic law. However it does not mention torture at all. However the Pakistan Penal Code does mention the word "Hurt" and provides necessary details. Our consultations with legal experts yielded that a number of torture cases in Pakistan are dealt under the sections of "Hurt." The provisions regarding hurt are²⁴ Section 323 Hurt, Section 333 Itlaf-iUdw, Section 334

²⁰Constitution of Pakistan 1973 chapter I, article 14 clause 2

²¹Hina Jilani, I.A. Rehman

²²Barrister Zafar Ullah

²⁴Pakistan. Atlas of Torture. Accessed from:
<http://www.univie.ac.at/bimtor/index.php?m2=242&m1=countrysituations&submit=Go>. Date of

Pakistan and Torture

Punishment for Itlaf-Udw, Section 335 Itlaf-i-Salahiyat-i-Udw, Section 336 Punishment for Itlaf-i-Salahiyat-i-Udw, Section 337 Shajjah, Section 337 (Sub-sections A-Z) and Section 338 Isqat-i-Hamal (Sub-sections A-H). (Details of these sections can be found in the Annexure.)

Pakistan ratified UNCAT on July 23, 2010 but has yet to sign and ratify OPCAT and ICCPR-OP2 despite recommendations by the UN Special Reporter on Torture (UNSRT) in his follow-up report in 2008.²⁵

Pakistan has made several declarations and reservations upon ratification of the CAT. Recently, on 20 September 2011 the Government of Pakistan decided to withdraw the reservations to Articles 3, 4, 6, 12, 13 and 16.²⁶

However Pakistan still maintains its reservations regarding Article 8 of the CAT. Article 8 reads;

1. The offences referred to in Article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offenses. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested state.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

²⁵ <http://www.univie.ac.at/bimtor/index.php?m2=242&m1=countrysituations&submit=Go>

²⁶ *ibid*

How to Report on Torture

Identification of torture cases: A reporter needs to first establish the distinction between torture and other degrading, inhuman treatments. More importantly s/he must discuss the story in the light of domestic as well as international law. Differentiating torture from other inhuman treatments can be confusing. It is of great importance that a reporter does not confuse the treatment of torture with violence. Although domestic laws does not clearly define torture, but the provisions of "Hurt" of Pakistan Penal Code can provide the filing of torture under the domestic law. A reporter must establish, that who was responsible for inflicting torture. In the previous chapter we have established, how the domestic laws treat torture and how torture is defined and treated under the international law especially according to UN Convention Against Torture.

For instance, when a reporter identifies a torture survivor, s/he should mention in the report that which laws under the Constitution as well as the Pakistan Penal Code have been alleged to be violated. Secondly after mentioning the domestic laws the reporter must also relate the case with the definition provided in the UNCAT. So that it could be known to the people receiving the news the types of violations carried out by the perpetrators.

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

Torture is an act:

- Which includes **severe pain or suffering**
- **Could be mental or physical**
- It is **intentionally** inflicted
- For a **purpose**
- By or with the consent or acquiescence of the **state authorities**

State authorities could be **police, military, law enforcement agencies, levies, militias, Frontier Constabulary, Intelligence agencies (Intelligence Bureau and Inter-Services-Intelligence agency)**

How to Report on Torture

Torture is characterized and distinguished from other forms of ill-treatment by the severe degree of suffering involved and the involvement of state officials. It is important to reserve the term "severe suffering" for the most objectively serious forms of ill-treatment.²⁷

The reporter should also know that cruel treatment, inhuman or degrading treatment and punishment are also legal terms which refer to ill-treatment causing various degrees of suffering less severe than in the case of torture. Forms of ill-treatment other than torture do not have to be inflicted for a specific purpose, but there does have to be intent to expose individuals to the conditions which amount to or result in the ill-treatment.²⁸

Therefore in the initial phase of identifying a torture case a reporter should follow two guidelines in assessing whether or not the set of facts amounts to torture:

- The essential elements contained in the definition of torture should be supported by the facts.
- Torture may be distinguished from other forms of ill-treatment by the severe degree of suffering and involvement of state official and the need for a purposive element.²⁹

UN Convention Against Torture sets out a number of essential elements which are required for an incident to be considered as a possible case of torture in the legal sense. The elements necessary for treatment to amount to ill-treatment other than torture are similarly abstract. Therefore it is necessary to answer certain questions while trying to identify cases of torture:

What was done?

Severe physical or mental pain or suffering has been deliberately inflicted (torture) or intentional exposure to significant mental or physical pain or suffering has occurred (ill-treatment other than torture).

Who did it?

The state authorities either inflicted this suffering themselves, or else knew or ought to have known about it but did not try to prevent it.

Why was it done?

The suffering was inflicted for a specific purpose, such as gaining information, punishment or intimidation (torture only).³⁰

What exactly these elements consist of is left for interpretation by the concerned authorities. They hold responsibility of developing consistent interpretations of the definition of torture and other forms of ill-treatment and must make sure that they

²⁷Camille Giffard. The Torture Reporting Handbook. Human Rights Center: University of Essex, UK. February, 2000.

²⁸ibid

²⁹ibid

³⁰Camille Giffard. The Torture Reporting Handbook. Human Rights Center: University of Essex, UK.

apply the same standards in each case.³¹ This means that you, as a reporter, do not have to decide whether the ill-treatment inflicted on an individual amounts to torture or something else, but by documenting facts which support the essential elements, you provide evidence for the authorities to decide and take appropriate action.

Torture is distinguished from other, lesser, forms of ill-treatment by the severe degree of suffering involved. This is perhaps the most difficult aspect of torture to assess. The two other essential elements are to a large extent objectively verifiable it is generally objectively possible to establish that the perpetrator had a link with the state, or that the torture was inflicted for a specific purpose. The nature and degree of suffering experienced by an individual are another matter. They may depend on many personal characteristics of the survivor - for example, sex, age, religious or cultural beliefs, health. In other cases, certain forms of ill-treatment or certain aspects of detention which would not constitute torture on their own may do so in combination with each other.

Forms of ill-treatment which have been found to amount to torture, either alone or in combination with other forms of treatment, include:

- Falaka/falanga: beatings on the soles of the feet
- Palestinian hanging (commonly known as rasa chahrana): suspension by the arms while these are tied behind the back, as a result of which whole body weight falls on wrists.
- Severe forms of beatings
- Electric shocks
- Rape
- Sleep deprivation
- Mock executions
- Forcing to inhale chili powders (practice inherited by the British Raj)
- Using of leather belts (commonly known as chitter)
- Huge wooden stick put in the middle of legs and forced to sit on it. As a result of which blood stops to flow towards the legs and blood pressure is disturbed hence causing mental trauma as well
- Pulling of finger nails with the help of pliers
- Incision of steel, wooden rods inside the body
- Being buried alive
- Mock amputations

³¹ ibid

How to Report on Torture

Certain types of treatment appear objectively to fall into the category of torture - for example, electric shocks to the genitals, or the pulling out of fingernails. Torture is not, however, limited to such familiar examples - it encompasses many forms of suffering, both physical and psychological in nature. It is particularly important not to forget about psychological forms of ill-treatment - very often these can have the most long-lasting consequences for torture survivors, who may recover from physical injuries yet continue to suffer from deep psychological scarring.

There are, however, also many 'grey areas' which do not clearly amount to torture, or about which there is still disagreement, but which are of great concern to the international community. Examples include:

- Corporal punishment imposed as a judicial penalty
- Some forms of capital punishment and the death-row phenomenon
- Solitary confinement
- Certain aspects of poor prison conditions, particularly if combined
- Disappearances, including their effect on the close relatives of the disappeared person
- Treatment inflicted on a child which might not be considered torture if inflicted on an adult

Helpful quick tips

1. Differentiate between torture and violence
2. Include the violations under the Pakistan Penal Code i.e. "HURT"
3. Fulfill the criteria according to the definition of UNCAT
4. Analyze the ill treatments that can also constitute torture
5. Answer what, who, why type questions
6. Observe the type of methods used to inflict torture

Identifying the culprits

Who are the perpetrators?

Due to the sensitivity of torture cases, it is also important for a reporter to know and to identify the perpetrators of torture. So that it becomes easy for a reporter to report a case effectively and efficiently.

As is emphasized in the section describing what torture is, it is necessary to note that any state official would be involved in torture or ill-treatment. However, considering the common purposes of torture, which may be to obtain information during an interrogation, or, increasingly, to intimidate the population as a whole in the face of insurrection or disturbance, it is unsurprising that the principal perpetrators are those officials involved in the criminal investigation process, and those responsible for the security of the state. This means that those most likely to be involved in torture and other forms of ill-treatment include:

- The police
- Law enforcement agencies
- The Military
- Paramilitary forces acting in connection with official forces
- State-controlled contra-guerrilla forces
- Frontier Constabulary
- Intelligence Agencies (Intelligence Bureau and Inter Services Intelligence)
- Prison officers
- Death squads (torture following disappearance and preceding killing)
- Any government official
- Health professionals - doctors, psychiatrists or nurses may participate in torture either by act (direct involvement which may include certifying someone fit for interrogation) or by omission (falsifying medical reports or failure to give appropriate treatment)
- Co-detainees acting with the approval or on the orders of public officials³³
- The method of abduction or taking into custody, and subsequent treatment, may itself be characteristic of a particular group operating in your area (which might have been established by previous submissions to the concerned authorities), and helps to establish that the survivor was held by the perpetrators.
- Where was the person taken into custody? - Home, street, place of worship, outside a military base etc.
- When was the person taken into custody? - The approximate date, or the month or season of the year.
- The time of day or whether it was morning, afternoon or night.
- How did it occur? Was any form of restraint used? Were any others present

³³Camille Giffard. The Torture Reporting Handbook. Human Rights Center: University of Essex, UK. February, 2000.

How to Report on Torture

who would have seen it happen? - If no detail is known, when and where was the last time the survivor was seen and in whose company? Was there any warning, was the survivor summoned to a police station; were they in a demonstration on the street etc.

- Was any reason given for the arrest? Was there any official reason given?

Details you should ask the torture survivor:

- Location of the room within the institution: did they have to go upstairs or down; what could they hear and smell around them; did they notice any landmarks on their way there; if there is one, can anything be seen out of the window of the room?
- The room itself: What size was it? What were the walls, floor, ceiling, door made of? What shape was it? Was there anything unusual about it?
- Others held in the room: Were any other people held there; if so, how many; are any of them possible witnesses; would they have noticed anything about the state of health of the survivor; what state of health were the other people in?
- Solation: If the torture survivor was in isolation, for how long and in what manner were they isolated?
- Content of the room: What was in the room - bedding, furniture, toilet, sink etc.?
- Climate of the room: What was the temperature like; was there any ventilation; was there any dampness?
- Light: Was there any light; was it natural light from a window, or electric light; if it was electric light, how much of the time was it on; what did the light look or feel like, e.g. color, intensity?
- Hygiene: Were there any facilities for personal hygiene; where and how did they go to the toilet or bathe? What was the general hygiene of the place like? Was it infested in any way?
- Clothes: What clothes did they wear and could they be washed or changed?
- Food and drinking water: how often and how much food and water was given; what was the quality like; who provided it; was it provided free of charge?
- Exercise: Was there any opportunity to leave the cell? If so, for how long and how often?
- Regime: Were there any especially stringent or monotonous aspects to the regime?
- Medical facilities: Was a doctor or any other form of healthcare professional present or available; could any of the prisoners be examined or treated in a separate medical facility such as by a family doctor or hospital; were medicines available; who were they provided by?
- Family visits: Was there access to family visits; if so, where did these take place; could conversations be overheard; did the family know where the person was?

- Legal representation: Was there access to a legal representative; when was access first given, i.e. meeting with a counsel.
- How long after the survivor was first taken into custody; how often was it given; where did visits take place; could the conversation be overheard?
- Appearance before a judicial officer: Did the survivor appear before a magistrate or court; when did this happen, i.e. how long after the survivor was first taken into custody?
- Bribes: Did any bribe have to be paid for any of these facilities?
- Identifying the torture survivors(s):

The more detail can be obtained about the individual, the more definite the identification can be:

- Full name (and father's name - relevant to some cultures)
- Gender (this may not be clear from the name alone)
- Date of birth/age
- Occupation
- Address
- Appearance, including any unusual characteristics
- A photograph - of the survivor alive or indeed dead (these might help experts to interpret any obvious signs of ill-treatment seen in the photographs)
- Some indication of the survivor's state of health before being arrested or detained - medical records, witness accounts etc.
- Remember that urgent actions cannot normally be taken without a name.
- Identifying the location
- A reporter should also be aware of the places or locations where a torture case could possibly occur. They could be:
 - The greatest risk of torture and other forms of ill-treatment to individuals is in the first phase of arrest and detention, before they have access to a lawyer or court. This risk persists as long as the investigation lasts, irrespective of where a suspect is being held.
 - Incommunicado detention (i.e. detaining somebody either without acknowledgment or without allowing them access to anyone, such as their lawyer or family) is probably the single highest risk factor for torture because it means that there is no external monitoring of the interrogation process.
 - Sometimes, the security forces only officially register the individual once they have completed the initial interrogation.
 - Torture is usually less common in regular prisons for convicted prisoners as the investigation process has been completed, but it should be noted that many prisons also hold remand prisoners who are pending trial, as well as sentenced prisoners. A risk for remand prisoners should not be ruled out, especially if the security forces themselves run the prison or are known to be closely associated with it. The risk to remand prisoners may not necessarily exist within the institution itself, but instead with the

How to Report on Torture

possibility that they may be transferred back into the custody of the investigating authorities.

- In both the initial detention phase and also after transfer to a prison, it should be remembered that the conditions of detention themselves may amount to inhuman or degrading treatment, and thus should also be documented
- Torture may also occur following abductions. In temporary abductions the survivor is released several hours or days later. In the case of a 'disappearance' evidence indicates that the survivor is held by or with the acquiescence of the authorities, yet this is not acknowledged by the authorities. The survivor may not be found, or may be found dead. Both forms of abduction may involve torture and are used as a means of instilling fear or intimidation in the community. While cases of disappearance involve violations other than torture, (e.g. right to life, right to liberty and security of person) any evidence that torture occurred during the disappearance should be documented. The disappearance could also itself be found to amount to torture, either for the survivor or for the relatives of the survivor.

Documentation of the Torture cases:

The primary goal of documenting torture cases is to create an accurate, reliable and precise record of events. A reporter should always, be extra cautious while reporting such cases due to the nature of its sensitivity.

Two points should be kept in mind while documenting a torture report:

- I. Seek to obtain good quality information
- II. Information should be accurate and reliable

Obtaining good quality information:

Factors which contribute to the quality of your information are:

- The source of the information: Where was the information obtained? Directly from the survivor, from the survivor's family or friends, from a witness present at the scene of the incident, from someone who heard it from someone else, from a media report? The further away from the survivor or incident you get, the less dependable the information is likely to be.
- The level of detail: Is the allegation very detailed? Are there unexplained gaps in the account? Do you only know the very bare facts? The more detail you can obtain, the better, because it helps others to understand what happened.
- The absence or presence of contradictions: Is the account consistent throughout? Are there contradictions in the account or elements which do not make sense? Good information should be consistent, or at least try to provide a reason for any inconsistencies
- The absence or presence of elements which support (corroborate) or disprove the allegation: Are there witness statements which confirm the survivor's account? Is there a medical certificate or autopsy report which

confirms the survivor's injuries? The more supporting documentation you can provide, the more likely it is that the allegation will be found credible.

- The extent to which the information demonstrates a pattern: Is the allegation one of many alleging similar facts? Is it the only one of its kind which has ever been received in a particular area? Where there is evidence of a commonplace practice, there may be a higher presumption that the information is true.
- The age of the information: Is the information very recent? Does it relate to facts which occurred several years previously? The fresher your information, the easier it is to investigate or verify the facts alleged.

Good Quality Information:

- ✓ **source of the information**
- ✓ **level of detail**
- ✓ **absence or presence of contradictions**
- ✓ **absence or presence of elements which support or disprove allegation**
- ✓ **pattern demonstrated by information**
- ✓ **currency of information**

Interviewing the person alleging torture:

- While interviewing a person alleging torture it is important, that interviewee, feels comfortable while answering questions of the reporter. Below are few guidelines, a reporter can use while asking questions: Establish as comfortable and private a setting as possible - preferably alone, unless the interviewee would feel more at ease with someone else present and that person agrees not to interfere with the conversation.
- If the interview cannot take place in private, try to ensure at least that others are out of hearing.
- Be aware that your posture and how you sit in relation to the interviewee can affect how comfortable they feel - for example, in a confined space, leaning forward may appear threatening, while under other circumstances, not doing so may convey a lack of interest. Some may prefer to sit closer to the interviewer; others may be very protective of their personal space or shy away from being touched. Be aware of your surroundings and observe the body language of the interviewee to gain a sense of what may be most appropriate in a given case.
- Allow for the possibility of taking breaks.

Dealing with people, who are afraid of talking:

- Make sure that individuals have given their informed consent to the interview
- Never name individuals alleging ill -treatment to the authorities without their express consent.
- Avoid identifying individuals, even inadvertently, as being those who have given you information - for example, in a location with a very small number of detainees, like a police station, you should make sure to interview all detainees in the same way, and not to react immediately to allegations in a way which makes it possible for the authorities to identify the source of information. If you feel that an issue should be immediately taken up with, for example, a police station chief, you should first consult with the interviewees, and should never approach the official without their consent.
- Make it very clear to interviewees that if they or any of their relatives or friends are subject to intimidation or pressure of any kind as a result of the information they have provided, they should let you know -give them a card with your contact details, and emphasize the importance of contacting you.
- Do your best to follow -up individual cases if you feel they may be at risk in any way, keep records of all the persons you have interviewed.

Special considerations while conducting interviews in prisons or other places of group custody:

- Where there is a ward or prisoner representative, it can be helpful to interview and seek the cooperation of this person first - similarly, there may be a certain hierarchy among persons in long-term custody which it may be useful to be aware of.
- If it is feasible, you should try to interview all detainees. In a large facility, this may not be possible, but you should try at least to interview a significant group of detainees of a particular category.
- If interviews must be carried out in a ward or dormitory environment, it can be helpful to begin with a general group interview introducing yourself and what you are looking for, but you should also interview each individual. Even if there are others in the same area and privacy is not possible, you should try to talk to each individual one at a time.

Addressing sensitivity of the subject matter:

- Show regard and respect for the interviewee in your tone, language, and attitude.
- Be aware of cultural factors and exercise particular sensitivity towards culturally-taboo subjects.
- Advise the interviewee about the possibility of obtaining support or a referral.
- Listen and allow expression of personal and family concerns.
- Acknowledge pain and distress, but maintain professional boundaries - do not create unreasonable expectations that you can respond to their needs.
- Do not press interviewees if they become distressed - be aware that some torture survivor might not be ready to talk about their experience
- Where possible, it may be better to carry out several shorter interviews rather than one long and intensive one.
- Try not to end an interview suddenly without bringing the conversation around to a less sensitive subject.

Certain considerations while asking questions:³⁴

- ✓ Start with **open ended** questions
- ✓ Use "**What**"; "**How**" or "**Why**" sort of questions
- ✓ Adopt a **T-funnel approach**: That is, to begin with open questions and then follow-up with closed questions, gradually narrowing the scope of the inquiry, and eliciting more pertinent details.
- ✓ Having **in-depth** knowledge of the person, before you ask him/her questions

³⁴Refugee Protection Division TRAINING MANUAL ON VICTIMS OF TORTURE Professional Development Branch, April 2004

Certain techniques to be avoided:³⁵

- Rapid questions
- Rushing the claimant
- Confrontational style
- Repeating questions
- Strings of closed questions
- Changes in attitude, approach, demeanor
- Loud or aggressive voice, gesturing
- Interrupting or cutting off
- Expressing disbelief
- Attempts to catch or trip up the claimant

Some basic questions while getting information on torture case:

1. Identify the torture survivors(s)
2. Identify the perpetrator(s)
3. Describe how the torture survivor came into the hands of the public officials
4. Explain where the torture survivor was taken/held
5. Describe what the holding conditions were like
6. Describe the form of the ill-treatment
7. Describe any official response to the incident (including stating that there was None)

³⁵ibid

Sections of Pakistan Penal Code dealing with Hurt

Section 332: Hurt

- (1) Whoever causes pain, harm, disease, infirmity or injury to any person or impairs, disables or dismembers any organ of the body or part thereof of any person without causing his death, is said to cause hurt.
- (2) The following are the kinds of hurt:
 - (a) Itlaf-i-udw
 - (b) Itlaf-i-salahiyyat-i-udw
 - (c) shajjah
 - (d) jurh and
 - (e) all kinds of other hurts.

Section 333: Itlaf-i-udw:

Whoever dismembers, amputates, severs any limb or organ of the body of another person is said to cause Itlaf-i-udw.

Section 334: Punishment for Itlaf-udw.

Whoever by doing any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person causes Itlaf-i-udw of any person, shall, in consultation with the authorised medical officer, be punished with qisas, and if the qisas is not executable keeping in view the principles of equality in accordance with the Injunctions of Islam, the offender shall be liable to arsh and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir.

Section 335: Itlaf-i-salahiyyat-i-udw.

Whoever destroys or permanently impairs the functioning, power or capacity of an organ of the body of another person, or causes permanent disfigurement is said to cause itlaf-i-salahiyyat-i-udw.

Section 336: Punishment for itlaf-i-salahiyyat-i-udw.

Whoever, by doing any act with the intention of causing hurt to any person, or with the knowledge that he is likely to cause hurt to any person, causes itlaf-i-salahiyyat-i-udw of any person, shall, in consultation with the authorised medical officer, be punished with qisas and if the qisas is not executable, keeping in view the principles of equality in accordance with the Injunctions of Islam, the offender shall be liable to arsh and may also be punished with imprisonment of either description for a term which may extend to ten years as taz'ir.

Section 337: Shajjah.

- (1) Whoever causes, on the head or face of any person, any hurt which does not amount to itlaf-i-udw or itlaf-i-salahiyyat-i-udw, is said to cause shajjah.

Annexure- A

- (2) The following are the kinds of shajjah namely:-
- (a) Shajjah-i-Khafifah
 - (b) Shajjah-i-mudihah
 - (c) Shajjah-i-hashimah
 - (d) Shajjah-i-munaqqilah
 - (e) Shajjah-i-ammah and
 - (f) Shajjah-i-damighah
- (3) Whoever causes shajjah:-
- (i) Without exposing bone of the survivor, is said to cause shajjah-i-khafifah;
 - (ii) By exposing any bone of the survivor without causing fracture, is said to cause Shajjah-imudihah;
 - (iii) by fracturing the bone of the survivor, without dislocating it, is said to cause shajjah-ihashimah;
 - (iv) by causing fracture of the bone of the survivor and thereby the bone is dislocated, is said to cause shajjah-i-munaqqilah;
 - (v) by causing fracture of the skull of the survivor so that the wound touches the membrane of the brain, is said to cause shajjah-i-ammah;
 - (vi) by causing fracture of the skull of the survivor and the wound ruptures the membrane of the brain is said to cause shajjah-i-damighah.

Section 337-A:Punishment of shajjah.

Whoever, by doing any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, causes-

- (i) shajjah-i-khafifah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to two years as ta'zir,
- (ii) shajjah-i-mudihah to any person, shall, in consultation with the authorised medical officer, be punished with qisas, and if the, qisas is not executable keeping in view the principles of equality, in accordance with the Injunctions of Islam, the convict shall be liable to arsh which shall be five percent of the diyat and may also be punished with imprisonment of either description for a term which may extend to five years as ta'zir,
- (iii) shajjah-i-hashimah to any person, shall be liable to arsh which shall be ten per cent of the diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir,
- (iv) shajjah-i-munaqqilah to any person, shall be liable to arsh which shall be fifteen percent of the diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir,

- (v) shajjah-i-ammah to any person, shall be liable to arsh which shall be one-third of the diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir, and
- (vi) shajjah-i-damighah to any person shall be liable to arsh which shall be one-half of diyat and may also be punished with imprisonment of either description for a term which may extend to fourteen years as ta'zir.

Section 337- B: Jurh.

- (1) Whoever causes on any part of the body of a person, other than the head or face, a hurt which leaves a mark of the wound, whether temporary or permanent, is said to cause jurh.
- (2) Jurh is of two kinds, namely:-
 - (a) Jaifah; and
 - (b) Ghayr-jaifah.

Section 337- C: Jaifah.

Whoever causes jurh in which the injury extends to the body cavity of the trunk, is said to cause jaifah.

Section 337- D: Punishment for Jaifah.

Whoever by doing any act with the intention of causing hurt to a person or with the knowledge that he is likely to cause hurt to such person, causes jaifah to such person, shall be liable to arsh which shall be one-third of the diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir.

Section 337- E: Ghayr-Jaifah.

- (1) Whoever causes jurh which does not amount to jaifah, is said to cause ghayr-jaifah.
- (2) The following are the kinds of ghayr-faifah, namely:-
 - (a) damihah
 - (b) badi'ah
 - (c) mutalahimah
 - (d) mudihah
 - (e) hashimah; and
 - (f) munaqqilah
- (3) Whoever causes Ghayr-Jaifah
 - (i) in which the skin is ruptured and bleeding occurs, is said to cause damiyah;
 - (ii) by cutting or incising the flesh without exposing the bone, is said to cause badi'ah
 - (iii) by lacerating the flesh, is said to cause mutalahimah;
 - (iv) by exposing the bone, is said to cause mudihah;
 - (v) by causing fracture of a bone without dislocating it, is said to

- (vi) cause hashimah; and by fracturing and dislocating the bone, is said to cause munaqqilah.

Section 337- F: Punishment of Ghayr-Jaifah.

Whoever by doing any act with the intention of causing hurt to any person, or with the knowledge that he is likely to cause hurt to any person, causes:-

- (i) damihah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to one year as ta'zir;
- (ii) badi'ah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to three years as ta'zir;
- (iii) mutafahimah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to three years as ta'zir;
- (iv) mudihah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to five years as ta'zir;
- (v) hashimah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to five years as ta'zir, and
- (vi) munaqqilah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to seven years as ta'zir.

Section 337- G: Punishment for hurt by rash or negligent driving.

Whoever causes hurt by rash or negligent driving shall be liable to arsh or daman specified for the kind of hurt caused and may also be punished with imprisonment of either description for a term which may extend to five years as ta'zir.

Section 337- H: Punishment for hurt by rash or negligent act.

- (1) Whoever causes hurt by rash or negligent act, other than rash or negligent driving, shall be liable to arsh or daman specified for the kind of hurt caused and may also be Punished with imprisonment of either description for a term which may extend to three years as ta'zir.
- (2) Whoever does any act so rashly or negligently as to endanger human life or the personal safety of other, shall be punished with imprisonment of either-description for a term which may extend to three months, or with fine, or with both.

Section 337- I: Punishment for causing hurt by mistake (khata).

Whoever causes hurt by mistake (khata) shall be liable to arsh or daman specified for the kind of hurt caused.

Section 337- J: Causing hurt by mean of a poison.

Whoever administers to or causes to be taken by, any person, any poison or any stupefying, intoxicating or unwholesome drug, or such other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt may, in addition to the punishment of arsh or daman provided for the kind of hurt caused, be punished, having regard to the nature of the hurt caused, with imprisonment of either description for a term which may extend to ten years.

Section 337- K: Causing hurt to extort confession, or to compel restoration of property.

Whoever causes hurt for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of any offence or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore, or to cause the restoration of, any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property, or valuable security shall, in addition to the punishment of qisas, arsh or daman, as the case may be, provided for the kind of hurt caused, be punished, having regard to the nature of the hurt caused, with imprisonment of either description for a term which may extend to ten years as ta'zir.

Section 337- L: Punishment for other hurt.

- (1) Whoever causes hurt, not mentioned hereinbefore, which endangers life or which causes the sufferer to remain in severe bodily pain for twenty days or more or renders him unable to follow his ordinary pursuits for twenty days or more, shall be liable to daman and also be punished with imprisonment of either description for a term which may extend to seven years.
- (2) Whoever causes hurt not covered by sub-section (1) shall be punished with imprisonment of either description for a term which may extend to two years, or with daman, or with both.

Section 337- M: Hurt not liable to qisas.

Hurt shall not be liable to qisas in the following cases, namely:-

- (a) when the offender is a minor or insane:
Provided that he shall be liable to arsh and also to ta'zir to be determined by the Court having regard to the age of offender, circumstances of the case and the nature of hurt caused;
- (b) when an offender at the instance of the survivor causes hurt to him: Provided that the offender may be liable to ta'zir provided for the kind of hurt caused by him;
- (c) when the offender has caused itlaf-i-udw of a physically imperfect organ of the survivor and the convict does not suffer from similar physical imperfection of such organ:
Provided that the offender shall be liable to arsh and may also be

- (d) liable to ta'zir provided for the kind of hurt caused by him; and when the organ of the offender liable to qisas is missing: Provided that the offender shall be liable to arsh and may also be liable to ta'zir provided for the kind of hurt caused by him.
- Illustrations
- (i) A amputates the right ear of Z, the half of which was already missing. If A's right ear is perfect, he shall be liable to arsh and not qisas.
- (ii) If in (he above illustration, Z's ear is physically perfect but without power of hearing, A shall be liable to qisas because the defect in Z's ear is not physical.
- (iii) If in illustration (i) Z's ear is pierced, A shall be liable to qisas because such minor defect is not physical imperfection.

Section 337- N: Cases in which qisas for hurt shall not be enforced.

- (1) The qisas for a hurt shall not be enforced in the following cases, namely:-
- (a) when the offender dies before execution of qisas;
- (b) when the organ of the offender liable to qisas is lost before the execution of qisas:
Provided that offender shall be liable to arsh, and may also be liable to ta'zir provided for the kind of hurt caused by him;
- (c) when the survivor waives the qisas or compounds the offence with badl-i-suffh; or
- (d) when the right of qisas devolves on the person who cannot claim qisas against the offender under this Chapter:
Provided that the offender shall be liable to arsh, if there is any wali other than the offender, and if there is no wali other than the offender he shall be liable to ta'zir provided for the kind of hurt caused by him.
- (2) Notwithstanding anything contained in this Chapter, in all cases of hurt, the Court may, having regard to the kind of hurt caused by him, in addition to payment of arsh, award ta'zir to an offender who is a previous convict, habitual or hardened, desperate or dangerous criminal [or the offence has been committed by him in the name or on the pretext of honour]
Provided that the ta'zir shall not be less than one-third of the maximum imprisonment provided for the hurt caused if the offender is a previous convict, habitual, hardened, desperate or dangerous criminal or if the offence has been committed by him in the name or on the pretext of honour.

Section 337- O: Wali in case of hurt:

In the case of hurt: The wali shall be-

- (a) the survivor:
Provided that, if the survivor is a minor or insane, his right of qisas shall be exercised by his father or paternal grandfather, how high-so-ever;
- (b) the heirs of the survivor, if the later dies before the execution of qisas; and
- (c) the Government, in the absence of the survivor or the heirs of the survivor.

Section 337- P: Execution of qisas for hurt.

- (1) Qisas shall be executed in public by an authorised medical officer who shall before such execution examine the offender and take due care so as to ensure that the execution of qisas does not cause the death of the offender or exceed the hurt caused by him to the survivor.
- (2) The wali shall be present at the time of execution and if the wali or his representative is not present, after having been informed of the date, time and place by the Court an officer authorised by the Court in this behalf shall give permission for the execution of qisas.
- (3) If the convict is a woman who is pregnant, the Court may, in consultation with an authorised medical officer, postpone the execution of qisas upto a period of two years after the birth of the child and during this period she may be released on bail on furnishing of security to the satisfaction of the Court or, if she is not so released, shall be dealt with as if sentenced to simple imprisonment.

Section 337- Q: Arsh for single organs.

The arsh for causing itlaf of an organ which is found singly in a human body shall be equivalent to the value of diyat.

Explanation: Nose and tongue are included in the organs which are found singly in a human body.

Section 337- R: Arsh for organs in pairs.

The arsh for causing itlaf of organs found in a human body in pairs shall be equivalent to the value of diyat and if itlaf is caused to one of such organs the amount of arsh shall be one-half of the diyat:

Provided that, where the survivor has only one such organ or his other organ is missing or has already become incapacitated the arsh for causing itlaf of the existing or capable organ shall be equal to the value of diyat.

Explanation: Hands, feet, eyes, lips and breasts are included in the organs which are found in a human body in pairs.

Section 337- S: Arsh for the organs in quadruplicate.

The arsh for causing itlaf of organs found in a human body in a set of four shall be equal to-

- (a) one-fourth of the diyat, if the itlaf is one of such organs;
- (b) one-half of the diyat, if the itlaf is of two of such organs;
- (c) three-fourth of the diyat, if the itlaf is of three such organs; and
- (d) full diyat, if the itlaf is of all the four organs.

Explanation: Eyelids are organs which are found in a human body in a set of four.

Section 337- T: Arsh for fingers:

- (1) The arsh for causing itlaf of a finger of a hand or foot shall be one-tenth of the diyat.
- (2) The arsh for causing itlaf of a joint of a finger shall be one-thirteenth of the diyat:
Provided that where the itlaf is of a joint of a thumb, the arsh shall be one-twentieth of the diyat.

Section 337- U: Arsh for teeth.

- (1) The arsh for causing itlaf of a tooth, other than a milk tooth, shall be one-twentieth of the diyat.
Explanation: The impairment of the portion of a tooth outside the gum amounts to causing itlaf of a tooth.
- (2) The arsh for causing itlaf of twenty or more teeth shall be equal to the value of diyat.
- (3) Where the itlaf is of a milk tooth, the accused shall be liable to daman and may, also be punished with imprisonment of either description for a term which may extend to one year:
Provided that, where itlaf of a milk tooth impedes the growth of a new tooth, the accused shall be liable to arsh specified in sub-section (1).

Section 337- V: Arsh for hair.

- (1) Whoever uproots:-
 - (a) all the hair of the head, beard, moustaches eyebrow, eyelashes or any other part of the body shall be liable to arsh equal to diyat and may also be punished with imprisonment of either description for a term which may extend to three years as ta'zir;
 - (b) one eyebrow shall be liable to arsh equal to one-half of the diyat; and
 - (c) one eyelash, shall be liable to arsh equal to one fourth of the diyat.
- (2) Where the hair of any part of the body of the survivor are forcibly removed by any process not covered under sub section (1), the accused shall be liable to daman and imprisonment of either description which may extend to one year.

Section 337-W: Merger of arsh.

- (1) Where an accused more than one hurt, he shall be liable to arsh specified for each hurt separately:
Provided that, where:-
 - (a) hurt is caused to an organ, the accused shall be liable to arsh for causing hurt to such organ and not for arsh for causing hurt to any part of such organ; and
 - (b) the wounds join together and form a single wound, the accused shall be liable to arsh for one wound.

Illustrations

 - (i) A amputates Z's fingers of the right hand and then at the same time amputates that hand from the joint of his wrists. There is separate arsh for hand and for fingers. A shall, however, be liable to arsh specified for hand only.
 - (ii) A twice stabs Z on his thigh. Both the wounds are so close to each other that they form into one wound. A shall be liable to arsh for one wound only.
- (2) Where, after causing hurt to a person, the offender causes death of such person by committing qatl liable to diyat, arsh shall merge into such diyat.
Provided that the death is caused before the healing of the wound caused by such hurt.

Section 337-X: Payment of arsh.

- (1) The arsh may be made payable in a lump sum or in instalments spread over a period of three years from the date of the final judgment.
- (2) Where a convict fails to pay arsh or any part thereof within the period specified in subsection (1), the convict may be kept in jail and dealt with in the same manner as if sentenced to simple imprisonment until arsh is paid in full may be released on bail if he furnishes security equal to amount of arsh to the satisfaction of the Court.
- (3) Where a convict dies before the payment of arsh any part thereof, it shall be recovered from his estate.

Section 337-Y: Value of daman.

- (1) The value of daman may be determined by the Court keeping in view:-
 - (a) the expenses incurred on the treatment of survivor;
 - (b) loss or disability caused in the functioning or power of any organ; and
 - (c) the compensation for the anguish suffered by the survivor.
- (2) In case of non-payment of daman, it shall be recovered from the convict and until daman is paid in full to the extent of his liability, the convict may be kept in jail and dealt with in the same manner as if sentenced to simple

imprisonment or may be released on bail if he furnishes security equal to the amount of daman to the satisfaction of the Court.

Section 337- Z: Disbursement of arsh or daman.

The arsh or daman shall be payable to the survivor or, if the survivor dies, to his heirs according to their respective shares in inheritance.

Section 338: Isqat-i-Hamal.

Whoever causes woman with child whose organs have not been formed, to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, or providing necessary treatment to her, is said to cause isqat-i-hamal.

Explanation: A woman who causes herself to miscarry is within the meaning of this section.

Section 338- A: Punishment for Isqat-i-haml.

Whoever cause isqat-i-haml shall be liable to punishment as ta'zir-

- (a) with imprisonment of either description for a term which may extend to three years, if isqat-i-haml is caused with the consent of the woman; or
- (b) with imprisonment of either description for a term which may extend to ten years, if isqat-i-haml is caused without the consent of the woman:

Provided that, if as a result of isqat-i-haml, any hurt is caused to woman or she dies, the convict shall also be liable to the punishment provided for such hurt or death as the case may be.

Section 338- B: Isqat-i-janin.

Whoever causes a woman with child some of whose limbs or organs have been formed to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, is said to cause Isqat-i-janin.

Explanation: A woman who causes herself to miscarry is within the meaning of this section.

Section 338- C: Punishment for Isqat-i-janin.

Whoever causes isqat-i-ianin shall be liable to:-

- (a) one-twentieth of the diyat if the child is born dead;
- (b) full diyat if the child is born alive but dies as a result of any act of the offender; and
- (c) imprisonment of either description for a term which may extend to seven years as ta'zir:

Provided that, if there are more than one child in the womb of the woman, the offender shall be liable to separate diyat or ta'zir, as the case may be/for every such child:

Provided further that if, as a result of isqat-i-fanin, any hurt is caused to the woman or she dies, the offender shall also be liable to the punishment provided for such hurt or death, as the case may be.

Section 338-D: Confirmation of sentence of death by way of qisas or tazir, etc.

A sentence of death awarded by way of qisas or ta'zir, or a sentence of qisas awarded for causing hurt, shall not be executed, unless it is confirmed by the High Court.

Section 338-E: Waiver or compounding of offences:

- (1) Subject to the provisions of this Chapter and Section 345 of the Code of Criminal Procedure, 1898 (V of 1898), all offences under this Chapter may be waived or compounded and the provisions of Sections 309 and 310 shall, mutatis mutandis, apply to the waiver or compounding of such offences:

Provided that, where an offence has been waived or compounded, the Court may, in its discretion having regard to the facts and circumstances of the case, acquit or award ta'zir to the offender according to the nature of the offence.

Provided further that where an offence under this Chapter has been committed in the name or on the pretext of honour, such offence may be waived or compounded subject to such conditions as the Court may deem fit to impose with the consent of the parties having regard to the facts and circumstances of the case.

- (2) All questions relating to waiver or compounding of an offence or awarding of punishment under Section 310, whether before or after the passing of any sentence, shall be determined by trial Court:

Provided that where the sentence of qisas or any other sentence is waived or compounded during the pendency of an appeal, such questions may be determined by the trial Court.

Section 338-F: Interpretation.

In the interpretation and application of the provisions of this Chapter, and in respect of matter ancillary or akin thereto, the Court shall be guided by the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah.

Section 338-G: Rules.

The Government may, in consultation with the Council of Islamic ideology, by notification in the official Gazette, make such rules as it may consider necessary for carrying out the purposes of this Chapter.

Section 338-H: Saving.

Nothing in this Chapter, except Sections 309, 310 and 338-E, shall apply to cases pending before any Court immediately before the commencement of the Criminal Law (Second Amendment) Ordinance, 1990 (VII of 1990), or to the offences committed before such commencement.

Above are all the provisions of Pakistan Penal Code, which discusses "hurt". However the definition let alone the mention of torture is not provided by the Pakistan Penal Code. Human rights activists such as Hina Jillani and I.A.Rehman are of the opinion that since torture is not properly defined in the Penal code, it does not allow for the

Annexure- A

punishments as well. Therefore the police and other state agencies can get away with inflicting torture. Nevertheless legal expert like Azeem Tarar are of the view that Pakistan Penal does provide a protection against torture, the issue is the non-implementation of the laws and not adhering to laws. Senior retired police officer, Tariq Kohsa also supports the argument, that the Pakistani laws provide a safeguard against torture, however the issue remains of the properly implementation of the laws. He thinks that since police force remains under immense pressure of politicians and elite, they are bound to inflict torture in order to satisfy the ruling elite.

It is pertinent to observe that, "Hurt" is exclusively explained in detail but it does not account for the infliction of torture. Human rights activists, legal experts and even journalists all agree to the fact that torture is a broad term and it is often confused with the term violence. In the Pakistan Penal Code, the "hurt" mostly covers the domain of violence and not torture. The major difference between the two terms is not the wounds or the way it is inflicted, rather it is the purpose for which it is being inflicted and used upon.

Annexure- B

Police Order 2002

Replacing the colonial era Police Act 1861 which sought the police subservience to the 'Deputy Collector' or the 'District Magistrate', the Police Order 2002 was promulgated to primarily ensure police autonomy from District Magistracy and to make police people responsive.³⁶

The police order 2002, tried to provide safeguard to the prisoners and detainees in the police custody. The police order ensures that any police officer regardless of any rank is liable for punishment if he inflicts torture. It is necessary to look at the provisions provided in the police order in 2002, which discusses torture;³⁷

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.

According to senior retired police officer Tariq Kohsa, the police order clause 156, is enough to address the issue of torture infliction by the police officers. However he reiterates that since there is no proper adherence to the rule of law in Pakistan, the concerned police officers may get away with such crimes. Similarly senior legal expert Azeem Tarar says that a police officer on paper has to follow two legal frameworks in Pakistan. One is the ordinary law which is the constitution, Pakistan Penal code and the other one is the extra law, which is the police, order of 2002. If a police officer inflicts torture and is caught he receives a compound punishment under all these laws.

Pakistan and UNCAT

Pakistan is one of the 149 countries to have submitted after a great deal of public persuasion from within and abroad to implement CAT in letter and spirit within her territorial and extra-territorial jurisdictions.³⁸

³⁶Pakistan Penal Code

³⁷Chaudary, Y. Ahsan. Towards a torture free Pakistan: Implementing CAT-Challenges and Prospects. P. 9.

Accessed online: <http://ssrn.com/abstract>. Date of Access: December 20, 2011

³⁸United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Annexure- B

According to the jurisprudence of International Law, Pakistan is one of those dualist nation-states which need transformation to give effect to any multi-lateral treaty. The Torture Convention, like other U.N. sponsored human rights instruments, is not self executing, thus it requires Pakistan to implement it through a set of comprehensive legislative, adjudicative and administrative arrangements.

According to an international law expert, Ehsan Ali Qazi, the international conventions such as CAT have a legal standing between state and the international body i.e. United Nations and Pakistan. However such treaties or conventions are not necessarily between the state and the citizens.

Therefore it is pertinent to observe here that UNCAT is not applicable on the citizens of Pakistan, since there are no corresponding domestic laws. For the UNCAT to be applicable in Pakistan, there is a need for domestic legislation to be developed on torture.

The international law dictates that, when a state signs an international convention or treaty regarding human rights, it is incumbent upon the state to publish a report within a year encompassing the current situation of human rights in the state. Sadly although Pakistan signed the CAT in 2010; it has failed to publish the state report regarding torture.

Senior Human rights activist Hina Jilani, criticizes the state for not publishing the state report regarding torture. She also criticizes the civil society organizations for not helping the state. She was of the opinion that civil society organizations should have assisted the state in the compilation of the report. If the state was lacking the capacity, then non-governmental organizations should have helped the government in the capacity building. In any case the report should have been published so that the existing situation of torture in Pakistan could have been highlighted at international level.

Another human rights activist Shafique Chaudry, explained that Pakistan should have published the report in time. This would have helped in reforming the image of Pakistan at an international level.

Although Pakistan has signed the convention against torture, but Pakistan still lags behind in number of ways. Above all it has not been able to develop a state report on the situation of torture in the country. Secondly and yet another major problem is the fact that Pakistani laws do not define torture appropriately according to universally acclaimed definition of torture available in UNCAT. It should be realized amongst the different segments of society mainly media, lawyers and civil society organizations that a pressure or voice be raised so that the state takes serious measures in eradicating the menace of torture. This could only be done if a domestic legislation condemning torture is introduced following severe punishments.

Annexure- C

Case Studies of Torture on Media Personnel

Journalists have remained prime targets of the military regime and dictators. Several have been arbitrarily arrested, tortured, forcibly disappeared or subjected to extra-judicial killing by members of the armed forces.

Case of Dilawar Khan Wazir of BBC

The case of abduction and torture of Mr. Dilawar Khan Wazir from Rawalpindi, Islamabad, who works for the BBC, is described here. He was abducted on November 20, 2006, allegedly by army intelligence personnel in plain clothes. He was kept blindfolded for 30 hours and was severely tortured. After international pressure and protests from journalists throughout country, and opposition parties in parliament, he was thrown into a forest still bearing torture marks. The kidnappers reportedly asked how he had received information about a US missile attack in Bajour on 30th October, and about his sources in the area. He was told not to tell anybody that he was in custody of the military intelligence. His younger brother had been kidnapped and murdered on August 30, 2006. Prior to that, he had been the target of two separate bomb explosions: at his house and at a primary school. For further details, please see AHRC Urgent Appeal UA-381-2006.

Case of Saeed Sarbazi of Karachi Daily Business Recorder

Mr. Saeed Sarbazi of the Karachi Daily Business Recorder was abducted on September 20, 2006 by armed members of the Military Intelligence, when he was going to his office. The people who followed the vehicle, in which he was being taken, witnessed it entering the Malir Cantonment, a place known to be a place in which torture is used. He was kept blind-folded for five days in the camp and was severely tortured. The military wanted to know about his connections in southern province of Balochistan, where the Pakistan Army has been conducting military operations since 2001. After protest from journalist community and political parties, he was released but was told by his captors not to inform anyone about his custody or treatment, otherwise his family would suffer the consequences.

Torture by Police at a Religious Congregation in Lahore

Wadood Mushtaq (ARY), cameraman Nazir Awan (ARY) and Zahid Malik (ATV) were tortured by the police at a religious congregation at Minar-e-Pakistan on September 17. Media reports say that all the three journalists received multiple fractures and Deputy Superintendent of Police (DSP) Mukhtar Shah was directly involved in beating them.

a. **Media's role in highlighting torture cases (Civilians case studies)³⁹**

Media has always been instrumental in highlighting/exposing torture cases. However, it is a separate debate that how these cases are followed up at later stages. Following are some of the case studies highlighted by media:

³⁹ (Source: Asian Human Rights Commission, Pakistan: The Human Rights situation in Pakistan, 2006).

Annexure- C

1. On September 26, 2006, Mr. Mohammad Asif, who was sentenced to death in a murder case, was allegedly severely tortured by police in Adialla jail Rawalpindi. When his condition deteriorated, he was moved to the prison hospital. The prison authorities were reportedly reluctant to move him to a civil hospital because the torture marks he bore. During the night, his condition worsened, and he was then moved to the Rawalpindi district hospital where he died from his injuries. The case is currently before a civil court.
2. Muhammad Sharif, a suspected murderer, was allegedly tortured to death by Musafirkhana police station officials, in Bahawalpur on May 18. The deceased's uncle said that Sharif, along with two of his cousins - Ghulam Hassan and Ghulam Mustafa - was taken into custody by the Musafirkhana police following a complaint by Muhammad Aslam. Sharif's cousins Ghulam Hussain and Allah Rakha alleged that the three suspects were tortured during investigation by police officials, as a result of which Sharif died. His body was brought to the Bahawal Victoria Hospital mortuary for a post-mortem. When contacted, police officials denied the charge and alleged that Sharif had committed suicide by slitting open his throat with a razor.
3. 22-year-old Roshan Ali died in the Naushehro Feroze Civil Hospital on April 16, allegedly due to police torture. He had been admitted to hospital as the result of a court order after there had been allegations of his being subjected to police torture. Around 100 people blocked the national highway a day later demanding the registration of an FIR against those responsible for Roshan's death. Taluka (sub-town) police officer Naushero Feroze reached the spot and informed the protestors that an FIR had been lodged against the responsible people. SP Gul Mohammad said an FIR was lodged against in-charge investigation Sub-Inspector Azeem Rajpar and six civilians under sections 302, 343 and 109 PPC. The Sub- Inspector was reportedly suspended, but no further actions are known to have been taken.
4. A lady doctor, MS Abida, was tortured in the police station by the female police officers in the presence of male officers and many persons. The case was some months old but the video, made through a cell phone, and was released in the month of April. A female deputy superintendent of police (DSP) and station house officer (SHO) Women Zahida Perveen were also present on the occasion. Women constables slapped the woman, wearing red Shalwar Kameez, who was later made to lie down on her stomach for flogging on the orders of male police officers. The SHO Nasrullah Niazi, on the occasion, appears to be talking to the woman, being subjected to the humiliation. The woman in the TV footage appears to be shouting, asking the female and male police personnel to stop the insulting act.

5. In the end of March 2010 six persons from a Christian family were tortured for many days in the torture cell of the Pakistan Air Force at its Air Head Quarter in Islamabad, the capital of Pakistan. The arrest and torture continued for a period of 18 days and was due to the suspicion that they had stolen gold ornaments from the house of a Wing Commander in the Pakistan Air Force (PAF). A 14 year-old girl and her 16 year-old brother were tortured by the Wing Commander himself. As a result the girl is disabled and neither she nor her brother is able to walk properly. A Session Court has helped obtain the victims' release but has not initiated any judicial process against the officials of the PAF even after finding evidence that the family was tortured and detained illegally in the PAF torture cell.

6. Mr. Shafiq Dogar was subjected to which included torment of various imaginative kinds, including his rape, after which red chili powder was put into his anus. Dogar's wife Riffat Rani and her younger sisters, 12 and 19, were also beaten by policemen and by law maker Iftekhar Baloch. Since their release they have been threatened by Iftekhar Baloch. While policemen held Dogar down, one officer sodomised him. After some time the DSP asked the cook of the police station to bring him some red chili powder and a spoon. At around three am on May 6 Dogar is again hung upside down and a wooden spoon dipped in chilly powder paste was pushed inside his anus, twice. He fainted and was not able to clean himself until 11.00 a.m. However he was unable to walk until later that evening.

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