

PAKISTAN'S INTERNATIONAL
HUMAN RIGHTS OBLIGATIONS:
TRAINING MODULE FOR
CAPACITY BUILDING

Training Module for Capacity Building of Relevant Stakeholders at the Federal and Provincial Levels

Prepared by: The Research Society of International Law (RSIL), Pakistan

Project Researchers

Saad-ur-Rehman Khan

Research Fellow, RSIL

LL.B (London), LL.M (Manchester)

Imaan Hazir Mazari

Research Associate, RSIL

LL.B (Edinburgh)

Table of Contents

Module One: Day One	- 2 -
1.1 Introduction to International Law	- 4 -
International Law as a Tool in Developing a Country’s Foreign Policy	- 6 -
Sources of International Law	- 7 -
Subjects of International Law	- 9 -
Potential Overlap between National Law and International Law	- 11 -
International Humanitarian Law and Human Rights Law	- 14 -
1.2 The United Nations System	- 15 -
The United Nations Charter	- 16 -
The Universal Declaration of Human Rights	- 18 -
Voting Rights of Member States	- 18 -
Reporting Mechanisms under the UN	- 19 -
1.3 Pakistan’s Obligations under International Human Rights Law	- 21 -
Reservations under the Seven Core Human Rights Conventions	- 22 -
Division of Responsibility Post-18th Amendment	- 24 -
Distribution of Power between the Federation and the Provinces post-18th amendment	- 25 -
1.4 Legal Exercise	- 29 -
Module Two: Day Two	- 30 -
2.1 Overview of the International Covenant on Civil and Political Rights	- 32 -
Key Provisions of the ICCPR	- 32 -
Provisions of the Human Rights Committee and reporting requirements	- 34 -
Individual Communications Procedure	- 36 -
General Comments issued by the Human Rights Committee	- 36 -
2.2 Demographic and other indicators	- 46 -
2.3 Domestic Enforcement of the ICCPR	- 48 -
Pakistan’s Constitutional Provisions mirroring ICCPR-guaranteed rights	- 48 -
Domestic legislation pertaining to ICCPR-guaranteed rights	- 56 -
Domestic institutions responsible for compliance reporting	- 58 -
2.4 Legal Simulation Exercise	- 62 -
Module Three: Day Three	- 65 -
3.1 Overview of the International Covenant on Economic, Social and Cultural Rights	- 67 -

Key Provisions of the ICESCR	- 67 -
Provisions on the Committee on Economic, Social and Cultural Rights and reporting requirements.....	- 69 -
Individual Communications Procedure	- 70 -
General Comments issued by the Committee on Economic, Social and Cultural Rights	- 70 -
3.2 Domestic Enforcement of the ICESCR.....	- 84 -
Pakistan's Constitutional Provisions mirroring ICESCR-guaranteed rights	- 84 -
Domestic legislation pertaining to ICESCR-guaranteed rights.....	- 90 -
Domestic institutions responsible for compliance reporting	- 90 -
3.3 Legal Simulation Exercise	- 92 -
Module Four: Day Four	- 95 -
4.1 Overview of the Convention on the Elimination of All Forms of Discrimination against Women	- 97 -
Key Provisions of the CEDAW	- 97 -
Provisions on the Committee on the Elimination of All Forms of Discrimination against Women .	- 98 -
Individual Communications Procedure	- 99 -
General Recommendations issued by the Committee on the Elimination of All Forms of Discrimination against Women.....	- 100 -
4.2 Domestic Enforcement of the CEDAW.....	- 113 -
Domestic legislation pertaining to CEDAW-guaranteed rights.....	- 114 -
Domestic institutions responsible for compliance reporting	- 115 -
4.3 Legal Simulation Exercise	- 117 -
Module Five: Day Five.....	- 119 -
5.1 Overview of the Convention on the Rights of the Child	- 121 -
Key Provisions of the CRC.....	- 121 -
Provisions on the Committee on the Rights of the Child.....	- 123 -
Individual Communications Procedure	- 125 -
General Comments issued by the Committee on the Rights of the Child.....	- 125 -
5.2 Domestic Enforcement of the CRC	- 137 -
Domestic legislation pertaining to CRC-guaranteed rights	- 137 -
Domestic institutions responsible for compliance reporting	- 138 -
5.3 Legal Simulation Exercise	- 140 -

Module Six: Day Six	- 142 -
6.1 Overview of the Convention against Torture, Inhuman or Degrading Treatment or Punishment	- 144 -
Key Provisions of the CAT	- 144 -
Provisions on the Committee against Torture	- 148 -
Individual Communications Procedure	- 151 -
General Comments issued by the Committee against Torture	- 152 -
6.2 Domestic Enforcement of the CAT	- 156 -
Domestic legislation pertaining to CAT-guaranteed rights	- 156 -
Domestic institutions responsible for compliance reporting	- 156 -
6.3 Legal Simulation Exercise	- 158 -
Module Seven: Day Seven	- 160 -
7.1 Overview of the Convention on the Rights of Persons with Disabilities	- 163 -
Key Provisions of the CRPD	- 163 -
Provisions on the Committee on the Rights of Persons with Disabilities	- 164 -
Individual Communications Procedure	- 167 -
General Comments issued by the Committee on the Rights of Persons with Disabilities	- 167 -
7.2 Domestic Enforcement of the CRPD	- 169 -
Domestic legislation pertaining to CRPD-guaranteed rights	- 169 -
Domestic institutions responsible for compliance reporting	- 170 -
7.3 Legal Simulation Exercise	- 171 -
Module Eight: Day Eight	- 173 -
8.1 Overview of the Convention on the Elimination of All Forms of Racial Discrimination ...	- 175 -
Key Provisions of the ICERD	- 175 -
Provisions on the ICERD Committee	- 176 -
Individual Communications Procedure	- 179 -
General Recommendations issued by the ICERD-Committee	- 179 -
8.2 Domestic Enforcement of the ICERD	- 181 -
Domestic institutions responsible for compliance reporting	- 181 -
8.3 Legal Simulation Exercise	- 182 -
Module Nine: Day Nine	- 184 -
9.1 Overview of the compliance reporting mechanisms under the seven core conventions	- 187 -

Understanding the Harmonized Guidelines for Reporting	- 190 -
9.2 Status of Pakistan's compliance reports	- 200 -
Domestic institutions responsible for compliance reporting	- 201 -
Data collection and disaggregation.....	- 207 -
Key recommendations on enhancing national and international compliance.....	- 211 -
9.3 Examining other jurisdictions.....	- 212 -

This Training Module was prepared for capacity building with regard to Pakistan's international human rights obligations

By: **The Research Society of International Law (RSIL), Pakistan**

Module One: Day One

Introduction

This Module will focus on the introductory aspects of international law whereby trainers will provide the participants with talks on the general nature of international law.

Contents

1.1 Introduction to International Law

- International Law as a Tool in Developing a Country's Foreign Policy

- Sources of International Law

- Subjects of International Law

- Potential Overlap between National and International Law

- International Humanitarian Law and Human Rights Law

1.2 The United Nations System

- The United Nations Charter

- The Universal Declaration of Human Rights

- Voting Rights of Member States

- Reporting Mechanisms under the UN

1.3 Pakistan's Obligations under International Law

- Reservations under the Seven Core Human Rights Conventions

- Division of Responsibility Post-18th Amendment

- Distribution of Power between the Federation and the Provinces post-18th amendment

1.4 Legal Exercise

Module One: Introduction to International Law

Essential Reading:

Books:-

- Dixon, Martin. "Textbook on International Law", *Oxford University Press* (Seventh Edition) (2013); Chapters 1, 2, 3, 4 and 12
- Shaw, Malcolm. "International Law", *Cambridge University Press* (Seventh Edition) (2014); Chapters 1, 2, 3, 4 and 22

Treaties (Annexed in "Basic Legal Documents" (BLDs):-

- United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.
- UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).
- UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.
- UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p.3.
- UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.
- UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106.
- UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195.
- UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.
- UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vo. 1465, p. 85.

Academic Articles:-

- Humphrey, John P. "The Universal Declaration of Human Rights", *International Journal*, Vol. 4, No. 4 (Autumn 1949), pp. 351-361
- Bayefsky, Anne. "Introduction to the UN Human Rights Treaty System", *28 Law Now* 51 (2003-2004)
- Mechlem, Kerstin. "Treaty Bodies and the Interpretation of Human Rights", *42 V and. J. Transnat'l L.* 905 (2009)
- Lowe, Kasey. "Human Rights Treaty Bodies as Mechanisms of Review", *1 Edinburgh Student Law Review* 53 (2009-2012)
- Faracik, Beata. "Constructive Dialogue as a Cornerstone of the Human Rights Treaty Bodies Supervision", *38 B.L.J* 39 (2006)

Other:-

- International Service for Human Rights (ISHR). Simple Guide to Treaty Bodies (2010) [Annexed in BLDs]

- *Constitution (Eighteenth Amendment) Act 2010 (Act No. X of 2010)* [Annexed in BLDs]

Useful Links:

- Soofi, Ahmer Bilal. 'Disregard of International Law', *Dawn* available at: <http://www.dawn.com/news/1149047/disregard-of-international-law>
- Soofi, Ahmer Bilal. Treaty cells in provinces, *Dawn* available at: <http://www.dawn.com/news/1142071/treaty-cells-in-provinces>
- Soofi, Ahmer Bilal. 'Implementing Expectations', *Dawn* available at: <http://www.dawn.com/news/528555/implementing-expectations>
- Shah, Sikandar Ahmed. 'HR compliance', *Dawn* available at: <http://www.dawn.com/news/1217048/hr-compliance>
- Shah, Sikandar Ahmed. 'Wrong approach', *Dawn* available at: <http://www.dawn.com/news/1135568/wrong-approach>
- Khan, Saad-ur-Rehman. 'International law is a reality', *The News* available at: <http://www.thenews.com.pk/Todays-News-9-302413-International-law-is-a-reality>
- Sheikh, Maira. 'International law and government decision making', *Pakistan Today* available at: <http://www.pakistantoday.com.pk/2015/02/14/comment/international-law-and-government-decision-making/>
- Abbasi, Muhammad Nawaz (Mr. Justice). 'Domestic Application of International Human Rights Norms' available at: <http://www.supremecourt.gov.pk/ijc/Articles/1/1.pdf>
- Ministry of Law, Justice and Human Rights, 'Quarterly Newsletter', January-March 2015 available at: <http://www.mohr.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTMwOjkwODAvbW9ocndlYi91c2VyZmlsZXMxL2ZpbGUvTmV3c2xldHRlciUyMEhSJTlwRmluYWwucGRm>
- Soofi, Ahmer Bilal. International Law Lecture Series available at: <http://ocw.vu.edu.pk/Videos.aspx?cat=Law&course=PSC401>

1.1 Introduction to International Law

• What is international law?

- 1 In plain terms, international law comprises a system of principles and rules which govern international relations between sovereign States and other institutional subjects of international law, e.g. the United Nations (UN).
- 2 It may be regarded either as the rules created primarily by States for:
 - i) Their own purposes; or
 - ii) As a means of facilitating and controlling the activities of other actors in the international community.

• How can the existence of international law be justified?

- 3 Rules of international law cover nearly every facet of inter-state and other international activity:

- (i) There are laws regulating the use of the sea, outer space and Antarctica;
 - (ii) The rules encompassing telecommunications, postal services, carriage of goods and passengers by air and transfer of money;
 - (iii) In this regard, international law is also a key tool with regard to international trade.
-
- 4 It relates to subject-matter ranging from nationality, extradition, the use of armed force, human rights, protection of the environment, the dignity of the individual and the security of nations.
 - 5 In short, there is very little that is done in the international arena that is not regulated by international law; without which an interdependent world could not function.
 - 6 While there is a centralized executive, judiciary and legislature within every State that produces, enforces and interprets the law, there is no such centralized structure in the international community. So what evidence do we have regarding the existence of international law? The existence of the United Nations is perhaps one of the most important pieces of evidence to demonstrate the existence of international law. States entered into a multilateral arrangement with one another and brought into existence an international organization mandated to preserve international peace and security.
 - 7 The fact remains that the majority of the substance of international law is followed and adhered to. For instance, with regard to aviation, the International Civil Aviation Organization (ICAO) manages the administration and governance of the Convention on International Civil Aviation (the Chicago Convention). It sets international civil aviation Standards and Recommended Practices (SARPs) and policies to ensure the safety, efficiency and security of the civil aviation sector. These SARPs and policies are utilized by ICAO Member States to ensure that their domestic civil aviation regulations are in conformity with global norms which results in over 100,000 daily flights globally. It is these very standards and regulations that Pakistan conforms to so that it can operate flights in and out of its territory in accordance with international law.
 - 8 Similarly, the Universal Postal Union (UPU) ensures a universal network of up-to-date products and services while setting rules for international mail exchanges. It is because of, and through, international law that the UPU is able to regulate international communication which allows us to send and receive letters, packages, etc. from different parts of the world.
 - 9 There are **two main roles of international law**, illustrated below in **Diagram A**.

Diagram A

1. It *facilitates* the functioning of the international community;

2. Modern international law seeks to *control* States by inhibiting or directing their conduct. For instance:

(a) Inter-state relations, e.g. the law prohibiting the use of armed force to settle disputes;

(b) In relation to individuals, both its own nationals (through the law of human rights) and individuals of other States (issues concerning the exercise of criminal jurisdiction).

10 There has been a shift in the paradigm of international law from a state-centric system to a system more engaged in the control of its subjects.

Note 1: The distinction between Public International Law and Private International Law must be made clear. While Public International Law regulates the conduct between States as well as International Organizations (IOs), Private International Law governs the international legal relations between private subjects.

11 Questions that may be raised by the trainers include the following:

- i. Can international law even be regarded as law?
- ii. What proof would one have in order to justify the existence of international law?
- iii. Can international law readily be enforced against another State? If not, does it generally lack enforcement mechanisms?

International Law as a Tool in Developing a Country's Foreign Policy

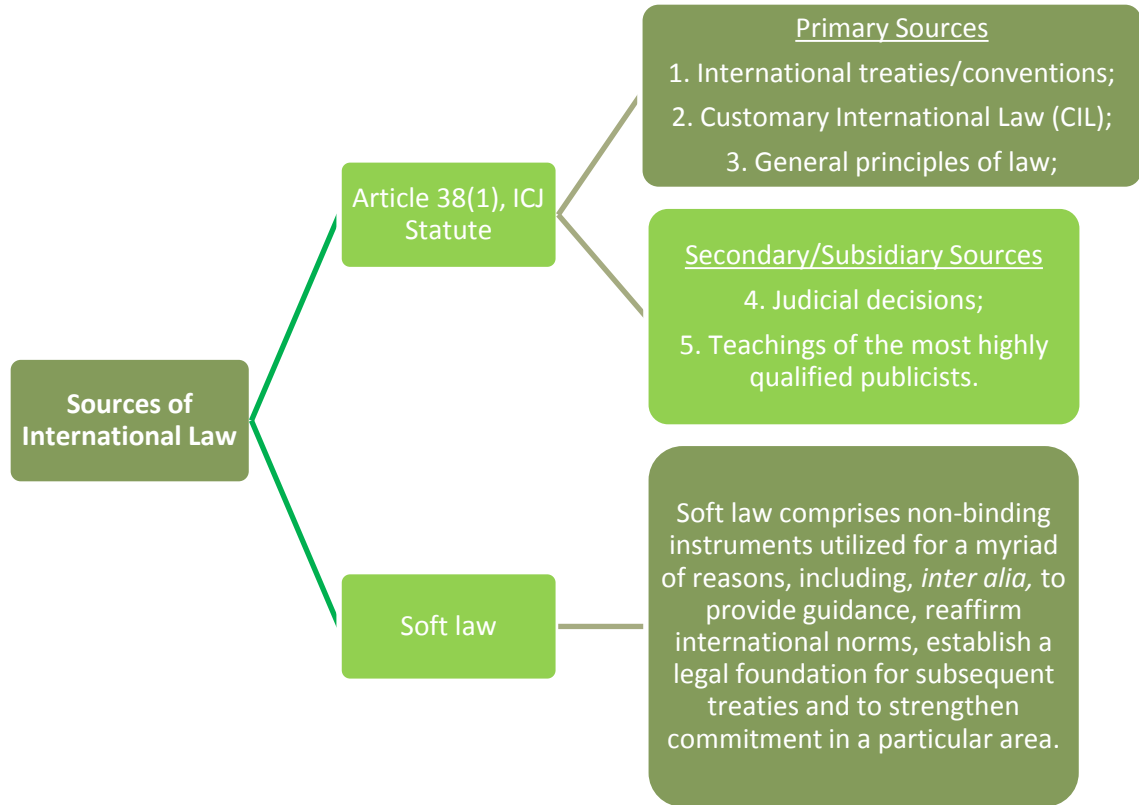
9 It is pertinent to understand that the practice of international law is intrinsically intertwined with international relations and politics.

- 10 International law does not operate in a stagnant environment and international legal rules may be one of the many factors considered by a State before determining its course of action.
- 11 However, it is imperative to ask how to ascertain when States believe that there are a set of rules binding on them as law. In other words, what evidence is there of this “law-habit”?
- 12 International law is practiced on a daily basis in the Foreign Offices, International Courts and other Governmental organs of States as well as in IOs, such as the UN.
- 13 Foreign Offices have legal departments whose task is to advise on questions of international law and to assist in drafting up international agreements and the like.
- 14 National Courts are frequently concerned with substantive questions of international law. **C.f. *Zubair Ahmed Khaskheli v. Federation of Pakistan* [2015 PLD 118]**
- 15 Therefore, rules of international law, whilst vague in nature, are nonetheless practiced on a daily basis across the world. Consequently, this practice, more often than not, leads to the development of one State’s foreign policy with another.

Sources of International Law

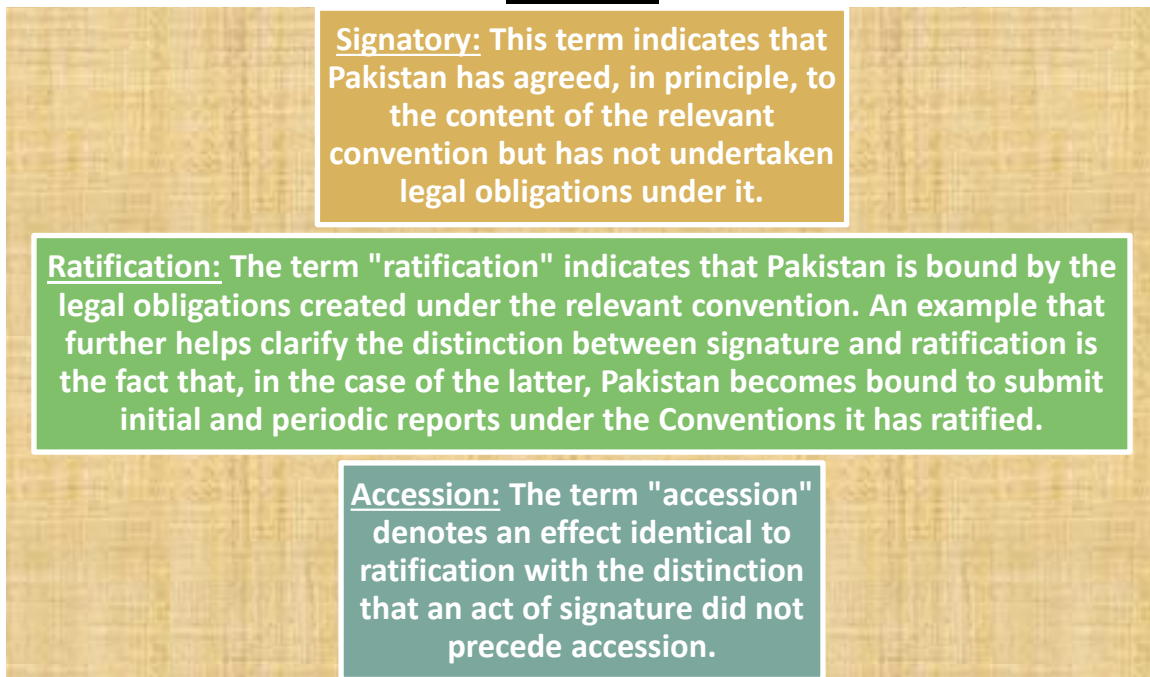
- 16 Every legal system must have some criteria by which legal norms or laws are recognized. It must have reasonably clear sources of law even though international law does not possess formal institutions mandated for law-creation. There are recognized and accepted mechanisms by which legal rules come into existence, as well as several ways in which the precise content of legal rules can be identified.
- 17 The international legal system has no central legislature, executive and judiciary which poses the question: where is the law found and how can we ascertain whether a particular proposition amounts to a legal rule? When one refers to 'sources' of international law, one means those provisions operating within the legal system on a technical level, to the exclusion of 'ultimate sources' such as reason or morality.
- 18 Article 38(1), of the Statute of the International Court of Justice (ICJ) is widely recognized as the most authoritative statement as to the sources of international law. By virtue of Article 93 of the UN Charter, all Member States of the UN are ipso facto parties to the ICJ Statute. As enlisted in Article 38(1), the sources of international law include: international conventions, custom and general principles, as primary sources; and judicial decisions and academic writings as secondary sources. These collectively are the sources of international law, illustrated below in Diagram B.

Diagram B



Note 2: The distinction between the terms "signatory", "ratification" and "accession" must be explained. Much of the effect of these terms is dependent on national legal processes and powers pertaining to international legal instruments. In the case of Pakistan, the terms are explained in the following diagram ("Diagram C").

Diagram C



- 19 As a dualist State, Pakistan incorporates international law into the domestic legal context in a two-stage process:
- i. The international legal instrument is first signed and ratified/acceded to; following which,
 - ii. Implementing legislation is promulgated by the relevant legislative assembly to give the international legal obligations domestic effect.
 - iii. This raises some concerns as, while Pakistan may be party to any number of treaties or conventions, it is only when the pertinent implementing legislation is passed that the international legal commitments the State of Pakistan has taken upon itself become directly implementable in the national legal context. Moreover, Pakistan would need to take into account any potential conflict between its international legal commitments and its Constitution and domestic law.

Subjects of International Law

20 It is imperative, at this point, to discuss whether international law even applies to anyone. Given that international law itself stands as weak law, lacking enforcement mechanisms, it is often difficult to determine the precise subjects to which its scope and application relates. However, in practice, it is important to note that the following are considered the most important subjects of international law, i.e. **the entities to whom international law applies**. In order to determine the subjects of international law, one must understand the **doctrine of subjects**. In accordance with this doctrine, the characteristics of a subject include:

- (i) Capacity to bring claims;
- (ii) International standing;
- (iii) Ability to make rules and international law;
- (iv) Authority to enforce laws;

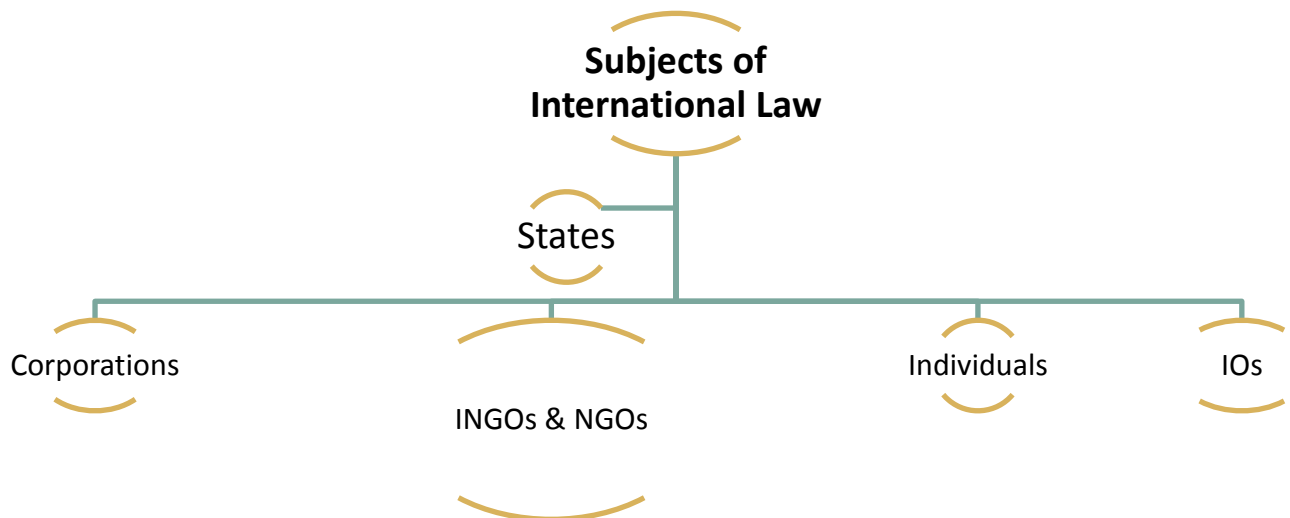
(v) Rights and responsibilities under international law.

21 Since, for instance, individuals cannot enforce international law, they cannot be classified as subjects under this doctrine. Corporations, Non-Governmental Organizations (NGOs) and International Non-Governmental Organizations (INGOs) constitute legal entities that are recognized under international law but they too cannot be classified as subjects under this doctrine.

22 It is pertinent to note that the doctrine of subjects has lost its functional purpose with international law now recognizing individuals as 'participants' rather than passive 'objects'. The concept of international legal personality has evolved which has altered the traditional classification of main actors in the international legal system.

23 It should be noted that the subjects mentioned below in "**Diagram D**" should be discussed with the participants to the extent that their role under international law is made clear.

Diagram D



Note 3: In the post-1945 international legal system, it has been accepted that entities may be regarded as subjects of international law so long as they directly possess rights, powers and duties. The ICJ's *Advisory Opinion in the Reparations Case* (1949) clearly affirms that subjects of international law are not identical. While states possess the full range of rights, duties and attendant capacities, other subjects have more limited rights, obligations and capacities.

24 The two essential theories vis-à-vis the recognition of subjects in international law must be discussed. These are:

i. **The Declaratory Theory:-**

When an existing state 'recognizes' a new state, this is said to be nothing more than an acknowledgment of pre-existing legal capacity. The act of recognition is not decisive of the new entity's claim to statehood, because that status is conferred by operation of international law.

ii. **The Constitutive Theory:-**

This theory denies that international personality is conferred by operation of international law. On the contrary, the act of recognition is seen as a necessary precondition to the existence of the capacities of statehood or government. So, under this theory, if Taiwan is not recognized as a state, it is not a state.

Potential Overlap between National Law and International Law

25 In order to fully comprehend the manner in which international law applies, within each State, an understanding of the national law of that particular State cannot be under-emphasized. It must be made clear to participants that each State is a sovereign state in its own right and that general rules of international law can only be applied to the extent that that sovereign State wishes/accepts.¹

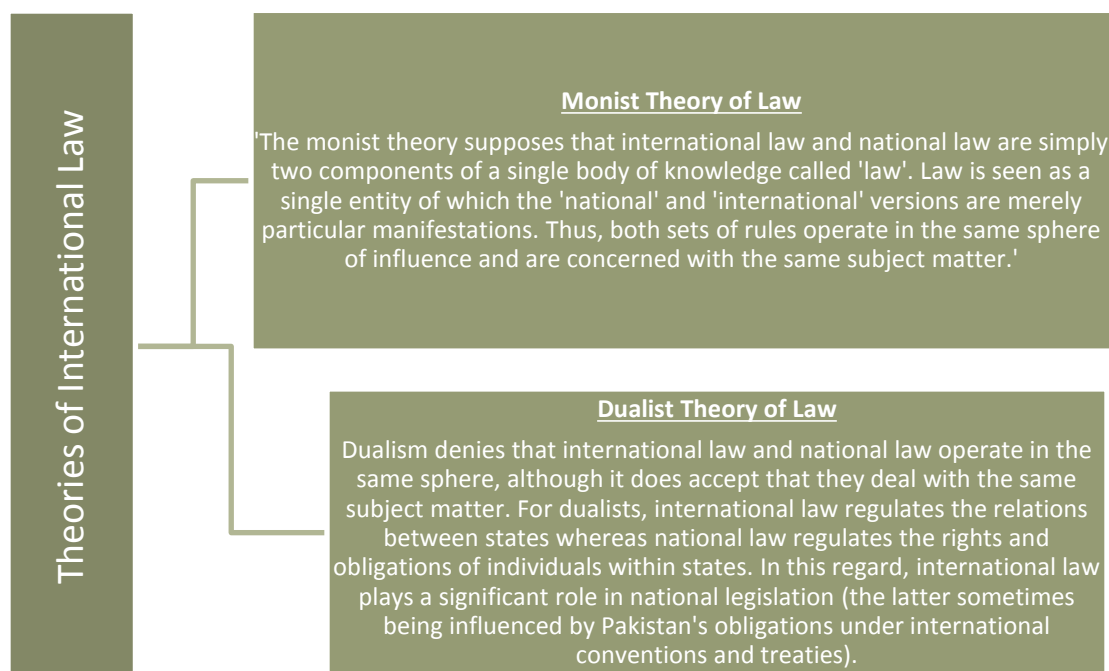
26 In this regard, an explanation must be provided pertaining to the different theories that have been developed to describe the relationship and overlap between international law and national law, as illustrated in **Diagram E** below.

27 The significance of national law with regard to international law is also important for the participants to understand. This essentially means that national/domestic law is of vital importance with regard to the overlap between international law and national law. For instance, the role national law plays before international tribunals, i.e. when national law, including domestic case law, can be used as evidence of that particular State's position on a given subject-matter before an international tribunal.² Therefore, national law does not always exist in isolation; but rather, facilitates in the interpretation and application of international law.

¹ There is, however, a general exception to this notion of 'state consent' with regard to those norms termed "*jus cogens*" or peremptory norms that all States must respect. These include, but are not limited to: self-determination, the principle of territorial integrity, the prohibition against genocide and the prohibition against slavery.

² Here, trainers may make reference to the *Reko Diq* case and the position of the Islamic Republic of Pakistan before the International Centre for the Settlement of Investment Disputes (ICSID), i.e. referring to the Supreme Court of Pakistan's judgment in the case between the TCC and the Balochistan Development Authorities (BDA).

Diagram E



28 Furthermore, the various methods by which a national system incorporates international law within its own legal system must be discussed. In this regard, **the two theories** pertaining to this transposition must be explained. Participants must be made aware of how Pakistan incorporates an international instrument within its domestic legal framework, i.e. the procedure by which an international legal instrument is harmonized with domestic law and the manner/process through which it receives final Presidential assent and becomes an Act of Parliament. This is illustrated in **Table 1** below.

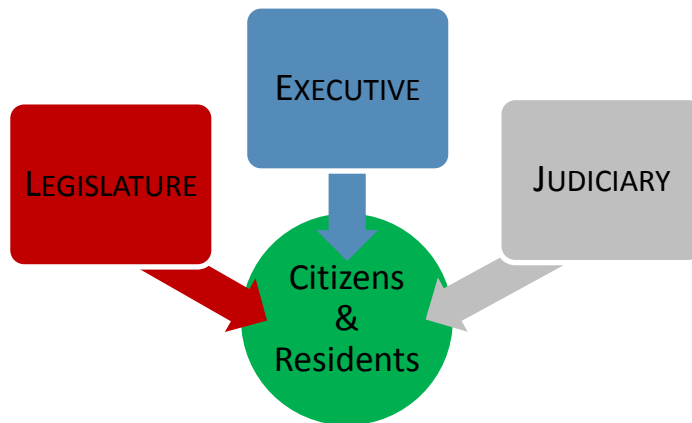
Table 1: Transposition Theories

<u>Incorporation Theory</u>	Under the doctrine of incorporation, a rule of international law becomes part of national law without the need for express adoption by the local courts or legislature. The rule of international law is incorporated in national law simply because it is a rule of international law. This 'automatic' adoption is said to operate unless there is some clear provision in	Illustration A: Pakistan has ratified the Convention against Torture. However, many of the provisions found within the CAT remain unenforceable in Pakistan because of lack of implementing legislation transposing all enlisted obligations into domestic law. This clearly demonstrates that Pakistan does not follow the incorporation model.
------------------------------------	--	---

	national law, such as a statute or judicial decision, which precludes the use of the international law rule by the national court.' This method of incorporating international law into a national legal system does not operate in Pakistan.	
<u>Transformation Theory</u>	'The doctrine of transformation... stipulates that rules of international law do not become part of national law until they have been expressly adopted by the State . International law is not <i>ipso facto</i> part of national law.' The transformation theory, therefore, requires the legislature to transpose the provisions of international law into national law in order for the former to have binding force.	Illustration B: Pakistan is a State Party to the UN Convention against Corruption. To incorporate the anti-money laundering provisions enlisted therein, Pakistan transposed these obligations into domestic law through the Anti-Money Laundering Act 2010. Thus, it is clear that Pakistan follows the transformation theory.

Note 4: The differing natures of the international legal system and national legal systems, as illustrated by "**Diagram F**" below, must be clarified to the participants. While international legal systems are based on a horizontal relationship, i.e. between States, national legal systems maintain a vertical relationship, i.e. between the State and the individual.

Diagram F



29 From Diagram F, we can see that the three main organs within a State, namely the legislature, executive and judiciary, operate in a vertical manner, making the law binding on citizens and those residing within the jurisdiction of the State. However, in international law, the relationship between states with respect to the law is horizontal, i.e. every state is sovereign and international law applies equally to all. In other words, no one State can bind the other – unlike national systems where law binds citizens directly as it flows from institutions to citizens.

International Humanitarian Law and Human Rights Law

30 International Humanitarian Law (IHL) and international human rights law, although distinct in their nature, are two complementary bodies of law. The common areas of protection concern the right to life, dignity and health.

31 While IHL applies in times of war, human rights law is applicable in times of war and peace, i.e. at all times. The focal difference between IHL and human rights law is that the latter allows for the State to suspend certain rights in situations of emergency. However, States cannot suspend certain fundamental rights – these include the right to life, the prohibition against torture, non-retroactivity of the law, the right to freedom of thought, conscience and religion, and the principle of legality. In times of armed conflict, IHL is reinforced by human rights law.

32 The rationale for international human rights law is based on the assumption that individuals require protection from the State. State uses of force are considered legitimate under the international human rights framework when this is absolutely necessary in self-defense, in order to prevent crime or in order to effect the lawful arrest of offenders. This paradigm regulates the resort to force by State authorities in order to maintain or restore public security, law and order, and is therefore premised on the principle of 'capture rather than kill' unless capture is not possible through non-lethal means. Under the human rights paradigm therefore, the use of force – particularly lethal force – is only a measure of last resort.

1.2 The United Nations System

33 With the purposes of maintaining international peace and security, developing friendly relations among nations, achieving international cooperation in solving problems of an economic, social, cultural or humanitarian nature and to serve as the center for harmonizing actions of nations in attainment of the aforementioned ends, the UN system is an increasingly significant IO for States to engage with.

34 In this regard, trainers should provide participants with an explanation of the purposes and functions of the following: the UN Security Council (UNSC), the General Assembly (UNGA) and the Human Rights Council. This information is provided in **Table 2** below.

Table 2: The UN System

UN Security Council	• The UNSC comprises 15 members (5 permanent; 10 non-permanent). • The 5 permanent members are: China, France, Russia, UK and the US. • The UNGA elects the 10 non-permanent members of the UNSC. • Non-permanent members are elected for a term of two years. • Retiring members are not eligible for immediate re-election. • The UNSC's mandate focuses on responsibility for the maintenance of international peace and security.
UN General Assembly	• The UNGA comprises all Members of the UN. • Each member shall not have more than 5 representatives in the UNGA. • The UNGA may discuss any questions or matters within the scope of the UN Charter. • Further, the UNGA may discuss any questions relating to the maintenance of international peace and security. • The UNGA may also call the attention of the UNSC to situations which are likely to endanger international peace and security.
Human Rights Council	• The Human Rights Council is a subsidiary organ of the UNGA. • It comprises 47 members, elected by majority of members of the UNGA.

	• Members are elected for 3 years for up to 2 consecutive terms. • The Council replaced the Human Rights Commission, while retaining its special procedures function.³
--	--

The United Nations Charter

35 The UN Charter constitutes the entire UN system and is a key document in international law.

Note 6: The UN Charter must be read on a provision-by-provision basis to identify and explain to participants the following core provisions of the UN Charter. These include:

- **Article 1**
- **Article 7**
- **Article 10**
- **Article 11**
- **Article 12**
- **Article 23**
- **Article 24**

36 For the purpose of convenience, these provisions are reproduced below in **Table 3**.

Table 3

Article 1	The Purposes of the United Nations are: (1) To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace; (2) To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace; (3) To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and (4) To be a centre for harmonizing the actions of nations in the attainment of these common ends.
Article 7	(1) There are established as principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship

³ Note 5: Explanation of Special Procedures is available on page 19.

	Council, an International Court of Justice and a Secretariat. (2) Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.
Article 10	The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.
Article 11	(1) The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both. (2) The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion. (3) The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security. (4) The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.
Article 12	(1) While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests. (2) The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters
Article 23	(1) The Security Council shall consist of fifteen Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.

	(2) The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members after the increase of the membership of the Security Council from eleven to fifteen, two of the four additional members shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election. (3) Each member of the Security Council shall have one representative.
Article 24	(1) In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf. (2) In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII. (3) The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

The Universal Declaration of Human Rights

37 The Universal Declaration of Human Rights (UDHR) is the fundamental starting point in the area of human rights protection. Although aspirational in nature, the UDHR holds weight with regard to the universality of certain fundamental human rights – the preamble delineates the Declaration as, "a common standard of achievement for all peoples and all nations".

38 The rights listed within the Declaration are generically worded and were later categorized into two distinct, legally binding Conventions: The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), thereby distinguishing between civil and political rights, on one hand, and economic, social and cultural rights, on the other. The UDHR, however, makes no such distinction. The UDHR, ICCPR and ICESCR combined are referred to as the "**International Bill of Rights**".

Note 6: The UDHR is annexed in the BLDS. The UDHR must be discussed with participants on an article by article basis to ensure they have a solid understanding of the foundational human rights document.

Voting Rights of Member States

39 Voting in the UN is covered under the UN's Conduct of Business Rules. The following rules **must** be discussed with participants:

- Rule 82
- Rule 83
- Rule 84
- Rule 85

40 For the purpose of convenience, these provisions have been reproduced below in **Table 4**.

Table 4

Rule 82	Each member of the General Assembly shall have one vote.
Rule 83	Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 c of Article 86 of the Charter, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.
Rule 84	Decisions of the General Assembly on amendments to proposals relating to important questions, and on parts of such proposals put to the vote separately, shall be made by a two-thirds majority of the members present and voting.
Rule 85	Decisions of the General Assembly on questions other than those provided for in rule 83, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

Note 7: Discussion on Article 27 of the UN Charter, reproduced below, with regard to Security Council Voting is pertinent.

"Article 27:

- (1) Each member of the Security Council shall have one vote.
- (2) Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.
- (3) Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting."

Reporting Mechanisms under the UN

41 The respective committees under the seven core human rights conventions are classified as, "Treaty-based human rights bodies" while the Human Rights Council is a "Charter-based body". Participants should be able to make the distinction between the two, as demonstrated below in **Table 5**.

Table 5

	Charter-based bodies	Treaty-based human rights bodies
Existence:	Founded under the UN Charter	Derive existence from specific treaty
Mandate:	Broad	Narrow; treaty-specific codified areas
Audience:	Unlimited; wide	Narrow; limited to States Parties to the treaty
Decision-making:	Majority-voting	Consensus approach

42 Treaty-based bodies are founded through their constituent treaty, for instance Article 40 of the ICCPR creates the Human Rights Committee (HRC), the treaty-body responsible for monitoring compliance with the ICCPR.

43 All treaty bodies, with the exception of the Committee on Economic, Social and Cultural Rights (CESCR), have a common election procedure [with minor variations]. These elections take place during the meetings of the States Parties, whereby experts are elected through secret ballot. Two thirds of States Parties constitute quorum. The largest number of votes and absolute majority of the votes of the representatives of the States Parties present and voting result in election to the relevant committee. The CESCR has a slightly different procedure: the Economic and Social Council (ECOSOC) elects members of the CESCR.

44 Under each respective human rights treaty, mechanisms for compliance reporting are provided.

45 The Human Rights Council replaced the Human Rights Commission through UN General Assembly (GA) Resolution 60/251 of 15 March 2006. The Council meets in Geneva and reports to the GA. Its functions include:

- i) Strengthening the promotion and protection of human rights;
- ii) Addressing human rights violations; and
- iii) Making recommendations on human rights violations.

Note 8: In this regard, the following subsidiaries of the Council, as illustrated in Table 6 below, should be discussed.

Table 6: Subsidiaries of the Human Rights Council

Universal Periodic Review	Universal Periodic Review (UPR) refers to the process by which the UPR Working Group examines the human rights record of all UN Member States, every four years. The purpose of the UPR is to 'ensure universal coverage and equal treatment of all States'. The UPR Working Group carries out reviews of each State's fulfilment of its human rights obligations and commitments. It meets at three sessions per year. Sixteen countries are
----------------------------------	--

	reviewed at each session. Hence, a four-year cycle is required to review all 193 member states of the UN.
Advisory Committee	The Advisory Committee functions as a think-tank for the Council, providing expertise in the form requested by the latter. It focuses on research-based advice. The Committee is not permitted to adopt resolutions or decisions but it is allowed to propose work to the Council, subject to the approval of the latter
Special Procedures	Special procedures investigate, discuss and report on specific human rights issues under a country mandate or a thematic mandate. These include: (a) Special Rapporteurs; (b) Independent Experts; (c) Working Groups; (d) Special Representatives.

43 The special procedures of the Human Rights Council comprise independent experts, with either a thematic or country-specific mandate, to advise and report on human rights. They undertake country visits, send communications, conduct thematic studies, convene expert consultations, engage in advocacy and report annually to the Council.

Note 9: For further information on the Human Rights Council and its Special Procedures, participants should refer to the "Simple Guide to the Treaty Bodies", annexed in the BLDs. This particular Guide lays down detailed information regarding the procedures under the aforementioned mechanisms. If the trainers wish, they could use this Guide to further elaborate on the powers of these subsidiaries under the Council.

1.3 Pakistan's Obligations under International Human Rights Law

44 There are nine core human rights conventions, of which Pakistan has ratified seven. These conventions, along with their status, are provided below in **Table 7**.

Table 7

<u>Convention</u>	<u>Status</u>
International Covenant on Civil and Political Rights (ICCPR)	Ratified on <u>23 June 2010</u>
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Ratified on <u>17 April 2008</u>
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Acceded to on <u>12 March 1996</u>
Convention on the Elimination of All Forms	Ratified on <u>21 September 1966</u>

of Racial Discrimination (ICERD)	
Convention on the Rights of Persons with Disabilities (CRPD)	Ratified on <u>5 July 2011</u>
Convention on the Rights of the Child (CRC)	Ratified on <u>20 November 1990</u>
Convention against Torture (CAT)	Ratified on <u>23 June 2010</u>
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) ⁴	Not ratified
Convention for the Protection of All Persons from Enforced Disappearance (CED) ⁵	Not ratified

45 The status of optional protocols is illustrated through **Table 8** below.

Table 8

Convention	Status
Optional Protocol to the Convention against Torture	Not ratified
Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty	Not ratified
Optional Protocol to the CRC on the involvement of children in armed conflict	Not ratified
Optional Protocol to the CRC on the sale of children, child prostitution and child pornography	Ratified on <u>5 July 2011</u>

Note 10: For further information on the content of all the aforementioned conventions, participants should go through their texts, annexed in the BLDs.

Reservations under the Seven Core Human Rights Conventions

⁴ Briefly, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the UN General Assembly, through resolution 45/158, on 18 December 1990. The Preamble of the Convention makes reference to the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). The Convention provides a comprehensive delineation of migrant workers' rights, taking into account the increasing link between migration and human rights. The central purpose of the Convention is not to create new rights for migrants but to ensure equality in treatment, for instance with regard to working conditions.

⁵ The International Convention for the Protection of All Persons from Enforced Disappearance was adopted by the UN General Assembly on 20 December 2006. Apart from providing a definition of "enforced disappearance" in Article 2, the Convention sets out obligations of States Parties to ensure that enforced disappearance constitutes an offence under its national law. Further, States Parties are directed to establish jurisdiction in situations where the alleged offender is not a citizen or resident of that particular State.

46 Pakistan has made certain declarations and reservations with regard to the core human rights convention. These are given in **Table 9** below.

Table 9

Convention	Reservation(s)	Declaration(s)
CEDAW	"The Government of Pakistan declares that it does not consider itself bound by paragraph 1 of article 29 of the Convention".	"The accession by (the) Government of the Islamic Republic of Pakistan to the (said Convention) is subject to the provisions of the Constitution of the Islamic Republic of Pakistan".
ICCPR	<u>Article 3:</u> "Islamic Republic of Pakistan declares that the provisions of Articles 3, 6, 7, 18 and 19 shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan and the Sharia laws". <u>Article 25:</u> "Islamic Republic of Pakistan declares that the provisions of Article 25 shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan".	
CAT	<u>Article 8:</u> "The Government of the Islamic Republic of Pakistan declares the pursuant to Article 8, paragraph 2, of the Convention, it does not take this Convention as the legal basis for cooperation on extradition with other States Parties". <u>Article 28:</u> "In accordance with Article 28, Paragraph 1, of the Convention, the Government of the Islamic Republic of Pakistan hereby declares that it does not recognize the competence of the Committee provided for in Article 20". <u>Article 30:</u> "The Government of the Islamic Republic of Pakistan does not consider itself bound by Article 30, Paragraph 1 of the Convention".	
ICESCR	"Pakistan with a view to achieving progressively the full realization of the rights recognized in the present Covenant shall use all appropriate means to the maximum of its	

Note 11: Pakistan has made an objection to the declaration made by the Government of India regarding Article 1 of the ICESCR. This objection is reproduced below.

"The right of self-determination as enshrined in the Charter of the United Nations and as embodied in the Covenants applies to all peoples under foreign occupation and alien domination. The Government of the Islamic Republic of Pakistan cannot consider as valid any interpretation of the rights of the self-determination which is contrary to the clear language of the provisions in question. Moreover, the said reservation is incompatible with the object and purpose of the Covenants. This objection shall not preclude the entry into force of the Covenant between the Islamic Republic of Pakistan and India without India benefiting from its reservations."

Division of Responsibility Post-18th Amendment

- 47 Following the 18th Constitutional Amendment Act 2010, Pakistan set in motion devolution of federal ministries to the provinces. Initially, the Ministry of Human Rights had been merged with the Ministry for Law. Recently, however, the Ministry of Human Rights has been separated from the Ministry of Law.
- 48 This development has culminated in a lack of coordination between the provinces and the center. Without uniform implementation of these Conventions in the provinces, the State of Pakistan will continue to face inconsistencies and obstacles in compliance reporting to the UN human rights treaty bodies.
- 49 In this regard, the implementation of international treaties can only be ensured through measures adopted at the Provincial level through effective coordination with the Federal Ministry for Human Rights. This is explained through **Illustrations 1-2** below.

Illustration 1: Given that there is no existing legislation which transposes either the ICCPR or the ICESCR into domestic law, there is often a need to extrapolate international best practices in the absence of any domestic legislation on the matter. For instance, in the *Contempt of Court Proceedings against Syed Yusuf Raza Gillani*,⁶ Justice Nasir-ul-Mulk of the Supreme Court, when examining the scope of rights not defined under domestic legislation, stated that "[b]y not defining the [right] the legislature perhaps intended to give it the same meaning as is broadly, universally recognized and embedded in our own jurisprudence..."⁷

⁶ *Suo Moto Case No. 4 of 2010 (Contempt of Court Proceedings against Syed Yusuf Raza Gillani)*, PLD 2012 Supreme Court 553

⁷ *Suo Moto Case No. 4 of 2010 (Contempt of Court Proceedings against Syed Yusuf Raza Gillani)*, PLD 2012 Supreme Court 553, at para. 27.

Illustration 2: By way of another example, following the 18th Amendment, the Sindh Government promulgated the Sindh Protection of Human Rights Act 2011, which provides for an intersection of international law with domestic law. The Act establishes a Sindh Human Rights Commission which is empowered (under the Act) to inquire into petitions presented to it by any person or to examine, on its own accord, violations of human rights.⁸ Following this, the Commission may then recommend the way forward to the Government in order to rectify the situation.⁹ Further, the Commission is also under an obligation to study treaties and international instruments, and to advise the Government on how to best implement them.¹⁰

50 It is clear that, in the absence of domestic provisions delineating the definition and scope of rights, we may look towards international law in its broader context and derive said definition and scope from its broad, universal meaning, as indicated by the above judgment (**Illustration 1**). Similarly, while Pakistan has not recognized the competence of either the Human Rights Committee or the Committee on Economic, Social and Cultural Rights to hear individual communications alleging violations of human rights, there is provincial legislation in the form of the Sindh Protection of Human Rights Act that provides for a forum where violations of human rights can be entertained. Similarly, in early 2014, the Government of Khyber Pakhtunkhwa enacted the Khyber Pakhtunkhwa Promotion, Protection and Enforcement of Human Rights Act 2014 which established a Human Rights Directorate to investigate human rights violations and assist the victims. This demonstrates that there are domestic mechanisms, in certain provinces, available for redress of human rights violations.

Distribution of Power between the Federation and the Provinces post-18th amendment

51 The following Constitutional Articles can be reviewed for powers of the Federation:

- Article 97
- Article 141
- Article 142
- Article 143
- Article 144
- Article 145
- Article 146
- Article 148
- Article 270AA(6)

52 These have been reproduced below in **Table 10**.

Table 10

Article 97	Extent of executive authority of Federation.
-------------------	---

⁸ Sindh Protection of Human Rights Act 2011, Section 4(i)(a)-4(i)(b).

⁹ Sindh Protection of Human Rights Act 2011, Section 4(ii).

¹⁰ Sindh Protection of Human Rights Act 2011, Section 4(vi).

	Subject to the Constitution, the executive authority of the Federation shall extend to the matters with respect to which [Majlis-e-Shoora (Parliament)] has power to make laws, including exercise of rights, authority and jurisdiction in and in relation to areas outside Pakistan: Provided that the said authority shall not, save as expressly provided in the Constitution or in any law made by [Majlis-e-Shoora (Parliament)], extend in any Province to a matter with respect to which the Provincial Assembly has also power to make laws.
Article 141	Extent of Federal and Provincial laws. Subject to the Constitution, [Majlis-e-Shoora (Parliament)] may make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof.
Article 142	Subject-matter of Federal and Provincial laws. (a) [Majlis-e-Shoora (Parliament)] 306 shall have exclusive power to make laws with respect to any matter in the Federal Legislative List; (b) Majlis-e-Shoora (Parliament) and a Provincial Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence. (c) Subject to paragraph (b), a Provincial Assembly shall, and Majlis-e-Shoora (Parliament) shall not, have power to make laws with respect to any matter not enumerated in the Federal Legislative List. (d) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province.
Article 143	Inconsistency between Federal and Provincial Law. If any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of Majlis-e-Shoora (Parliament) which Majlis-e-Shoora (Parliament) is competent to enact, then the Act of Majlis-e-Shoora (Parliament), whether passed before or after the Act of the Provincial Assembly, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void.
Article 144	Power of [Majlis-e-Shoora (Parliament)] to legislate for [one] or more Provinces by consent. (1) If [one] or more Provincial Assemblies pass resolutions to the effect that [Majlis-e-Shoora (Parliament)] may by law regulate any matter not enumerated [the Federal Legislative List] in the Fourth Schedule, it shall be lawful for [Majlis-e-Shoora (Parliament)] to pass an Act for regulating that matter accordingly, but any act so passed may, as respects any Province to which it applies, be amended or repealed by Act of the Assembly of that Province.
Article 145	Power of President to direct Governor to discharge certain functions as his Agent. (1) The President may direct the Governor of any Province to discharge as his Agent, either generally or in any particular matter, such functions relating to such areas in the Federation which are not included in any Province as may be specified in the direction.

	(2) The provisions of Article 105 shall not apply to the discharge by the Governor of his functions under clause (1).
Article 146	Power of Federation to confer powers, etc., on Provinces, in certain cases. (1) Notwithstanding anything contained in the Constitution, the Federal Government may, with the consent of the Government of a Province, entrust either conditionally or unconditionally to that Government, or to its officers, functions in relation to any matter to which the executive authority of the Federation extends. (2) An Act of [Majlis-e-Shoora (Parliament)] may, notwithstanding that it relates to a matter with respect to which a Provincial Assembly has no power to make laws, confer powers and impose duties upon a province or officers and authorities thereof. (3) Where by virtue of this Article powers and duties have been conferred or imposed upon a Province or officers or authorities thereof, there shall be paid by the Federation to the Province such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of Pakistan, in respect of any extra costs of administration incurred by the Province in connection with the exercise of those powers or the discharge of those duties.
Article 148	Obligation of Provinces and Federation. (1) The executive authority of every Province shall be so exercised as to secure compliance with Federal laws which apply in that Province. (2) Without prejudice to any other provision of this Chapter, in the exercise of the executive authority of the Federation in any Province regard shall be had to the interests of that Province. (3) It shall be the duty of the Federation to protect every Province against external aggression and internal disturbances and to ensure that the Government of every Province is carried on in accordance with the provisions of the Constitution.
Article 270AA(6)	Notwithstanding omission of the Concurrent Legislative List by the Constitution (Eighteenth Amendment) Act, 2010, all laws with respect to any of the matters enumerated in the said List (including Ordinances, Orders, rules, bye-laws, regulations and notifications and other legal instruments having the force of law) in force in Pakistan or any part thereof, or having extra-territorial operation, immediately before the commencement of the Constitution (Eighteenth Amendment) Act, 2010, shall continue to remain in force until altered, repealed or amended by the competent authority.

53 The following Constitutional provisions can be reviewed for powers of the Provinces:

- Article 137
- Article 141
- Article 142
- Article 143
- Article 144
- Article 147

- Article 148
- Article 270AA(6)

54 These provisions have been reproduced below in **Table 11**.

Table 11

Article 137	Extent of executive authority of Province. Subject to the Constitution, the executive authority of the Province shall extend to the matters with respect to which the Provincial Assembly has power to make laws: Provided that, in any matter with respect to which both [Majlis-e-Shoora (Parliament)] and the Provincial Assembly of a Province have power to make laws, the executive authority of the Province shall be subject to, and limited by, the executive authority expressly conferred by the Constitution or by law made by [Majlis-e-Shoora (Parliament)] upon the Federal Government or authorities thereof.
Article 147	Power of the Provinces to entrust functions to the Federation. Notwithstanding anything contained in the Constitution, the Government of a Province may, with the consent of the Federal Government, entrust, either conditionally or unconditionally, to the Federal Government, or to its officers, functions in relation to any matter to which the executive authority of the Province extends. [Provided that the Provincial Government shall get the functions so entrusted ratified by the Provincial Assembly within sixty days.]

Note 12: The Fourth Schedule, annexed in the BLDs, may also be reviewed in this regard.

1.4 Legal Exercise

55 In order to assess participants' understanding of the fundamental components of the international legal system, trainers must divide the participants into the following States in the UN General Assembly:

1. Pakistan
2. India
3. Afghanistan
4. United States of America
5. United Kingdom
6. France
7. China
8. Israel
9. Russia
10. Syria

Note 13: Participants may be grouped together to collectively represent the aforementioned UN Member States.

56 The topic of discussion before the mock UNGA concerns: "The situation in the Middle East". Each State must follow the UNGA procedure and the Committee should ideally pass a resolution on the subject-matter, with regard to the emerging consensus on the UDHR as *jus cogens*.

Module Two: Day Two

This Module will focus on discussion of the International Covenant on Civil and Political Rights (ICCPR).

Contents

2.1 Overview of the International Covenant on Civil and Political Rights

Key Provisions of the ICCPR

Provisions on the Human Rights Committee and reporting requirements

Individual Communications Procedure

General Comments issued by the Human Rights Committee

2.2 Demographic and other Indicators

2.3 Domestic Enforcement of the ICCPR

Pakistan's Constitutional provisions mirroring ICCPR-rights

Domestic legislation pertaining to the ICCPR-guaranteed rights

Domestic institutions responsible for compliance reporting

2.4 Legal Simulation Exercise

Module Two: Overview of the International Covenant on Civil and Political Rights

Essential Reading:

Books:-

- Shaw, Malcolm. "International Law", *Cambridge University Press* (Seventh Edition) (2014); Chapter 6

Treaties:-

- UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 [Annexed in BLDs]

Academic Articles:

- Tomuschat, Christian. "International Covenant on Civil and Political Rights", *UN Audiovisual Library of International Law*

Other:-

- International Service for Human Rights (ISHR). Simple Guide to Treaty Bodies (2010) [Annexed in BLDs]
- UN Secretary General. *Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties*, HRI/GEN/2/Rev.6 (3 June 2009) [Annexed in BLDs]

Useful Links:

- 'Overview of the Human Rights Framework' available at: <http://www.ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/>
- Human Rights Bodies – Complaints Procedures available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>

- Shah, Sikandar Ahmed. 'Right to fair trial', *Dawn* available at: <http://www.dawn.com/news/1158134/right-to-fair-trial>
- Shah, Sikandar Ahmed. 'Minority Protection', *Dawn* available at: <http://www.dawn.com/news/1171416/minority-protection>
- Sattar, Babar. 'Fettering freedoms', *The News* available at: <http://www.thenews.com.pk/Todays-News-9-343529-Fettering-freedoms>
- Mazari, Imaan Hazir. 'Protecting our Children: Kasur in Perspective', *Courting the law* available at: <http://courtingthelaw.com/2015/08/13/commentary/protecting-our-children-kasur-in-perspective/>
- Hamdani, Yaseer Latif. 'Pakistan in violation of international human rights obligations', *Daily Times* available at: <http://archives.dailytimes.com.pk/editorial/02-Apr-2012/comment-pakistan-in-violation-of-international-human-rights-obligations-yasser-latif-hamdani>
- Soofi, Ahmer Bilal. International Law Lecture Series available at: <http://ocw.vu.edu.pk/Videos.aspx?cat=Law&course=PSC401>

2.1 Overview of the International Covenant on Civil and Political Rights

1 The ICCPR establishes a framework for States to protect and promote the civil and political rights of their citizens, whilst also emphasizing the importance of rectifying violations of these rights. The UDHR, taken together with the ICCPR and the ICESCR, is known as the "International Bill of Rights".

Key Provisions of the ICCPR

2 Each provision of the ICCPR should be discussed, distinguishing between:

- Substantive provisions (those provisions that create, define or regulate rights);
- Implementing provisions (those provisions that put into effect certain definite procedures); and
- Derogation provisions (those provisions which allow for the signatory to refuse compliance with certain obligations).

Note 1: Table 1, below, highlighting the relevant substantive, implementing and derogatory provisions of the ICCPR must be discussed.

Table 1

<u>Convention</u>	<u>Substantive Provision(s)</u>	<u>Implementing Provision(s)</u>	<u>Derogation Provision(s)</u>
ICCPR	Arts. 1, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19,	Arts. 2, 4(2), 44, 48, 49, 50 and 51	Arts. 4(2)-(3) and 5(2).

	20, 21, 22, 23, 24, 25, 26 and 27.		
--	---------------------------------------	--	--

3 **Table 2** below summarizes ICCPR provisions:

Table 2: Summary of ICCPR Provisions

Article 1	<u>Self-determination</u>
Article 2	<u>State Party obligations (taking legislative or other measures to protect the rights enlisted in the Covenant; providing the right to legal recourse to those whose rights have been violated even where the violation was committed by someone acting in an official capacity)</u>
Article 3	<u>Equal right of men and women to enjoyment of civil and political rights</u>
Article 4	<u>Public emergency provisions</u>
Article 5	<u>Restriction and derogation provisions</u>
Article 6	<u>Right to life</u>
Article 7	<u>Prohibition against torture, cruel, inhuman or degrading treatment or punishment</u>
Article 8	<u>Prohibition against slavery, servitude and forced or compulsory labour</u>
Article 9	<u>Right to liberty and security</u>
Article 10	<u>Treatment of persons deprived of their liberty</u>
Article 11	<u>Prohibition against imprisonment for failure to fulfil contractual obligation</u>
Article 12	<u>Right to liberty of movement</u>
Article 13	<u>Provision on lawful aliens</u>
Article 14	<u>Due process and fair trial guarantees</u>
Article 15	<u>Prohibition against retrospective liability and punishment</u>
Article 16	<u>Right to recognition before the law</u>
Article 17	<u>Protection against arbitrary or unlawful interferences with privacy, family, home or correspondence</u>
Article 18	<u>Right to freedom of thought, conscience and religion</u>
Article 19	<u>Right to freedom of expression</u>
Article 20	<u>Prohibition of propaganda for war and incitement</u>
Article 21	<u>Right of peaceful assembly</u>
Article 22	<u>Right to freedom of association</u>
Article 23	<u>Protections afforded to family (marriage and responsibilities)</u>
Article 24	<u>Protections afforded to children (registration, nationality)</u>
Article 25	<u>Right to take part in public affairs, vote and have access to public service</u>
Article 26	<u>Non-discrimination guarantee</u>
Article 27	<u>Protection of ethnic, religious and linguistic minorities</u>
Article 28	<u>Provision on the establishment of the Human Rights Committee</u>
Articles 29-30	<u>Elections to the Human Rights Committee</u>
Articles 31-39	<u>Provisions on the composition, functions and re-election with regard to the Human Rights Committee</u>
Articles 40-47	<u>Submission of State Party reports, inter-state complaints procedure, recourse for settling disputes, submission of annual reports by the Human Rights Committee</u>

Articles 48-53	Provisions on ratification, entry into force, extension of Covenant to all units of a Federation, amendments and languages in which the Convention's texts are authentic.
-----------------------	---

Provisions of the Human Rights Committee and reporting requirements

4 In order to monitor implementation of the ICCPR, the Convention created the Human Rights Committee (HRC), the treaty-body mandated with monitoring State Party implementation of the Convention.

5 Like the other treaty bodies, the HRC comprises independent experts responsible for monitoring progress under the ICCPR through compliance reports submitted by States Parties. Compliance reports are prepared and submitted by States Parties to a Convention, as a measure of progress (or lack thereof), at given intervals and in a specified format.

Note 2: Participants should be given an explanation of the composition of the HRC. The HRC comprises nationals of States Parties to the ICCPR who have 'high moral character and recognized competence in the field of human rights' (Article 28(2) ICCPR). Further, consideration is given 'to the usefulness of the participation of some persons having legal experience' (Article 28(2) ICCPR). The members serve in their personal capacity after being elected by secret ballot.

6 Provisions on the Committee that must be highlighted include the following, provided in **Table 3** below.

Table 3

ICCPR Provision	Content Summary
Article 29	Members elected by secret ballot; each State Party may nominate not more than two persons; persons are eligible for re-nomination.
Article 30	Initial election to be held no later than 6 months after date of entry into force of the ICCPR; UN Secretary General to address invitation to States Parties to submit their nominations for membership of committee at least four months before the date of each election to the Committee; list of nominees to be prepared in alphabetical order by UNSG; persons elected to the Committee will be those nominees who obtain the largest number of votes and an absolute majority of the votes of representatives of States Parties present and voting.
Article 31	HRC cannot include more than one national of the same State; equitable geographical distribution of membership is necessary.
Article 32	Members of HRC to be elected for a term of four years; eligibility for re-election if re-nominated.
Article 33	If the unanimous opinion of the other members is that a member of the HRC has ceased to carry out functions, the HRC shall notify the UNSG who will then declare the seat of that member to be vacant; in the event of death or resignation, Chairman of HRC to inform UNSG who shall declare seat vacant from date of death or date on which resignation takes effect.

Article 34	Technicalities for filling vacancies.
Article 35	HRC to receive emoluments from UN resources.
Article 36	UN Secretary General (UNSG) to provide necessary staff and facilities for effective performance of HRC.
Article 37	UNSG to convene initial meeting of HRC at UN headquarters; after initial meeting, Committee will meet in accordance with its rules of procedure; HRC to normally meet at headquarters of UN or at UN office at Geneva.
Article 38	Members of HRC to make solemn declaration in open committee that they will perform their functions impartially and conscientiously.
Article 39	Committee to elect its officers for term of two years; option of re-election; HRC to establish its own rules of procedure but the rules shall provide that twelve members constitute a quorum and that decisions of the HRC will be made by a majority vote of the members present.
Article 42	Provision for ad hoc Conciliation Commission in case of unresolved States Parties dispute; composition of the Conciliation Commission.
Article 43	Members of HRC and ad hoc conciliation commissions shall be entitled to facilities, privileges and immunities of experts on mission for the UN.
Article 45	HRC to submit to UNGA an annual report on its activities, through the Economic and Social Council.

7 Having clarified the manner in which the Committee functions, the following salient provisions on reporting, given in **Table 4**, must be discussed with participants.

Table 4

ICCPR Provision	Content Summary
Article 40	States Parties to submit initial report within one year of entry into force of ICCPR and submit periodic reports thereafter whenever the Committee so requests; all reports to be submitted to UNSG; Committee to study all reports; States Parties may submit any observations to comments made by the Committee.
Article 41	States Parties may declare recognition of competence of the HRC to receive and consider individual communications; process for inter-state disputes.

8 A general overview of the manner in which State Party reports are to be prepared and submitted under the ICCPR must be provided. Reference may be made to the Report of the UN Secretary General on Harmonized Reporting Guidelines, annexed in the BLDs.

9 The Report of the UN Secretary General on Harmonized Reporting Guidelines was produced in response to requests by the UN General Assembly, through Resolutions 52/118 and 53/138. The Guidelines provide detailed information on the form and content of reports to be submitted by States Parties to the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Committee against Torture.

10 The Guidelines are intended to provide States Parties with information on all that is to be included in their common core document and compliance reports so as to ensure consistent form and comprehensive substance. It is the responsibility of each State Party to ensure the document is current and updated. Common core documents should not exceed 60-80 pages and should contain information of a general and factual nature. The common core document forms the initial part of each State Party report to the various treaty bodies. The Guidelines stipulate that the common core document should include detailed general background information on the situation pertaining to the enforcement of human rights. This includes factual and statistical information, for instance indicators used in assessing performance under the Millennium Development Goals and the general framework that exists in the State Party for the protection and promotion of human rights. Moreover, since the substance of many of the core human rights conventions is closely tied, the common core document should also provide information on congruent provisions pertaining to substantive rights of relevance to the human rights treaties. This prevents duplication of information.

11 Further, the Guidelines assist States Parties in understanding the manner in which data is to be collected prior to drafting of reports.

Individual Communications Procedure

12 The Human Rights Committee may, under certain conditions, consider individual petitions alleging violations of rights guaranteed under the ICCPR. Pakistan however, has not recognized the competence of the Committee to consider individual communications. Those States which have ratified the First Optional Protocol to the ICCPR recognize the competence of the Committee to consider individual communications.

Note 3: For additional information in this regard, the web link on "Human Rights Bodies – Complaints Procedures" provided under "Useful Links" can be utilized.

13 While Pakistan has not recognized the competence of the HRC to receive and consider individual communications, it has established a domestic helpline service for complaints regarding human rights violations.

14 The Ministry of Human Rights has established a helpline service for victims of human rights violations. Victims from all across the country can dial the toll free number, 1099, to receive counselling and referral services. The helpline operators work in accordance with the GATHER approach: greet, ask, tell, help, explain and return (follow-up). There are 18 basic categories of violations and 87 sub-categories. The helpline operationalized in March 2015 and has taken 163 cases since then. 23 of these cases have been referred to the relevant authorities and are under review with regard to follow-up. 140 clients have been legally advised. Each complaint has a "disposal status" – ensuring that effective follow-up safeguards exist.

General Comments issued by the Human Rights Committee

15 As per the general practice of the treaty bodies, the Human Rights Committee issues general comments intended to serve as authoritative guides for States in implementing and interpreting the ICCPR.

16 The following General Comments of particular importance for Pakistan, provided in **Table 5** below, should be discussed.

Table 5: ICCPR General Comments

<u>General Comment</u>	<u>Salient Features</u>
General Comment No. 6 on Article 6 pertaining to "The Right to Life" ¹¹	• Right to life is a 'supreme right from which no derogation is permitted even in times of public emergency which threatens the life of the nation'. It is a right 'which should not be interpreted narrowly'. • The Committee recognized that 'war and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every years'. States have 'the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life'. • The HRC highlighted the connection between the right to life under Art. 6 and prohibition of any propaganda for war under Art. 20. • Protection against arbitrary deprivation of life 'is of paramount importance', due to which States Parties 'should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces'. • The HRC also noted that States Parties should take 'specific and effective measures to prevent the disappearance of individuals'. • The 'inherent right to life' cannot be interpreted in a 'restrictive manner' – protection of this right mandates 'positive measures' being adopted by States Parties. Thus, focus is required on reducing infant mortality, increasing life expectancy and eliminating malnutrition and epidemics. • While States Parties are not mandated to abolish the death penalty, they are 'obliged to limit its use' and to 'abolish it for other than the most serious crimes'. In other words, the death penalty should be an exceptional measure.
General Comment No. 11 on	• The prohibition under Article 20 'extends to all forms

¹¹ (30 April 1982)

Article 20 pertaining to "Prohibition of Propaganda for War and Inciting National, Racial or Religious Hatred" ¹²	of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations'. Further, 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence' is also prohibited.
General Comment No. 14 on Article 6 pertaining to "The Right to Life" ¹³	• In this Comment, the HRC noted that 'it is evident that the designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confronts mankind today'. Thus, the Committee states 'the production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as a crime against humanity'.
General Comment No. 16 on Article 17 pertaining to "The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation" ¹⁴	• This right is to be protected 'against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons'. • States Parties, in their reports to the HRC, have provided insufficient information in this regard. • Further, the term 'unlawful' indicates that 'no interference can take place except cases envisaged by the law'. However, 'interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant'. • The Committee also stated that 'surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited'. Searches of a person's home 'should not be allowed to amount to harassment'. Further, 'so far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched'.
General Comment No. 17 on Article 24 pertaining to "Rights of the Child" ¹⁵	• The HRC noted that 'reports submitted by States Parties often seem to underestimate this obligation and supply inadequate information on the way in which children are afforded enjoyment of their right to a special protection'. • Children are also to benefit from all the 'civil rights

¹² (29 July 1983)

¹³ (01 January 1989)

¹⁴ (28 September 1988)

¹⁵ (17 April 1989)

	enunciated in the Covenant'. Importantly, 'convicted juvenile offenders shall be subject to a penitentiary system that involves segregation from adults and is appropriate to their age and legal status, the aim being to foster reformation and social rehabilitation'. • The HRC asserts that 'every possible economic and social measure should be taken to reduce infant mortality and to eradicate malnutrition among children to prevent them from being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labour or prostitution, or by their use in the illicit trafficking of narcotic drugs, or by any other means'. • The General Comment highlights that the 'responsibility for guaranteeing children the necessary protection lies with the family, society and the State'. Child registration is of paramount importance.
General Comment No. 18 on "Non-discrimination" ¹⁶	• Non-discrimination and equality before the law constitute 'basic' and 'general' principles pertaining to the protection of human rights. • The Committee is to be 'informed about the nature of such measures and their conformity with the principles of non-discrimination and equality before the law and equal protection of the law'. • While the CEDAW and ICERD provide specific definitions of discrimination with regard to women and race, the term 'discrimination' should be 'understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition of enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms'.
General Comment No. 19 on Article 23 pertaining to "Protection of the Family, the Right to Marriage and Equality of the Spouses" ¹⁷	• The Committee states, 'in view of the existence of the various forms of family, such as unmarried couples and their children or single parents and their children, States Parties should also indicate whether and to what extent such types of family and their members are recognized and protected by domestic law and practice'.

¹⁶ (10 November 1989)

¹⁷ (27 July 1990)

	• Marriages are only to be entered into with 'free and full consent of the intending spouses'.
General Comment No. 20 on Article 7 pertaining to "Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment" ¹⁸	• The Committee states that the 'text of article 7 allows of no limitation'. This indicates that even in situations of public emergency, no derogation is permitted from the provisions of article 7. While there exists no list of prohibited acts, the distinctions between different kinds of punishment or treatment depend 'on the nature, purpose and severity of the treatment applied'. In fact, the 'prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim'. • The Committee expressed its view that the 'prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure'. • Prolonged solitary confinement of detained or imprisoned persons constitutes a violation of article 7. • Appropriate instruction and training is required for those persons belonging to law enforcement agencies, the medical profession or any other field dealing with custody or treatment of any individual subjected to any form of arrest, detention or imprisonment. • States Parties are required to provide information on the steps being taken to establish 'safeguards for the special protection of particularly vulnerable persons'. • Systematic review of interrogation rules, instructions, methods and practices is mandatory for States Parties. • Further, to discourage violations under article 7, the law 'must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment'. • The Committee clarified that 'amnesties in respect of acts of torture' are 'generally incompatible with the duty of States to investigate such acts'.
General Comment No. 21 on Article 10 pertaining to "Humane Treatment of Persons Deprived of their Liberty" ¹⁹	• The Committee notes that treating all persons deprived of their liberty with 'humanity and with respect for their dignity is a fundamental and universally applicable rule'. Thus, 'application of this rule, as a minimum, cannot be dependent on the material resources available in the State Party'. • All penitentiary systems should 'seek the reformation

¹⁸ (30 September 1992)

¹⁹ (13 March 1993)

	and social rehabilitation of the prisoner'.
General Comment No. 22 on Article 18 pertaining to "The Right to Freedom of Thought, Conscience and Religion" ²⁰	• The HRC states that the right to freedom of thought, conscience and religion is 'far reaching and profound', encompassing 'freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others'. Article 18 'protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief'. • The Committee also highlighted that 'instruction in subjects such as the general history of religions and ethics' is only permitted if it is 'given in a neutral and objective way'. • The freedom from coercion to have or to adopt a religion or belief and the liberty of the parents and guardians to ensure religious and moral education cannot be restricted.
General Comment No. 23 on Article 27 pertaining to "The Rights of Minorities" ²¹	• An important point made in this General Comment is that 'the terms used in Article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language'. • Further, 'those terms also indicate that the individuals designed to be protected need not be citizens of the State Party'. Though the rights guaranteed under Article 27 are 'individual rights', they depend 'on the ability of the minority group to maintain its culture, language or religion'. Thus, positive measures on the part of the State are required to protect the 'identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group'.
General Comment No. 25 on Article 25 pertaining to "The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service" ²²	• The HRC makes clear that irrespective of the form of constitution or government in force, the ICCPR requires that States Parties 'adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects'. No distinctions are permitted between citizens in the enjoyment of the rights enlisted in Article 25 on grounds of 'race, colour, sex,

²⁰ (Thirty-seventh session) (10 November 1989)

²¹ CCPR/C/21/Rev.1/Add.5 (26 April 1994)

²² CCPR/C/21/Rev.1/Add.7 (27 August 1996)

	language, religion, political or other opinion, national or social origin, property, birth or other status'.
General Comment No. 27 on Article 12 pertaining to "Freedom of Movement" ²³	• The Committee states that liberty of movement is an 'indispensable condition for the free development of a person'. The 'permissible limitations which may be imposed on the rights protected under article 12 must not nullify the principle of liberty of movement'. States are to report on 'all legal and practical restrictions' on this right as well as include information in their reports 'on measures that impose sanctions on international carriers which bring to their territory persons without required documents'. • This right may only be restricted to 'protect national security, public order (<i>ordre public</i>), public health or morals and the rights and freedoms of others'. To classify as 'permissible' restrictions, the measures must be 'provided by law', 'necessary in a democratic society' and 'consistent with all other rights recognized in the Covenant'.
General Comment No. 28 on Article 3 pertaining to "The Equality of Rights between Men and Women" ²⁴	• The HRC notes that States Parties should take all 'necessary steps to enable every person' to enjoy the rights enlisted within the Covenant. These steps include 'the removal of obstacles to the equal enjoyment of such rights, the education of the population and of State officials in human rights, and the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant'. This indicates that States are to adopt positive measures in all areas rather than solely focusing on 'measures of protection'. States Parties are to provide information 'regarding the actual role of women in society so that the Committee may ascertain what measures, in addition to legislative provisions, have been or should be taken to give effect to these obligations, what progress has been made, what difficulties are encountered and what steps are being taken to overcome them'. • The obligation to ensure equality with regard to human rights enforcement extends not only to the public sector but also the private sector. Inequality embedded in 'tradition, history and culture, including religious attitudes' must also be addressed. In this

²³ CCPR/C/21/Rev.1/Add.8/Rev.1 (08 December 1997)

²⁴ CCPR/C/21/Rev.1/Add.10 (29 March 2000)

	regard, 'the high incidence of prenatal sex selection and abortion of female fetuses' are areas of particular focus. • Even in times of emergency, the equal enjoyment of human rights by women must be protected. Similarly, considering the particular vulnerability of women in times of internal or international armed conflict, States should 'inform the Committee of all measures taken during these situations to protect women from rape, abduction and other forms of gender-based violence'. • The HRC makes mention of reporting on the right to life and provides that 'States Parties should provide data on birth rates and on pregnancy – and child-birth related deaths of women'. • Further, 'gender disaggregated data should be provided on infant mortality rates'. The HRC, in this General Comment, asserts that States Parties should report on 'measures to protect women from practices that violate their right to life, such as female infanticide, the burning of widows and dowry killings'. • From the contents of this Comment, it is clear that there is a crucial link between Article 3 and Article 6. Similarly, Article 9 maintains a strong link with Article 3 in that States Parties are to provide information 'on any laws or practices which may deprive women of their liberty on an arbitrary or unequal basis, such as by confinement within the house'. • The HRC takes note of the fact that discrimination against women is intertwined with discrimination on other grounds, including race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status.
General Comment No. 29 on Article 4 pertaining to "States of Emergency"²⁵	• The HRC deems Article 4 of 'paramount importance for the system of protection for human rights under the Covenant'. While allowing a State Party to unilaterally derogate temporarily from part of its obligations under the ICCPR, Article 4 subjects this 'very measure of derogation, as well as its material consequences' to a 'specific regime of safeguards'. Further, derogation must of an 'exceptional and temporary nature'. Not every disturbance or catastrophe qualifies as a public emergency which

²⁵ CCPR/C/21/Rev.1/Add.11 (31 August 2001)

	threatens the life of the nation. The HRC advises States Parties to 'carefully consider the justification and why such a measure is necessary and legitimate in the circumstances'. • Further, the 'category of peremptory norms extends beyond the list of non-derogable provisions as given in article 4, paragraph 2'. There are inherent safeguards pertaining to derogation which are based on 'the principles of legality and the rule of law inherent in the Covenant as a whole'.
General Comment No. 32 on Article 14 pertaining to "Right to Equality before Courts and Tribunals and to Fair Trial" ²⁶	• Article 14 is of a 'complex nature'. Article 14 applies not only to procedures 'for the determination of criminal charges against individuals' but also to 'procedures to determine their rights and obligations in a suit at law'. • Each State Party must explain 'in greater detail' how the concepts of 'criminal charge' and 'rights and obligations in a suit at law' are interpreted within their respective legal systems. • The HRC requires States to provide 'more detailed information on the steps taken to ensure that equality before the courts, including equal access to courts, fair and public hearings and competence, impartiality and independence of the judiciary'. • States Parties are to 'specify the relevant constitutional and legislative texts which provide for the establishment of courts and ensure that they are independent, impartial and competent, in particular with regard to the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office; the condition governing promotion, transfer and cessation of their functions and the actual independence of the judiciary' from other state organs. • It is also pertinent to note that the HRC has stated that the provisions of article 14 apply to 'all courts and tribunals... whether ordinary or specialized'. In this regard, 'if States Parties decide in circumstances of a public emergency as contemplated by article 4 to derogate from normal procedures required under article 14, they should ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation, and respect the other conditions in paragraph 1 of article 14'.

²⁶ CCPR/C/GC/32 (23 August 2007)

	• Moreover, the requirements of paragraph 3 are 'minimum guarantees' – their observance may not always be sufficient. • With regard to the right of the accused to have 'adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing', the HRC clarifies that influences, pressures or undue interferences are prohibited. • An important point made by the HRC is that 'the accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defences and the right to challenge the conduct of the case if they believe it to be unfair'.
General Comment No. 34 on Article 19 pertaining to "Freedoms of Opinion and Expression" ²⁷	• There is no permissible exception or restriction on the right to hold opinions without interference. HRC noted that many state reports 'confine themselves to mentioning that freedom of expression is guaranteed under the Constitution or the law' – what the Committee requires is 'to know the precise regime of freedom of expression in law and in practice'. • The Committee states that 'freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights'. • The Committee also highlights that 'a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights'. • The right of access to information is also emphasized by the Committee.
General Comment No. 35 on Article 9 pertaining to "Liberty and Security of Person" ²⁸	• Article 9 has been 'narrowly understood in reports by States Parties' due to which incomplete information has been provided to the Committee. • Article 9 is 'applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.' • With regard to persons being brought 'promptly' before a judge, the HRC provides that delays must not exceed a few days. Further, 'pre-trial detention should be an exception and as short as possible'.

²⁷ CCPR/C/GC/34 (12 September 2011)

²⁸ CCPR/C/GC/35 (15 December 2014)

--	--

2.2 Demographic and other indicators

17 States Parties measure their performance under international treaties through various sets of indicators. The Report of the Secretary General on Harmonized Guidelines for Reporting sets out a list of key indicators. Trainers must discuss the following with participants:

- 1) Demographic Indicators;
- 2) Indicators of Standard of Living;
- 3) Indicators on the Political System; and
- 4) Indicators on Crime and Administration of Justice.

Note 4: These indicators are provided below in the following tables, Tables 6-9, and are additionally contained in the Report of the UNSG annexed in the BLDs.

Table 6: Demographic Indicators

Population size
Population growth rate
Population density
Population distribution by mother tongue, religion and ethnicity in rural and urban areas
Age composition
Dependency ratio (% of population <15 and >65 years)
Statistics on births and deaths
Life expectancy
Fertility rate
Average household size
Proportion of single-parent households and households headed by women
Proportion of population in rural and urban areas
Social, economic and cultural indicators

Table 7: Indicators of Standard of Living

Share of household consumption expenditures on food, housing, health and education
Proportion of population below the national poverty line
Proportion of population below the minimum level of dietary consumption
Gini coefficient relating to distribution of income or household consumption
Prevalence of underweight children < 5 years of age
Infant and maternal mortality rates
Percentage of women of child bearing age using contraception or whose partner is using contraception
Medical terminations of pregnancy as a proportion of live births
Rates of infection of HIV/AIDS and major communicable diseases
Prevalence of major communicable and non-communicable diseases
Ten major causes of death
Net enrolment in primary and secondary education
Attendance and drop-out rates in primary and secondary education
Teacher-student ratio in public funded schools
Literacy rates
Unemployment rate
Employment by major sectors of economic activity, including break-down between the formal and informal sectors
Work participation rates
Proportion of work force registered with trade unions
Per capita income
Gross Domestic Product (GDP)
Annual growth rate
External and domestic public debt
Consumer Price Index (CPI)
Gross National Income (GNI)
Proportion of international assistance provided in relation to the State budget by sector and in relation to GNI
Indicators on the political system
Social expenditures (e.g. food, housing, health, education, etc.) as proportion of total public expenditure and

Table 8: Indicators on the Political System

Number of recognized political parties at the national level
Proportion of population eligible to vote
Proportion of non-citizen adult population registered to vote
Number of complaints on the conduct of elections registered, by type of alleged irregularity
Population coverage and breakdown of ownership of major media channels (electronic, print, audio, etc.)
Number of recognized non-governmental organizations
Distribution of legislative seats by party
Percentage of women in parliament
Proportions of national and sub-national elections held within the schedule laid out by law
Average voter turnouts in the national and sub-national elections by administrative unit (e.g. states or provinces, districts, municipalities and villages)

Table 9: Indicators on Crime and Administration of Justice

Incidence of violent death and life-threatening crimes reported per 100,000 persons
Number of persons and rate (per 100,000 persons) who were arrested/brought before a court/convicted/sentenced/incarcerated for violent or other serious crimes, such as homicide, robbery, assault and trafficking
Number of reported cases of sexually motivated violence, such as rape, female genital mutilation, honour crimes and acid attacks
Maximum and average time of pre-trial detention
Prison population with a breakdown by offence and length of sentence
Incidence of death in custody
Number of persons executed under the death penalty per year
Average backlog of cases per judge at different levels of the judicial system
Number of police/security personnel per 100,000 persons
Number of prosecutors and judges per 100,000 persons
Share of public expenditure on police/security and judiciary
Of the accused and detained persons who apply for free legal aid, the proportion of those who receive it
Proportion of victims compensated after adjudication by type of crime

2.3 Domestic Enforcement of the ICCPR

Pakistan's Constitutional Provisions mirroring ICCPR-guaranteed rights

18 In order to provide participants an understanding of Constitutional protections afforded to ICCPR-guaranteed rights, the Constitutional provisions, provided in **Table 10** below, must be discussed.

Table 10: Constitutional Provisions and the ICCPR

ICCPR Provision	Constitutional Provision
Article 1: Self-Determination	-
Article 2: Non-Discrimination	Article 25: Equality of citizens (1) All citizens are equal before law and are entitled to equal protection of law. (2) There shall be no discrimination on the basis of sex. (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children. Article 26: Non-discrimination in respect of access to public places (1) In respect of access to places of public entertainment or resort not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth. (2) Nothing in clause (1) shall prevent the State from making any special provision for women and children.
Article 3: Equal Rights of Men and Women	Article 25: Equality of citizens (1) All citizens are equal before law and are entitled to equal protection of law. (2) There shall be no discrimination on the basis of sex. (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.
Article 4: Provision for derogation and non-derogation	Article 8: Laws inconsistent with or in derogation of fundamental rights to be void (1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void. (2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.

	(3) The provisions of this Article shall not apply to :- (a) any law relating to members of the Armed Forces, or of the police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them; or (b) any of the:- (i) laws specified in the First Schedule as in force immediately before the commencing day or as amended by any of the laws specified in that Schedule; (ii) other laws specified in Part I of the First Schedule; and no such law nor any provision thereof shall be void on the ground that such law or provision is inconsistent with, or repugnant to, any provision of this Chapter. (4) Notwithstanding anything contained in paragraph (b) of clause (3), within a period of two years from the commencing day, the appropriate Legislature shall bring the laws specified in [Part II of the First Schedule] into conformity with the rights conferred by this Chapter: Provided that the appropriate Legislature may by resolution extend the said period of two years by a period not exceeding six months. (5) The rights conferred by this Chapter shall not be suspended except as expressly provided by the Constitution.
Article 6: Right to Life	Article 9: Security of person No person shall be deprived of life or liberty save in accordance with law.
Article 7: Prohibition against torture, cruel, inhuman or degrading treatment or punishment	Article 14: Inviolability of dignity of man, etc. (1) The dignity of man and, subject to law, the privacy of home, shall be inviolable. (2) No person shall be subjected to torture for the purpose of extracting evidence.
Article 8: Prohibition of slavery, servitude and compulsory labour	Article 11: Slavery, forced labour, etc. prohibited (1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form. (2) All forms of forced labour and traffic in human beings are prohibited. (3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment. (4) Nothing in this Article shall be deemed to affect compulsory service:- (a) By any person undergoing punishment for an offence against any law; or (b) Required by any law for public purpose provided that no compulsory

	service shall be of a cruel nature or incompatible with human dignity.
Article 9: Right to liberty and security of person	Article 9: Security of person No person shall be deprived of life or liberty save in accordance with law.
Article 10: Treatment of Accused	Article 10: Safeguards as to arrest and detention (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice. (2) Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate. (3) Nothing in clauses (1) and (2) shall apply to any person who is arrested or detained under any law providing for preventive detention. (4) No law providing for preventive detention shall be made except to deal with persons acting in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof, or external affairs of Pakistan, or public order, or the maintenance of supplies or services, and no such law shall authorise the detention of a person for a period exceeding [three months] unless the appropriate Review Board has, after affording him an opportunity of being heard in person, reviewed his case and reported, before the expiration of the said period, that there is, in its opinion, sufficient cause for such detention, and, if the detention is continued after the said period of [three months], unless the appropriate Review Board has reviewed his case and reported, before the expiration of each period of three months, that there is, in its opinion, sufficient cause for such detention. (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, [within fifteen days] from such detention, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order: Provided that the authority making any such order may refuse to disclose facts which such authority considers it to be against the public interest to disclose. (6) The authority making the order shall furnish to the appropriate Review Board all documents relevant to the case unless a certificate, signed by a Secretary to the Government concerned, to the effect that it is not in the public interest to furnish any documents, is produced. (7) Within a period of twenty-four months commencing on the day of his first detention in pursuance of an order made under a law providing for preventive detention, no person shall be detained in pursuance of any such

	order for more than a total period of eight months in the case of a person detained for acting in a manner prejudicial to public order and twelve months in any other case: Provided that this clause shall not apply to any person who is employed by, or works for, or acts on instructions received from, the enemy [or who is acting or attempting to act in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof or who commits or attempts to commit any act which amounts to an anti-national activity as defined in a Federal law or is a member of any association which has for its objects, or which indulges in, any such anti-national activity] (8) The appropriate Review Board shall determine the place of detention of the person detained and fix a reasonable subsistence allowance for his family. (9) Nothing in this Article shall apply to any person who for the time being is an enemy alien.
Article 11: Prohibition against imprisonment for inability to fulfil contractual obligation	
Article 12: Right to liberty of movement and choice of residence	Article 15: Freedom of movement, etc. Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof.
Article 13: Expulsion of aliens	
Article 14: Due process and fair trial guarantees	Article 10A: Right to fair trial For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.
Article 15: Prohibition of retrospective punishment	Article 12: Protection against retrospective punishment (1) No law shall authorize the punishment of a person:- (a) for an act or omission that was not punishable by law at the time of the act or omission; or (b) for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.

	(2) Nothing in clause (1) or in Article 270 shall apply to any law making acts of abrogation or subversion of a Constitution in force in Pakistan at any time since the twenty-third day of March, one thousand nine hundred and fifty-six, an offence.
Article 16: Right to recognition before the law	
Article 17: Prohibition against arbitrary or unlawful interference with privacy, family, home or correspondence	Article 14: Inviolability of dignity of man, etc. (1) The dignity of man and, subject to law, the privacy of home, shall be inviolable. (2) No person shall be subjected to torture for the purpose of extracting evidence.
Article 18: Right to freedom of thought, conscience and religion	Article 20: Freedom to profess religion and to manage religious institutions Subject to law, public order and morality:- (a) Every citizen shall have the right to profess, practice and propagate his religion; and (b) Every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions Article 21: Safeguard against taxation for purposes of any particular religion No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own Article 22: Safeguards as to educational institutions in respect of religion, etc. (1) No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own. (2) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation. (3) Subject to law: (a) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that

	community or denomination; and (b) No citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth. (4) Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.
Article 19: Right to hold opinions/freedom of expression	Article 19: Freedom of speech, etc. Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence.
Article 20: Prohibition of propaganda for war and hate speech	
Article 21: Right of peaceful assembly	Article 16: Freedom of assembly Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order
Article 22: Freedom of association	Article 17: Freedom of association (1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality. (2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final. (3) Every political party shall account for the source of its funds in accordance with law
Article 23:	Article 35: Protection of family, etc.

Family and marital rights	The State shall protect the marriage, the family, the mother and the child.
Article 24: Child protection/registration and rights	Article 35: Protection of family, etc. The State shall protect the marriage, the family, the mother and the child.
Article 25: Right to take part in conduct of public affairs/vote/serve	Article 27: Safeguard against discrimination in service (1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth: Provided that, for a period not exceeding [forty] years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan: Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex [:] Provided also that under-representation of any class or area in the service of Pakistan may be redressed in such manner as may be determined by an Act of Majlis-e-Shoora (Parliament) (2) Nothing in clause (1) shall prevent any Provincial Government, or any local or other authority in a Province, from prescribing, in relation to any post or class of service under that Government or authority, conditions as to residence in the Province, for a period not exceeding three years, prior to appointment under that Government or authority.
Article 26: Non-Discrimination and Equal Protection of the Law	Article 25: Equality of citizens (1) All citizens are equal before law and are entitled to equal protection of law. (2) There shall be no discrimination on the basis of sex. (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children
Article 27: Minority rights to enjoy their culture, profess and practice their	Article 28: Preservation of language, script and culture Subject to Article 251 any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and

religion and use their own language	subject to law, establish institutions for that purpose.
-------------------------------------	--

Domestic legislation pertaining to ICCPR-guaranteed rights

19 In order to provide a comprehensive overview of the domestic status of rights guaranteed in the ICCPR, participants should be briefly introduced to some of the following legislative instruments, provided below in **Table 11**, which provide similar protections as afforded under the ICCPR.

Table 11

National Commission on the Status of Women Act 2012
Domestic Violence (Prevention and Protection) Act 2012 (Passed by senate – not law yet)
Investigation for Fair Trial Act 2013
National Commission on Human Rights Act 2012
Action in Aid of Civil Power Regulations 2011
Protection against Harassment of Women at the Workplace Act 2010
Protection of Women (Criminal Laws) (Amendment) Act 2006
Political Parties Order 2002
Political Parties Rules 2002
Election Commission Order 2002
Juvenile Justice System Ordinance 2000
Bonded Labour System (Abolition) Act 1992
Pakistan Prison Rules 1978
Probation of Offenders Ordinance 1960
Probation of Offenders Rules 1961

20 Participants should be informed of the effect of the 21st Constitutional Amendment, annexed in the BLDs, on the domestic implementation of the ICCPR. Although the 21st Constitutional Amendment is only intended to remain effective for a period of two years (sunset clause), its enactment has implications for the fair trial and due process guarantees under Articles 14 and 15 of the ICCPR as well as Pakistan's own Constitution.

21 The purpose of the amendment is to try miscreants, terrorists and foreign funded elements through military courts. Therefore, one major consequence of the enactment of amendment is the establishment of military courts. The establishment of military courts has been criticized for violating human rights obligations and standards.

22 In light of the Army Public School (APS) attack in Peshawar on 16 December 2014, and the extraordinary situation Pakistan finds itself in, the incumbent government decided that these courts needed to be established. While the military courts have been criticized for infringing upon basic human rights and due process rights, the Supreme Court of Pakistan has declared them legal. The full text of the judgment may be found at the following link:

23 Important excerpts from the judgment and their analysis are annexed to the BLDs, under "Supreme Court Judgment on Military Courts".

24 The lack of transparency associated with military courts has resulted in allegations being levelled against Pakistan regarding due process violations – these allegations set Pakistan back with regard to the GSP+ Status afforded to it in 2014. In this regard, participants should be referred to the "GSP+ Policy Brief", annexed in the BLDs.

25 The fact remains that the military courts are only intended to remain effective for a period of two years, as aforementioned. Therefore, the sunset clause acts as a counter-argument against those levelling allegations against military courts. In fact, the guarantees for fair trial and due process (including rights of appeal) are protected even within the framework of operation of military courts. In fact, the enactment of the 21st Constitutional Amendment demonstrates Pakistan's compliance with its international legal obligations, particularly UN Security Council Resolutions 1373 and 1267, to take action against non-state actors engaging in terrorist activities.

26 Participants can be referred to the following for access to UN Security Council Resolutions 1373 and 1267 respectively:

- Resolution 1373: <http://www.refworld.org/docid/3c4e94552a.html>
- Resolution 1267: <http://www.refworld.org/docid/3b00f2298.html>

27 Military courts and tribunals are allowed under international law and there exists no prohibition against their establishment in order to prosecute those waging war against the State and engaging in terrorist activities. In fact, as per **the Human Rights Committee's General Comment No. 32** on Article 14 (right to equality before courts and tribunals and to a fair trial):

28 *"The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized, civilian or military. The Committee notes the existence, in many countries, of military or special courts which try civilians. While the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned. The Committee also notes that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14. Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State Party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials."*

Note 5: Participants may be referred to the following link for more information on General Comment No. 32: <http://www1.umn.edu/humanrts/gencomm/hrcom32.html>

Domestic institutions responsible for compliance reporting

29 The alteration in working structure following enactment of the 18th Constitutional Amendment must be explained:

- Various provincial governments have established Human Rights Departments at the provincial level that supplement the work of the Federal Ministry of Human Rights.

30 In this regard, discussion on the roles played by the following in compliance reporting is pertinent: National Commission of Human Rights (NCHR), National Commission on the Status of Women (NCSW), National Commission for Minorities, and the National Commission on the Rights of the Child (NCRC). This information is provided in **Table 12** below.

Table 12

National Commission of Human Rights (NCHR)	• The NCHR was established pursuant to the National Commission for Human Rights Act 2012. • The Commission is a National Human Rights Institute established in accordance with the requirements of the Paris Principles. • The Commission comprises a Chairperson, one member from each Province, Federally Administered Tribal Areas and Islamabad Capital Territory, the Chairperson of the National Commission on the Status of Women, one member from minority communities and a Secretary. • The Commission has a wide mandate, comprising the following functions: <i>suo-moto</i> or petition-basis inquiry into complaints of human rights violations and negligence in the prevention of such violations by a public servant. • It is also authorized to intervene in any proceeding involving any allegation of violation of human rights pending before a court by making an application for becoming a party to the proceedings before such court. • Additionally, the Commission is empowered to visit any jail, place of detention or any other institution or place under the control of the Government or its agencies where convicts, under trial prisoners, detainees or other persons are lodged or detained for purposes of ascertaining the legality of their detention. • The NCHR has the power to review safeguards provided by or under the Constitution or any other law and recommend
---	--

	adoption of new legislation, amendment of existing laws and the adoption or amendment of administrative measures for their effective implementation. • Further, its tasks include reviewing the factors that inhibit the enjoyment of human rights, studying treaties and other international instruments on human rights and make recommendations for their effective implementation, undertaking and promoting research in the field of human rights and spreading human rights literacy and awareness among different segments of society. • It has the authority to direct investigations and inquiries in respect of any incident concerning a human rights violation. It is also empowered to submit independent reports to the Government on the state of human rights in Pakistan, develop a national plan of action for the promotion and protection of human rights and carry out any other functions that it may deem necessary for the promotion of human rights.
National Commission on the Status of Women (NCSW)	• The NCSW comprises a Chairperson (who has to be a woman), two members from each Province (one of whom must be a woman), one woman member each from FATA, Azad Jammu and Kashmir, Gilgit-Baltistan, the Islamabad Capital Territory and from minorities. • It is also to consist of five ex-officio members who shall be representatives of the Ministries of Law, Finance, Foreign Affairs, Interior and the Ministry concerned with the subject of women's rights. • The NCSW also has a Chairperson or designated member of each Provincial Commission on Women's Rights as well as Secretary of the Commission. • It maintains a wide scope of powers and functions ranging from examining policy, programs and other measures taken by the Federal Government for gender equality to reviewing all Federal laws, rules and regulations affecting the status and rights of women. • It can sponsor, steer and encourage research to generate information, analysis and studies and maintain a database relating to women and gender issues. • It can recommend to the Federal Government the signing or ratifying of international instruments affecting the rights of women. • It also acts as a monitoring mechanism and institutional structure for redressal of violation of women's rights.
National Commission for Minorities	• The Commission comprises a Chairperson, Vice Chairperson and ten members to be nominated by the Federal Government (from the minority communities).
National Commission	• The NCRC comprises a Chairperson, Members ex officio

on the Rights of the Child (NCRC)	consisting of the Secretary of the Division, a representative of the Foreign Affairs Division, a representative of Interior Division, the Chairperson of the NCHR, the Chairperson of the NCSW, Chairperson of Provincial Commissions on the Rights of the Child, six members, one each from each Province, ICT and FATA, one child and the Secretary of the Commission. • The NCRC has the following functions: examining existing or proposed legislation and administrative instruments, engaging with provincial commissions, examining and reviewing any laws or policies, presenting to the Federal and/or Provincial governments reports upon working of such laws or policies, inquiring into violations of child rights, examining all factors inhibiting enjoyment of rights of children, sponsoring, steering and encouraging research, spreading awareness and promoting dialogue on child rights, examining international instruments and undertaking periodical reviews of existing policies and programmes on child rights while making recommendations for their effective implementation in the best interest of children, advising the Federal Government to sign, ratify or accede to any international treaty, protocol, inquiring into complaints of violations of child rights and undertaking any other functions assigned to it by the Federal Government pertaining to the promotion and protection of child rights.
---	--

31 With regard to the ICCPR, the Election Commission of Pakistan (ECP) has an important role to play in the protection of civil and political rights guaranteed under the Covenant. This is important to understand given the recent rise in voter awareness and turnout in Pakistan.

32 The Government must also engage with certain NGOs, civil society and relevant organizations, which are working in the field of human rights protection, to prepare comprehensive compliance reports. These organizations, *inter alia*, include:

- (i) The Human Rights Commission of Pakistan (HRCP);
- (ii) Aurat Foundation (AF);
- (iii) United Nations High Commission for Human Rights (UNHCHR);
- (iv) Human Rights Watch (HRW);
- (v) Asian Commission of Human Rights (ACHR);
- (vi) Democracy Reporting International (DRI).

33 Participants must be given an explanation of the role of the following Federal and Provincial set-ups with regard to the ICCPR:

- (i) National Counter Terrorism Authority (NACTA);
- (ii) Election Commission of Pakistan (ECP);
- (iii) Ministry of Information and Broadcasting;
- (iv) Military Courts;
- (v) Ministry of Religious Affairs and Inter-Faith Harmony;

- (vi) Human Rights and Minorities Affairs Department Punjab;
- (vii) Minority Affairs Department Sindh;
- (viii) Religious Affairs and Inter-Faith Harmony Department Balochistan;
- (ix) Women Development Departments in all the provinces;
- (x) Inter Provincial Coordination Departments in all the provinces.

Activity: Reference may be made to the elections for district and village council seats in Hangu and parts of Malakand (in the Khyber-Pakhtunkhwa province) where women were barred from voting²⁹ to engage participants in a discussion on:

- (i) Which ICCPR rights were violated in this situation;**
- (ii) The role of the ECP in ensuring the right to vote for all;**
- (iii) The responsibility of political parties in protecting the right to vote for all.**

Answer Key:

- (i) ICCPR provisions to be discussed: Article 1(1); Article 2(1); Article 3; Article 25; Article 26.
- (ii) The ECP is a constitutionally established federal institution responsible for supervising all elections, including to local governments, state parliament, provincial legislatures as well as indirect election of the President of Pakistan. Under Article 222(d) of the Constitution of Pakistan, the Election Commission is entrusted with supervising the conduct of elections, election petitions and decision of doubts and disputes arising in connection with elections. Thus, the ECP is responsible for the setting up of female polling stations in constituencies and/or ensuring there are a set number of polling booths for women within male polling stations. The distribution of polling material to women's polling booths is another responsibility entrusted to the ECP.
- (iii) There have been deals between various political parties to disenfranchise women. Political parties must push for the criminalization of prevention of women from voting. As the law currently stands, disenfranchisement of women cannot be a ground for declaring an election void. All political parties must put their weight behind reform of this provision. Further, any political party that colludes in women disenfranchisement should lose the right to join the electoral process.

²⁹ Boone, Jon. "Women barred from voting in parts of Pakistan". *The Guardian*, 29 May 2015. Web, available at: <http://www.theguardian.com/world/2015/may/29/women-barred-voting-pakistan-khyber-pakhtunkhwa> [Accessed 06/11/2015 at 09:51]; "Dir women protest vote bar", *Dawn News*, 06 June 2015. Web, available at: <http://www.dawn.com/news/1186489> [Accessed 24/11/2015 at 10:28]; Karim, Meeran. "Bar on women voters criticized". *The News*, 09 May 2015. Web, available at: <http://www.thenews.com.pk/Todays-News-5-317115-Bar-on-women-voters-criticised> [Accessed 24/11/2015 at 10:30]; Rehman, I. "Enforcing women's right to vote". *Dawn News*, 14 May 2015. Web, available at: <http://www.dawn.com/news/1181766> [Accessed 24/11/2015 at 10:32]

2.4 Legal Simulation Exercise

34 To assess the understanding of the participants, trainers should distribute the following legal simulation exercise:

35 "Mr. Joseph, a Christian politician from Gujranwala, announced his political manifesto at a public rally prior to the 2015 general elections. In the manifesto, he identifies as his priorities: amendment of the Constitution of Pakistan to allow minorities and females to become President and amendment of discriminatory laws against minorities. Mr. Joseph criticizes the ruling party for failing to protect minorities and women.

36 Mr. Shah, the leader of Pakistan's ruling party, at a public rally the next day, declares Mr. Joseph an 'infidel' for his criticism of laws Mr. Shah deems 'fundamental Islamic principles'. Mr. Shah proceeds to criticize Mr. Joseph's followers, stating, "This country was created for Muslims to be governed according to Shariah. Those who cannot accept that should leave Pakistan."

37 The following day, Mr. Shah and Mr. Joseph's workers are campaigning in the same vicinity when a few workers from Mr. Shah's camp attack Mr. Joseph's political workers. Instead of breaking up the fight, police join Mr. Shah's workers in their assault and subsequently begin arresting Mr. Joseph's supporters. The Government orders police to arrest Mr. Joseph.

38 Identify the ICCPR-rights invoked in this situation. Identify the considerations Mr. Joseph would need to take into account prior to submitting a complaint to the Human Rights Committee."

Legal Simulation Answer Key:-

39 The key provisions of the ICCPR in this situation are as follows:

- Article 2
- Article 3
- Article 5
- Article 9
- Article 12
- Article 17
- Article 18
- Article 19
- Article 20
- Article 21
- Article 25

40 The following should be discussed by the participants:

- Pakistan has not recognized the competence of the Human Rights Committee to consider individual complaints from its citizens.

- Had Pakistan ratified the First Optional Protocol to the ICCPR and explicitly recognized the competence of the Human Rights Committee to receive and examine individual complaints, Mr. Joseph would need to take the following factors into account:
- Any time limits established by the Human Rights Committee for admissibility of complaints (even where there are no time limits, it is advised that a complaint be submitted as soon as possible);
- Criteria for admissibility:
 - (i) Mr. Joseph may either submit a complaint on his behalf only as he is the direct victim of the alleged violation, or he may also obtain the requisite authorization from his political workers and submit the complaint on their behalf.
 - (ii) All domestic remedies must have been exhausted unless Mr. Joseph can prove that pursuing domestic remedies would either be unduly prolonged or ineffective in this case;
 - (iii) The complaint cannot be pending consideration before any other regional or international settlement mechanism;
 - (iv) The complaint cannot constitute an abuse of the complaints procedure, i.e. it cannot be frivolous;
 - (v) The complaint must not be 'manifestly ill-founded';
 - (vi) The incident in question must have occurred after the entry into force of the ICCPR.
- The form and content of the communication including:
 - (i) Facts of the case forming the basis of the complaint;
 - (ii) Basic personal information regarding the complainant;
 - (iii) Proof of consent of Mr. Joseph's party workers if the complaint is filed on their behalf;
 - (iv) Steps taken to exhaust local remedies;
 - (v) Steps taken to submit the complaint to any other international or regional body;
 - (vi) Reasons why Mr. Joseph considers that his rights have been violated (specific reference to ICCPR provisions is preferable);
 - (vii) All documents relevant for substantiation purposes.

Module Three: Day Three

This Module will focus on the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Contents

3.1 Overview of the International Covenant on Economic, Social and Cultural Rights

Key Provisions of the ICESCR

Provisions on the Committee on Economic, Social and Cultural Rights and reporting requirements

Individual Communications Procedure

General Comments issued by the Committee on Economic, Social and Cultural Rights

3.2 Domestic Enforcement of the ICESCR

Pakistan's Constitutional provisions mirroring ICESCR-rights

Domestic legislation pertaining to the ICESCR-guaranteed rights

Domestic institutions responsible for compliance reporting

3.3 Legal Simulation Exercise

Module Three: Overview of the International Covenant on Economic, Social and Cultural Rights

Essential Reading:

Books:-

- Shaw, Malcolm. "International Law", *Cambridge University Press* (Seventh Edition) (2014); Chapter 6

Treaties:-

- UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p.3 [Annexed in BLDs]

Academic Articles:

- Alston, Philip; Quinn, Gerard. "The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights", *Human Rights Quarterly*, Vol 9, No. 2 (May 1987), pp. 156-229

- Saul, Ben; Kinley, David; Mowbray, Jacqueline. "Introduction to the International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials", *Legal Studies Research Paper No. 14/05 (January 2014)*

Other:-

- International Service for Human Rights (ISHR). Simple Guide to Treaty Bodies (2010) [Annexed in BLDs]
- UN Secretary General. *Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties*, HRI/GEN/2/Rev.6 (3 June 2009) [Annexed in BLDs]

Useful Links:

- 'Overview of the Human Rights Framework' available at: <http://www.ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/>
- Human Rights Bodies – Complaints Procedures available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>
- Mazari, Imaan Hazir. 'The right to education', *Express Tribune* available at: <http://tribune.com.pk/story/973503/the-right-to-education/>
- 'UN rights treaty: Pakistan's forgotten promise', *Express Tribune* available at: <http://tribune.com.pk/story/982357/un-rights-treaty-pakistans-forgotten-promise/>
- Mazari, Imaan Hazir. 'Protecting our Children: Kasur in Perspective', *Courting the law* available at: <http://courtingthelaw.com/2015/08/13/commentary/protecting-our-children-kasur-in-perspective/>
- Soofi, Ahmer Bilal. International Law Lecture Series available at: <http://ocw.vu.edu.pk/Videos.aspx?cat=Law&course=PSC401>

3.1 Overview of the International Covenant on Economic, Social and Cultural Rights

1 The ICESCR encourages States to grant economic, social and cultural rights to all citizens and provide labour rights, rights to health, education and an adequate standard of living. As mentioned previously, the UDHR, taken together with the ICCPR and the ICESCR, is commonly referred to as the "International Bill of Rights".

Key Provisions of the ICESCR

2 Each provision of the ICESCR should be discussed, distinguishing between:

- Substantive provisions;
- Implementing provisions; and
- Derogation provisions.

Note 1: Table 1, below, highlighting the relevant substantive, implementing and derogatory provisions of the ICESCR must be discussed.

Table 1

<u>Convention</u>	<u>Substantive Provision(s)</u>	<u>Implementing Provision(s)</u>	<u>Derogation Provision(s)</u>
ICESCR	Arts. 1, 6, 7, 8, 9, 10, 11, 12, 13 and 15.	Arts. 2, 3, 5(1), 14, 23, 26, 27 and 29.	Arts. 4 and 5(2)

3 **Table 2** below summarizes ICESCR provisions:

Table 2: Summary of ICESCR Provisions

Article 1	<u>Self-determination</u>
Article 2	<u>State Party obligations (to take steps, in accordance with the maximum of available resources, to progressively realize the rights in the Treaty; guarantee of the rights enlisted without any sort of discrimination)</u>
Article 3	<u>Equal right of men and women to enjoyment of social, economic and cultural rights</u>
Article 4	<u>Limitation provision (limitations only permissible where they are compatible with the nature of the right and solely for the purpose of promoting public good in a democratic society)</u>
Article 5	<u>Restriction and derogation provisions (no one is permitted to destroy any of the rights enlisted therein)</u>
Article 6	<u>Right to work</u>
Article 7	<u>Right to enjoyment of just and favourable conditions of work</u>
Article 8	<u>Right to form and join trade unions</u>
Article 9	<u>Right to social security</u>
Article 10	<u>Protection and assistance to be accorded to the family (special protection and assistance for mothers and children)</u>
Article 11	<u>Right to adequate standard of living (food, clothing, housing and continuous improvement of living conditions)</u>
Article 12	<u>Right to enjoy highest attainable standard of physical and mental health</u>
Article 13	<u>Right to education</u>
Article 14	<u>Compulsory and free primary education</u>
Article 15	<u>Right to take part in cultural life, enjoy benefits of scientific progress and artistic production</u>
Articles 16-17	<u>State Party reports</u>
Articles 18-19	<u>Arrangements and reports by the Economic and Social Council</u>
Article 20	<u>State Party comments to general recommendations or otherwise</u>
Article 21	<u>Submission of reports to the General Assembly the Economic and Social Council</u>
Articles 22-25	<u>Provisions on technical assistance and holding of regional and technical meetings</u>

Articles 26-31	Provisions on ratification, instruments of accession, application of Convention to all units of a Federation, amendments and languages in which texts of the Convention are authentic.
-----------------------	--

Provisions on the Committee on Economic, Social and Cultural Rights and reporting requirements

4 In order to monitor implementation of the ICESCR, the Convention created the Committee on Economic, Social and Cultural Rights (CESCR), the treaty-body mandated with monitoring State Party implementation of the Convention.

5 Like the other treaty bodies, the CESCR comprises independent experts responsible for monitoring progress under the ICESCR through compliance reports submitted by States Parties.

Note 2: Participants should be given an explanation of the composition of the CESCR. The CESCR comprises 18 independent experts responsible for monitoring implementation of the ICESCR. The CESCR was established via Economic and Social Council (ECOSOC) Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the UN ECOSOC listed in Part IV of the Covenant. The Committee meets in Geneva and usually holds two sessions per year, comprising a three-week plenary and one-week pre-sessional working group. Members of the Committee are elected for a term of four years by States Parties and may be re-elected if nominated.

6 Provisions on the Committee that must be highlighted include the following, provided in **Table 3** below.

Table 3

ICESCR Provision	Content Summary
Article 18	The Committee may make arrangements with specialized agencies with regard to progress made in achieving observance of the Covenant.
Article 19	The Committee may transmit to the Human Rights Council reports concerning human rights submitted by States Parties for study and general recommendation.
Article 21	The Committee may submit reports with recommendations, of a general nature, to the General Assembly.
Article 22	The Committee is authorized to bring to the attention of the other organs of the UN any matters arising out of the reports of States Parties.

7 Having clarified the manner in which the Committee functions, the following salient provisions on reporting, given in **Table 4**, must be discussed with participants.

Table 4

ICESCR Provision	Content Summary
Article 16	States Parties to the ICESCR to submit reports to the Secretary-General of the UN.
Article 17	States Parties to submit initial report within one year of entry into force of the ICESCR; reports to indicate factors and difficulties affecting fulfilment of obligations under the Covenant.
Article 20	States Parties to submit comments to any general recommendation issued by the Committee.

8 A general overview of the manner in which State Party reports are to be prepared and submitted under the ICESCR must be provided. Reference may be made to the Report of the UN Secretary General on Harmonized Reporting Guidelines, annexed in the BLDs.

Individual Communications Procedure

9 The Committee on Economic, Social and Cultural Rights may, under certain conditions, consider individual petitions alleging violations of rights guaranteed under the ICESCR. Pakistan, however, has not recognized the competence of the Committee to consider individual communications. Those States which have ratified the Optional Protocol to the ICESCR recognize the competence of the Committee to consider individual communications.

Note 3: For additional information in this regard, the web link on "Human Rights Bodies – Complaints Procedures" provided under "Useful Links" can be utilized.

10 While Pakistan has not recognized the competence of the CESCRR to receive and consider individual communications, it has established a domestic helpline service for complaints regarding human rights violations.

11 The Ministry of Human Rights has established a helpline service for victims of human rights violations. Victims from all across the country can dial the toll free number, 1099, to receive counselling and referral services. The helpline operators work in accordance with the GATHER approach: greet, ask, tell, help, explain and return (follow-up). There are 18 basic categories of violations and 87 sub-categories. The helpline operationalized in March 2015 and has taken 163 cases since then. 23 of these cases have been referred to the relevant authorities and are under review with regard to follow-up. 140 clients have been legally advised. Each complaint has a "disposal status" – ensuring that effective follow-up safeguards exist.

General Comments issued by the Committee on Economic, Social and Cultural Rights

12 As per the general practice of the treaty bodies, the CESCRR issues general comments intended to serve as authoritative guides for States in implementing and interpreting the ICESCR.

13 The following General Comments of particular importance for Pakistan, provided in **Table 5** below, should be discussed.

Table 5: ICESCR General Comments

<u>General Comment</u>	<u>Salient Features</u>
General Comment No. 3 on the nature of States Parties obligations (Article 2, para. 1) ³⁰	• Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions of the Covenant. It describes the nature of the general legal obligations undertaken by States Parties to the Covenant. Those obligations include both what may be termed (following the work of the International Law Commission) obligations of conduct and obligations of result. • While great emphasis has sometimes been placed on the difference between the formulations used in this provision and that contained in the equivalent Article 2 of the International Covenant on Civil and Political Rights, it is not always recognized that there are also significant similarities. In particular, while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect. • The means which should be used in order to satisfy the obligation to take steps are stated in article 2 (1) to be “all appropriate means, including particularly the adoption of legislative measures”. • The Committee recognizes that, in many instances, legislation is highly desirable and in some cases may even be indispensable. For example, it may be difficult to combat discrimination effectively in the absence of a sound legislative foundation for the necessary measures. In fields such as health, the protection of children and mothers, and education, as well as in respect of the matters dealt with in Articles 6 to 9, legislation may also be an indispensable element for many purposes. • Similarly, the Committee underlines the fact that even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members

³⁰ (1 January 1991)

	of society can and indeed must be protected by the adoption of relatively low cost targeted programmes. In support of this approach the Committee takes note of the analysis prepared by UNICEF entitled “Adjustment with a human face: protecting the vulnerable and promoting growth, the analysis by UNDP in its Human Development Report 1990 and the analysis by the World Bank in the World Development Report 1990.
General Comment No. 4 on the right to adequate housing (Article 11(1))³¹	• The human right to adequate housing, which is derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights. • In the Committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. • Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This “the inherent dignity of the human person” from which the rights in the Covenant are said to derive requires that the term “housing” be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in Article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities all at a reasonable cost”. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute

³¹ (1 January 1992)

	“adequate housing” for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. These include: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.
General Comment No. 5 on persons with disabilities ³²	• Both de jure and de facto discrimination against persons with disabilities have a long history and take various forms. They range from invidious discrimination, such as the denial of educational opportunities, to more “subtle” forms of discrimination such as segregation and isolation achieved through the imposition of physical and social barriers. • For the purposes of the Covenant, “disability based discrimination” may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights. • Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. • The effects of disability based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services. • Despite some progress in terms of legislation over the past decade, the legal situation of persons with disabilities remains precarious. In order to remedy past and present discrimination, and to deter future discrimination, comprehensive anti-discrimination legislation in relation to disability would seem to be indispensable in virtually all States Parties. Such legislation should not only provide persons with disabilities with judicial remedies as far as possible

³² (1 January 1995)

	and appropriate, but also provide for social policy programmes which enable persons with disabilities to live an integrated, self-determined and independent life.
General Comment No. 6 on the economic, social and cultural rights of older persons ³³	• The world population is ageing at a steady, quite spectacular rate. • The International Covenant on Economic, Social and Cultural Rights does not contain any explicit reference to the rights of older persons, although Article 9, dealing with "the right of everyone to social security, including social insurance", implicitly recognizes the right to old-age benefits. Nevertheless, in view of the fact that the Covenant's provisions apply fully to all members of society, it is clear that older persons are entitled to enjoy the full range of rights recognized in the Covenant. • This approach is also fully reflected in the International Plan of Action on Ageing. Moreover, in so far as respect for the rights of older persons requires special measures to be taken, States Parties are required by the Covenant to do so to the maximum of their available resources.
General Comment No. 7 on the right to adequate housing: forced evictions ³⁴	• Forced evictions are prima facie incompatible with the requirements of the Covenant. The use of the term "forced evictions" is, in some respects, problematic. This expression seeks to convey a sense of arbitrariness and of illegality. • To many observers, however, the reference to "forced evictions" is a tautology, while others have criticized the expression "illegal evictions" on the ground that it assumes that the relevant law provides adequate protection of the right to housing and conforms with the Covenant, which is by no means always the case. • Similarly, it has been suggested that the term "unfair evictions" is even more subjective by virtue of its failure to refer to any legal framework at all. • The international community, especially in the context of the Commission on Human Rights, has opted to refer to "forced evictions", primarily since all suggested alternatives also suffer from many such defects. • The term "forced evictions" as used throughout this

³³ (7 October 1996)

³⁴ (20 May 1997)

	general comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. • The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights. • The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelationship and interdependency which exists among all human rights, forced evictions frequently violate other human rights. • Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.
General Comment No. 9 on the domestic application of the Covenant ³⁵	• In general, legally binding international human rights standards should operate directly and immediately within the domestic legal system of each State Party, thereby enabling individuals to seek enforcement of their rights before national courts and tribunals. • The rule requiring the exhaustion of domestic remedies reinforces the primacy of national remedies in this respect. • The existence and further development of international procedures for the pursuit of individual claims is important, but such procedures are ultimately only supplementary to effective national remedies. • The Covenant does not stipulate the specific means by which it is to be implemented in the national legal order. And there is no provision obligating its comprehensive incorporation or requiring it to be accorded any specific type of status in national law. • Although the precise method by which Covenant rights are given effect in national law is a matter for

³⁵ (3 December 1998)

	each State Party to decide, the means used should be appropriate in the sense of producing results which are consistent with the full discharge of its obligations by the State Party. • The means chosen are also subject to review as part of the Committee's examination of the State Party's compliance with its obligations under the Covenant.
General Comment No. 11 on plans of action for primary education (Article 14) ³⁶	• The obligation under Article 14 needs to be scrupulously observed in view of the fact that in developing countries, 130 million children of school age are currently estimated to be without access to primary education, of whom about two thirds are girls.
General Comment No. 12 on the right to adequate food (Article 11) ³⁷	• The right to adequate food, like any other human right, imposes three types or levels of obligations on States Parties: the obligations to respect, to protect and to fulfil. • In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide. • The obligation to respect existing access to adequate food requires States Parties not to take any measures that result in preventing such access. • The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. • The obligation to fulfil (facilitate) means that the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. • Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. This obligation also applies for persons who are victims of natural or other disasters. • Some measures at these different levels of obligations of States Parties are of a more immediate nature, while other measures are more of a long-term character, to achieve progressively the full realization of the right to food. • The most appropriate ways and means of implementing the right to adequate food will

³⁶ (10 May 1999)

³⁷ (12 May 1999)

	inevitably vary significantly from one State Party to another. • Every State will have a margin of discretion in choosing its own approaches, but the Covenant clearly requires that each State Party take whatever steps are necessary to ensure that everyone is free from hunger and as soon as possible can enjoy the right to adequate food. This will require the adoption of a national strategy to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of policies and corresponding benchmarks. • It should also identify the resources available to meet the objectives and the most cost-effective way of using them. The strategy should be based on a systematic identification of policy measures and activities relevant to the situation and context, as derived from the normative content of the right to adequate food and spelled out in relation to the levels and nature of State parties' obligations referred to in paragraph 15 of the present general comment. This will facilitate coordination between ministries and regional and local authorities and ensure that related policies and administrative decisions are in compliance with the obligations under article 11 of the Covenant.
General Comment No. 13 on the right to education (Article 13) ³⁸	• Education is both a human right in itself and an indispensable means of realizing other human rights. • As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. • Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. • The importance of education, however, is not merely practical – a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.

³⁸ (8 December 1999)

	• The International Covenant on Economic, Social and Cultural Rights (ICESCR) devotes two articles to the right to education: Articles 13 and 14. Article 13, the longest provision in the Covenant, is the most wide ranging and comprehensive article on the right to education in international human rights law. • While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States Parties various obligations which are of immediate effect. • States Parties have immediate obligations in relation to the right to education, such as the “guarantee” that the right “will be exercised without discrimination of any kind” (art.2 (2)) and the obligation “to take steps” (art. 2 (1)) towards the full realization of article 13. Such steps must be “deliberate, concrete and targeted” towards the full realization of the right to education. • The realization of the right to education over time, that is “progressively”, should not be interpreted as depriving States Parties’ obligations of all meaningful content. Progressive realization means that States Parties have a specific and continuing obligation “to move as expeditiously and effectively as possible” towards the full realization of Article 13.
General Comment No. 14 on the right to the highest attainable standard of health ³⁹	• Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. • The realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, or the implementation of health programmes developed by the World Health Organization, or the adoption of specific legal instruments. Moreover, the right to health includes certain components which are legally enforceable. • The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the

³⁹ (11 August 2000)

	prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health. • The right to health is not to be understood as a right to be healthy. • The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. • By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health. The notion of "the highest attainable standard of health" in Article 12(1) takes into account both the individual's biological and socio-economic preconditions and a State's available resources. • There are a number of aspects which cannot be addressed solely within the relationship between States and individuals; in particular, good health cannot be ensured by a State, nor can States provide protection against every possible cause of human ill health. Thus, genetic factors, individual susceptibility to ill health and the adoption of unhealthy or risky lifestyles may play an important role with respect to an individual's health. • Consequently, the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health. • The progressive realization of the right to health over a period of time should not be interpreted as depriving States Parties' obligations of all meaningful content. Rather, progressive realization means that States Parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of Article 12.
General Comment No. 15 on the right to water ⁴⁰	• Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human

⁴⁰ (20 January 2003)

	dignity. It is a prerequisite for the realization of other human rights. • The Committee has been confronted continually with the widespread denial of the right to water in developing as well as developed countries. • Over one billion persons lack access to a basic water supply, while several billion do not have access to adequate sanitation which is the primary cause of water contamination and diseases linked to water. • The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements. • Environmental hygiene, as an aspect of the right to health under article 12, paragraph 2 (b), of the Covenant, encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions. For example, States Parties should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes. Likewise, States Parties should monitor and combat situations where aquatic eco-systems serve as a habitat for vectors of diseases wherever they pose a risk to human living environments. • The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water. • While the adequacy of water required for the right to water may vary according to different conditions, the following factors apply in all circumstances: (a) availability; (b) quality; (c) accessibility (physical and economic accessibility along with the guarantee of non-discrimination); and (d) information accessibility.
--	---

General Comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights (Article 3)	• The essence of Article 3 of the ICESCR is that the rights set forth in the Covenant are to be enjoyed by men and women on a basis of equality, a concept that carries substantive meaning. • While expressions of formal equality may be found in constitutional provisions, legislation and policies of Governments, Article 3 also mandates the equal enjoyment of the rights in the Covenant for men and women in practice. The enjoyment of human rights on the basis of equality between men and women must be understood comprehensively. Guarantees of non-discrimination and equality in international human rights treaties mandate both de facto and de jure equality. De jure (or formal) equality and de facto (or substantive) equality are different but interconnected concepts. • Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. • Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience. • Substantive equality for men and women will not be achieved simply through the enactment of laws or the adoption of policies that are, prima facie, gender-neutral. In implementing article 3, States Parties should take into account that such laws, policies and practice can fail to address or even perpetuate inequality between men and women because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women. • The principles of equality and non-discrimination, by themselves, are not always sufficient to guarantee true equality. • Temporary special measures may sometimes be needed in order to bring disadvantaged or marginalized persons or groups of persons to the same substantive level as others. Temporary special measures aim at realizing not only de jure or formal equality, but also de facto or substantive equality for men and women. • However, the application of the principle of equality will sometimes require that States Parties take
--	--

	measures in favour of women in order to attenuate or suppress conditions that perpetuate discrimination. As long as these measures are necessary to redress de facto discrimination and are terminated when de facto equality is achieved, such differentiation is legitimate.
General Comment No. 19 on the right to social security (Article 9)⁴¹	• The right to social security 'is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights'. • The 'redistributive character' of social security is extremely important in poverty reduction and alleviation as well as 'preventing social exclusion and promoting social inclusion'. States must think of social security as a 'social good' rather than an instrument of economic policy. • Schemes of social security must be sustainable while providing for coverage of the 'nine principal branches of social security' which include: health care, sickness, old age, unemployment, employment injury, family and child support, maternity and disability. Apart from ensuring accessibility, the State must also focus on providing affordable social security.
General Comment No. 20 on non-discrimination in economic, social and cultural rights⁴²	• The Committee begins the General Comment by stating that 'economic growth has not, in itself, led to sustainable development and individuals and groups of individuals continue to face socio-economic inequality, often because of entrenched historical and contemporary forms of discrimination'. • The Committee recognizes that 'non-discrimination is an immediate and cross-cutting obligation in the Covenant'. • It is pertinent to note the components of 'discrimination' enlisted by the Committee: 'any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights'. • The Committee makes reference to 'formal discrimination', 'substantive discrimination', 'direct discrimination' and 'indirect discrimination' – States

⁴¹ (4 February 2008)

⁴² (2 July 2009)

	must take into account these different types of discrimination. • The CESCR states 'some individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority'.
General Comment No. 21 on the right of everyone to take part in cultural life ⁴³	• 'Cultural rights are an integral part of human rights and, like other rights, are universal, indivisible and interdependent'. • The right to take part in cultural life is an important right as the Committee highlights its linkage to Article 27 of the UDHR, which states that 'everyone has the right freely to participate in the cultural life of the community'. • The Committee asserts that in order for the right to be protected, States Parties are required to abstain (i.e. adopt a policy of non-interference with the exercise of cultural practices) as well as take positive action (securing preconditions for facilitation and promotion of cultural life). • The CESCR took note of the 'multifaceted content implicit in the concept of culture'. Certain necessary conditions are delineated by the Committee with regard to the full realization of the right of everyone to take part in cultural life on a basis of equality and non-discrimination. • These include availability, accessibility, acceptability, adaptability and appropriateness. Further, the Committee identifies persons and communities that require special protection, i.e. women, children, the elderly, persons with disabilities, minorities, migrants, indigenous peoples and persons living in poverty. • Additionally, the CESCR takes note of the positive and negative effects of globalization due to which States Parties 'must take appropriate steps to avoid its adverse consequences on the right to take part in cultural life, particularly for the most disadvantaged and marginalized individuals and groups, such as persons living in poverty'.

⁴³ (21 December 2009)

3.2 Domestic Enforcement of the ICESCR

Pakistan's Constitutional Provisions mirroring ICESCR-guaranteed rights

14 In order to provide participants an understanding of Constitutional protections afforded to ICESCR-guaranteed rights, the Constitutional provisions, provided in **Table 6** below, must be discussed.

Table 6: Constitutional Provisions and the ICESCR

ICESCR Provision	Constitutional Provision
Article 1: Self-determination	
Article 2: Non-discrimination	Article 25: Equality of citizens (1) All citizens are equal before law and are entitled to equal protection of law. (2) There shall be no discrimination on the basis of sex (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children. Article 26: Non-discrimination in respect of access to public places. (1) In respect of access to places of public entertainment or resort not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth. (2) Nothing in clause (1) shall prevent the State from making any special provision for women and children. Article 27: Safeguard against discrimination in services. (1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth: Provided that, for a period not exceeding [forty] years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan: Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be

	adequately performed by members of the other sex [:] [Provided also that under-representation of any class or area in the service of Pakistan may be redressed in such manner as may be determined by an Act of Majlis-e-Shoora (Parliament).] (2) Nothing in clause (1) shall prevent any Provincial Government, or any local or other authority in a Province, from prescribing, in relation to any post or class of service under that Government or authority, conditions as to residence in the Province for a period not exceeding three years, prior to appointment under that Government or authority.
Article 3: Equal rights of men and women	Article 25: Equality of citizens (1) All citizens are equal before law and are entitled to equal protection of law. (2) There shall be no discrimination on the basis of sex (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children. Article 34: Full participation of women in national life – Steps shall be taken to ensure full participation of women in all spheres of national life.
Article 6: Right to work	
Article 7: Right to just and favourable conditions of work	Article 38: Promotion of social and economic well-being of the people. The State shall : (a) secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants; (b) provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure; (c) provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means; (d) provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all

	such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment; (e) reduce disparity in the income and earnings of individuals, including persons in the various classes of the service of Pakistan; (f) eliminate <i>riba</i> as early as possible (g) the shares of the Provinces in all federal services, including autonomous bodies and corporations established by, or under the control of, the Federal Government, shall be secured and any omission in the allocation of the shares of the Provinces in the past shall be rectified.
Article 8: Right to form trade unions	
Article 9: Right to social security	
Article 10: Protection and assistance to the family	Article 35: Protection of family, etc. The State shall protect the marriage, the family, the mother and the child.
Article 11: Right to an adequate standard of living	Article 37: Promotion of social justice and eradication of social evils. The State shall: (a) promote, with special care, the educational and economic interests of backward classes or areas; (b) remove illiteracy and provide free and compulsory secondary education within minimum possible period; (c) make technical and professional education generally available and higher education equally accessible to all on the basis of merit; (d) ensure inexpensive and expeditious justice; (e) make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment; (f) enable the people of different areas, through education, training, agricultural and industrial development and other methods, to participate fully in all forms of national activities, including employment in the service of Pakistan; (g) prevent prostitution, gambling and taking of injurious drugs, printing, publication, circulation and display of obscene literature and advertisements;

	(h) prevent the consumption of alcoholic liquor otherwise than for medicinal and, in the case of non-Muslims, religious purposes; and (i) decentralise the Government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public. Article 38: Promotion of social and economic well-being of the people. The State shall : (a) secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants; (b) provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure; (c) provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means; (d) provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment; (e) reduce disparity in the income and earnings of individuals, including persons in the various classes of the service of Pakistan; (f) eliminate <i>riba</i> as early as possible (g) the shares of the Provinces in all federal services, including autonomous bodies and corporations established by, or under the control of, the Federal Government, shall be secured and any omission in the allocation of the shares of the Provinces in the past shall be rectified.
Article 12: Right to highest attainable standard of physical and mental health	Article 37: Promotion of social justice and eradication of social evils. The State shall: (a) promote, with special care, the educational and economic interests of backward classes or areas; (b) remove illiteracy and provide free and compulsory secondary education within minimum

	possible period; (c) make technical and professional education generally available and higher education equally accessible to all on the basis of merit; (d) ensure inexpensive and expeditious justice; (e) make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment; (f) enable the people of different areas, through education, training, agricultural and industrial development and other methods, to participate fully in all forms of national activities, including employment in the service of Pakistan; (g) prevent prostitution, gambling and taking of injurious drugs, printing, publication, circulation and display of obscene literature and advertisements; (h) prevent the consumption of alcoholic liquor otherwise than for medicinal and, in the case of non-Muslims, religious purposes; and (i) decentralise the Government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public.
Article 13: Right to education	Article 25A: Right to education. The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law. Article 37: Promotion of social justice and eradication of social evils. The State shall: (a) promote, with special care, the educational and economic interests of backward classes or areas; (b) remove illiteracy and provide free and compulsory secondary education within minimum possible period; (c) make technical and professional education generally available and higher education equally accessible to all on the basis of merit; (d) ensure inexpensive and expeditious justice; (e) make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment;

	(f) enable the people of different areas, through education, training, agricultural and industrial development and other methods, to participate fully in all forms of national activities, including employment in the service of Pakistan; (g) prevent prostitution, gambling and taking of injurious drugs, printing, publication, circulation and display of obscene literature and advertisements; (h) prevent the consumption of alcoholic liquor otherwise than for medicinal and, in the case of non-Muslims, religious purposes; and (i) decentralise the Government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public.
Article 14: Compulsory education free of charge for all	Article 37: Promotion of social justice and eradication of social evils. The State shall: (a) promote, with special care, the educational and economic interests of backward classes or areas; (b) remove illiteracy and provide free and compulsory secondary education within minimum possible period; (c) make technical and professional education generally available and higher education equally accessible to all on the basis of merit; (d) ensure inexpensive and expeditious justice; (e) make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment; (f) enable the people of different areas, through education, training, agricultural and industrial development and other methods, to participate fully in all forms of national activities, including employment in the service of Pakistan; (g) prevent prostitution, gambling and taking of injurious drugs, printing, publication, circulation and display of obscene literature and advertisements; (h) prevent the consumption of alcoholic liquor otherwise than for medicinal and, in the case of non-Muslims, religious purposes; and (i) decentralise the Government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public.
Article 15: Right to take part in	Article 28: Preservation of language, script and culture.

cultural life etc.	Subject to Article 251 any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and subject to law, establish institutions for that purpose.
--------------------	---

Domestic legislation pertaining to ICESCR-guaranteed rights

15 In order to provide a comprehensive overview of the domestic status of rights guaranteed in the ICESCR, participants should be briefly introduced to some of the following legislative instruments, provided below in **Table 7**, which provide similar protections as afforded under the ICESCR.

Table 7

Islamabad Mandatory Vaccination and Protection of Health Workers Bill 2015
Sindh Injured Persons (Medical Aid) Act 2014
Sindh Healthcare Commission Act 2014
Sindh Epidemic Diseases Act 2014 (received Governor's assent in January 2015 – no further record)
Sindh Eye Surgery (Restriction) Act 2014 (received Governor's assent in December 2014 – no further record)
Sindh Right of Children to Free and Compulsory Education Act 2013
Reproductive Healthcare and Rights Act 2013 (news articles are the only evidence of this Act)
Balochistan Compulsory Education Act 2014
Right to Free and Compulsory Education Act 2012
Punjab Healthcare Commission Act 2010
Sacked Employees (Re-instatement) Act 2010
Social Security Bill 2010
Punjab Employees Efficiency, Discipline and Accountability Act 2006
NWFP Compulsory Primary Education Act 1996
Punjab Compulsory Primary Education Act 1994

16 The following administrative measures relevant to the ICESCR may also be discussed:

1. National Labour Policy 2010
2. National Education Policy 2009
3. National Employment Policy 2009
4. National Plan of Action for the Abolition of Child Labour

Domestic institutions responsible for compliance reporting

17 The alteration in working structure following enactment of the 18th Constitutional Amendment must be explained:

- Various provincial governments have established Human Rights Departments at the provincial level that supplement the work of the Federal Ministry of Human Rights.

18 In this regard, discussion on the roles played by the following in compliance reporting is pertinent: National Commission of Human Rights (NCHR), National Commission on the Status of Women (NCWS), National Commission for Minorities, and the National Commission on the Rights of the Child (NCRC). **This can be found on page 55 of the Module.**

19 With regard to the ICESCR, there are several Federal and Provincial institutions that play an important role in the protection of economic, social and cultural rights guaranteed under the Covenant.

20 The Government must also engage with certain NGOs, civil society and relevant organizations, which are working in the field of human rights protection, to prepare comprehensive compliance reports. These organizations include:

- (i) The Human Rights Commission of Pakistan (HRCP);
- (ii) Aurat Foundation (AF);
- (iii) United Nations High Commission for Human Rights (UNHCHR);
- (iv) Human Rights Watch (HRW);
- (v) Asian Commission of Human Rights (ACHR);
- (vi) Democracy Reporting International (DRI).

21 Participants must be given an explanation of the role of the following Federal and Provincial institutions with regard to the ICESCR:

- (i) Ministry of Planning and Development;
- (ii) Economic Affairs Division;
- (iii) Ministry of Housing & Works;
- (iv) Ministry of Inter-Provincial Coordination;
- (v) Ministry of Religious Affairs and Inter-Faith Harmony;
- (vi) Ministry of Water and Power;
- (vii) Ministry of National Health Services Regulation and Coordination;
- (viii) Punjab Health Department;
- (ix) Sindh Health Department;
- (x) Khyber Pakhtunkhwa Health Department;
- (xi) Labour Departments in all the provinces;
- (xii) Ministry of National Food Security and Research;
- (xiii) Women Development Departments in all the provinces;
- (xiv) Inter Provincial Coordination Departments in all the provinces;
- (xv) Food Departments in all the provinces;
- (xvi) Housing and Urban Development Departments in all the provinces;
- (xvii) Ministry of Federal Education and Professional Training;
- (xviii) Punjab Education Department;
- (xix) Balochistan Education Department;
- (xx) Sindh Education and Literacy Department;
- (xxi) Khyber-Pakhtunkhwa Elementary and Secondary Education Department;
- (xxii) Planning and Development Departments in all the provinces.

Activity: Reference may be made to the eviction drive taking place in Islamabad⁴⁴ to engage participants in a discussion on:

- (i) Which ICESCR rights are invoked in this situation;**
- (ii) The role of the Capital Development Authority (CDA) with regard to the ICESCR;**
- (iii) The responsibility of the Government in providing the right to shelter.**

Answer Key:

- (i) Article 11 discussed alongside General Comment No. 7 which specifically addresses the issue of forced evictions.
- (ii) The CDA was established via the CDA Ordinance 1960 – it is mandated with planning and developing Islamabad; performing functions to provide for cleanliness, health, education of inhabitants, supply of goods, articles of food and promoting the interests of different sections of the public. All provisions within the Ordinance provide for advancing public interest and public good. All actions of the CDA are to be transparent.
- (iii) Pakistan made a reservation to the ICESCR citing scarcity of resources as a ground for non-fulfillment/delayed fulfillment of obligations under the Convention. The Committee on Economic, Social and Cultural Rights has clarified, in its general comments, that, although the Covenant allows for 'progressive realization', this does not mean States Parties should not prioritize social, economic and cultural rights. Although there is no implementing legislation for the ICESCR in Pakistan, Chapter II of the Constitution of Pakistan provides similar guarantees. Article 38(a) requires the State to 'secure the well-being of the people... by raising their standard of living', while Article 38(d) provides for 'basic necessities of life, such as food, clothing, housing...'

3.3 Legal Simulation Exercise

⁴⁴ Abbasi, Obaid. "Three injured in clashes as authorities begin eviction drive in Islamabad". *Express Tribune*, 30 July 2015. Web, available at: <http://tribune.com.pk/story/929219/three-injured-in-clashes-as-authorities-begin-eviction-drive-in-islamabad/> [Accessed 06/11/2015 at 10:42]

22 The trainers should distribute the following legal simulation exercise to the participants to assess their understanding of the ICESCR:

23 "Ms. Sara and Mr. Asad work in a renowned law firm in Karachi, X&Y, with identical contracts of employment. Although Ms. Sara and Mr. Asad have been working at X&Y for the same duration, the firm decides to promote Mr. Asad owing to "the large number of male clientele that maintains a comfortable working relationship with Mr. Asad". The promotion entitles Mr. Asad to a pay rise even though the work-load remains shared between himself and Ms. Sara.

24 Mr. Asad is put in charge of two major projects the firm has just secured, for which he requires Ms. Sara to prepare extensive reports. Once the reports have been prepared and submitted, Ms. Sara discovers that her name was entirely omitted from the files, having been replaced with Mr. Asad's. On registering her complaint with the X&Y's HR Department, Ms. Sara hopes the error will be rectified. Instead, three days later, Ms. Sara is requested to resign due to her "inability to work, in a team, with others".

25 Identify the ICESCR rights invoked in this situation."

Legal Simulation Answer Key:-

26 The following key provisions of the ICESCR relevant to this situation must be discussed:

- Article 2;
- Article 3;
- Article 6;
- Article 7;
- Article 15.

Module Four: Day Four

This Module will focus on an in-depth discussion of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Contents

4.1 Overview of the Convention on the Elimination of All Forms of Discrimination against Women

Key Provisions of the CEDAW

Provisions on the Committee on the Elimination of All Forms of Discrimination against Women

Individual Communications Procedure

General Recommendations issued by the Committee on the Elimination of All Forms of Discrimination against Women

4.2 Domestic Enforcement of the CEDAW

Domestic legislation pertaining to the CEDAW-guaranteed rights

Domestic institutions responsible for compliance reporting

4.3 Legal Simulation Exercise

Module Four: Overview of the Convention on the Elimination of All Forms of Discrimination against Women

Essential Reading:

Books:-

- Shaw, Malcolm. "International Law", *Cambridge University Press* (Seventh Edition) (2014); Chapter 6

Treaties:-

- UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13 [Annexed in BLDs]

Academic Articles:

- Tinker, Catherine. "Human Rights for Women: The UN Convention on the Elimination of All Forms of Discrimination against Women", *Human Rights Quarterly*, Vol. 3, No. 2 (May 1981), pp. 32-43

Other:-

- International Service for Human Rights (ISHR). Simple Guide to Treaty Bodies (2010) [Annexed in BLDs]
- UN Secretary General. *Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties*, HRI/GEN/2/Rev.6 (3 June 2009) [Annexed in BLDs]

Useful Links:

- 'Overview of the Human Rights Framework' available at: <http://www.ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/>
- Human Rights Bodies – Complaints Procedures available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>
- Alavi, Aleena Zainab. 'Struggle for justice', *Dawn* available at: <http://www.dawn.com/news/1163010/struggle-for-justice>
- 'Women's rights in Pakistan: NGOs compile report to show the 'real' picture', *Express Tribune* available at: <http://tribune.com.pk/story/481390/womens-rights-in-pakistan-ngos-compile-report-to-show-the-real-picture/>
- 'Women in Pakistan continue to be victims of gender-based violence', *The Daily Times* available at: <http://www.dailytimes.com.pk/islamabad/03-Apr-2015/women-in-pakistan-continue-to-be-victims-of-gender-based-violence>
- Ashraf, Malik Muhammad. 'The state of our women', *Pakistan Today* available at: <http://www.pakistantoday.com.pk/2015/02/07/features/the-state-of-our-women/>

- Durrani, Fakhar. 'Pakistan needs decades to ensure gender equality', *The News* available at: <http://www.thenews.com.pk/print/60234-pakistan-needs-decades-to-ensure-gender-equality#>
- Soofi, Ahmer Bilal. , International Law Lecture Series available at: <http://ocw.vu.edu.pk/Videos.aspx?cat=Law&course=PSC401>

4.1 Overview of the Convention on the Elimination of All Forms of Discrimination against Women

1 The overarching purpose of the CEDAW is the eradication of any such concurrent traditional practices or laws in a State that discriminate against women on the basis of their sex, and to provide them a manifesto of equal opportunities and rights through domestic enforcement of their inherent rights.

Key Provisions of the CEDAW

2 Each provision of the CEDAW should be discussed, distinguishing between:

- Substantive provisions;
- Implementing provisions; and
- Derogation provisions.

Note 1: Table 1, below, highlighting the relevant substantive, implementing and derogatory provisions of the CEDAW must be discussed.

Table 1

<u>Convention</u>	<u>Substantive Provision(s)</u>	<u>Implementing Provision(s)</u>	<u>Derogation Provision(s)</u>
CEDAW	Arts 1, 10, 11, 12, 13, 14, 15 and 16.	Arts. 2, 3, 4, 5, 6, 7, 8, 9, 23 and 24.	-

3 Table 2, below summarizes CEDAW provisions:

Table 2: Summary of CEDAW Provisions

Article 1	<u>Definition of discrimination</u>
Article 2	<u>Policy measures (duty of States Parties to eliminate discriminatory laws, policies and practices in the national legal framework)</u>
Article 3	<u>Guarantee of basic human rights and fundamental freedoms</u>
Article 4	<u>Special measures (temporary special measures to enhance equality of women)</u>
Article 5	<u>Sex role stereotyping and prejudice (modification or elimination of practices based on assumptions of the inferiority of women)</u>
Article 6	<u>Prostitution and trafficking</u>
Article 7	<u>Political and public life</u>

Article 8	<u>Representation</u>
Article 9	<u>Nationality</u>
Article 10	<u>Education</u>
Article 11	<u>Employment</u>
Article 12	<u>Health</u>
Article 13	<u>Economic and social benefits</u>
Article 14	<u>Rural women</u>
Article 15	<u>Equality of men and women before the law</u>
Article 16	<u>Marriage and family life</u>
Article 17	<u>Provision on the Committee on the Elimination of Discrimination against Women</u>
Article 18	<u>National reports</u>
Article 19	<u>Rules of procedure</u>
Article 20	<u>Committee meetings</u>
Article 21	<u>Committee reports</u>
Article 22	<u>Role of specialized agencies</u>
Article 23	<u>Effect on other treaties</u>
Article 24	<u>Commitment of States Parties</u>
Articles 25-30	<u>Administration of the Convention</u>

Provisions on the Committee on the Elimination of All Forms of Discrimination against Women

4 In order to monitor implementation of the CEDAW, the Convention created the Committee on the Elimination of All Forms of Discrimination against Women, the treaty-body mandated with monitoring State Party implementation of the Convention.

5 Like the other treaty bodies, the CEDAW Committee comprises independent experts responsible for monitoring progress under the CEDAW through compliance reports submitted by States Parties.

Note 2: Participants should be given an explanation of the composition of the CEDAW Committee. Members of the CEDAW Committee are elected by secret ballot from a list of persons nominated by States Parties. Each State Party nominates one person from among its own nationals. The members of the Committee are elected for a term of four years.

6 Provisions on the Committee that must be highlighted include the following, provided in **Table 3** below.

Table 3

CEDAW Provision	Content Summary
Article 17	Members of CEDAW Committee to be elected by secret ballot from list of

	persons nominated by States Parties; each State Party may nominate one person from among its own nationals; initial election held six months after date of entry into force of CEDAW; elections of members of Committee to be held at meeting of States Parties convened at the UN headquarters by the Secretary-General; two-thirds of States Parties constitute a quorum; members of the Committee are those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting; members elected for a term of four years; nine members elected at the first election shall have their term expire at the end of two years; filling of casual vacancies; the Committee receives emoluments from the UN; Secretary-General of UN to provide necessary staff and facilities for effective performance of the Committee's functions.
Article 19	Committee to adopt its own rules of procedure and elect its officers for a term of two years.
Article 20	Committee to normally meet for a period of two weeks annually in order to consider State Party reports; these meetings are to be held at the UN headquarters or at any other convenient place as determined by the Committee.
Article 21	Committee to report annually to the GA through the ECOSOC and make suggestions and general recommendations based on its examination of State Party reports; Secretary-General to transmit these reports of the Committee to the Commission on the Status of Women.
Article 22	Specialized agencies entitled to representation at consideration of implementation of those provisions that fall within the scope of their activities.

7 Having clarified the manner in which the Committee functions, Article 18, on reporting to the Committee, given in **Table 4**, must be discussed with participants.

Table 4

CEDAW Provision	Content Summary
Article 18	States Parties to submit reports to the Secretary-General on the legislative, judicial, administrative or other measures which they have adopted to give effect to CEDAW provisions and the progress made in this regard; initial report due one year after entry into force of the CEDAW for the State Party; periodic reports to be submitted every four years and further whenever requested by the Committee; State Party reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

8 A general overview of the manner in which State Party reports are to be prepared and submitted under the CEDAW must be provided. Reference may be made to the Report of the UN Secretary General on Harmonized Reporting Guidelines, annexed in the BLDs.

Individual Communications Procedure

9 The Committee on the Elimination of Discrimination against Women may, under certain conditions, receive and consider individual complaints alleging violations of the rights enlisted within the Convention. Pakistan, however, has not recognized the competence of the Committee to do so. Those States that have ratified the Optional Protocol to the Convention on the Elimination of Discrimination against Women recognize the competence of the Committee to consider individual communications.

Note 3: For additional information in this regard, the web link on "Human Rights Bodies – Complaints Procedures" provided under "Useful Links" can be utilized.

10 While Pakistan has not recognized the competence of the CEDAW Committee to receive and consider individual communications, it has established a domestic helpline service for complaints regarding human rights violations.

11 The Ministry of Human Rights has established a helpline service for victims of human rights violations. Victims from all across the country can dial the toll free number, 1099, to receive counselling and referral services. The helpline operators work in accordance with the GATHER approach: greet, ask, tell, help, explain and return (follow-up). There are 18 basic categories of violations and 87 sub-categories. The helpline operationalized in March 2015 and has taken 163 cases since then. 23 of these cases have been referred to the relevant authorities and are under review with regard to follow-up. 140 clients have been legally advised. Each complaint has a "disposal status" – ensuring that effective follow-up safeguards exist.

General Recommendations issued by the Committee on the Elimination of All Forms of Discrimination against Women

12 As per the general practice of the treaty bodies, the CEDAW issues general recommendations intended to serve as authoritative guides for States in implementing and interpreting the Convention.

13 The following General Recommendations of particular importance for Pakistan, provided in **Table 5** below, should be discussed.

Table 5: CEDAW General Comments

<u>General Recommendation</u>	<u>Salient Features</u>
General Recommendation No. 3 on education and public information programmes (1987)	- Although reports have come from States with different levels of development, they present features in varying degrees demonstrating the existence of stereotyped conceptions of women, owing to sociocultural factors, that perpetuate discrimination based on sex and hinder the implementation of Article 5 of the Convention. - The Committee urges all States Parties to effectively adopt education and public information programmes which will help eliminate prejudices and current practices that hinder the full operation of the principle

	of the social equality of women.
General Recommendation No. 6 on effective national machinery and publicity (1988)	• States Parties should establish and/or strengthen effective national machinery, institutions and procedures, at a high level of Government, and with adequate resources, commitment and authority to: (a) advise on the impact on women of all government policies; (b) monitor the situation of women comprehensively; and (c) help formulate new policies and effectively carry out strategies and measures to eliminate discrimination. • States Parties should take steps to ensure the dissemination of the Convention, the reports of the States Parties and the reports of the Committee in the language of the States concerned. • States Parties should seek the assistance of the Secretary-General and the Department of Public Information in providing translations of the Convention and the reports of the Committee. • Lastly, States Parties should include in their initial and periodic reports the actions taken in respect of this recommendation.
General Recommendation No. 7 on resources (1988)	• States Parties should continue to support proposals for strengthening the coordination between the Centre for Human Rights at Geneva and the Centre for Social Development and Humanitarian Affairs at Vienna, in relation to the servicing of the Committee. • Further, they should support proposals that the Committee meet in New York and Vienna. All necessary and appropriate steps should be taken to ensure that adequate resources and services are available to help the Committee to prepare for its sessions and during its session. • They should ensure that supplementary reports and materials are submitted to the Secretariat in due time to be translated into the official languages of the United Nations in time for distribution and consideration by the Committee.
General Recommendation No. 9 on statistical data (1989)	• States Parties should make every effort to ensure that their national and statistical services responsible for planning national censuses and other social and economic surveys formulate their questionnaires in such a way that data can be disaggregated according to gender, with regard to both absolute numbers and percentages so that interested users can easily obtain information on the situation of women in the

	particular sector in which they are interested.
General Recommendation No. 13 on equal remuneration for work of equal value (1989)	• In order to fully implement the CEDAW, those States Parties that have not yet ratified ILO Convention No. 100 should be encouraged to do so. • States Parties should consider the study, development and adoption of job evaluation systems based on gender-neutral criteria that would facilitate the comparison of the value of those jobs of a different nature, in which women presently dominate, with those jobs in which men presently dominate, and they should include the results achieved in their reports to the Committee. • They should support, as far as practicable, the creation of implementation machinery and encourage the efforts of the parties to collective agreements, where they apply, to ensure the application of the principle of equal remuneration for work of equal value.
General Recommendation No. 15 on women and AIDS (1990)	• States Parties must intensify efforts in disseminating information to increase public awareness of the risk of HIV infection and AIDS, especially in women and children, and of its effect on them. • Programmes to combat AIDS should pay special attention to the rights and needs of women and children, and to the factors relating to the reproductive role of women and their subordinate position in some societies which make them especially vulnerable to HIV infection. • States Parties are recommended to ensure the active participation of women in primary healthcare and take measures to enhance their role as care providers, health-workers and educators in the prevention of infection with HIV. • States Parties should include in their reports information on the effects of AIDS on the situation of women and on the action taken to cater to the needs of those women who are infected and to prevent specific discrimination against women in response to AIDS.
General Recommendation No. 16 on unpaid women workers in rural and urban family enterprises (1991)	• States Parties should include in their reports to the Committee information on the legal and social situation of unpaid women working in family enterprises. • They should also collect statistical data on women who work without payment, social security and social benefits in enterprises owned by a family member,

	and include this data in their report to the Committee. • States Parties should take necessary steps to guarantee payment, social security and social benefits for women who work without such benefits in enterprises owned by a family member.
General Recommendation No. 17 on measurement and quantification of the unremunerated domestic activities of women and their recognition in the GNP (1991)	• States Parties should encourage and support research and experimental studies to measure and value the unremunerated domestic activities of women; for example, by conducting time-use surveys as part of their national household survey programmes and by collecting statistics disaggregated by gender on time spent on activities both in the household and on the labour market. • Further, States Parties should take steps, in according with the CEDAW and the Nairobi Forward-looking Strategies for the Advancement of Women, to quantify and include the unremunerated domestic activities of women in the gross national product. • Lastly, States Parties should include in their reports information on the research and experimental studies undertaken to measure and value unremunerated domestic activities, as well as on the progress made in the incorporation of the unremunerated domestic activities of women in national accounts.
General Recommendation No. 19 on violence against women (1992)	• Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. • The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. • States Parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act. • They should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. • Appropriate protective and support services should be provided for victims. • Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention. • Further, States Parties should encourage the

	compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence. • Effective measures should be taken to ensure that the media respect and promote respect for women. In their reports to the Committee, States Parties should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women, and the kinds of violence that result. They should report the measures that they have undertaken to overcome violence and the effect of those measures. • Effective complaints procedures and remedies, including compensation, should be provided. Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation. • States Parties should include in their reports information on sexual harassment, and on measures to protect women from sexual harassment and other forms of violence or coercion in the workplace. States Parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refugees, specially trained health workers, rehabilitation and counselling.
General Recommendation No. 21 on equality in marriage and family relations (1994)	• Nationality is critical to full participation in society. In general, States confer nationality on those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons such as statelessness. Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality. • While most countries report that national constitutions and laws comply with the Convention, custom, tradition and failure to enforce these laws in reality contravene the Convention. • There are countries that do not acknowledge that right of women to own an equal share of the property with the husband during a marriage or de facto relationship and when that marriage or relationship ends. Many countries recognize that right, but the practical ability

	of women to exercise it may be limited by legal precedent or custom. • States Parties should also require the registration of all marriages whether contracted civilly or according to custom or religious law. The State can thereby ensure compliance with the Convention and establish equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy and the protection of the rights of children.
General Recommendation No. 23 on women in political and public life (1997)	• Public and private spheres of human activity have always been considered distinct, and have been regulated accordingly. • Invariably, women have been assigned to the private or domestic sphere, associated with reproduction and the raising of children, and in all societies, these activities have been treated as inferior. • By contrast, public life, which is respected and honoured, extends to a broad range of activity outside the private and domestic sphere. • Men have historically dominated public life and exercised the power to confine and subordinate women within the private sphere. • Despite women's central role in sustaining the family and society and their contribution to development, they have been excluded from political life and the decision-making process, which nonetheless determine the pattern of their daily lives and the future of societies. • In order to achieve broad representation in public life, women must have full equality in the exercise of political and economic power, they must be fully and equally involved in decision-making at all levels, both nationally and internationally, so that they may make their contribution to the goals of equality, development and the achievement of peace. • A gender-perspective is critical if these goals are to be met and if true democracy is to be assured. Women's double burden of work, as well as financial constraints, will limit women's time or opportunity to follow electoral campaigns and to have the full freedom to exercise their vote. In many nations, traditions and social and cultural stereotypes discourage women from exercising their right to vote. • Many men influence or control the votes of women by persuasion or direct action, including voting on their

	behalf. Any such practices should be prevented. The participation of women in government at the policy level continues to be low in general. States Parties are to achieve a balance between women and men holding publicly elected positions and to ensure that women understand their right to vote, the importance of this right and how to exercise it.
General Recommendation No. 24 on women and health (1999)	• States Parties' compliance with Article 12 of the Convention is central to the health and well-being of women. • It requires States to eliminate discrimination against women in their access to health-care services throughout the life cycle, particularly in the areas of family planning, pregnancy and confinement and during the post-natal period. • The examination of reports submitted by States Parties demonstrates that women's health is an issue that is recognized as a central concern in promoting the health and well-being of women. • States Parties should implement a comprehensive national strategy to promote women's health throughout their lifespan. This will include interventions aimed at both the prevention and treatment of diseases and conditions affecting women, as well as responding to violence against women. Further, it will ensure universal access for all women to a full range of high-quality and affordable health care, including sexual and reproductive health services. States Parties should allocate adequate budgetary, human and administrative resources to ensure that women's health receives a share of the overall health budget comparable with that for men's health, taking into account their different health needs. In particular, States Parties should place a gender perspective at the centre of all policies and programmes affecting women's health and should involve women in the planning, implementation and monitoring of such policies and programmes and in the provision of health services to women.
General Recommendation No. 27 on older women and protection of their human rights (2010)	• The Committee expresses its concern regarding the multiple forms of discrimination experienced by older women as well as the fact that older women's rights are not systematically addressed in the reports of States Parties. • This general recommendation explores the

	relationship between the articles of the CEDAW and ageing. • It identifies the multiple forms of discrimination that women face as they age, outlines the content of the obligations to be assumed by States Parties with regard to ageing with dignity and older women's rights, and includes policy recommendations aimed at mainstreaming the responses to the concerns of older women into national strategies, development initiatives and positive action so that older women can fully participate in society without discrimination and on an equal basis with men. • States Parties must recognize that older women are an important resource to society, and have the obligation to take all appropriate measures, including legislation, to eliminate discrimination against older women. • States Parties should adopt gender-sensitive and age-specific policies and measures, including temporary special measures, in line with Article 4(1) of the Convention. • In order to support legal reform and policy formulation, States Parties are urged to collect, analyse and disseminate data disaggregated by age and sex, so as to have accurate information on the situation of older women, including those living in rural areas, areas of conflict, belonging to minority groups, and those with disabilities. Such data should especially focus, among other issues, on poverty, illiteracy, violence, unpaid work, including care-giving to those living with or affected by HIV/AIDS, migration, access to health care, housing, social and economic benefits and employment. • States Parties should provide older women with information on their rights and how to access legal services. They should train the police, judiciary as well as legal aid and paralegal services on the rights of older women, and sensitize and train public authorities and institutions on age and gender-related issues that affect older women. • Additionally, States Parties have an obligation to eliminate negative stereotyping and modify social and cultural patterns of conduct that are prejudicial and harmful to older women, so as to reduce the physical, sexual, psychological, verbal and economic abuse that older women, including those with disabilities, experience based on negative stereotyping and
--	--

	cultural practices.
General Recommendation No. 28 on the core obligations of States Parties under Article 2 of the Convention (2010)	• Article 2 calls on States Parties to condemn discrimination against women 'in all its forms', while Article 3 refers to appropriate measures that States Parties are expected to take in 'all fields' to ensure the full development and advancement of women. • Through these provisions, the Convention anticipates the emergence of new forms of discrimination that had not been identified at the time of its drafting. • Article 2 is not limited to the prohibition of discrimination against women caused directly or indirectly by States Parties. It also imposes a due diligence obligation on States Parties to prevent discrimination by private actors. • States Parties must abstain from performing, sponsoring or condoning any practice, policy or measure that violates the Convention. • It must also foster wide knowledge about and support for its obligations under the Convention while adopting temporary special measures that achieve sex non-discrimination and gender equality in practice.
General Recommendation No. 29 on the economic consequences of marriage, family relations and their dissolution (2013)	• Inequality in the family underlies all other aspects of discrimination against women and is often justified in the name of ideology, tradition and culture. • An examination of States Parties' reports reveals that, in many States, the rights and responsibilities of married partners are governed by the principles of civil or common law, religious or customary laws and practices, or some combination of such laws and practices that discriminate against women and do not comply with the principles set out in the Convention. • The economic consequences for women of marriage, divorce, separation and death have been of growing concern to the Committee. • Moreover, throughout the world, female-headed households are the most likely to be poor. States Parties should guarantee equality between women and men in their constitutions and should eliminate any constitutional exemptions that would serve to protect or preserve discriminatory laws and practices with regard to family relations. • States Parties should adopt written family codes or personal status laws that provide for equality between spouses or partners irrespective of their religious or ethnic identity or community, in accordance with the

	Convention and the Committee's general recommendations. • In the absence of a unified family law, the system of personal status laws should provide for individual choice as to the application of religious law, ethnic custom or civil law at any stage of the relationship. • Personal laws should embody the fundamental principle of equality between women and men and should be fully harmonized with the provisions of the Convention so as to eliminate all discrimination against women in all matters relating to marriage and family relations. • States Parties are obligated to address the sex- and gender-based discriminatory aspects of all the various forms of family and family relationships. • In respect of discrimination against women, they must address patriarchal traditions and attitudes and open family law and policy with the same scrutiny that is given to the "public" aspects of individual and community life. • States Parties should establish a legal requirement of marriage registration and conduct effective awareness-raising activities to that effect. They must provide for implementation through education about the requirements and provide infrastructure to make registration accessible to all persons within their jurisdiction. • States Parties should provide for establishing proof of marriage by means other than registration where circumstances warrant. The State must protect the rights of women in such marriages, regardless of their registration status. States Parties should take all legislative and policy measures needed to abolish polygamous marriages. Nevertheless, as stated by the Committee in its general recommendation No. 27, "polygamy is still practised in many States Parties, and many women are in polygamous unions". Accordingly, with regard to women in existing polygamous marriages, States Parties should take the necessary measures to ensure the protection of the economic rights of women. States Parties should provide to individuals entering into marriage information on the economic consequences of the marital relationship and of its potential dissolution by divorce or death. Where the States Parties provide for registered partnerships, the same information should
--	---

	be provided to them.
General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (2013)	• The general recommendation specifically guides States Parties on the implementation of their obligation of due diligence in respect of acts of private individuals or entities that impair the rights enshrined in the Convention, and makes suggestions as to how non-state actors can address women's rights in conflict-affected areas. • The general recommendation covers the application of the Convention to conflict prevention, international and non-international armed conflicts, situations of foreign occupation and other forms of occupation and the post-conflict phase. Additionally, the recommendation covers other situations of concern, such as internal disturbances, protracted and low-intensity civil strife, political strife, ethnic and communal violence, states of emergency and suppression of mass uprisings, war against terrorism and organized crime, which may not necessarily classify as armed conflict under International Humanitarian Law but which results in serious violations of women's rights. • The Committee recommends that States Parties: (a) apply the Convention and other international human rights instruments and humanitarian law comprehensively in the exercise of territorial or extraterritorial jurisdiction, whether acting individually or as members of international or intergovernmental organizations or coalitions; (b) regulate the activities of all domestic non-state actors within their effective control who operate extraterritorially, and ensure full respect of the Convention by them; and (c) respect, protect and fulfil the rights guaranteed by the Convention, which applies extraterritorially, as occupying Power in situations of foreign occupation. • Further, the Committee stipulates that States Parties are to: (a) ensure redress for acts of private individuals or entities as part of their due diligence obligation; (b) reject all forms of rollbacks in women's rights protections in order to appease non-state actors such as terrorists, private individuals or armed groups; (c) engage with non-state actors to prevent human rights abuses relating to their activities in conflict-affected areas; (d) use gender-sensitive practices in the investigation of violations during and after conflict;

	(e) respect women's rights in conflict and post-conflict situations, in line with the Convention; and (f) commit themselves to abiding by codes of conduct on human rights and the prohibition of all forms of gender-based violence. Further, in implementing their obligations under the Convention, States Parties are to give due consideration to the complementary protections for women and girls stemming from international humanitarian, refugee and criminal law.
Joint General Recommendation/General Comment No. 31 of the CEDAW Committee and No. 18 of the Committee on the Rights of the Child on harmful practices	• This General Recommendation/Comment was produced in lieu of the overlapping mandate of the CEDAW Committee and the CRC Committee. • The objective intended is to 'clarify the obligations of States Parties to CEDAW and CRC by providing authoritative guidance on legislative, policy and other appropriate measures that must be taken to ensure full compliance with their obligations under the two Conventions and to eliminate harmful practices'. • The CEDAW and CRC Committees consistently note that harmful practices are embedded in societal attitudes, according to which women and girls are regarded as inferior to men and boys based on stereotyped roles. • They also highlight the gender dimension of violence and indicate that sex and gender-based attitudes and stereotypes, power imbalances, inequalities and discrimination perpetuate the widespread existence of practices that often involve coercion or violence. • The harmful practices being referred to include <i>inter alia</i> female genital mutilation (FGM), child marriage, polygamy, crimes committed in the name of 'honour' and dowry-related violence. • While harmful practices are endemic within a wide variety of communities, their manifestations vary. Many practices have been identified as harmful practices which are all strongly connected to and reinforce socially constructed gender roles and systems of patriarchal power relations. • Significantly, reservations which have the effect of broadly limiting or qualifying the obligations of States to respect, protect and fulfil women's and children's rights to live free from harmful practices are incompatible with the object and purpose of the CRC and CEDAW and impermissible pursuant to Article 28(2) of the CEDAW and Article 51(2) of the CRC.

General Recommendation No. 33
on women's access to justice

- The right to access to justice for women is essential to the realization of all the rights protected under the CEDAW.
- It is a fundamental element of the rule of law and good governance, together with the independence, impartiality, integrity and credibility of the judiciary, the fight against impunity and corruption, and the equal participation of women in the judiciary and other law implementation mechanisms.
- The right to access to justice is multidimensional. It encompasses justiciability, availability, accessibility, good quality, the provision of remedies for victims and the accountability of justice systems.
- The Committee has observed a number of obstacles and restrictions that impede women from realizing their right to access to justice on a basis of equality, including a lack of effective jurisdictional protection offered by States Parties in relation to all dimensions of access to justice.
- These obstacles occur in a structural context of discrimination and inequality owing to factors such as gender stereotyping, discriminatory laws, intersecting or compounded discrimination, procedural and evidentiary requirements and practices, and a failure to systematically ensure that judicial mechanisms are physically, economically, socially and culturally accessible to all women. All these obstacles constitute persistent violations of women's human rights.
- The scope of the right to access to justice also includes plural justice systems. The term “plural justice systems” refers to the coexistence within a State Party of State laws, regulations, procedures and decisions on the one hand, and religious, customary, indigenous or community laws and practices on the other. Therefore, plural justice systems include multiple sources of law, whether formal or informal, whether State, non-State or mixed, that women may encounter when seeking to exercise their right to access to justice. Religious, customary, indigenous and community justice systems — referred to as traditional justice systems in the present general recommendation — may be formally recognized by the State, operate with the acquiescence of the State, with or without any explicit status, or function outside of the State’s regulatory framework.

4.2 Domestic Enforcement of the CEDAW

14 The Constitution of Pakistan safeguards equality of all citizens in Article 25, and provides protection against discrimination through non-discrimination guarantees contained in Articles 26 and 27. These provisions, along with others relevant to the rights enlisted within the CEDAW, are reproduced below.

Article 25	Equality of citizens. (1) All citizens are equal before law and are entitled to equal protection of law. (2) There shall be no discrimination on the basis of sex. (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.
Article 26	Non-discrimination in respect of access to public places. (1) In respect of access to places of public entertainment or resort not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth. (2) Nothing in clause (1) shall prevent the State from making any special provision for women and children.
Article 27	Safeguard against discrimination in services. (1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth.
Article 34	Full participation of women in national life: Steps shall be taken to ensure full participation of women in all spheres of national life.
Article 35	Protection of family, etc.: The State shall protect the marriage, the family, the mother and the child.

15 It is pertinent to note that criminal, civil and family laws in Pakistan safeguard the rights enlisted within the CEDAW more so than the Constitution as the latter, merely providing a principle, does not delve into the details of the protection.

Domestic legislation pertaining to CEDAW-guaranteed rights

16 In order to provide a comprehensive overview of the domestic status of rights guaranteed in the CEDAW, participants should be briefly introduced to some of the following legislative instruments, provided below in **Table 6**, which provide similar protections as afforded under the CEDAW.

Table 6

Punjab Protection of Women Against Violence Bill 2015
Punjab Commission on the Status of Women Act 2014
Sindh Domestic Violence (Prevention and Protection) Act 2013
Reproductive Healthcare and Rights Act 2013
National Commission on the Status of Women Act 2012
Women in Distress and Detention Fund (Amendment) Act 2011
Criminal Law (Second Amendment) Act 2011
Criminal Law (Third Amendment) Act 2011 (on prevention of anti-women practices)
Acid Control and Acid Crime Prevention Act 2010
Criminal Law (Amendment) Act 2010 (on sexual harassment)
Punjab Protection against Harassment of Women at the Workplace Act 2010
The Domestic Violence Prevention and Protection Act 2009
The Criminal Law Amendment Act 2009
North-West Frontier Province Establishment of a Commission on the Status of Women Act 2009
The Protection of Women (Criminal Laws) (Amendments) Act 2006
The Criminal Law (Amendment) Act 2004 (on 'honour' crimes)
Family Courts Act 1964
The Muslim Family Laws Ordinance 1961
The West Pakistan Maternity Benefit Ordinance 1958
The West Pakistan Maternity Benefit Rules 1961
Mines Maternity Benefit Act 1941
The Child Marriage Restraint Act 1929
Civil Servants Rules
Balochistan Domestic Violence (Prevention and Protection) Act 2014
Punjab Fair Representation of Women Act 2014
Balochistan Protection and Promotion of Breast-feeding and Child Nutrition Act 2014

17 The following administrative measures relevant to the CEDAW may be discussed with participants:

1. National Plan of Action
2. National Policy for Development and Empowerment of Women 2002

Domestic institutions responsible for compliance reporting

18 The alteration in working structure following enactment of the 18th Constitutional Amendment must be explained:

- Various provincial governments have established Human Rights Departments at the provincial level that supplement the work of the Federal Ministry of Human Rights.

19 In this regard, discussion on the roles played by the following in compliance reporting is pertinent: National Commission of Human Rights (NCHR), National Commission on the Status of Women (NCSW), National Commission for Minorities, and the National Commission on the Rights of the Child (NCRC). **This information is provided on page 55 of the Module.**

- National Commission of Human Rights (NCHR);
- National Commission on the Status of Women (NCSW);
- National Commission for Minorities; and
- National Commission on the Rights of the Child (NCRC).

20 With regard to the CEDAW, there are several Federal and Provincial institutions that play an important role in the protection of women's rights guaranteed under the Convention.

21 The Government must also engage with certain NGOs, civil society and relevant organizations, which are working in the field of human rights protection, to prepare comprehensive compliance reports. These organizations include:

- (i) The Human Rights Commission of Pakistan (HRCP);
- (ii) Aurat Foundation (AF);
- (iii) United Nations High Commission for Human Rights (UNHCHR);
- (iv) Human Rights Watch (HRW);
- (v) Asian Commission of Human Rights (ACHR);
- (vi) Democracy Reporting International (DRI).

22 Participants must be given an explanation of the role of the following Federal and Provincial set-ups with regard to the CEDAW:

- (i) Ministry of Inter-Provincial Coordination;
- (ii) Women Development Departments in all the provinces;
- (iii) Inter Provincial Coordination Departments in all the provinces.

Activity: Reference may be made to the rise in acid attacks⁴⁵ to engage participants in a discussion on:

- (i) **Which CEDAW rights are invoked in this situation;**

⁴⁵ Khalid, Shareen. "Acid attacks on the rise in Pakistan as women left disfigured and blinded for life in horrific assaults". *Daily Record*, 25 April 2015. Web, available at: <http://www.dailyrecord.co.uk/news/uk-world-news/acid-attacks-rise-pakistan-women-5580535> [Accessed 06/11/2015 at 10:55]

- (ii) The role of Provincial Women Development Departments in protecting these rights;**
- (iii) The responsibility of the Government in providing protection and penalties.**

Answer Key:

- (i) Provisions of the CEDAW that should be discussed include: Article 3, Article 5(a) and Article 16(a)-(b).
- (ii) The various Provincial Women Development Departments are mandated to lead distinct provinces towards gender equality, women empowerment as well as transforming the socio-economic status of women. These Departments are authorized to propose legislation, policy and sectoral planning for women development. Although there exists a federal law prohibiting and punishing acid crimes, each provincial Women Development Department should propose legislation to provincial assemblies on the same.
- (iii) The Acid Control and Acid Crime Prevention Act 2011 provides for stringent penalties, such as 14-years to life imprisonment sentences, for acid crimes. Moreover, fines of up to Rs. 1 million are also provided for within the Act. Enforcement of these penalties is the responsibility of the Government. Further, the Government must also strengthen and tighten laws pertaining to acquisition of acid and such materials used to carry out violent crimes against women. Not only the purchasers of these materials, but also the sellers, should face the possibility of prosecution for not maintaining a record of sales and scrutinizing sale of such products.

4.3 Legal Simulation Exercise

23 To assess the participants' understanding of the CEDAW, trainers should distribute the following legal simulation exercise:

24 "Mr. X and Ms. A are neighbours and close family friends belonging to a conservative family from rural Punjab. Mr. X's family approach Ms. A's family to ask for the two to be married within the year. Ms. A politely declines the offer, stating that he has yet to complete her education. Mr. X, infuriated by this response, abducts, drugs and rapes Ms. A.

25 When Ms. A regains consciousness, she finds herself alone in a strange locality. Realizing that she needed to file a case immediately, Ms. A makes her way to the nearest police station. Due to the state of shock Ms. A is in, the police refuse to register a complaint, mistaking her silence for lying. When a medical examination is finally conducted on Ms. A, she is repeatedly accused of lying because of the absence of any marks and bruises, implying she did not resist the alleged rape. Ms. A explains to the examiners that she was drugged and unconscious due to which she was not in a position to resist the rape.

26 Having been accused of lying by the police and the medical examiners, Ms. A returns home where her father beats her for trying to report the rape. Ms. A's father then approaches Mr. X to marry his daughter to "reconcile". Ms. A is then coerced into this marriage with the threat of 'honour killing'.

27 Identify the CEDAW-rights invoked in this situation and the avenues available to Ms. A for seeking redress."

Legal Simulation Answer Key:-

28 The following provisions of the CEDAW should be discussed by participants:

- Article 1;
- Article 2;
- Article 3;
- Article 5;
- Article 15;
- Article 16.

29 Participants should discuss the process identified in the ICCPR Answer Key as the same procedure applies for the CEDAW. Other points of discussion could include reviews by the Human Rights Council and its Special Procedures.

Module Five: Day Five

This Module will focus on an in-depth discussion of the Convention on the Rights of the Child (CRC).

Contents

5.1 Overview of the Convention on the Rights of the Child

Key Provisions of the CRC

Provisions on the Committee on the Rights of the Child

Individual Communications Procedure

General Recommendations issued by the Committee on the Rights of the Child

5.2 Domestic Enforcement of the CRC

Domestic legislation pertaining to the CRC-guaranteed rights

Domestic institutions responsible for compliance reporting

5.3 Legal Simulation Exercise

Module Five: Overview of the Convention on the Rights of the Child

Essential Reading:

Books:-

- Shaw, Malcolm. "International Law", *Cambridge University Press* (Seventh Edition) (2014); Chapter 6

Treaties:-

- UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3 [Annexed in BLDs]

Academic Articles:

- Cohen, Cynthia Price. "United Nations: Convention on the Rights of the Child", *International Legal Materials*, Vol 28, No. 6 (November 1989), pp. 1448-1476
- Hashemi, Kamran. "Religious Legal Tradition, Muslim States and the Convention on the Rights of the Child: An Essay on the Relevant UN Documentation", *Human Rights Quarterly*, Vol. 29, No. 1 (February 2007), pp. 194-227

Other:-

- International Service for Human Rights (ISHR). Simple Guide to Treaty Bodies (2010) [Annexed in BLDs]
- UN Secretary General. *Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties*, HRI/GEN/2/Rev.6 (3 June 2009) [Annexed in BLDs]

Useful Links:

- 'Overview of the Human Rights Framework' available at: <http://www.ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/>
- Human Rights Bodies – Complaints Procedures available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>
- Mazari, Imaan Hazir. 'The right to education', *Express Tribune* available at: <http://tribune.com.pk/story/973503/the-right-to-education/>
- Mahmood, Arshad. 'Child rights in Pakistan: An unfinished agenda', *Express Tribune* available at: <http://tribune.com.pk/story/793859/child-rights-in-pakistan-an-unfinished-agenda/>
- Ali, Salman. 'Rights for children still an illusion', *Daily Times* available at: <http://www.dailytimes.com.pk/opinion/17-Nov-2014/rights-for-children-still-an-illusion>

- Mazari, Imaan Hazir. 'Protecting our Children: Kasur in Perspective', *Courting the law* available at: <http://courtingthelaw.com/2015/08/13/commentary/protecting-our-children-kasur-in-perspective/>
- Mohsin, Agha. 'Child rights and Pakistan's alternative report for the UNCRC 2015', *The Nation* available at: <http://nation.com.pk/blogs/21-Jun-2015/child-rights-and-pakistan-s-alternative-report-for-uncrc-2015>
- 'Child protection: Convention on children's rights poorly implemented', *Express Tribune* available at: <http://tribune.com.pk/story/769051/child-protection-convention-on-childrens-rights-poorly-implemented/>
- Shahid, Jamal. 'Law adopted to provide protection to children', *Dawn* available at: <http://www.dawn.com/news/1243231/law-adopted-to-provide-protection-to-children>
- Soofi, Ahmer Bilal. International Law Lecture Series available at: <http://ocw.vu.edu.pk/Videos.aspx?cat=Law&course=PSC401>

5.1 Overview of the Convention on the Rights of the Child

1 The aim of the CRC is to set standards for the protection of children against abuse, neglect and exploitation. It addresses the right to possess, receive and have access to certain services essential to the well-being of children. The Convention also mandates the protection of children from harmful acts and practices. Further, it ensures the child's right to be heard on decisions affecting his or her life and provides for progressive participation in matters impacting the child.

2 The CRC has three optional protocols:

- (i) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict (25 May 2000);
- (ii) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (25 May 2000);
- (iii) Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (19 December 2011).

3 Pakistan has signed the first optional protocol but has not ratified it. On 5 July 2011, Pakistan ratified the second optional protocol. The Islamic Republic is not a signatory to the third optional protocol.

Key Provisions of the CRC

4 Each provision of the CRC should be discussed, distinguishing between:

- Substantive provisions;
- Implementing provisions; and
- Derogation provisions.

Note 1: Table 1, below, highlighting the relevant substantive, implementing and derogatory provisions of the CRC must be discussed.

Table 1

<u>Convention</u>	<u>Substantive Provision(s)</u>	<u>Implementing Provision(s)</u>	<u>Derogation Provision(s)</u>
CRC	Arts 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39 and 40.	Arts. 2, 4, 19, 21, 22, 33, 35, 42 and 44(6).	Arts. 10(2), 13(2), 14(3) and 15(2).

5 **Table 2** below summarizes CRC provisions:

Table 2: Summary of CRC Provisions

Article 1	<u>Definition of the child</u>
Article 2	<u>Non-discrimination</u>
Article 3	<u>Best interests of the child (the best interests of the child must be the primary consideration while taking decisions that affect the child)</u>
Article 4	<u>Protection of rights (through all available measures)</u>
Article 5	<u>Parental guidance</u>
Article 6	<u>Survival and development</u>
Article 7	<u>Registration, name, nationality and care</u>
Article 8	<u>Preservation of identity</u>
Article 9	<u>Separation from parents</u>
Article 10	<u>Family reunification</u>
Article 11	<u>Kidnapping</u>
Article 12	<u>Respect for the views of the child</u>
Article 13	<u>Freedom of expression</u>
Article 14	<u>Freedom of thought, conscience and religion</u>
Article 15	<u>Freedom of association</u>
Article 16	<u>Right to privacy</u>
Article 17	<u>Access to information, mass media</u>
Article 18	<u>Parental responsibilities, state assistance</u>
Article 19	<u>Protection from all forms of violence</u>
Article 20	<u>Children deprived of family environment</u>
Article 21	<u>Adoption</u>
Article 22	<u>Refugee children</u>
Article 23	<u>Children with disabilities</u>
Article 24	<u>Health and health services</u>
Article 25	<u>Review of treatment in care</u>
Article 26	<u>Social security</u>
Article 27	<u>Adequate standard of living</u>
Article 28	<u>Right to education</u>

Article 29	<u>Goals of education</u>
Article 30	<u>Children of minorities/indigenous groups</u>
Article 31	<u>Leisure, play and culture</u>
Article 32	<u>Child labour</u>
Article 33	<u>Drug abuse</u>
Article 34	<u>Sexual exploitation</u>
Article 35	<u>Abduction, sale and trafficking</u>
Article 36	<u>Other forms of exploitation</u>
Article 37	<u>Detention and punishment</u>
Article 38	<u>War and armed conflicts</u>
Article 39	<u>Rehabilitation of child victims</u>
Article 40	<u>Juvenile justice</u>
Article 41	<u>Respect for superior national standards</u>
Article 42	<u>Knowledge of rights</u>
Articles 43-54	<u>Implementation measures</u>

Provisions on the Committee on the Rights of the Child

6 In order to monitor implementation of the CRC, the Convention created the Committee on the Rights of the Child, the treaty-body mandated with monitoring State Party implementation of the Convention.

7 Like the other treaty bodies, the CRC Committee comprises independent experts responsible for monitoring progress under the CRC through compliance reports submitted by States Parties.

Note 2: Participants should be given an explanation of the composition of the CRC Committee. The Committee comprises 18 experts of high moral standing and recognized competence in the field. Members to be elected by States Parties from among their own nationals and serve in their personal capacity. Equitable geographical distribution is to be given its due consideration. Members of the Committee are elected by secret ballot from list of persons nominated by States Parties. Members of the Committee are elected for a period of four years and shall be eligible for re-election if re-nominated.

8 Provisions on the Committee that must be highlighted include the following, provided in **Table 3** below.

Table 3

CRC Provision	Content Summary
Article 43	Committee comprises 18 experts elected by States Parties by secret ballot from among their own nationals; initial election to Committee to be held no later than six months after date of entry into force of the CRC and thereafter every second

	year; members to be elected for four year term and be eligible for re-election if re-nominated; if a member dies or resigns or declares that he/she can no longer perform the duties of the Committee, the State Party which nominated him/her shall appoint another expert from among its own nationals to serve for the remainder of the term subject to the approval of the Committee; Committee to have its own rules of procedures and elect its officers for a period of two years; meetings of the Committee to be held at UN headquarters or any other convenient place as determined by the Committee; Committee to meet annually; Secretary-General to provide necessary staff and facilities for effective performance of Committee.
Article 44(4)	Committee may request further information from States Parties relevant to the implementation of the CRC.
Article 44(5)	Committee to submit to the GA through ECOSOC reports on its activities every two years.
Article 45(b)	Committee to transmit to the specialized UN agencies any reports from States Parties that indicate a need or contain a request for technical advice or assistance, along with the Committee's own observations and suggestions.
Article 45(c)	The Committee may recommend to the GA to request the Secretary-General to undertake, on its behalf, studies on specific issues relating to the rights of the child.
Article 45(d)	The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the CRC.

9 Having clarified the manner in which the Committee functions, trainers should run the participants through the following salient provisions on reporting to the Committee, given in **Table 4**.

Table 4

CEDAW Provision	Content Summary
Article 44	States Parties to submit to the Committee, through the Secretary-General, reports on measures they have adopted to give effect to the CRC; initial report due within two years of entry into force of the Convention for the State Party concerned; periodic reports due every five years; reports should indicate factors and difficulties affecting the degree of fulfilment of obligations under the CRC; a State Party which has submitted a comprehensive initial report need not repeat basic information previously mentioned; Committee may request further information from States Parties and submit to the GA, through ECOSOC, a report on its activities every two years; States Parties to make their reports widely available to the public in their own countries.
Article 44(6)	States Parties to make their reports widely available to the public in their own countries.

10 A general overview of the manner in which State Party reports are to be prepared and submitted under the CRC must be provided. Reference may be made to the Report of the UN Secretary General on Harmonized Reporting Guidelines, annexed in the BLDs.

Individual Communications Procedure

11 The Committee on the Rights of the Child may, under certain conditions, receive and consider individual complaints alleging violations of the rights enlisted within the Convention. Pakistan, however, has not recognized the competence of the Committee to do so. The Optional Protocol (on a communications procedure) to the CRC gives the Committee competence to receive and consider individual communications alleging violations of the CRC and its Protocols.

Note 3: For additional information in this regard, the web link on "Human Rights Bodies – Complaints Procedures" provided under "Useful Links" can be utilized.

12 While Pakistan has not recognized the competence of the CRC Committee to receive and consider individual communications, it has established a domestic helpline service for complaints regarding human rights violations.

13 The Ministry of Human Rights has established a helpline service for victims of human rights violations. Victims from all across the country can dial the toll free number, 1099, to receive counselling and referral services. The helpline operators work in accordance with the GATHER approach: greet, ask, tell, help, explain and return (follow-up). There are 18 basic categories of violations and 87 sub-categories. The helpline operationalized in March 2015 and has taken 163 cases since then. 23 of these cases have been referred to the relevant authorities and are under review with regard to follow-up. 140 clients have been legally advised. Each complaint has a "disposal status" – ensuring that effective follow-up safeguards exist.

General Comments issued by the Committee on the Rights of the Child

14 As per the general practice of the treaty bodies, the CRC Committee issues general comments intended to serve as authoritative guides for States in implementing and interpreting the Convention.

15 The following General Comments of particular importance for Pakistan, provided in **Table 5** below, should be discussed.

Table 5: CRC General Comments

<u>General Comment</u>	<u>Salient Features</u>
General Comment No.1 on the	• This General Comment is centred on Article 29 which is of

aims of education ⁴⁶	far-reaching importance. The aims of education that it sets out, which have been agreed to by all States Parties, promote, support and protect the core value of the Convention: the human dignity innate in every child and his or her equal and inalienable rights. • Article 29(1) not only adds to the right to education recognized in Article 28 a qualitative dimension which reflects the rights and inherent dignity of the child; it also insists upon the need for education to be child-centred, child-friendly and empowering, and it highlights the need for educational processes to be based upon the very principles it enunciates. • The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. • "Education" in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society. • The child's right to education is not only a matter of access but also of content. Article 29(1) is much more than an inventory or listing of different objectives which education should seek to achieve. It draws upon, reinforces, integrates and complements a variety of other provisions and cannot be properly understood in isolation from them. • The general principles of the Convention – non-discrimination, best interests of the child, right to life, survival and development, and the right to express views and have them taken into account – must also be taken into account. Children's rights are not detached or isolated values devoid of context, but exist within a broader ethical framework which is partly described in Article 29(1)
General Comment No. 3 on HIV/AIDS and the rights of children ⁴⁷	• The HIV/AIDS epidemic has drastically changed the world in which children live. Millions of children have been infected and have died and many more are gravely affected as HIV spreads through their families and communities. • Children who use drugs are at high risk. Yet, all children can be rendered vulnerable by the particular circumstances of their lives, especially (a) children who are themselves HIV-infected; (b) children who are affected by the epidemic because of the loss of a parental caregiver or teacher and/or because their families or communities are severely strained

⁴⁶ (17 April 2001)

⁴⁷ (17 March 2003)

	by its consequences; and (c) children who are most prone to be infected or affected. The objectives of the present General Comment are: (a) to identify further and strengthen understanding of all the human rights of children in the context of HIV/AIDS; (b) to promote the realization of the human rights of children in the context of HIV/AIDS, as guaranteed under the CRC; (c) to identify measures and good practices to increase the level of implementation by States of the rights related to the prevention of HIV/AIDS and the support, care and protection of children infected with or affected by this pandemic; (d) to contribute to the formulation and promotion of child-oriented plans of action, strategies, laws, policies, programmes to combat the spread and mitigate the impact of HIV/AIDS at the national and international levels.
General Comment No. 4 on adolescent health and development in the context of the Convention ⁴⁸	• Adolescents up to 18 years old are holders of all the rights enshrined in the Convention – they are entitled to special protection measures and, according to their evolving capacities, they can progressively exercise their rights. • Adolescence is a period characterized by rapid physical, cognitive and social changes, including sexual and reproductive maturation; the gradual building up of the capacity to assume adult behaviours and roles involving new responsibilities requiring new knowledge and skills. • The dynamic transition period to adulthood is also generally a period of positive changes, prompted by the significant capacity of adolescents to learn rapidly, to experience new and diverse situations, to develop and use critical thinking, to familiarize themselves with freedom, to be creative and to socialize. • The Committee notes that, in implementing their obligations under the Convention, States Parties have not given sufficient attention to the specific concerns of adolescents as rights holders and to promoting their health and development. • States Parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention without discrimination (Art. 2), including with regard to “race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”. • These grounds also cover adolescents’ sexual orientation and health status (including HIV/AIDS and mental health). Adolescents who are subject to discrimination are more

⁴⁸ (21 July 2003)

	vulnerable to abuse, other types of violence and exploitation, and their health and development are put at greater risk. They are therefore entitled to special attention and protection from all segments of society. • The right to express views freely and have them duly taken into account (Art. 12) is also fundamental in realizing adolescents' right to health and development. States Parties need to ensure that adolescents are given a genuine chance to express their views freely on all matters affecting them, especially within the family, in school, and in their communities. • Systematic data collection is necessary for States Parties to be able to monitor the health and development of adolescents. States Parties should adopt data-collection mechanisms that allow desegregation by sex, age, origin and socio-economic status so that the situation of different groups can be followed. Data should also be collected to study the situation of specific groups such as ethnic and/or indigenous minorities, migrant or refugee adolescents, adolescents with disabilities, working adolescents, etc. • Where appropriate, adolescents should participate in the analysis to ensure that the information is understood and utilized in an adolescent sensitive way. • States Parties are obligated to create a safe and supportive environment for adolescents, including within their family, in schools, in all types of institutions in which they may live, within their workplace and/or in the society at large; to ensure that adolescents have access to the information that is essential for their health and development and that they have opportunities to participate in decisions affecting their health (notably through informed consent and the right of confidentiality), to acquire life skills, to obtain adequate and age-appropriate information, and to make appropriate health behaviour choices; to ensure that health facilities, goods and services, including counselling and health services for mental and sexual and reproductive health, of appropriate quality and sensitive to adolescents' concerns are available to all adolescents; to ensure that adolescent girls and boys have the opportunity to participate actively in planning and programming for their own health and development; to protect adolescents from all forms of labour which may jeopardize the enjoyment of their rights, notably by abolishing all forms of child labour and by regulating the working environment and conditions in accordance with international standards; to protect adolescents from all forms of intentional and unintentional injuries, including
--	--

	those resulting from violence and road traffic accidents; to protect adolescents from all harmful traditional practices, such as early marriages, honour killings and female genital mutilation; to ensure that adolescents belonging to especially vulnerable groups are fully taken into account in the fulfilment of all aforementioned obligations; to implement measures for the prevention of mental disorders and the promotion of mental health of adolescents.
General Comment No. 5 on general measures of implementation of the Convention ⁴⁹	• This Comment aims to outline States Parties' obligations to develop what it has termed 'general measures of implementation'. The various elements of the concept are complex. • Article 4 requires States Parties to take 'all appropriate legislative, administrative, and other measures' for implementation of the rights contained therein. • While it is the State which takes on obligations under the Convention, its task of implementation needs to engage all sectors of society and, of course, children themselves. • Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced is fundamental. • The Committee provides specific recommendations relating to general measures. The Committee's reporting guidelines arrange the Convention's articles in clusters, the first being on 'general measures of implementation'. The second sentence of Article 4 reflects a realistic acceptance that lack of resources – financial and otherwise – can hamper the full implementation of economic, social and cultural rights in some states. This introduces the concept of 'progressive realization' of such rights. • For rights to have meaning, effective remedies must be available to redress violations. States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. • Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as mandated by Article 39.

⁴⁹ (27 November 2003)

	States Parties are to develop a comprehensive national strategy rooted firmly in the Convention. Further, effective coordination is required to monitor and assess progress in the implementation of children's rights. While self-monitoring and evaluation is an obligation for States Parties, the Committee also regards the independent monitoring of progress towards implementation by parliamentary committees, NGOs and independent human rights institutions as essential. Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation.
General Comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment ⁵⁰	- This Comment aims to guide States Parties in understanding the provisions of the Convention concerning the protection of children against all forms of violence. - It focuses on corporal punishment and other cruel or degrading forms of treatment, which are currently very widely accepted and practiced forms of violence against children. The Committee defines “corporal” or “physical” punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. - Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). - In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child. Corporal punishment and other cruel or degrading forms of punishment of children take place in many settings, including within the home and family, in all forms of alternative care, schools and other educational institutions and justice systems - both as a sentence of the courts and as a punishment within penal and other institutions - in situations of child labour, and in the

⁵⁰ (21 August 2006)

	community.
General Comment No. 7 on implementing child rights in early childhood ⁵¹	• This General Comment was designed in lieu of the Committee's experiences of reviewing States Parties' reports, in which very little information has been offered regarding early childhood. Thus, the objectives of this comment are to strengthen understanding of the human rights of all young children and to draw States Parties' attention to their obligations towards young children; to comment on the specific features of early childhood that impact on the realization of rights; to encourage recognition of young children as social actors from the beginning of life, with particular interests, capacities and vulnerabilities, and of requirements for protection, guidance and support in the exercise of their rights; to draw attention to diversities within early childhood that need to be taken into account when implementing the CRC; to point to variations in cultural expectations and treatment of children; to emphasize the vulnerability of young children to poverty, discrimination, family breakdown and multiple other adversities that violate their rights and undermine their well-being; and to contribute to the realization of rights for all young children through formulation and promotion of comprehensive policies, laws, programmes, practices, professional training and research specifically focused on rights in early childhood. • The Committee has identified Articles 2, 3, 6 and 12 of the Convention as general principles – each principle has implications for rights in early childhood. States Parties must adopt a rights-based, multi-sectoral policy with regard to programmes for early childhood. There is a need to build capacity for research in early childhood as well as training in this regard.
General Comment No. 10 on children's rights in juvenile justice ⁵²	• In line with the Committee's guidelines for periodic reporting, the implementation of Articles 37 and 40 of the CRC is the main focus of the information provided by States Parties. • Many States Parties still have a long way to go in achieving full compliance with the CRC, e.g. in the areas of procedural rights, development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings, and the use of deprivation of liberty only as a measure of last resort.

⁵¹ (20 September 2006)

⁵² (25 April 2007)

	• The Committee expresses its concern over the lack of information on the measures that States Parties have taken to prevent children from coming into conflict with the law. This might be a culmination of a lack of comprehensive policy in the field of juvenile justice. Juvenile justice should promote, <i>inter alia</i>, the use of alternative measures such as diversion and restorative justice as well as responding to children in conflict with the law in an effective manner, and serving not only the best interests of these children but also the short and long-term interest of the society at large. • The CRC requires States Parties to develop and implement a comprehensive juvenile justice policy. This comprehensive approach cannot be limited to the implementation of the specific provisions in Articles 37 and 40 of the Convention, but should also take into account the general principles enshrined in Articles 2, 3, 6 and 12, as well as all other relevant articles, for instance Articles 4 and 39. This General Comment is further intended to promote the integration of international standards, such as the UN Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules'), UN Rules for the Protection of Juveniles Deprived of their Liberty (the 'Havana Rules') and the UN Guidelines for the Prevention of Juvenile Delinquency (the 'Riyadh Guidelines') into a national and comprehensive juvenile justice policy.
General Comment No. 9 on the rights of children with disabilities ⁵³	• There are around 500-600 million persons with disabilities in the world which is approximately 10% of the world population. 150 million of these are children. • The Committee recognizes that most of the causes of disabilities are preventable, for instance war, illness and poverty. Similarly, the secondary impacts of disabilities are often caused by the lack of timely intervention. Thus, more needs to be done to create the necessary political will and real commitment to investigate and put into practice the most effective actions to prevent disabilities with participation at all levels. • The Committee emphasizes that the barrier is not the disability itself but rather a combination of social, cultural, attitudinal and physical obstacles which children with disabilities encounter in their daily lives. Acknowledging the importance of Articles 2 and 23 of the Convention, the Committee asserts that the implementation of the Convention with regard to children with disabilities should not be limited to these articles.

⁵³ (13 November 2007)

	• This General Comment is intended to provide guidance and assistance to States Parties in their efforts to implement the rights of children with disabilities, in a comprehensive manner which covers all the provisions of the Convention. • All appropriate and necessary measures undertaken to protect and promote the rights of children with disabilities must include and pay special attention to the particular vulnerability and needs of children belonging to minorities and indigenous children who are more likely to be already marginalized within their communities. Programmes and policies must always be culturally and ethnically sensitive.
General Comment No. 13 on the right of the child to freedom from all forms of violence ⁵⁴	• The Committee issued this comment in lieu of the alarming extent and intensity of violence exerted against children. Measures to end violence must be massively strengthened and expanded in order to effectively put an end to these practices which jeopardize children's development and society's potential non-violent solutions for conflict resolution. • No violence against children is justifiable and all violence against children is preventable. States Parties need to establish national standards for child well-being, health and development as securing these conditions is the ultimate goal of child caregiving and protection. Clear operational legal definitions are required of the different forms of violence outlined in Article 19 in order to ban all forms of violence in all settings. The comment addresses mental and physical violence as well as self-harm and violence in the mass media.
General Comment No. 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts ⁵⁵	• The importance of play and recreation in the daily life of a child has been acknowledged by the international community from early on, as evidenced by the 1959 Declaration of the Rights of the Child, in Article 7 which states: "The child shall have full opportunity for play and recreation...; society and the public authorities shall endeavour to promote the enjoyment of this right". • Poor recognition of the significance of this right results in lack of investment in appropriate provisions, weak or non-existent protective legislation and the invisibility of children in national and local-level planning. • The Committee notes the difficulties faced by particular categories of children, especially girls, poor children, children with disabilities, etc.

⁵⁴ (18 April 2011)

⁵⁵ (17 April 2013)

	• Moreover, profound changes in the world are having a major impact on children's opportunities to enjoy the rights provided for in Article 31. The urban population, especially in developing countries, is increasingly significantly as is violence worldwide in all its forms – at home, in schools, in mass media, in the streets. • The implications along with the commercialization of play provisions are influencing the ways children engage in recreation, as well as in cultural and artistic activities. For many children in rich and poor countries alike, child labour, domestic work or increasing educational demands serve to reduce time available for enjoyment of these rights.
General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health ⁵⁶	• This Comment is premised on the significance of approaching children's health from a child-rights perspective that all children have the right to opportunities to survive, grow and develop, within the contextual of physical, emotional and social well-being to each child's full potential. • The Committee recognizes that most mortality, morbidity and disabilities among children could be prevented if there were political commitment and sufficient allocation of resources directed towards the application of available knowledge and technologies for prevention, treatment and care. • The comment aims to provide guidance and support to States Parties and other duty bearers to support them in respecting, protecting and fulfilling children's right to the enjoyment of the highest attainable standard of health. • The Committee interprets children's right to health as defined in Article 24 as an 'inclusive right', extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services but also to a right to grow and to develop to their full potential and live in conditions that enable them to attain the highest standard of health through the implementation of programmes that address the underlying determinants of health. • The comment is explicitly generic in order to ensure its relevance to a wide range of children's health problems, health systems and the varied contexts that exist in different countries and regions. • Children's health is affected by a variety of factors, many of which have changed during the past 20 years and are likely

⁵⁶ (17 April 2013)

	to continue to evolve in the future. This includes the attention given to new health problems and changing health priorities, such as HIV/AIDS, pandemic influenza, non-communicable diseases, importance of mental health care, care of the new born, and neonatal and adolescent mortality, increased understanding of the factors that contribute to death, disease and disability in children, including structural determinants, such as the global economic and situation, poverty, unemployment, migration and population displacements, war and civil unrest, discrimination and marginalization. • There is also a growing understanding of the impact of climate change and rapid urbanization on children's health; the development of new technologies, such as vaccines and pharmaceuticals, a stronger evidence base for effective biomedical, behavioural and structural interventions, as well as some cultural practices that relate to child-rearing and have proved to have a positive impact on children.
General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration ⁵⁷	• Article 3, paragraph 1 of the CRC gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere. • It expresses one of the fundamental values of the Convention – it is one of the four general principles under the CRC for interpreting and implementing all the rights of the child. • Further, it applies as a dynamic concept that requires an assessment appropriate to the specific context. • The full application of the concept of the child's best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity. • The child's best interests is a threefold concept involving a substantive right, a fundamental, interpretative legal principle and a rule of procedure. • This comment should guide decisions by all those concerned with children, including parents and caregivers. • The main objective of this general comment is to strengthen the understanding and application of the right of children to have their best interests assessed and taken as a primary consideration or, in some cases, the paramount

⁵⁷ (29 May 2013)

	consideration. Its overall objective is to promote a real change in attitudes leading to the full respect of children as rights holders. • It has implications for the elaboration of all implementation measures taken by governments as well as individual decisions made by judicial or administrative authorities or public entities through their agents that concern one or more identified children. Decisions made by civil society entities and the private sector which provide services concerning or impacting on children are also relevant in this regard. • Lastly, the comment is intended to serve as a guideline for actions undertaken by persons working with and for children.
Joint General Recommendation/General Comment No. 31 of the CEDAW Committee and No. 18 of the CRC Committee on harmful practices⁵⁸	• This General Recommendation/Comment was produced in lieu of the overlapping mandate of the CEDAW Committee and the CRC Committee. • The objective intended is to 'clarify the obligations of States Parties to CEDAW and CRC by providing authoritative guidance on legislative, policy and other appropriate measures that must be taken to ensure full compliance with their obligations under the two Conventions and to eliminate harmful practices'. • The CEDAW and CRC Committees consistently note that harmful practices are embedded in societal attitudes, according to which women and girls are regarded as inferior to men and boys based on stereotyped roles. • They also highlight the gender dimension of violence and indicate that sex and gender-based attitudes and stereotypes, power imbalances, inequalities and discrimination perpetuate the widespread existence of practices that often involve coercion or violence. • The harmful practices being referred to include <i>inter alia</i> female genital mutilation (FGM), child marriage, polygamy, crimes committed in the name of 'honour' and dowry-related violence. • While harmful practices are endemic within a wide variety of communities, their manifestations vary. Many practices have been identified as harmful practices which are all strongly connected to and reinforce socially constructed gender roles and systems of patriarchal power relations. • Significantly, reservations which have the effect of broadly limiting or qualifying the obligations of States to respect, protect and fulfil women's and children's rights to live free

⁵⁸ (4 November 2014)

	from harmful practices are incompatible with the object and purpose of the CRC and CEDAW and impermissible pursuant to Article 28(2) of the CEDAW and Article 51(2) of the CRC.
--	---

5.2 Domestic Enforcement of the CRC

16 The Constitution of Pakistan broadly safeguards many of the provisions enlisted within the CRC. The details that fall within these principles are further governed under Pakistan's criminal, civil and family laws. The relevant Constitution provisions are reproduced below.

Article 25A	Right to education: The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.
Article 35	Protection of family, etc.: The State shall protect the marriage, the family, the mother and the child.

Domestic legislation pertaining to CRC-guaranteed rights

17 In order to provide a comprehensive overview of the domestic status of rights guaranteed in the CRC, participants should be briefly introduced to some of the following legislative instruments, provided below in **Table 6**, which provide similar protections as afforded under the CRC.

Table 6

The Senate passed a bill on <u>11 March 2016</u> criminalizing sexual assault against minors, child pornography and trafficking. This amendment to the penal code <u>will come into force once ratified by the President</u> . Its salient features include: raising the age of criminal responsibility from 7 to years of age; sexual assaults will be punishable by up to 7 years in prison; child pornography will be punishable by seven years imprisonment and a fine of 700,000 rupees.
Criminal Law (Amendment Bill) 2015 (providing for protection of children) (adopted by Senate)
The Sindh Child Protection Authority Act 2011
The Child Protection and Welfare Act (CPWA) 2010
The Protection of Children Act 2006 (<u>there is no evidence that this went beyond the bill stage</u>)
The Punjab Destitute and Neglected Children Act 2004

Protection of Breastfeeding and Child Nutrition Ordinance 2002
Federally Administered Areas Compulsory Primary Education Ordinance 2000
Juvenile Justice System Ordinance 2000
NWFP Compulsory Primary Education Act 1996
Punjab Primary Compulsory Education Act 1994
The Employment of Children Rules 1995
Bonded Labour System (Abolition) Act 1992
Employment of Children Act 1991 (as amended in 2011)
Punjab Youthful Offenders Ordinance 1983 (as amended in 2001)
Sindh Children Act 1955
Children (Pledging of Labour) Act 1933
Child Marriage Restraint Act 1929
Birth, Marriage and Death Registration Act 1886
Guardians and Wards Act 1890

Domestic institutions responsible for compliance reporting

18 The alteration in working structure following enactment of the 18th Constitutional Amendment must be explained:

- Various provincial governments have established Human Rights Departments at the provincial level that supplement the work of the Federal Ministry of Human Rights.

19 In this regard, discussion on the roles played by the following in compliance reporting is pertinent: National Commission of Human Rights (NCHR), National Commission on the Status of Women (NCSW), National Commission for Minorities, and the National Commission on the Rights of the Child (NCRC). **This information is provided on page 55 of the Module.**

20 With regard to the CRC, there are several Federal and Provincial institutions that play an important role in the protection of child rights guaranteed under the Convention.

21 The Government must also engage with certain NGOs, civil society and relevant organizations, which are working in the field of human rights protection, to prepare comprehensive compliance reports. These organizations include:

- (i) The Human Rights Commission of Pakistan (HRCP);
- (ii) Aurat Foundation (AF);
- (iii) United Nations High Commission for Human Rights (UNHCHR);
- (iv) Human Rights Watch (HRW);
- (v) Asian Commission of Human Rights (ACHR);
- (vi) Democracy Reporting International (DRI);
- (vii) Society for the Protection of the Child (SPARC).

22 Trainers must explain to participants the role of the following Federal and Provincial institutions with regard to the CRC:

- (iv) Ministry of Inter-Provincial Coordination;
- (v) Women Development Departments in all the provinces;
- (vi) Probation Departments in all provinces;
- (vii) Inter Provincial Coordination Departments in all the provinces.

Activity: Reference may be made to the child sexual abuse scandal in Kasur⁵⁹ to engage participants in a discussion on:

- (i) Which CRC rights were invoked in this situation;**
- (ii) The responsibility of the Government in providing protection and penalties.**

Answer Key:

- (i) The following provisions of the CRC should be discussed: Article 4, Article 6, Article 16, Article 24, Article 27, Article 33, Article 34, Article 36, Article 37, Article 39 and Article 40. Similarly, since Pakistan has ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the following provisions of the same should be discussed: Article 1, Article 3, Article 7, Article 8 and Article 9.
- (ii) By undertaking the aforementioned obligations, the Government has a legal obligation to protect child victims of sexual abuse and exploitation. Moreover, the State has a responsibility to provide rehabilitation and counselling services to child victims of abuse. The perpetrators of abuse cannot be protected against the interests and well-being of the child victims. Additionally, the State has an obligation to prosecute and punish perpetrators of these offences.

⁵⁹ Khan, Mohammad Zubair. "Pakistan horrified over child abuse ring revelations". *The Telegraph*, 10 August 2015. Web, available at: <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/11795388/Pakistan-horrified-over-child-abuse-ring-revelations.html> [Accessed 06/11/2015 at 11:03]

5.3 Legal Simulation Exercise

23 Trainers should distribute the following legal simulation exercise to assess the participants' understanding of the CRC:

24 "Ahad is a ninth grade student at a private school in Islamabad. His school has an essay competition approaching on 'Life in Pakistan' for which all students are encouraged to participate. Ahad belongs to the Ahmadi community in Pakistan and writes a powerful piece on the persecution and deaths of members of his family. On receiving Ahad's essay submission, the school principal calls Ahad into his office to inform him that his essay will not be forwarded by the school "because it is anti-Pakistan and anti-Islam". Ahad, though disappointed, decides to let the issue go.

25 When Ahad returns home, his parents ask him if his essay has been selected by the school following which he narrates his conversation with the school principal. His parents approach the school the next day to further inquire into why their son was called into the principal's office. The principal, although reluctant to meet Ahad's parents, calls them into his office. Ahad's parents dispute the principal's claims that Ahad's essay is "anti-Pakistan and anti-Islam", stating it is merely a description of his experiences but to no avail.

26 The following day, one of Ahad's teachers reports him to the school principal for greeting him with the traditional Muslim "*Assalam-o-laikum*". Ahad is subsequently given an expulsion notice.

27 Identify the CRC-rights invoked in this situation and the avenues for redress available to Ahad and his family."

Legal Simulation Answer Key:-

28 The following provisions of the CRC should be discussed with regard to the legal simulation:

- Article 1 (definition of a child and how Ahad falls under that definition);
- Article 2 (protection against discrimination or punishment on the basis of 'expressed opinions' or 'beliefs of the child's parents');
- Article 3(1) (preserving the best interests of the child);
- Article 4 (States Parties must take all appropriate legislative, administrative and other measures for implementation of the rights guaranteed under the Convention);
- Article 6(2) (ensuring maximum development of the child);
- Article 8 (preservation of child's identity and provision of protection where deprivation of identity occurs);
- Article 13 (freedom of expression);
- Article 14 (freedom of thought, conscience and religion);

Note 4: Discussion of the limitation under Article 14(3): is the limitation of Ahad's rights under Article 14(1) fulfilling one of the criteria listed in Article 14(3)? If so, it is not a violation.

- Article 16 (children not to be subjected to 'arbitrary or unlawful interference' with their privacy nor to 'unlawful attacks on.. honour and reputation'; the child has 'the right to protection of the law against such interference or attacks');
- Article 28(2) (States Parties to ensure that 'school discipline is administered in a manner consistent with the child's human dignity and in conformity' with the CRC);
- Article 29 (education of the child is to be directed to development of the child's talents to their fullest potential, etc.);
- Article 31(2) (promoting the right of the child to participate fully in artistic and cultural life);

29 Further, participants should discuss the process identified in the ICCPR Answer Key as the same procedure applies for the CRC. Other points of discussion could include reviews by the Human Rights Council and its Special Procedures.

Module Six: Day Six

This Module will focus on an in-depth discussion of the Convention against Torture, Inhuman or Degrading Treatment or Punishment (CAT).

Contents

6.1 Overview of the Convention against Torture, Inhuman or Degrading Treatment or Punishment

Key Provisions of the CAT

Provisions on the Committee against Torture

Individual Communications Procedure

General Comments issued by the Committee against Torture

6.2 Domestic Enforcement of the CAT

Domestic legislation pertaining to the CAT-guaranteed rights

Domestic institutions responsible for compliance reporting

6.3 Legal Simulation Exercise

Module Six: Overview of the Convention against Torture, Inhuman or Degrading Treatment or Punishment

Essential Reading:

Books:-

- Shaw, Malcolm. "International Law", *Cambridge University Press* (Seventh Edition) (2014); Chapter 6

Treaties:-

- UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vo. 1465, p. 85 [Annexed in BLDs]

Academic Articles:

- Research Society of International Law. 'Policy Brief on the Implementation of the Convention against Torture, Inhuman or Degrading Treatment or Punishment (2011)'
- Ahsan, Khwaja Aizaz; Gillani, Nimra. "Criminalizing Torture", *Human Rights Review*, Vol. I, pp. 99-113

Other:-

- International Service for Human Rights (ISHR). Simple Guide to Treaty Bodies (2010) [Annexed in BLDs]
- UN Secretary General. *Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties*, HRI/GEN/2/Rev.6 (3 June 2009) [Annexed in BLDs]

Useful Links:

- 'Overview of the Human Rights Framework' available at: <http://www.ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/>
- Human Rights Bodies – Complaints Procedures available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>
- Bennett-Jones, Owen. 'Torture', *The News* available at: <http://www.thenews.com.pk/Todays-News-9-289048-Torture>
- Soofi, Ahmer Bilal. , International Law Lecture Series available at: <http://ocw.vu.edu.pk/Videos.aspx?cat=Law&course=PSC401>

6.1 Overview of the Convention against Torture, Inhuman or Degrading Treatment or Punishment

1 The Convention requires State Parties to end torture within their jurisdiction and criminalize all acts of torture. The Convention goes beyond many other international Conventions in that it offers a general definition of torture as the infliction of severe physical and/or mental suffering committed under the colour of law. Importantly, the Convention does not allow any room for the use of torture in emergencies or exigent circumstances.

Key Provisions of the CAT

2 Each provision of the CAT should be discussed, distinguishing between:

- Substantive provisions;
- Implementing provisions; and
- Derogation provisions.

Note 1: Table 1 below highlighting the relevant substantive, implementing and derogatory provisions of the CAT must be discussed.

<u>Convention</u>	<u>Substantive Provision(s)</u>	<u>Implementing Provision(s)</u>	<u>Derogation Provision(s)</u>
CAT	Arts. 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15.	Arts. 2, 3, 4 and 16.	-

3 Participants should be provided with an explanation of the concept of "extradition" agreements. In accordance with the fundamental principle of international law, i.e. state sovereignty, the general rule favours the legal authority of each State over individuals and groups within its territory. However, where extradition treaties have been concluded between States, one sovereign State Party may formulate an extradition request for a criminal/alleged criminal under such a treaty.

4 It should be noted that Article 3 of CAT is reproduced below:

Article 3

(1) No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

(2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

5 In order to provide the participants with information on Pakistan's commitments under the aforementioned Article, a list of countries Pakistan has signed extradition treaties with has been provided in Table 2 below.

Table 2: Extradition Treaties entered into by Pakistan

<u>2009</u>	• Extradition Agreement between the Islamic Republic of Pakistan and the Great Socialist People's Libyan Arab Jamahiriya, 2 May 2009
<u>2007</u>	• Pakistan – Uzbekistan treaty on mutual legal assistance in criminal matters, 14 March 2007. • Pakistan – China Agreement on Mutual Legal Assistance in Criminal Matters, 17 April 2007. • Pakistan – UAE Agreement on cooperation to fight against terrorism and organized crime, 12 June 2007. • Pakistan – UK Agreement on Transfer of Prisoners, 24 August 2007. • Pakistan – Thailand Agreement on cooperation in the transfer of offenders and enforcement of penal sentences, 20 December 2007.
<u>2006</u>	• Process-verbal exchange of instruments of ratification of the agreement between the Government of the Islamic Republic of Pakistan and the Government of the Democratic Socialist Republic of Sri Lanka on Mutual Legal Assistance in Criminal Matters, 31 March 2006.
<u>2005</u>	• Pakistan- Sri Lanka Agreement on Mutual Legal Assistance in Criminal Matters, 9 February 2005. • Pakistan – China agreement on combating terrorism, secessionism and extremism, 5 April 2005. • Pakistan – Uzbekistan Agreement on Cooperation in the fight against international terrorism, 6 may 2005. • Pakistan – Hellenic Republic Agreement on cooperation in fighting terrorism, illicit drug trafficking and organized crime, 11 May 2005. • Pakistan – ASEAN joint declaration for cooperation to combat terrorism, 29 July 2005.

<u>2004</u>	• Pakistan – Turkey Cooperation Agreement on Fight against International Terrorism and Organized Crime, 20 January 2004. • Pakistan – UAE Treaty on Service of Judicial and Extra Judicial documents, taking of evidence and recognition and enforcement of judgments in civil and commercial matters, 8 March 2004. • Pakistan – UAE Extradition Treaty, 8 March 2004. • Pakistan – Tajikistan Agreement on Cooperation in Combating Illicit Trafficking of Narcotic Drugs, psychotropic substances, and their precursors, 13 May 2004. • Pakistan – Azerbaijan Agreement on cooperation International Terrorism and Organized Crime, 8 July 2004. • Pakistan – Azerbaijan agreement on cooperation in combating illicit trafficking of narcotic drugs, psychotropic substances and their precursors, 8 July 2004. • Pakistan – Italy Agreement on cooperation to combat narcotic drugs trafficking, psychotropic substances and precursors, 29 September 2004. • Pakistan – Brazil Agreement on Cooperation in Combating production, consumption and illicit trafficking of drugs and psychotropic substances, 29 November 2004. • Pakistan – Sri Lanka Agreement on Transfer of Offenders, 1 December 2004.
<u>2003</u>	• Pakistan – Cambodia Arrangement with regard to combating terrorism and transnational crimes, 27 April 2003. • Pakistan – Turkey Agreement on fighting against international illicit trafficking in narcotic drugs and psychotropic substances, 15 June 2003. • Pakistan – USA Agreement regarding surrender of persons to international tribunals, 21 July 2003. • Pakistan – Sri Lanka Agreement on cooperation between their Ministries of Interior, 13 September 2003. • Pakistan – China Treaty on Extradition, 3 November 2003. • Pakistan – Indonesia Arrangement with regard to combating international terrorism, 16 December 2003.
<u>2001</u>	• Pakistan – Uzbekistan Extradition Treaty 25 January 2001.
<u>1997</u>	• Pakistan – Russian Federation Agreement on Cooperation in Combating Illicit Trafficking and Abuse of Narcotic Drugs and Psychotropic Substances, 8 July 1997.
<u>1996</u>	• Pakistan – Syria Agreement for cooperation to combat organized crimes, particularly crimes related to terrorism, 25 April 1996. • Pakistan – Libya treaty of extradition, 28 September 1996.

	• Pakistan – Libya Agreement for cooperation in the field of security, 28 September 1996. • Pakistan – Uzbekistan agreement for cooperation to eliminate crimes relating to illicit trafficking in narcotic drugs, psychotropic substances and their chemical precursors, 19 October 1996. • Pakistan – Uzbekistan Agreement for cooperation in combating and efficient preventing of organized crime relating to terrorism, 19 October 1996. • Pakistan – Kyrgyz Republic Agreement for collaboration in the sphere of fight against crime, 27 October 1996. • Pakistan Kyrgyz Republic agreement for cooperation to control illegal trafficking of narcotic drugs and psychotropic substances, 27 October 1996. • Pakistan – China Agreement on Cooperation against illicit trafficking in narcotic drugs, psychotropic substances and their chemical precursors, 1 December 1996.
<u>1995</u>	• Pakistan – Kazakhstan Agreement on Cooperation between their respective Ministries of Interior, 1 June 1995. • Pakistan – Kazakhstan Agreement on cooperation in combating organized crime, illicit drug trafficking, terrorism and other heinous crimes, 1 June 1995. • Pakistan – Kazakhstan Agreement for collaboration in matters of legal assistance on civil, family and criminal cases, 23 August 1995. • Pakistan – UAE Agreement on Cooperation against illicit trafficking in narcotic drugs, psychotropic substances and chemical precursors, 5 November 1995.
<u>1990</u>	• SAARC Convention on narcotic drugs and psychotropic substances, 23 November 1990.
<u>1984</u>	• Pakistan – Maldives Treaty on Extradition, 12 July 1984.
<u>1983</u>	• Pakistan – Saudi Arabia Extradition Treaty, 3 April 1983. • Pakistan – Turkey Treaty on Extradition, 13 August 1983.
<u>1981</u>	• Pakistan – Turkey Convention on Mutual Assistance in Criminal Matters, 23 November 1981.
<u>1972</u>	• Pakistan – Italy Treaty of Extradition, 21 July 1972.
<u>1955</u>	• Pakistan – India Agreement regarding obtaining of evidence by civil courts of either country in the other country (concluded by exchange of letters during June-December 1955).

6 **Table 3** summarizes CAT provisions:

Table 3: Summary of CAT Provisions

Article 1	<u>Definition of torture</u>
Article 2	<u>State Party obligations (effective legislative, administrative, judicial or other measures)</u>
Article 3	<u>Obligation of non-refoulement</u>
Article 4	<u>Criminalization of all acts of torture</u>
Article 5	<u>Establishing jurisdiction over torture-related offences</u>
Article 6	<u>Taking custody and making preliminary inquiry into facts</u>
Article 7	<u>Submission of case of torture for prosecution</u>
Article 8	<u>Extradition</u>
Article 9	<u>Supply of evidence and mutual judicial assistance</u>
Article 10	<u>Training of law enforcement personnel, civil or military, medical personnel, public officials and other persons involved in custody, interrogation or treatment of anyone subjected to any form of arrest, detention or imprisonment</u>
Article 11	<u>Obligation of State Party to systematically review interrogation rules, instructions, methods and practices</u>
Article 12	<u>Prompt and impartial investigation in cases where there is reasonable ground to believe that an act of torture has been committed</u>
Article 13	<u>Right to complain and have case heard promptly and impartially examined (protection of complainants and witnesses)</u>
Article 14	<u>Right to obtain redress and receive adequate compensation</u>
Article 15	<u>Evidence gathered through torture to be inadmissible</u>
Article 16	<u>Acts of cruel, inhuman or degrading treatment or punishment by public officials to be prevented</u>
Articles 17-24	<u>Provisions on the Committee against Torture, election to the Committee, States Parties reports, cooperation between States Parties and the Committee, inter-state complaints procedure, individual communications procedure, ad hoc conciliation commissions, annual reports of the Committee</u>
Articles 25-33	<u>Provisions on ratification and accession, amendments, inter-state disputes, denunciation and languages in which the text of the Convention is authentic.</u>

Provisions on the Committee against Torture

7 In order to monitor implementation of the CAT, the Convention created the Committee against Torture, the treaty-body mandated with monitoring State Party implementation of the Convention.

8 Like the other treaty bodies, the CAT Committee comprises independent experts responsible for monitoring progress under the CAT through compliance reports submitted by States Parties.

Note 2: Participants should be given an explanation of the composition of the CAT Committee. The Committee comprises 10 experts of high moral standing and recognized competence in the field of human rights, who serve in their personal capacity. Members of the Committee are elected by secret ballot from a list of persons nominated by States Parties – each State Party may nominate one person from among its own nationals. Members of the Committee are elected for a term of four years and are eligible for re-election if re-nominated.

9 Provisions on the Committee that must be highlighted include the following, provided in **Table 4** below.

Table 4

CAT Provision	Content Summary
Article 17	Committee comprises 10 experts of high moral standing and recognized competence in the field of human rights, who serve in their personal capacity; members elected by secret ballot from list of persons nominated by States Parties; each State Party may nominate one person from among its own nationals; elections to the Committee shall be held at biennial meetings of the States Parties convened by the Secretary-General; two-thirds of States Parties constitute a quorum; persons elected to the Committee are those who obtain the largest number of votes and an absolute majority of votes of the representatives of States Parties present and voting; initial election held no later than six months after date of entry into force of the Convention; members of the Committee are elected for a four-year term and are eligible for re-election if re-nominated; if a member of the Committee dies, resigns or can no longer perform his/her duties, the State Party which nominated him/her shall appoint another expert from among its nationals to serve for the remainder of the term subject to the approval of the States Parties; States Parties to be responsible for expenses of members of Committee while they are in performance of Committee duties.
Article 18	Committee to elect its officers for a term of two years; these officers may be re-elected; Committee to establish its own rules of procedure which shall provide that six members constitute a quorum and that decisions of the Committee shall be made by a majority vote of the members present; the Secretary-General shall provide necessary staff and facilities for the effective performance of the Committee; Secretary-General to convene the initial meeting of the Committee; States Parties to bear expenses incurred in connection with holding of meetings.
Article 19(4)	Committee, at its discretion, may decide to include any comments and observations received from any State Party in its annual report made in accordance with Article 24.
Article 20	In the event that the Committee receives reliable information that torture is being systematically practiced in the territory of a State Party, it shall invite that State Party to cooperate in the examination of this information; the Committee may decide to designate one or more of its members to make a confidential inquiry and to report to the Committee urgently in this regard; an inquiry may include a visit to the territory of the State Party which requires the cooperation of that State

	Party; the Committee shall transmit these findings to the State Party with any comments or suggestions it deems appropriate; all proceedings in this regard shall be confidential and cooperation of the State Party shall be sought at all stages of the proceedings.
Article 21(1)(c)	With regard to inter-state complaints, the Committee shall deal with a matter referred to it in this regard only after it has determined that all domestic remedies have been invoked and exhausted in the matter with the exception that remedies are unreasonably prolonged or are unlikely to bring effective relief to the victim of the violation.
Article 21(1)(d)	The Committee shall hold closed meetings when examining inter-state complaints.
Article 21(1)(f)	In any matter referred to it under Article 21, the Committee may call upon the States Parties concerned to provide any relevant information.
Article 21(1)(h)	The Committee shall submit a report within 12 months after the date of receipt of notice under Article 21(1)(b).
Article 22(2)	The Committee shall consider inadmissible any communication which is anonymous or which it considers to be incompatible with the provisions of the Convention.
Article 22(3)	The Committee shall bring any communications submitted to it to the attention of the State Party which has made a declaration under Article 22(1) and is alleged to be violating provisions of the Convention.
Article 22(4)	The Committee is to consider individual communications in light of all information made available to it by or on behalf of the individual and by the State Party concerned. The Committee shall not consider any communications from an individual unless the same matter has not been, and is not being, examined under another procedure of international investigation or settlement; similarly, the Committee shall not consider any communications from an individual unless that individual has exhausted all available domestic remedies with the exception that application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the victim of the violation.
Article 22(6)	The Committee shall hold closed meetings when examining individual communications.
Article 22(7)	The Committee shall forward its views to the individual concerned as well as the relevant State Party.
Article 23	The members of the Committee and of the ad hoc conciliation commissions shall be entitled to the facilities, privileges and immunities of experts on mission for the UN.
Article 24	Committee to submit annual report on its activities to the States Parties and the GA.

10 Having clarified the manner in which the Committee functions, the following salient provisions on reporting, given in **Table 5**, must be discussed with participants.

Table 5

CAT	Content Summary
-----	-----------------

Provision	
Article 19	States Parties to submit to the Committee, through the Secretary-General, reports on the measures they have taken to give effect to their obligations under the Convention; initial reports to be submitted one year after entry into force of the Convention for the State Party concerned; periodic reports to be submitted every four years or whenever the Committee requests; Committee to make general comments on the report; States Parties to respond with any observations to the Committee.
Article 21	States Parties may, at any time, declare that they recognize the competence of the Committee to receive and consider inter-state complaints; if the matter is not resolved within six months after receipt by the receiving State of the communication, either state has the right to refer the matter to the Committee; the Committee shall make available its good offices to the States Parties concerned with a view to arriving at a friendly solution of the matter.
Article 21(1)(g)	With regard to inter-state complaints, the States Parties concerned shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing.
Article 22(1)	A State Party can, at any time, declare under this Article that it recognizes the competence of the Committee to receive and consider individual communications; no communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

11 A general overview of the manner in which State Party reports are to be prepared and submitted under the CAT must be provided. Reference may be made to the Report of the UN Secretary General on Harmonized Reporting Guidelines, annexed in the BLDs.

Individual Communications Procedure

12 The Committee against Torture may, under certain conditions, receive and consider individual complaints alleging violations of the rights enlisted within the Convention. Pakistan, however, has not recognized the competence of the Committee to do so. The Committee may consider individual communications with regard to those States that have made the requisite declaration under Article 22 of the Convention.

Note 3: For additional information in this regard, the web link on "Human Rights Bodies – Complaints Procedures" provided under "Useful Links" can be utilized.

13 While Pakistan has not recognized the competence of the CAT Committee to receive and consider individual communications, it has established a domestic helpline service for complaints regarding human rights violations.

14 The Ministry of Human Rights has established a helpline service for victims of human rights violations. Victims from all across the country can dial the toll free number, 1099, to receive counselling and referral services. The helpline operators work in accordance with the GATHER

approach: greet, ask, tell, help, explain and return (follow-up). There are 18 basic categories of violations and 87 sub-categories. The helpline operationalized in March 2015 and has taken 163 cases since then. 23 of these cases have been referred to the relevant authorities and are under review with regard to follow-up. 140 clients have been legally advised. Each complaint has a "disposal status" – ensuring that effective follow-up safeguards exist.

General Comments issued by the Committee against Torture

15 As per the general practice of the treaty bodies, the Committee against Torture issues general comments intended to serve as authoritative guides for States in implementing and interpreting the Convention.

16 The following General Comments of particular importance for Pakistan should be discussed, provided in **Table 6**.

Table 6: CAT General Comments

<u>General Comment</u>	<u>Salient Features</u>
General Comment No. 2 on implementation of Article 2 by States Parties ⁶⁰	- Article 2, paragraph 1, obliges each State Party to take actions that will reinforce the prohibition against torture through legislative, administrative, judicial, or other actions that must, in the end, be effective in preventing it. States Parties are also obligated to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment; and to ensure that such conduct and any recurrences thereof are effectively prevented. - States Parties must also continually review and improve their national laws and performance under the Convention. Article 2, paragraph 1, requires that each State Party shall take effective measures to prevent acts of torture not only in its sovereign territory but also “in any territory under its jurisdiction.” - The Committee has recognized that “any territory” includes all areas where the State Party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law. - Article 2, paragraph 2, provides that the prohibition against torture is absolute and non-derogable. No exceptional circumstances whatsoever may be invoked by a State Party to justify acts of torture in

⁶⁰ (24 January 2008)

	any territory under its jurisdiction. • The Convention imposes obligations on States Parties and not on individuals. States bear international responsibility for the acts and omissions of their officials and others, including agents, private contractors, and others acting in official capacity or acting on behalf of the State. • The non-derogability of the prohibition of torture is underscored by the long-standing principle embodied in article 2, paragraph 3, that an order of a superior or public authority can never be invoked as a justification of torture. • Articles 3 to 15 of the Convention constitute specific preventive measures that the States Parties deemed essential to prevent torture and ill-treatment, particularly in custody or detention.
General Comment No. 3 on implementation of Article 14 by States Parties ⁶¹	• Each State Party is required to “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.” • The term “redress” in article 14 encompasses the concepts of “effective remedy” and “reparation”. The comprehensive reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention. • Reparation must be adequate, effective and comprehensive. The Committee recognizes the elements of full redress under international law and practice as outlined in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles and Guidelines). • Victims are persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. The term “victim” also includes

⁶¹ (13 December 2012)

	affected immediate family or dependents of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization. • To give effect to article 14, States Parties shall enact legislation specifically providing a victim of torture and ill-treatment with an effective remedy and the right to obtain adequate and appropriate redress, including compensation and as full rehabilitation as possible. • At the procedural level, States Parties shall ensure the existence of institutions competent to render enforceable final decisions through a procedure established by law to enable victims of torture or ill-treatment to secure redress, including adequate compensation and rehabilitation. • The Committee highlights the importance of the State Party affirmatively ensuring that victims and their families are adequately informed of their right to pursue redress. In this regard, the procedures for seeking reparation should be transparent. With respect to sexual or gender-based violence and access to due process and an impartial judiciary, the Committee emphasizes that in any proceedings, civil or criminal, to determine the victim's right to redress, including compensation, rules of evidence and procedure in relation to gender-based violence must afford equal weight to the testimony of women and girls. The Committee considers the training of relevant police, prison staff, medical personnel, judicial personnel and immigration personnel, including training on the Istanbul Protocol, to be fundamental to ensuring effective investigations. States Parties shall establish a system to oversee, monitor, evaluate, and report on their provision of redress measures and necessary rehabilitation services to victims of torture or ill-treatment. On account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them. The Committee wishes to underscore that specific information should be provided on the following: (a) the number of victims of torture or ill-treatment who have sought compensation; (b) the measures taken to assist victims in the direct aftermath of torture;
--	--

	(c) the rehabilitation facilities available to victims of torture or ill-treatment and the accessibility thereof and budget; (d) the methods available for assessing the effectiveness of rehabilitation programmes and services; (e) the measures taken to ensure satisfaction and guarantees of non-repetition; (f) the domestic legislation which provides victims of torture or ill-treatment with the right to remedy and redress, and relevant implementation measures taken by the State Party; (g) the measures taken to ensure that all victims of torture or ill-treatment are able to exercise and enjoy their rights under article 14; (h) the complaints mechanisms available for victims of torture or ill-treatment, including how such mechanisms are made known and accessible to all victims; (i) the measures taken by States Parties to ensure that all allegations of torture and ill-treatment are effectively investigated; (j) the legislation and policy measures designed to positively identify victims of torture in order to provide them with redress; (k) the available avenues for a victim of torture or ill-treatment to obtain redress, including all criminal, civil, administrative and non-judicial procedures, such as administrative reparation programmes; (l) the legal aid and witness protection available to victims of torture or ill-treatment as well as witnesses and others who have intervened on behalf of victims; (m) the steps taken to implement judgements by national, regional or international courts, including the amount of time lapsed from the date of the judgement and the actual provision of compensation or other forms of redress; (n) the safeguards available for the special protection of members of marginalized or vulnerable groups, including women and children seeking to exercise their rights guaranteed under article 14 of the Convention; (o) any such other matters that the Committee may require.
--	--

6.2 Domestic Enforcement of the CAT

Domestic legislation pertaining to CAT-guaranteed rights

17 Pakistan has yet to enact specific legislation incorporating the provisions of the Convention. Nonetheless, in order to provide a comprehensive overview of the domestic status of rights guaranteed in the CAT, participants should be briefly introduced to some of the following legislative instruments which provide similar protections as afforded under the CAT:

1. Article 14 of the Constitution
2. Section 44 of the Pakistan Penal Code
3. The Prisons Act 1894
4. Prison Rules 1978
5. Punjab Employees Efficiency, Discipline and Accountability Act 2006
6. Abolition of the Punishment of Whipping Act 1996
7. Police Order 2002:
 - (i) Article 35
 - (ii) Article 114(1)(c)
 - (iii) Article 114(2)
 - (iv) Article 156(d)

Domestic institutions responsible for compliance reporting

18 The alteration in working structure following the enactment of the 18th Constitutional Amendment must be explained:

- Various provincial governments have established Human Rights Departments at the provincial level that supplement the work of the Federal Ministry of Human Rights.

19 In this regard, discussion on the roles played by the following in compliance reporting is pertinent: National Commission of Human Rights (NCHR), National Commission on the Status of Women (NCSW), National Commission for Minorities, and the National Commission on the Rights of the Child (NCRC). **This information is provided on page 55 of the Module.**

20 With regard to the CAT, there are several Federal and Provincial institutions that play an important role in the enforcement of the prohibition against torture guaranteed under the Convention.

21 The Government must also engage with certain NGOs, civil society and relevant organizations, which are working in the field of human rights protection, to prepare comprehensive compliance reports. These organizations include:

- (i) The Human Rights Commission of Pakistan (HRCP);
- (ii) Aurat Foundation (AF);
- (iii) United Nations High Commission for Human Rights (UNHCHR);
- (iv) Human Rights Watch (HRW);
- (v) Asian Commission of Human Rights (ACHR);

- (vi) Democracy Reporting International (DRI);

22 Trainers must explain to participants the role of the following Federal and Provincial institutions with regard to the CAT:

- i. Ministry of Inter-Provincial Coordination;
- ii. Women Development Departments in all the provinces;
- iii. Prisons Departments in all the provinces;
- iv. Home Departments in all the provinces;
- v. Inspector Generals of Prisons in all the provinces;
- vi. Inter Provincial Coordination Departments in all the provinces.

Activity: Reference may be made to the frequent instances of torture in police custody⁶² to engage participants in a discussion on:

- i. Which CAT rights are invoked in these situations;**
- ii. The legal responsibility of law enforcement agencies;**
- iii. The responsibility of the Government in delineating and enforcing penalties.**

Answer Key:

- (i) The following provisions of the CAT should be discussed: Article 2, Article 6, Article 10, Article 11, Article 12, Article 13, Article 14, Article 15 and Article 16.
- (ii) Law enforcement agencies are not exempt from punishment for committing acts of torture or inflicting inhumane or degrading treatment or punishment against those in custody. Consequently, they must be provided adequate training in this regard and have requisite awareness regarding standards for interrogation and so forth. Any law enforcement agency official committing torture or inflicting inhumane or degrading treatment or punishment must be punished in accordance with the law.
- (iii) The State of Pakistan has yet to incorporate a definition of 'torture' into its domestic law. There is an urgent need to transpose the CAT into domestic law and delineate specific penalties for such acts, particularly when committed by law enforcement agencies (as these usually go unchecked and unpunished). There are numerous instances of torture in police custody and confessions extracted through torture – it is the responsibility of the State to enact adequate legislation for the Courts to exclude such confessions from proceedings.

⁶²Imtiaz, Saba. "Third degree". *Express Tribune*, 29 April 2012. Web, available at: <http://tribune.com.pk/story/370212/third-degree/> [Accessed 06/11/2015 at 13:30]

6.3 Legal Simulation Exercise

23 In order to assess the participants' understanding of the CAT, trainers should distribute the following legal simulation exercise:

24 "Mr. Abdul Karim is stopped and searched on arrival from Syria at Karachi Airport by security personnel. On opening his suitcase, police discover the following objects: a toy gun, strange-smelling white powder and eight cartons of cigarettes. Mr. Karim explains to the police personnel that the toy gun is a gift for his 16-year old nephew, the powder is medication for which he cannot produce a prescription and the cartons of cigarettes are not for sale but for personal consumption.

After detaining him for over an hour, police personnel decide to strip search Mr. Karim. On discovering the various tattoos on his body, some in Arabic and others in Hebrew, police become

suspicious of Mr. Karim and decide to question him again. While questioning him, police threaten Mr. Karim with torture and violence.

25 After holding him in detention for over two hours, police discover that Mr. Abdul Karim's name is on a no-fly list. To try and extract a confession from Mr. Karim, security personnel remove him from the airport and take him to a nearby police station where he is not allowed to make any phone calls and immediately placed in a dark cubicle. During the two hours that Mr. Abdul Karim is kept in the cubicle, police constantly drastically increase and decrease the temperature. This too, however, results in no confession.

26 Having contacted Syrian police, it is discovered that Mr. Karim had been convicted in *absentia* in Syria for plotting to carry out a terrorist bombing. After the involvement of intelligence agencies on both sides, Pakistan decides to return Mr. Karim to Syria. Mr. Karim is finally allowed to call a lawyer. His lawyer argues that Mr. Karim was convicted in *absentia* due to a confession obtained by torture and therefore, returning him to Syria would be a violation of Pakistan's commitments under the CAT.

27 Identify the relevant CAT-guaranteed rights that have been violated in this situation."

Legal Simulation Answer Key:-

28 The following provisions of the CAT should be discussed:

- Article 1 (definition of torture – Mr. Abdul Karim's situation clearly falls within the definition);
- Article 2(2) (torture is prohibited even in exceptional situations);
- Article 3 (obligation not to return a person 'where there are substantial grounds for believing that he would be in danger of being subjected to torture');
- Article 4 (States Parties to ensure that all acts of torture are offences under its criminal law);
- Article 6 (obligation of States to make inquiry into the facts);
- Article 7 (submission of case to domestic prosecution rather than extradition);
- Article 11 (systematic review of arrangements for custody, etc.);
- Article 12 (prompt and impartial investigation);

- Article 13 (right to complain; case to be promptly and impartially examined);
- Article 14 (redress for victims; enforceable right to fair and adequate compensation; full rehabilitation; dependents entitled to compensation);
- Article 15 (statements made as a result of torture cannot be invoked as evidence in any proceedings);
- Article 16 (prevention of cruel, inhuman or degrading treatment or punishment that does not amount to torture).

Module Seven: Day Seven

This Module will focus on an in-depth discussion of the Convention on the Rights of Persons with Disabilities (CRPD).

Contents

7.1 Overview of the Convention on the Rights of Persons with Disabilities

Key Provisions of the CRPD

Provisions on the Committee on the Rights of Persons with Disabilities

Individual Communications Procedure

General Comments issued by the Committee on the Rights of Persons with Disabilities

7.2 Domestic Enforcement of the CRPD

Domestic legislation pertaining to the CRPD-guaranteed rights

Domestic institutions responsible for compliance reporting

7.3 Legal Simulation Exercise

Module Seven: Overview of the Convention on the Rights of Persons with Disabilities

Essential Reading:

Books:-

- Shaw, Malcolm. "International Law", *Cambridge University Press* (Seventh Edition) (2014); Chapter 6

Treaties:-

- UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106* [Annexed in BLDs]

Academic Articles:

- Rasmussen, Marit; Lewis, Olivier. "Introduction to the United Nations Convention on the Rights of Persons with Disabilities", *International Legal Materials*, Vol. 46, No. 3 (May 2007), pp. 441-442
- Murad, Qasim. "Rights of Persons with Disabilities", *Human Rights Review Vol. II*, pp. 49-59.

Other:-

- International Service for Human Rights (ISHR). Simple Guide to Treaty Bodies (2010) [Annexed in BLDs]
- UN Secretary General. *Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties*, HRI/GEN/2/Rev.6 (3 June 2009) [Annexed in BLDs]

Useful Links:-

- 'Overview of the Human Rights Framework' available at: <http://www.ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/>
- Human Rights Bodies – Complaints Procedures available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>
- 'Rights of the disabled', *Dawn* available at: <http://www.dawn.com/news/833042/rights-of-the-disabled>
- Alavi, Aleena Zainab. 'Entry denied', *Dawn* available at: <http://www.dawn.com/news/1089122/entry-denied>
- 'WHO pushes for legislation on rights of the disabled', *Dawn* available at: <http://www.dawn.com/news/1183296>
- Mazari-Hazir, Imaan. 'PWDs in Pakistan', *The News* available at: <http://www.thenews.com.pk/print/99530-PWDs-in-Pakistan>
- 'Pakistan lacks data to address disabled people's problems', *The Nation* available at: <http://nation.com.pk/islamabad/30-Jun-2015/pakistan-lacks-data-to-address-disabled-people-s-problems>
- 'Persons with disabilities: Speakers urge for inclusive education practices', *Express Tribune* available at: <http://tribune.com.pk/story/705547/persons-with-disabilities-speakers-urge-for-inclusive-education-practices/>
- Wasif, Sehrish. 'PSDP allocations: No money for persons with disabilities', *Express Tribune* available at: <http://tribune.com.pk/story/896647/disabled-commitments-no-money-for-persons-with-disabilities/>
- Khan, Muhammad Zaman. 'The disabled and the 'disabled' legislation in Pakistan', *Frontier Post* available at: <http://www.thefrontierpost.pk/the-disabled-and-the-disabled-legislation-in-pakistan/>
- Bobra, Amir Jalil. '1.4m disabled Pakistani children have no access to schools', *Daily Times* available at: <http://www.dailytimes.com.pk/national/08-May-2014/1-4m-disabled-pakistani-children-have-no-access-to-schools>
- 'Data being collected on disabilities in Pakistan', *The News* available at: <http://www.thenews.com.pk/print/48623-data-being-collected-on-disabilities-in-pakistan>

- Soofi, Ahmer Bilal. Lecture Series available at: <http://ocw.vu.edu.pk/Videos.aspx?cat=Law&course=PSC401>

7.1 Overview of the Convention on the Rights of Persons with Disabilities

1 The purpose of the CRPD is to protect, promote and ensure the full and equal enjoyment of all human rights and freedoms by all persons with disabilities. The Convention includes, in persons with disabilities, those with long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may obstruct their full and effective participation and engagement in society on an equal basis with others. Moreover, the Convention makes specific references to women with disabilities and children with disabilities.

Key Provisions of the CRPD

2 Each provision of the CRPD should be discussed, distinguishing between:

- Substantive provisions;
- Implementing provisions; and
- Derogation provisions.

Note 1: Table 1, below, highlighting the relevant substantive, implementing and derogatory provisions of the CRPD must be discussed.

Table 1

<u>Convention</u>	<u>Substantive Provision(s)</u>	<u>Implementing Provision(s)</u>	<u>Derogation Provision(s)</u>
CRPD	Arts. 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30.	Arts. 4, 5, 31, 33, 33 and 43.	Art 4(4) and 4(5).

3 Table 2 below summarizes CRPD provisions.

Table 2: Summary of CRPD Provisions

Article 1	<u>Purpose of Convention (promoting, protecting and ensuring enjoyment of all rights and freedoms by persons with disabilities)</u>
Article 2	<u>Definitions of key terms (including communication, language, discrimination on the basis of disability, reasonable accommodation and universal design)</u>

Article 3	<u>General principles (respect for dignity, non-discrimination, participation and inclusion, respect for difference, equality of opportunity, accessibility, equality between men and women, respect for children)</u>
Article 4	<u>General obligations (to take all measures to promote full realization of all human rights and fundamental freedoms for persons with disabilities; obligation of non-discrimination)</u>
Article 5	<u>Equality and non-discrimination</u>
Article 6	<u>Women with disabilities</u>
Article 7	<u>Children with disabilities</u>
Article 8	<u>Awareness-raising</u>
Article 9	<u>Accessibility</u>
Article 10	<u>Right to life</u>
Article 11	<u>Situations of risk and humanitarian emergencies</u>
Article 12	<u>Equal recognition before the law</u>
Article 13	<u>Access to justice</u>
Article 14	<u>Liberty and security of person</u>
Article 15	<u>Freedom from torture or cruel, inhuman or degrading treatment or punishment</u>
Article 16	<u>Freedom from exploitation, violence and abuse</u>
Article 17	<u>Protecting the integrity of the person</u>
Article 18	<u>Liberty of movement and nationality</u>
Article 19	<u>Living independently and being included in the community</u>
Article 20	<u>Personal mobility</u>
Article 21	<u>Freedom of expression and opinion, and access to information</u>
Article 22	<u>Respect for privacy</u>
Article 23	<u>Respect for home and the family</u>
Article 24	<u>Education</u>
Article 25	<u>Health</u>
Article 26	<u>Habilitation and rehabilitation</u>
Article 27	<u>Work and employment</u>
Article 28	<u>Adequate standard of living and social protection</u>
Article 29	<u>Participation in political and public life</u>
Article 30	<u>Participation in cultural life, recreation, leisure and sport</u>
Article 31	<u>Statistics and data collection</u>
Articles 32-50	<u>These provisions explain the responsibility of States Parties with regard to reports and how to effectively implement and monitor the Convention.</u>

Provisions on the Committee on the Rights of Persons with Disabilities

4 In order to monitor implementation of the CRPD, the Convention created the Committee on the Rights of Persons with Disabilities, the treaty-body mandated with monitoring State Party implementation of the Convention.

5 Like the other treaty bodies, the CRPD Committee comprises independent experts responsible for monitoring progress under the CRPD through compliance reports submitted by States Parties.

Note 2: Participants should be given an explanation of the composition of the CRPD Committee. The Committee shall consist of 12 experts at the time of entry into force of the CRPD. After an additional sixty ratifications/accessions to the Convention, the membership of the Committee shall increase by 6 members to a maximum of 18 members. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the CRPD. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of different forms of civilization, balanced gender representation and participation of experts with disabilities. Members shall be elected by secret ballot from a list of persons nominated by States Parties from among their own nationals. The members of the Committee shall be elected for a term of four years and be eligible for re-election once.

6 Provisions on the Committee that must be highlighted include the following, provided in **Table 3** below.

Table 3

CRPD Provision	Content Summary
Article 34	The Committee shall consist of 12 experts at the time of entry into force of the CRPD; after an additional sixty ratifications/accessions to the Convention, the membership of the Committee shall increase by 6 members to a maximum of 18 members; the members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the CRPD; the members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of different forms of civilization, balanced gender representation and participation of experts with disabilities; members shall be elected by secret ballot from a list of persons nominated by States Parties from among their own nationals; those persons will be elected to the Committee who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting; members of the Committee shall be elected for a term of four years and be eligible for re-election once; if a member dies, resigns or declares that he/she can no longer perform his/her duties, the State Party which nominated the member shall appoint another expert possessing the qualifications; the Committee shall establish its own rules of procedure; the Secretary-General shall provide necessary staff and facilities for the effective performance of the functions of the Committee; members of the Committee shall receive emoluments from the UN and shall be entitled to the facilities, privileges and immunities of experts on mission for the UN.
Article 36	The Committee shall consider every report submitted to it by States Parties and make such suggestions and general recommendations on the report as it may consider appropriate; these suggestions and general recommendations are to be forwarded to the States Party concerned; the State Party may respond with any information it chooses to the Committee; the Committee may request further

	information from States Parties; if a State Party is significantly overdue in the submission of a report, the Committee may notify that State Party of the need to examine its implementation of the CRPD; the Secretary-General shall make available the reports to all States Parties; States Parties shall make their reports widely available to the public in their own countries; the Committee shall transmit reports from States Parties to the specialized UN agencies.
Article 37	Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate; the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the CRPD, including through international cooperation.
Article 38	The specialized agencies and other UN organs shall be entitled to representation at the consideration of implementation of the provisions of the Convention that fall within the scope of their mandate; the Committee shall consult other relevant bodies instituted by international human rights treaties with a view to ensuring the consistency of their respective reporting guidelines.
Article 39	The Committee shall report to the GA and ECOSOC every two years on its activities and make suggestions and recommendations based on the examination of reports and information received from States Parties.

7 Having clarified the manner in which the Committee functions, the following salient provisions on reporting, given in **Table 4**, must be discussed with participants.

Table 4

CRPD Provision	Content Summary
Article 35	Each State Party shall submit to the Committee, through the Secretary-General, a comprehensive report on measures taken to give effect to its obligations under the Convention; initial reports are due within two years after the entry into force of the CRPD; periodic reports are due every four years and further whenever the Committee so requests; the Committee shall decide any guidelines applicable to the content of the reports; reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the Convention.
Article 36	Each report shall be considered by the Committee which shall make suggestions and general recommendations on the report as it considers appropriate; States Parties may respond with any information they deem relevant; the Committee may request further information from States Parties; if a State Party is significantly overdue in submission of a report, the Committee may notify the State Party of the need to examine the implementation of the present Convention; the Secretary-General shall make available the reports to all States Parties; States Parties shall make their reports widely available to the public in their own countries and facilitate access to the suggestions and general recommendations relating to these reports; the Committee shall transmit reports from States Parties in order to address a request or indication of a need for technical advice or assistance, to the specialized agencies, funds and programmes of the UN and other competent

bodies.

8 A general overview of the manner in which State Party reports are to be prepared and submitted under the CRPD must be provided. Reference may be made to the Report of the UN Secretary General on Harmonized Reporting Guidelines, annexed in the BLDs.

Individual Communications Procedure

9 The Committee on the Rights of Persons with Disabilities may, under certain conditions, receive and consider individual complaints alleging violations of the rights enlisted within the Convention. Pakistan, however, has not recognized the competence of the Committee to do so. States Parties to the Optional Protocol to the Convention recognize the competence of the Committee to receive and consider individual communications.

Note 3: For additional information in this regard, the web link on "Human Rights Bodies – Complaints Procedures" provided under "Useful Links" can be utilized.

10 While Pakistan has not recognized the competence of the CRPD Committee to receive and consider individual communications, it has established a domestic helpline service for complaints regarding human rights violations.

11 The Ministry of Human Rights has established a helpline service for victims of human rights violations. Victims from all across the country can dial the toll free number, 1099, to receive counselling and referral services. The helpline operators work in accordance with the GATHER approach: greet, ask, tell, help, explain and return (follow-up). There are 18 basic categories of violations and 87 sub-categories. The helpline operationalized in March 2015 and has taken 163 cases since then. 23 of these cases have been referred to the relevant authorities and are under review with regard to follow-up. 140 clients have been legally advised. Each complaint has a "disposal status" – ensuring that effective follow-up safeguards exist.

General Comments issued by the Committee on the Rights of Persons with Disabilities

12 As per the general practice of the treaty bodies, the Committee on the Rights of Persons with Disabilities issues general comments intended to serve as authoritative guides for States in implementing and interpreting the Convention.

13 The following General Comments of particular importance for Pakistan should be discussed, provided in **Table 5** below.

Table 5: CRPD General Comments

<u>General Comment</u>	<u>Salient Features</u>
-------------------------------	--------------------------------

General Comment No. 1 on equal recognition before the law⁶³	• Equality before the law is 'a basic general principle of human rights protection' and is 'indispensable for the exercise of other human rights'. It is enshrined in Article 12 of the CRPD. • The Committee notes, on the basis of initial reports submitted by various States Parties, that there is 'a general misunderstanding' with regard to the 'exact scope' of State Party obligations under Article 12 of the Convention. • The Committee highlights the discriminatory manner in which persons with disabilities have been denied their right to legal capacity in many areas, for instance through mental health laws that permit forced treatment. These practices are to be abolished in order to 'ensure that full legal capacity is restored to persons with disabilities on an equal basis with others'. • While the Committee notes that all persons with disabilities 'can be affected by denial of legal capacity and substitute decision-making', it highlights the plight of persons with cognitive or psychosocial disabilities who are 'disproportionately affected by substitute decision-making regimes and denial of legal capacity'. • The Committee emphasizes the distinction between legal capacity and mental capacity. While the former is 'the ability to hold rights and duties (legal standing) and to exercise those rights and duties (legal agency)', mental capacity pertains to the 'decision-making skills of a person, which naturally vary from one person to another and may be different for a given person depending on many factors, including environmental and social factors'. • Supported decision-making must be available to all and intensive forms of support must also be available. Support
---	---

⁶³ 11 April 2014

	must be based on 'the will and preference of the person' as opposed to what is 'perceived as being in his or her objective best interests'. Moreover, recognition of legal capacity is 'inextricably linked' to the enjoyment of other human rights enlisted within the Convention, including inter alia the right to access justice (Article 13), the right to marry and found a family (Article 23) and the right to consent to medical treatment (Article 25).
General Comment No. 2 on accessibility ⁶⁴	- The Committee notes that accessibility is a 'precondition for persons with disabilities to live independently and participate fully and equally in society'. One of the principles that underpins the entire CRPD is accessibility. - Without access to physical environment and public transport, persons with disabilities cannot have equal opportunities for participation in their respective societies. - States Parties are required to ensure that access is achieved through 'gradual implementation' as well as through the use of 'international cooperation'. - Thus, States are required to identify the obstacles and barriers that need to be removed in an efficient manner and within a short to mid-term framework. - Further, States Parties are obliged to adopt and monitor national accessibility standards.

7.2 Domestic Enforcement of the CRPD

Domestic legislation pertaining to CRPD-guaranteed rights

14 In order to provide a comprehensive overview of the domestic status of rights guaranteed in the CRPD, participants should be briefly introduced to some of the following legislative

⁶⁴ 11 April 2014

instruments, provided below in **Table 6**, which provide similar protections as afforded under the CRPD.

Table 6

Punjab Disabled Persons (Employment and Rehabilitation) (Amendment) Act 2015
Disabled Persons Employment and Rehabilitation (Amendment) Act 2012
Mental Health Ordinance 2001
Special Citizens (Right to Concessions in Movement) Act 2009 (<u>no evidence of this as anything other than a bill</u>)
Special Citizens Act 2008 (<u>no evidence of this as anything other than a bill</u>)
Disabled Persons (Employment and Rehabilitation) Ordinance 1981

Domestic institutions responsible for compliance reporting

15 The alteration in working structure following enactment of the 18th Constitutional Amendment must be discussed:

- Various provincial governments have established Human Rights Departments at the provincial level that supplement the work of the Federal Ministry of Human Rights.

16 In this regard, discussion on the roles played by the following in compliance reporting is pertinent: National Commission of Human Rights (NCHR), National Commission on the Status of Women (NCSW), National Commission for Minorities, and the National Commission on the Rights of the Child (NCRC). **This information is provided on page 55 of the Module.**

17 With regard to the CRPD, there are several Federal and Provincial institutions that play an important role in the protection of the rights of Persons with Disabilities (PWDs) guaranteed under the Convention.

18 The Government must also engage with certain NGOs, civil society and relevant organizations, which are working in the field of human rights protection, to prepare comprehensive compliance reports. These organizations include:

- (i) The Human Rights Commission of Pakistan (HRCP);
- (ii) Aurat Foundation (AF);
- (iii) United Nations High Commission for Human Rights (UNHCHR);
- (iv) Human Rights Watch (HRW);
- (v) Asian Commission of Human Rights (ACHR).

19 Participants must be given an explanation of the role of the following Federal and Provincial set-ups with regard to the CRPD:

- i. Ministry of Inter-Provincial Coordination;
- ii. Women Development Departments in all the provinces;
- iii. Inspector Generals of Prisons in all the provinces;
- iv. Inter Provincial Coordination Departments in all the provinces.

Activity: Reference may be made to the hanging of a wheelchair-bound Pakistani prisoner, Abdul Basit,⁶⁵ to engage participants in a discussion on:

- i. Which CRPD rights were invoked in this situation;
- ii. The responsibility of the Government in protecting PWDs.

Answer Key:

- (i) The following provisions of the CRPD should be discussed: Article 3, Article 4, Article 15 and Article 17.
- (ii) The State of Pakistan is yet to formulate implementing legislation to incorporate the obligations undertaken under the CRPD into domestic law. This is its primary responsibility to ensure effective protection being granted to PWDs. Under the prison rules, as they currently stand, an execution can only proceed if the convict is able to stand on the gallows. The Government is responsible for, at the very least, issuing new guidelines that take into account respecting the dignity of convicted PWDs. In hanging a PWD, the State must ensure that a cruel execution (as was the case with Abdul Basit) does not take place. Moreover, the Government is under an obligation to alter its laws to give protection to PWDs. Awareness-raising with regard to PWDs is another legal responsibility of the Government.

7.3 Legal Simulation Exercise

20 In order to assess participants' understanding of the CRPD, trainers should distribute the following simulation exercise:

⁶⁵ Khan, Mohammed Zubair. "Hanging of wheelchair-bound Pakistan prisoner to go ahead despite no new guidelines". *The Telegraph*, 22 November 2015. Web, available at: <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/12010522/Hanging-of-wheelchair-bound-Pakistan-prisoner-to-go-ahead-despite-no-new-guidelines.html> [Accessed 24/11/2015 at 14:03]

21 "Sarah, the head of a leading NGO for the protection of the rights of Persons with Disabilities (PWDs), has been petitioning her home State, State X, to improve public access to places and amenities for PWDs. State X continues to dismiss her requests on grounds of 'insufficient resources' to be attributed towards this cause. An alternate request for awareness-raising is presented by Sarah to the Government, offering her NGO's services in briefing parliamentarians and State officials on combating stereotypes and prejudices pertaining to PWDs. No response is given to this request.

22 Sarah has been receiving increasing support from PWDs within State X, highlighting difficulties faced by them in accessing their places of work, hospitals, schools, public and private offices and recreational facilities.

23 Identify the CRPD-rights relevant to Sarah's cause to improve public access to places and amenities. Which provisions of the CRPD is State X violating in this situation? What mechanisms are available to Sarah and her NGO?"

Legal Simulation Answer Key:-

24 The following provisions of the CRPD should be discussed:

- Article 1;
- Article 3;
- Article 4;

- Article 5;
- Article 6;
- Article 7;
- Article 8;
- Article 9;
- Article 17;
- Article 18;
- Article 19;
- Article 20;
- Article 24;
- Article 25;
- Article 27;
- Article 29;
- Article 30;
- Article 33.

25 Participants should discuss the process identified in the ICCPR Answer Key as the same procedure applies for the CRPD. Other points of discussion could include reviews by the Human Rights Council and its Special Procedures.

Module Eight: Day Eight

This Module will focus on an in-depth discussion of the Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Contents

8.1 Overview of the Convention on the Elimination of All Forms of Racial Discrimination

Key Provisions of the ICERD

Provisions on the ICERD Committee

Individual Communications Procedure

General Recommendations issued by the ICERD Committee

8.2 Domestic Enforcement of the ICERD

Domestic institutions responsible for compliance reporting

8.3 Legal Simulation Exercise

Module Eight: Overview of the Convention on the Elimination of All Forms of Racial Discrimination

Essential Reading:

Books:-

- Shaw, Malcolm. "International Law", *Cambridge University Press* (Seventh Edition) (2014); Chapter 6

Treaties:-

- UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195 [Annexed in BLDs]

Academic Articles:-

- Mahalic, Drew; Mahalic, Joan Gambee. "The Limitation Provisions of the International Convention on the Elimination of All Forms of Racial Discrimination", *Human Rights Quarterly*, Vol. 9, No. 1 (February 1987), pp. 74-101

Other:-

- International Service for Human Rights (ISHR). Simple Guide to Treaty Bodies (2010) [Annexed in BLDs]
- UN Secretary General. *Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties*, HRI/GEN/2/Rev.6 (3 June 2009) [Annexed in BLDs]

Useful Links:-

- 'Overview of the Human Rights Framework' available at: <http://www.ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/>
- Human Rights Bodies – Complaints Procedures available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>
- Soofi, Ahmer Bilal. Lecture Series available at: <http://ocw.vu.edu.pk/Videos.aspx?cat=Law&course=PSC401>

8.1 Overview of the Convention on the Elimination of All Forms of Racial Discrimination

1 The purpose of the Convention is to promote and encourage the fundamental rights of all citizens of the State Party irrespective of their race, colour, sex, national origin, language or religion. The Constitution of Pakistan guarantees fundamental rights to its citizens, provided irrespective of their race, religion, caste, sex, residence or place of birth. The Convention also requires accurate statistics of the marginalized communities.

Key Provisions of the ICERD

2 Each provision of the ICERD should be discussed, distinguishing between:

- Substantive provisions;
- Implementing provisions; and

- Derogation provisions.

Note 1: Table 1, below, highlighting the relevant substantive, implementing and derogatory provisions of the ICERD must be discussed.

Table 1

<u>Convention</u>	<u>Substantive Provision(s)</u>	<u>Implementing Provision(s)</u>	<u>Derogation Provision(s)</u>
ICERD	Arts. 1, 2, 3, 4, 5 and 7.	Arts. 2, 3, 4, 6 and 16.	-

3 **Table 2**, below, summarizes ICERD provisions:

Table 2: Summary of ICERD Provisions

Article 1	<u>Definition of racial discrimination</u>
Article 2	<u>State Party obligations (legislation and otherwise)</u>
Article 3	<u>States Parties to condemn racial segregation and apartheid</u>
Article 4	<u>States Parties to condemn and penalize dissemination of racial propaganda (also, incitement to hatred and violence)</u>
Article 5	<u>Equality and non-discrimination</u>
Article 6	<u>Effective protection and remedies</u>
Article 7	<u>Immediate and effective measures to combat racial prejudice (particularly in education)</u>
Articles 8-16	<u>Establishment of Committee on the Elimination of Racial Discrimination, mechanism for implementation of ICERD, submission of initial and periodic reports.</u>
Articles 17-25	<u>Provisions on specific operation of the ICERD (ratification, accession, denunciation, inter-state disputes and languages in which the Convention is authentic)</u>

Provisions on the ICERD Committee

4 In order to monitor implementation of the ICERD, the Convention created the Committee on the Elimination of All Forms of Racial Discrimination (CERD), the treaty-body mandated with monitoring State Party implementation of the Convention.

5 Like the other treaty bodies, the CERD comprises independent experts responsible for monitoring progress under the ICERD through compliance reports submitted by States Parties.

Note 2: Participants should be given an explanation of the composition of the CERD. The CERD comprises 18 experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation

of the different forms of civilization. Members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. Members of the CERD shall be elected for a term of four years.

6 Provisions on the Committee that must be highlighted include the following, provided in **Table 3** below.

Table 3

ICERD Provision	Content Summary
Article 8	The CERD comprises 18 experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization; members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties; each State Party may nominate one person from among its own nationals; members of the CERD shall be elected for a term of four years; States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.
Article 9(2)	The Committee shall report annually to the GA on its activities and make suggestions and general recommendations based on the examination of reports and information received from States Parties.
Article 10	The Committee shall adopt its own rules of procedure and elect its officers for a term of two years; the secretariat of the Committee shall be provided by the Secretary-General of the UN; meetings of the Committee shall normally be held at UN headquarters.
Article 11	If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee; the Committee is to transmit this communication to the State Party concerned; if the matter is not adjusted to the satisfaction of both parties, either State shall have the right to refer the matter again to the Committee by notifying the Committee and the other State.
Article 12	The Chairman of the Committee shall appoint an ad hoc Conciliation Commission comprising five persons who may or may not be members of the Committee; the members of the Commission shall be appointed with the unanimous consent of the parties to the dispute; if the States Parties to the dispute fail to reach agreement within three months on the composition of the Commission, the members of the Commission not agreed upon by the States Parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members; the members of the Commission shall serve in their personal capacity; the Commission shall elect its own Chairman and adopt its own rules of procedure.
Article 14(6)(a)	The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating the Convention but the identity of the individual or groups of individuals concerned shall not be revealed without

	their express consent; the Committee shall not receive anonymous communications.
Article 14(7)	The Committee shall not consider any communication from a petitioner unless it has determined that the petitioner has exhausted all available domestic remedies with the exception of where the application of remedies is unreasonably prolonged; the Committee shall forward its suggestions and recommendations to the State Party concerned as well as to the petitioner.
Article 14(8)	The Committee shall include in its annual report a summary of such communications, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.
Article 14(9)	The Committee can only exercise competence under this Article when at least ten States Parties to the ICERD are bound by declarations in accordance with Article 14(1).
Article 15(2)	The Committee shall receive copies of petitions from the bodies of the UN which deal with matters directly related to the principles and objectives of the ICERD from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which GA resolution 1514 (XV) applies; the Committee shall receive from the competent bodies of the UN copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of the ICERD applied by the administering Powers within these Territories.

7 Having clarified the manner in which the Committee functions, the following salient provisions on reporting to the Committee, provided in **Table 4**, must be discussed with participants.

Table 4

ICERD Provision	Content Summary
Article 9	States Parties are to submit initial reports under the ICERD to the CERD within one year after the entry into force of the Convention for the State concerned; periodic reports are to be submitted every two years and whenever the Committee so requests; the Committee shall make suggestions and general recommendations based on the examination of reports and information received from States Parties.
Article 14	States Parties may declare that they recognize the competence of the Committee to receive and consider individual communications; no communication shall be received by the Committee if it concerns a State Party which has not made such a declaration; a register of petitions shall be kept by the body established by the State Party in its national legal order; the Committee shall confidentially bring any communication referred to it to the attention of the State Party concerned; the Committee shall consider communications in light of all information made available to it by the State Party concerned and by the petitioner; the Committee shall forward its suggestions and recommendations to the State Party and to the petitioner.

8 A general overview of the manner in which State Party reports are to be prepared and submitted under the ICERD must be provided. Reference may be made to the Report of the UN Secretary General on Harmonized Reporting Guidelines, annexed in the BLDs.

Individual Communications Procedure

9 The Committee on the Elimination of Racial Discrimination may, under certain conditions, receive and consider individual complaints alleging violations of the rights enlisted within the Convention. Pakistan, however, has not recognized the competence of the Committee to do so. States Parties that have made the requisite declaration under Article 14 of the Convention recognize the competence of the Committee to receive and consider individual communications.

Note 3: For additional information in this regard, the web link "Human Rights Bodies – Complaints Procedures" provided under "Useful Links" can be utilized.

10 While Pakistan has not recognized the competence of the CERD to receive and consider individual communications, it has established a domestic helpline service for complaints regarding human rights violations.

11 The Ministry of Human Rights has established a helpline service for victims of human rights violations. Victims from all across the country can dial the toll free number, 1099, to receive counselling and referral services. The helpline operators work in accordance with the GATHER approach: greet, ask, tell, help, explain and return (follow-up). There are 18 basic categories of violations and 87 sub-categories. The helpline operationalized in March 2015 and has taken 163 cases since then. 23 of these cases have been referred to the relevant authorities and are under review with regard to follow-up. 140 clients have been legally advised. Each complaint has a "disposal status" – ensuring that effective follow-up safeguards exist.

General Recommendations issued by the ICERD-Committee

12 As per the general practice of the treaty bodies, the CERD issues general recommendations intended to serve as authoritative guides for States in implementing and interpreting the Convention.

13 The following General Recommendations of particular importance for Pakistan should be discussed, provided in **Table 5**.

Table 5: ICERD General Recommendations

<u>General Recommendation</u>	<u>Salient Features</u>
--------------------------------------	--------------------------------

General Recommendation No. 1 on States Parties' obligations ⁶⁶	The Committee recommends that States Parties include in their legislation the implementation of the principles embodied in the UDHR and the rights expressly set out in Article 5 of the ICERD.
General Recommendation No. 4 on reporting by States Parties ⁶⁷	This short general recommendation notes that the reports sent by States Parties to the CERD are to be 'as informative as possible'. Further, these reports must include 'relevant information on the demographic composition of the population referred to in the provisions of article 1 of the Convention'.
General Recommendation No. 6 on overdue reports ⁶⁸	The CERD recognizes that ratification on its own 'does not enable the control system set up by the Convention to function effectively', due to which it is extremely pertinent for States Parties to submit initial and periodic reports to the Committee on the measures they have taken to give effect to the provisions of the ICERD.
General Recommendation No. 13 on the training of law enforcement officials in the protection of human rights ⁶⁹	The fulfilment of the obligations enlisted within the Convention is dependent on 'national law enforcement officials who exercise police powers, especially the powers of detention or arrest, and upon whether they are properly informed about the obligations their State has entered into under the Convention'. Thus, law enforcement officials should 'receive intensive training to ensure that in the performance of their duties they respect as well as protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin'.
General Recommendation No. 25 on gender-related dimensions of racial discrimination ⁷⁰	The Committee begins its recommendation by asserting that 'racial discrimination does not always affect women and men equally or in the same way'. Racial discrimination that affects women primarily or to a different degree than men is often not detected 'if there is no explicit recognition or acknowledgement of the different life experiences of women and men' in the private and public spheres. There are certain forms of racial discrimination directed specifically towards women as a consequence of their gender, for instance

⁶⁶ (24 February 1972)

⁶⁷ (24 August 1973)

⁶⁸ (19 March 1982)

⁶⁹ (15 March 1993)

⁷⁰ (20 March 2000)

	sexual violence. Similarly, there are effects of racial discrimination that primarily concern women, such as pregnancy resulting from racial bias-motivated rape. In fact, the Committee highlights the importance of understanding the relationship between gender and racial discrimination. This is understood by examining 'the form and manifestation of racial discrimination', 'the circumstances in which racial discrimination occurs', 'the consequences of racial discrimination' and 'the availability and accessibility of remedies and complaint mechanisms for racial discrimination'.
General Comment No. 32 on the meaning and scope of special measures in the ICERD ⁷¹	• The objective behind this General Recommendation is to provide 'practical guidance on the meaning of special measures under the Convention in order to assist States Parties in the discharge of their obligations under the Convention, including reporting obligations'. The Committee addresses situations of 'double or multiple discrimination', for instance on grounds of gender and race, stating that discrimination can often exist on multiple grounds listed in Article 1 of the Convention. Discrimination under the ICERD includes 'purposive or intentional discrimination' and 'discrimination in effect'. The term 'non-discrimination' does not imply the necessity of uniform treatment when 'there are significant differences in situation between one person or group and another', i.e. if there is an 'objective and reasonable justification' for differential treatment. The Convention concerns not only formal equality but also <i>de facto</i> equality 'in the enjoyment and exercise of human rights'. The Committee urges States Parties to refrain from using the term 'positive discrimination' as it is a <i>contradiction in terminis</i> in the context of international human rights standards, i.e. it is contradictory to the regime of non-discrimination.

8.2 Domestic Enforcement of the ICERD

Domestic institutions responsible for compliance reporting

14 The alteration in working structure following enactment of the 18th Constitutional Amendment must be explained:

⁷¹ (24 September 2009)

- Various provincial governments have established Human Rights Departments at the provincial level that supplement the work of the Federal Ministry of Human Rights.

15 In this regard, discussion on the roles played by the following in compliance reporting is pertinent: National Commission of Human Rights (NCHR), National Commission on the Status of Women (NCSW), National Commission for Minorities, and the National Commission on the Rights of the Child (NCRC). **This information is provided on page 55 of the Module.**

16 With regard to the ICERD, there are several Federal and Provincial institutions that play an important role in protection against racial discrimination guaranteed under the Convention.

17 The Government must also engage with certain NGOs, civil society and relevant organizations, which are working in the field of human rights protection, to prepare comprehensive compliance reports. These organizations include:

- (i) The Human Rights Commission of Pakistan (HRCP);
- (ii) Aurat Foundation (AF);
- (iii) United Nations High Commission for Human Rights (UNHCHR);
- (iv) Human Rights Watch (HRW);
- (v) Asian Commission of Human Rights (ACHR).

18 Participants must be given an explanation of the role of the following Federal and Provincial institutions with regard to the ICERD:

- i. Ministry of Inter-Provincial Coordination;
- ii. Women Development Departments in all the provinces;
- iii. Inspector Generals of Prisons in all the provinces;
- iv. Inter Provincial Coordination Departments in all the provinces.

8.3 Legal Simulation Exercise

19 In order to assess the participants' understanding of the ICERD, trainers should distribute the following legal simulation exercise:

20 "Hassan, a resident in the state of Bizania and a member of its Azanian ethnic minority, comes to his local 'Minority Rights' NGO alleging that he was subject to online threats of violence based on his ethnicity. When he contacted the local police station, they refused to take these threats seriously.

21 With reference to the ICERD, which rights might Hassan allege to have been violated? How might the NGO raise these complaints before the ICERD Committee? What procedural matters would the NGO need to pay attention to? How effective might the Committee be in addressing these specific rights violations and preventing similar ones in the future?"

Legal Simulation Answer Key:-

22 The following provisions of the ICERD must be discussed:

- Article 1;
- Article 4(c);
- Article 5(a);
- Article 5(b).

23 Participants should discuss the process identified in the ICCPR Answer Key as the same procedure applies for the ICERD. These may include:

- (i) The fact that NGOs play a key role in providing input to the treaty bodies;
- (ii) States often invite NGOs to participate in national consultations being carried out prior to the State report being compiled and drafted;
- (iii) NGOs can submit their own shadow reports to the treaty bodies;
- (iv) If NGOs submit their reports well in advance of the session, the relevant committee uses these comprehensive submissions as a basis for the 'list of questions' asked from States;
- (v) NGOs are generally allowed to attend plenary sessions of the various treaty bodies (but only as observers);
- (vi) NGOs play a crucial role at the national level by providing individuals and groups a platform through which they can submit their complaints to the treaty bodies (or even submitting complaints on their behalf);
- (vii) Specialized knowledge of NGOs play a major role in determining the success of seeking redress;
- (viii) NGOs have the ability to follow-up on recommendations, reports and other such progress.

24 Other points of discussion could include reviews by the Human Rights Council and its Special Procedures.

This Module will focus on an in-depth discussion of compliance reporting and data collection.

Contents

9.1 Overview of compliance reporting mechanisms under the seven core conventions

Understanding the Harmonized Guidelines for Reporting

Reviewing sample compliance reports from other jurisdictions

9.2 Status on Pakistan's compliance reports

Domestic institutions responsible for compliance reporting

Data collection and disaggregation

Key recommendations for enhancing national and international compliance

9.3 Examining other jurisdictions

Module Nine: Overview of Compliance Reporting and Data Collection

Essential Reading:

Treaties (Annexed in BLDs):-

- UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III) [Annexed in BLDs]
- UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 [Annexed in BLDs]
- UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p.3 [Annexed in BLDs]
- UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13 [Annexed in BLDs]
- UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106 [Annexed in BLDs]
- UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195 [Annexed in BLDs]
- UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3 [Annexed in BLDs]
- UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vo. 1465, p. 85 [Annexed in BLDs]

Other:-

- International Service for Human Rights (ISHR). Simple Guide to Treaty Bodies (2010) [Annexed in BLDs]
- UN Secretary General. *Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties*, HRI/GEN/2/Rev.6 (3 June 2009) [Annexed in BLDs]
- United Nations General Assembly. *Resolution 48/141 to "rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights with a view to improving its efficiency and effectiveness"*, 20 December 1993.
- *Dublin II Outcome Document* (November 2011) [Annexed in BLDs]

Useful Links:

- 'Overview of the Human Rights Framework' available at: <http://www.ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/>
- Pillay, Navanthem. 'Strengthening the United Nations human rights treaty body system: A report by the United Nations High Commissioner for Human Rights' (June 2012) available at: <http://www2.ohchr.org/english/bodies/HRTD/docs/HCTBReportTBStrengthening.pdf>
- Human Rights Bodies – Complaints Procedures available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>
- Shah, Sikandar Ahmed. 'Reactive Pakistan', *Dawn* available at: <http://www.dawn.com/news/1109254/reactive-pakistan>
- Imran, Myra. 'Government urged to strengthen institutions established to protect human rights', *The News* available at: <http://www.thenews.com.pk/Todays-News-6-349811-Government-urged-to-strengthen-institutions-established-to-protect-human-rights>

- Soofi, Ahmer Bilal. Lecture Series available at: <http://ocw.vu.edu.pk/Videos.aspx?cat=Law&course=PSC401>

9.1 Overview of the compliance reporting mechanisms under the seven core conventions

1 In order to improve compliance reporting under the seven core conventions, the mechanisms available for the same must be highlighted. In this regard, participants may be provided a recap of provisions on reporting and provisions on respective committees under each Convention.

Table 1

Note 1: Trainers may run the participants through the table-version of the aforementioned

<u>Convention</u>	<u>Provision(s) on the Committee</u>	<u>Provision(s) on Reporting</u>
ICCPR	Arts. 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 42, 43 and 45.	Arts. 40 and 41.
ICESCR	Arts. 18, 19, 21 and 22.	Arts. 16, 17 and 20.
CEDAW	Arts. 17, 19, 20, 21 and 22.	Art. 18
CRC	Arts. 43, 44(4), 44(5), 45(b), 45(c) and 45(d).	Arts. 44 and 44(6).
CAT	Arts. 17, 18, 19(4), 20, 21(1)(c), 21(1)(d), 21(1)(e), 21(1)(f), 21(1)(h), 22(2), 22(3), 22(4), 22(6), 22(7), 23 and 24.	Arts. 19, 21, 21(1)(g) and 22(1).
ICERD	Arts. 8, 9(2), 10, 11, 12, 14(6)(a), 14(7), 14(8), 14(9) and 15(2).	Arts. 9 and 14.
CRPD	Arts. 34, 36, 37, 38 and 39.	Arts. 35 and 36.

provisions for each Convention, as given in Table 1 above.

2 Many of the rights enlisted within the various Conventions overlap with one another and with the UDHR. To avoid the common error of duplication of efforts and information, participants may go through **Table 2** below on "Content Overlap between the Core Human Rights Conventions".

Table 2: Content Overlap between the Core Human Rights Conventions

<u>Right Listed</u>	<u>UDHR</u>	<u>ICCPR</u>	<u>ICESCR</u>	<u>ICERD</u>	<u>CEDAW</u>	<u>CRC</u>	<u>CAT</u>	<u>CRPD</u>
1. Right to life, liberty and security of person	Art. 3	Arts 6 & 9	-	Art. 5	-	Art. 6	-	Arts 10 & 14
2. Prohibition against	Art. 5	Art. 7	-		-	Arts 37 &	Arts 1-20	Art. 15

torture						39		
3. Non-discrimination/equality before the law	Arts. 2 & 6	Arts 3 & 26	Arts 2 & 3	Arts 2, 3 & 5	Arts 2, 5, 7, 8, 9 & 15	Art. 2	Art. 1	Arts 3, 4 & 5
4. Right to an effective remedy	Art 8	Art. 2	-	Art. 5		Art. 12	Art. 22	Art. 13
5. Fair and public hearing by independent and impartial tribunal	Art. 10	Art. 14	-	Art. 5	Art. 15	Art. 12	Arts 2-6	Art. 13
6. Protection against arbitrary arrest, detention or exile	Art. 9	Arts 9, 10, 14, 15 & 17	-	-	-	Art. 16	-	-
7. Right to privacy, family, home and correspondence	Art. 12	Art. 17	Art. 10	-	-	Art. 16	-	Arts, 22 & 23
8. Freedom of movement	Art. 13	Art. 12	-	Art. 5	Art. 15	-	-	Art. 18
9. Freedom of thought, conscience and religion	Art. 18	Art. 18	-	Art. 5	-	Art. 14	-	-
10. Right to own property	Art. 17	-	-	Art. 5	-	-	-	-
11. Freedom of expression	Art. 19	Art. 19	-	Art. 5	-	Art. 12	-	Art. 21
12. Right to take part in government and equal access to public service	Art. 21	Art. 25	-	Art. 5	Art. 7	-	-	Art. 29
13. Right to	Art. 23	-	Arts 6 &	Art. 5	Art. 11	Art.	-	Arts 26

employment and just and favourable conditions of work			7			32		& 27
14. Right to an adequate standard of living	Art. 25	-	Art. 11	Art.	-	Art. 27	-	Art. 28
15. Right to education	Art. 26		Arts 13 & 14	Arts 5 & 7	Arts 10 & 14	Arts 28 & 29	-	Arts 8 & 24
16. Right to participate in the cultural life of the community/r ight to cultural development	Art. 27	Art. 27	Art. 15	Art. 7	Art. 13	Art. 31	-	Art. 30
17. Child registration/ nationality/p rotection	-	Art. 24	Art. 10	Art. 5	-	Arts 7, 8, 9, 10, 11, 18, 19, 20, 21, 22, 23, 24	-	Art. 7
18. Freedom of assembly and association	-	Arts 21 & 22	Art. 8	Art. 5	-	Art. 15	-	-
19. Freedom to marry	-	Art. 23	Art. 10	Art. 5	Arts 9 & 16	-	-	Art. 23
20. Protection against hate speech/prop aganda for war	-	Art. 20	-	Arts 2 & 4	-	-	-	-

Note 2: The fundamental notion of the indivisibility and universality of human rights which underpins the treaty body system, not only requiring State Party ratification of core human

rights conventions but also effective implementation of the latter, must be explained to participants.

Understanding the Harmonized Guidelines for Reporting

3 The UN Secretary General compiled the Harmonized Guidelines for Reporting to provide States Parties with all relevant information that is to be included in their compliance reports to the various treaty bodies.

4 Reference should be made to the Harmonized Guidelines, annexed in the BLDs, in explaining to participants what is required under a compliance report. In this regard, participants should be made to understand the list of indicators, provided below in **Table 3**. This will provide a comprehensive understanding of how implementation of human rights is to be assessed. Further, a summary of key information from the Harmonized Guidelines, titled "UNSG Report: Salient Features", is annexed in the BLDs. This summary identifies the relevant treaty provisions under which States Parties are to submit reports to the relevant committees. It includes information of a guiding nature, ranging from setting up an institutional framework for preparation of compliance reports to formatting requirements. The summary highlights what information is to be included in Pakistan's common core document while also delineating the general content to be included in all reports.

Additionally, the summary provides a sample of how Pakistan should proceed with the reporting process, using the ICESCR as an example. In doing so, it identifies what information would be included under specific provisions of the ICESCR, thereby clarifying to relevant stakeholders how they are to prepare reports under the seven core conventions. Lastly, the summary also includes indicators for assessing implementation of human rights, ranging from demographic indicators to indicators on crime and the administration of justice. While this summary provides a brief overview of the content to be included in State Party reports, it is crucial that trainers read the original document, i.e. the UNSG's Report on Harmonized Guidelines.

Note 3: Participants should be provided with information contained in the BLDs on reporting guidelines for each Convention.

Table 3

<u>Convention</u>	<u>Key Indicators</u>
International Covenant on Civil and Political Rights	• Is there any implementing legislation incorporating obligations under the Convention into domestic law? • How many executions have taken place since the moratorium on the death penalty has been lifted? (Take into account cases of juveniles and disabled persons specifically). • Of the executions that have taken place, how many have been carried out against women, ethnic/racial/religious minorities, and convicts alleged to have been tortured or subjected to cruel, inhuman or degrading

	treatment/punishment? • How many persons are kept in slavery-like conditions, including bonded labour? • What are the initiatives, other than the Bonded Labour System (Abolition) Act 1992 and its 1995 Rules, in place for abolishing practices such as bonded labour? • How many complaints have been made with regard to violations of due process rights? (For instance, reference may be made to instances where juveniles have been sentenced to death under the recently established Military Courts). • How many complaints have been made/cases filed with regard to violations of freedom of thought, conscience and religion? (With reference to this, how many perpetrators of such violations have been convicted and have successfully served their sentence? E.g. Mumtaz Qadri). • How many people are kept in pre-trial detention with regard to allegations of blasphemy? • How many complaints have been made with regard to arbitrary and/or unlawful interference with citizens' privacy, family, home or correspondence? • How many complaints/cases have been filed concerning propaganda/material inciting war and/or national, religious and/or racial hatred? (Reference may be made to hate speech by religious clerics, for instance, Maulana Abdul Aziz of Lal Masjid). • What is the infant mortality rate? • What policies/initiatives are in place to reduce the infant mortality rate? • What is the total number of prisons in Pakistan? (Reference may be made to RSIL's Report on <i>'Effecting Change in Khyber Pakhtunkhwa's Probation Regime'</i>). • What is the total number of prisons in KPK, Punjab, Sindh and Balochistan? (Reference may be made to RSIL's Report on <i>'Effecting Change in Khyber Pakhtunkhwa's Probation Regime'</i>). • How many total prisoners are there in prisons across Pakistan? • How many total prisoners are there in KPK? (Reference may be made to RSIL's Report on <i>'Effecting Change in Khyber Pakhtunkhwa's Probation Regime'</i>). • How many total prisoners are there in Punjab? • How many total prisoners are there in Sindh? • How many total prisoners are there in Balochistan? • What kind of legal counsel is available and accessible to
--	--

	prisoners? • Are there any efforts being made to modify or repeal laws preventing women and minorities from fully participating in public/political life? (Reference can be made to the system of reserved seats in Parliament). • Are there any laws and/or policies in place that reverse the burden of proof? • Are there any provisions within the current criminal laws that exceed the time limit within which a certain case is to be decided/disposed of? (For instance, cases under the Anti-Terrorism Act 1997). • Are there any relevant laws which cater for the proper reintegration and rehabilitation of juveniles? • Are there any specific groups who are prohibited, by law, to practice, profess and manifest their religion and beliefs? • How many media personnel have been targeted as a result of their exercise of the right to freedom of expression? How many of the perpetrators of such a violation have been convicted and punished? • What ratio of equality exists with regard to minorities? Further, what legal protective measures exist for such vulnerable groups? (Reference may be made to the blatant violence against the Shia community). • What safeguards are in place guaranteeing linguistic, ethnic/racial and religious minorities the right to freely practice their religion and/or use their own language? • How is Pakistan ensuring preservation of the various languages written and spoken within its jurisdiction? • What measures are in place ensuring equitable distribution of resources amongst the provinces and the federation?
International Covenant on Economic, Social and Cultural Rights	• Is there any implementing legislation incorporating obligations under the Convention into domestic law? • What is the number of total registered trade unions? • How many cases are filed by trade unions against employers? How many of these cases have been heard and decided? How many of the cases decided found in favour of the trade unions? • How many complaints/cases have been filed concerning just and favourable conditions of work? • What monitoring mechanisms are in place to ensure just and favourable conditions of work? • Are there any penalties in place for those who subject their workers to unfair and unsafe working conditions? If so, are these penalties enforced? • What level of scrutiny exists to secure minimum wage for

	unskilled workers? • Are there any penalties in place for those refusing to pay minimum wage to their employees? Further, are these penalties enforced? • Is the cost of living, including inflation rates, taken into consideration when evaluating the amount to be set as minimum wage? • Is there disparity in the pay scales between men and women working in the same field? If so, what measures are in place to end this disparity? • How many cases have been filed concerning social security? • What measures are in place that provide those who are unemployed or living in poverty basic social security and welfare? • What mechanisms exist to hold accountable those who engage in economic and social exploitation of children? • How many complaints/cases have been filed concerning an adequate standard of living (including food, clothing, housing, etc.)? • What policies/programmes are in place protecting the population against diseases prevalent in the country, for instance polio, malaria, swine flu, etc.? • What policies/programmes are in place to prevent the spread of epidemic and endemic diseases? • What mechanisms are in place to monitor the prohibition against child labour? Further, are penalties, in this regard, enforced? • How many complaints/cases have been filed concerning environmental and industrial hygiene? • What measures are in place to prevent detrimental environmental and industrial practices? • What programmes/policies are in place pertaining to methods of protection, conservation and distribution of food to the general populace? • What are the policies in place safeguarding the right to free and compulsory primary education? (Reference may be made to the Punjab Free and Compulsory Education Act 2014). • What laws/policies exist ensuring universal education for the population? • Is there an accountability mechanism that maintains a check on the quality of education provided in public and private schools? • Is there disparity in access to education between rural and
--	--

	urban youth? • Is there disparity in access to education between males and females? • Is there disparity in access to health services between urban and rural populations? • How many cultural initiatives has the Government launched? • What percentage of the population has benefitted from cultural initiatives? • What kind of access to healthcare do prisoners have? • What is the status of access to continuing education for prison inmates? • Are there any vocational training programs for prison inmates?
Convention on the Rights of the Child	• Is there any implementing legislation incorporating obligations under the Convention into domestic law? • What is the incarceration rate with regard to juveniles? (Reference may be made to RSIL's Report on <i>'Effecting Change in Khyber Pakhtunkhwa's Probation Regime'</i>). • How many juveniles are incarcerated annually? (Reference may be made to RSIL's Report on <i>'Effecting Change in Khyber Pakhtunkhwa's Probation Regime'</i>). • What sentences are juveniles typically awarded? (Reference may be made to RSIL's Report on <i>'Effecting Change in Khyber Pakhtunkhwa's Probation Regime'</i>). • What are the rehabilitation efforts and initiatives in place with regard to juvenile offenders? (Reference may be made to RSIL's Report on <i>'Effecting Change in Khyber Pakhtunkhwa's Probation Regime'</i>). • What percentage of children are involved in practices such as bonded labour? • How many cases, involving children, allowed children to partake in proceedings? • How many cases, involving children, allowed children to freely express their views? • Taking into consideration the unprecedented number of terrorist attacks on educational institutions, how does Pakistan aim to provide adequate security to these institutions? • What level of protection is afforded to children in their exercise of the right to freedom of expression? (Reference may be made to the attack on Malala Yousafzai, an advocate for female education). • What measures has Pakistan taken to promote the right of children to seek, receive and impart information and ideas

	of all kinds? • What monitoring mechanisms are in place to ensure physical and mental protection of children in the public and private spheres? (Reference may be made to the Kasur child abuse scandal). • How many cases are reported annually concerning child sexual abuse? Are perpetrators of these violations punished effectively? • What steps have been taken by the state to update legislation on child marriage, exploitation and maltreatment? • Is there any legislation or administrative framework in place preventing and prosecuting child prostitution? What are the penalties awarded to the perpetrators of such crimes? • How many cases, involving children, took children's views into account in reaching a decision? • What measures has Pakistan taken to encourage the mass media to pay particular regard to the linguistic needs of children belonging to minority and indigenous communities? • What monitoring mechanisms are in place to supervise the curriculum and teaching content in <i>madressahs</i>? • To what extent does Pakistan provide assistance to parents in the fulfilment of their child-rearing duties? • Does Pakistan have any kind of system of child-care services? • What measures are taken to ensure that children of working parents have the right to benefit from child-care services? • What is the infant mortality rate? • What policies/initiatives are in place to reduce the infant mortality rate? • How many child protection centres exist? • What is the number of children present in child protection centres? • What is the total number of juveniles in prisons across Pakistan? • What is the total number of juveniles in prisons across KPK? • What is the total number of juveniles in prisons across Punjab? • What is the total number of juveniles in prisons across Sindh? • What is the total number of juveniles in prisons across Balochistan?
--	---

		• How many juveniles are kept in detention with adults? • How many juveniles are imprisoned with adults? • Are there counselling services available and accessible for young/first-time offenders in prisons? • Are there any psychological counselling services available and accessible for children from conflict zones and/or abusive homes? • What level of protection is afforded, by the state, to children who come from conflict zones and/or abusive and negligent homes? • Are any measures in place to promote self-reliance of disabled children? Does the state facilitate children with disabilities in leading a life of dignity? (Reference may be made to the case of 11-year old Rimsha Masih, a mentally challenged Christian girl forced to flee the country on false allegations of blasphemy). • What measures/policies are in place to provide healthcare services to children? What proportion of children do these benefit? • What measures/policies are in place to combat disease and malnutrition? What proportion of children are protected via such policies/measures? • To what extent has Pakistan safeguarded equal opportunity for all children within its jurisdiction? • To what extent has Pakistan ensured the right to free and compulsory primary education for children within its jurisdiction? • What steps has Pakistan taken to combat poor attendance in schools? • How many public places are dedicated to provide children the opportunity to participate in recreational activities and sports? • What mechanism(s) exists to prevent child labour? Are those who engage in such practices effectively penalized under the law? • What measures are in place to effectively combat child trafficking and exploitation? • What level of protection is afforded to children in light of the on-going war against terrorism and situations of domestic armed conflict? (Reference may be made to the Army Public School Peshawar attack).
Convention Torture	Against	• Has a definition of 'torture' been incorporated into domestic law? • Is there any implementing legislation incorporating obligations under the Convention into domestic law?

	• To what extent has Pakistan criminalized all acts of torture in its domestic law? • How many cases were filed with regard to complaints of torture, inhumane and degrading treatment or punishment? • How many cases filed, regarding complaints of torture, involved persons acting in an official capacity? • How many cases filed, involving allegations of torture, were heard? • How many decisions, in cases involving allegations of torture, were followed up? • What are the total number of complaints/cases filed, concerning torture, inhumane and degrading treatment or punishment? • How many of the complaints/cases concerning state officials resulted in disciplinary action against the latter? • What is the number of inmates per cell in prisons? • What is the number of prisoners as a proportion of the capacity of prisons? • What is the status of availability of minority worship areas/places in prisons? • What are the processes/procedures available to prison inmates for making complaints regarding prison conditions and facilities? • What are the processes/procedures available to inmates for making complaints regarding abuse and torture in prison? • What mechanism of redressal exists to provide alleged victims of torture a forum through which their cases can be heard by impartial and competent authorities? • Is there a special process for reviewing sexual assault complaints in prisons? • What are the initiatives and efforts in place for the rehabilitation of drug offenders in prisons? • What is the status on access to lavatories and sanitation facilities for prison inmates? (Specific arrangements made for women should be mentioned). • What measures/policies are in place to educate and inform law enforcement agencies, medical personnel, prison staff and public officials of the prohibition against torture?
Convention on the Elimination of All Forms of Discrimination Against Women	• Is there any implementing legislation incorporating obligations under the Convention into domestic law? • How many cases were filed by women alleging discrimination? • What is the incarceration rate with regard to women? • What percentage of women are involved in practices such as bonded labour?

	• How many complaints/cases have been reported concerning harassment of women at the workplace? • How many of the complaints/cases reported by women, concerning harassment at the workplace, have been decided in favour of the complainants? • What, typically, are the remedies awarded to complainants in cases concerning sexual harassment? • What is the total number of women in prisons across Pakistan? • What is the total number of women in prisons across KPK? • What is the total number of women in prisons across Punjab? • What is the total number of women in prisons across Sindh? • What is the total number of women in prisons across Balochistan? • How many cases of domestic violence are reported annually? • How many cases of rape are reported annually? • What are the sentences typically awarded to perpetrators of violence against women? • What initiatives are in place to end the practice of 'honour killing'? Are perpetrators of these crimes effectively punished? • What provisions are in place ensuring promotion of literacy of urban and rural women? • What measures are being taken to amend or repeal discriminatory laws and policies against women? • Has Pakistan taken any measures to preserve and promote the right of women to freely choose who they marry? • Has Pakistan taken measures to protect the right of women in cases of child custody issues? • What steps has Pakistan taken to ensure the right of women to determine their employment? • What initiatives are in place to eradicate acid crimes? Are perpetrators of these crimes effectively punished? • What is the disparity in income between men and women working in the same field? • What steps has Pakistan taken to combat prejudice and stereotypes against women? • What measures are taken to protect and promote the role played by rural women in ensuring survival of their families?
Convention on the Elimination of All Forms	• Is there any implementing legislation incorporating obligations under the Convention into domestic law?

of Racial Discrimination	• How many cases were filed by ethnic/racial/religious minorities alleging discrimination? • What is the incarceration rate of ethnic/racial/religious minorities? • Are there any current efforts to draft a racial discrimination?
Convention on the Rights of Persons with Disabilities	• Is there any implementing legislation incorporating obligations under the Convention into domestic law? • How many cases were filed by persons with disabilities pertaining to discrimination? • What is the incarceration rate of persons with disabilities? • What initiatives are in place to ensure accessibility for disabled persons? • What awareness-raising activities are in place informing disabled persons of accessibility initiatives? • What measures has Pakistan taken to provide disabled children ease of access to public places, including schools, hospitals, etc.? • What initiatives has Pakistan taken to ensure disabled persons have access to equal opportunities, in terms of employment, and enjoyment of the highest attainable standard of health without discrimination on the basis of disability? • What initiatives has Pakistan taken to ensure the participation of disabled persons in political and public life? • What initiatives has Pakistan taken to ensure ease of access, at affordable cost, to public places, including schools, hospitals, etc., for disabled persons within its jurisdiction? • What awareness-raising activities are in place to combat stereotypes against disabled persons? • What awareness-raising activities are in place to promote understanding of the capabilities and contributions of persons with disabilities? • What level of protection is afforded to disabled persons in conflict zones, situations of risk, humanitarian emergencies and natural disasters? • What mechanisms are in place to protect the right of access to justice for disabled persons? • Is there any statistical data available, and regularly updated, on the number of disabled persons in Pakistan in order to formulate and implement policies that give effect to the convention? • What legislative, administrative and judicial measures have

	been taken to prevent persons with disabilities from being subjected to torture, cruel and/or inhuman and/or degrading treatment or punishment? • What legislative, administrative and judicial measures have been taken to prevent persons with disabilities from being subjected to all forms of exploitation, violence and abuse including gender-based aspects? • With regard to exploitation, violence and abuse, has Pakistan taken any appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities? • What legislation has been introduced to curb exploitation of persons with disabilities?
--	--

9.2 Status of Pakistan's compliance reports

5 Participants must be provided with an overview of the status of Pakistan's compliance reports.

6 Merely preparing a compliance report will not suffice – it is equally important to ensure its timely submission to the relevant treaty body. In this regard, trainers should provide participants information on:

- Timelines for submission of periodic reports; and
- The last periodic report submitted by Pakistan to each Committee.

Note 4: Pakistan has submitted periodic reports under the CEDAW, CRC and ICERD. Moreover, the initial reports for the ICCPR, ICESCR and CAT have also been submitted. These reports have been annexed in the BLDs and should be discussed with the participants.

7 Shadow reports prepared by NGOs for the various treaty bodies are annexed in the BLDs and should be discussed with the participants. Shadow reports refer to the work of NGOs that supplements or provides an alternative to the information available in periodic reports submitted by States. There is often a gap between the work of the State of Pakistan and NGOs, with regard to the report and shadow report respectively. This can essentially be attributed to the critical monitoring role played by NGOs.

8 While Pakistan has been late in submitting reports under most of the core human rights conventions, it is pertinent to note the negative impact of non-compliance and late/inadequate reporting. Apart from creating a negative image of Pakistan among members of the international community, non-compliance and non-reporting place Pakistan in a disadvantageous position with regard to retaining the GSP plus status. Annex VIII of EU Regulation No 978-2012 requires Pakistan to effectively implement these core human rights conventions, among others. Were

Pakistan to lose out on the GSP plus status due to lacking compliance and reporting, its exports to European markets would be severely impacted.

Domestic institutions responsible for compliance reporting

9 The alteration in working structure following enactment of the 18th Constitutional Amendment must be explained:

- Various provincial governments have established Human Rights Departments at the provincial level that supplement the work of the Federal Ministry of Human Rights.

10 All relevant federal and provincial departments are identified, as relevant to each Convention, in **Table 4** below.

<u>Convention</u>	<u>Relevant Ministry/Department</u>
<u>ICCPR</u>	(i) National Counter Terrorism Authority (NACTA); (ii) Election Commission of Pakistan (ECP); (iii) Ministry of Information and Broadcasting; (iv) Military Courts; (v) Ministry of Religious Affairs and Inter-Faith Harmony; (vi) Human Rights and Minorities Affairs Department Punjab; (vii) Minority Affairs Department Sindh; (viii) Religious Affairs and Inter-Faith Harmony Department Balochistan; (ix) Women Development Departments in all the provinces; (x) Inter Provincial Coordination Departments in all the provinces.
<u>ICESCR</u>	(i) Ministry of Planning and Development; (ii) Economic Affairs Division; (iii) Ministry of Housing & Works; (iv) Ministry of Inter-Provincial Coordination; (v) Ministry of Religious Affairs and Inter-Faith Harmony; (vi) Ministry of Water and Power; (vii) Ministry of National Health Services Regulation and Coordination; (viii) Punjab Health Department; (ix) Sindh Health Department;

	(x) Khyber Pakhtunkhwa Health Department; (xi) Labour Departments in all the provinces; (xii) Ministry of National Food Security and Research; (xiii) Women Development Departments in all the provinces; (xiv) Inter Provincial Coordination Departments in all the provinces; (xv) Food Departments in all the provinces; (xvi) Housing and Urban Development Departments in all the provinces; (xvii) Ministry of Federal Education and Professional Training; (xviii) Punjab Education Department; (xix) Balochistan Education Department; (xx) Sindh Education and Literacy Department; (xxi) Khyber-Pakhtunkhwa Elementary and Secondary Education Department; (xxii) Planning and Development Departments in all the provinces.
<u>CEDAW</u>	(i) Ministry of Inter-Provincial Coordination; (ii) Women Development Departments in all the provinces; (iii) Inter Provincial Coordination Departments in all the provinces.
<u>CRC</u>	(i) Ministry of Inter-Provincial Coordination; (ii) Women Development Departments in all the provinces; (iii) Probation Departments in all provinces; (iv) Inter Provincial Coordination Departments in all the provinces.
<u>CAT</u>	(i) Ministry of Inter-Provincial Coordination; (ii) Women Development Departments in all the provinces; (iii) Inspector Generals of Prisons in all the provinces; (iv) Prisons Departments in all provinces; (v) Home Departments in all provinces;

	(vi) Inter Provincial Coordination Departments in all the provinces.
<u>CRPD</u>	(i) Ministry of Inter-Provincial Coordination; (ii) Women Development Departments in all the provinces; (iii) Inspector Generals of Prisons in all the provinces; (iv) Inter Provincial Coordination Departments in all the provinces.
<u>ICERD</u>	(i) Ministry of Inter-Provincial Coordination; (ii) Women Development Departments in all the provinces; (iii) Inspector Generals of Prisons in all the provinces; (iv) Inter Provincial Coordination Departments in all the provinces.

11 In this regard, discussion on the roles played by the following in compliance reporting is pertinent: National Commission of Human Rights (NCHR), National Commission on the Status of Women (NCSW), National Commission for Minorities, and the National Commission on the Rights of the Child (NCRC). **This information is provided on page 57 of the Module.**

Note 5: Participants should go through Tables 5-6, below, on "Domestic Human Rights Legislation", provided below.

Domestic Human Rights Legislation

Table 5: Federal Legislation

1. National Counter Terrorism Authority Act 2013
2. Election Laws (Amendment) Act 2013
3. Reproductive Healthcare and Rights Act 2013
4. Transplantation of Human Organs and Tissues Rules 2012
5. Domestic Violence (Prevention and Protection) Act 2012 (<u>passed by Senate; not law yet</u>)
6. National Commission for Human Rights Act 2012
7. National Commission on the Status of Women Act 2012
8. Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011
9. Women in Distress and Detention Fund (Amendment) Act 2011
10. Pakistan Prison Rules 1978
11. Employees Old Age Benefit Act 1976
12. Dowry and Bridal Gifts (Restriction) Act 1976
13. Federal employees benevolent and group insurance rules 1972
14. Provincial employees social security ordinance 1965

15. The Family Courts Act 1964
16. West Pakistan Family Court Act 1964
17. West Pakistan Family Court Rules 1965
18. Occupations Rules 1963
19. The Muslim Family Laws Ordinance 1961
20. West Pakistan Rules under the Muslim Family Laws Ordinance 1961
21. The West Pakistan Maternity Benefit Rules 1961
22. Election Laws (Amendment) Act 2011
23. Criminal Law (Amendment) Act 2010 (on sexual harassment)
24. The Protection against Harassment of Women at the Workplace Act 2010
25. Protection against Harassment of Women at the Workplace Rules 2010
26. Acid Control and Acid Crime Prevention Act 2010
27. National Policy for Labour 2010
28. Protection of Women (Criminal Laws Amendment) Act 2006
29. National Plan of Action for Persons with Disabilities 2006
30. Criminal Law (Amendment) Act 2004 (on 'honour' crimes)
31. Injured Persons (Medical Aid) Act 2004
32. Police Order 2002
33. Amendments in Family Courts Act for Khula etc. 2002
34. National Policy for Development and Empowerment of Women 2002
35. National Policy for Persons with Disabilities 2002
36. Prevention and Control of Human Trafficking Ordinance 2002
37. Protection of Breastfeeding and Child Nutrition Ordinance 2002
38. Pakistan Citizenship Act 1951 (partially amended in 2001)
39. Juvenile Justice System Ordinance 2000
40. National Plan of Action for Women 1998
41. Anti-Terrorism Act 1997
42. Employment of Children Act 1991 (as amended in 2011)
43. National Plan of Action for the Abolition of Child Labour
44. Qanun-e-Shahadat Order 1984 (Law of Evidence)
45. Hudood Ordinances 1979
46. Dowry and Bridal Gifts (Restriction) Rules 1976
47. Senate (election) Act 1975
48. Electoral rolls act 1974 (Amendments)
49. Code of Conduct for Observers for the General Elections 2013
50. Code of Conduct for Polling Personnel for the General Elections 2013
51. Code of Conduct for Security Personnel for the General Elections 2013
52. West Pakistan Maternity Benefit Ordinance 1958
53. Pakistan Army Act 1952
54. Mines Maternity Benefit Act 1941
55. Dissolution of Muslim Marriages Act 1939
56. Child Marriage Restraint Act 1929
57. Foreign Marriages Act 1903
58. Criminal Procedure Code 1898 – provides for special treatment of women when confronted with the law; the police may not enter a residential house for arrest or search

which is occupied by a woman till notice is given and such woman is facilitated to withdraw (Section 48); an accused woman can be arrested or searched only by a woman (Section 52); a woman detained cannot be kept in the police station overnight; a woman, even if accused of a non-bailable offence punishable by death or imprisonment for life, may be released on bail (Section 497); the Court may also release a convicted woman not punishable by death or imprisonment for life on probation of good conduct by executing a bond with or without sureties (Section 562).
59. Prisons Act 1894
60. Guardians and Wards Act 1890
61. Birth, Marriage and Death Registration Act 1886
62. Pakistan Penal Code 1860 – severe penalties are prescribed for the offences of kidnapping or abduction of girls/women (Sections 361, 363, 364(A) and 369), procurement of a girl (Section 366(A)) or her importation from abroad (Section 366(B)).
63. Section 45, Factories Act 1934 & Section 23(C) of the Mines Act 1923: prohibits women being employed in night-shifts or in hazardous occupations.
64. Civil Servants Rules: provide, among other things, maternity leave with pay to working women.

Table 6: Provincial Legislation

Punjab	Sindh	Khyber-Pakhtunkhwa	Balochistan	Azad Jammu and Kashmir	Gilgit-Baltistan
Punjab Protection against Harassment of Women at the Workplace Act 2010	Sindh Domestic Violence (Prevention and Protection) Act 2013	Khyber-Pakhtunkhwa Promotion of Regional Languages Authority Act 2012	Balochistan Transplantation of Human Organs and Tissues (Amendment) Act 2012	Azad Jammu and Kashmir Juvenile Justice System Act 2003	National Commission on the Status of Women (Adaptation and Enforcement) Order 2002
Parks and Horticulture Authority Act 2012	Sindh Transplantation of Human Organs and Tissues Act 2013	Khyber-Pakhtunkhwa Enforcement of Women Ownership Rights Act 2012	Balochistan Safe Blood Transfusion Act 2004	Azad Jammu and Kashmir (Adaptation of Mental Health Ordinance 2001) Act 2003	Juvenile Justice System (Adaptation and Enforcement) Order 2002
Punjab Transplantation of Human Organs and Tissues (Amendment) Act 2010	Sindh Right of Children to Free and Compulsory Education Act 2013	Khyber-Pakhtunkhwa Disabled Persons (Employment and Rehabilitation) (Amendment) Act 2012	Freedom of Information Act 2005	West Pakistan Pure Food Ordinance (Adaptation) Act 1987	Northern Areas Protection of Breast-Feeding and Child Nutrition Ordinance (Adaptation and Enforcement) Order 2003
Punjab Protection	Education City	Khyber-	West Pakistan	Azad Jammu and	

against Harassment of Women at the Workplace (Amendment) Act 2012	Act 2013	Pakhtunkhwa Payment of Wages Act 2013	family courts (Balochistan Amendment) Act 2005	Kashmir Minimum Wages for Unskilled Workers Act 1975	
Provincial Employees Social Security (Amendment) Ordinance 2013	Sindh Protection and Promotion of Breastfeeding and Child Nutrition Act 2013	Khyber-Pakhtunkhwa Minimum Wages Act 2013	Balochistan Local Government (Conduct of Elections) Rules 2004	Dowry and Bridal Gifts (Restriction) Act 1976	
Punjab Heritage Foundation Act 2005	Domestic Violence (Prevention and Protection) Act 2013	Khyber-Pakhtunkhwa Maternity Benefits Act 2013		Azad Jammu and Kashmir Minimum Wages for Unskilled Workers (Amendment) Act 2014	
Epidemic Diseases (Amendment) Act 2011	Sindh Protection of Communal Properties of Minorities Act 2013	Khyber-Pakhtunkhwa Workers Compensation Act 2013		Domestic Violence (Prevention and Protection) Act 2014	
Punjab Disabled Persons (Employment and Rehabilitation) Act 2012	Sindh Prevention and Control of Thalassemia Ordinance 2013	Khyber-Pakhtunkhwa Zakat and Ushr Act 2011		Azad Jammu and Kashmir Protection against Harassment of Women at the Workplace Act 2014	
Punjab Workers Children (Education) (Amendment) Act 2012	Sindh Mental Health Ordinance 2013	Khyber-Pakhtunkhwa Child Protection and Welfare Act 2010		Azad Jammu and Kashmir Establishment of a Commission on the Status of Women Act 2014	
Punjab Maternity Benefit (Amendment) Act 2012	Sindh HIV and AIDS Control Treatment and Protection Ordinance 2013				
Minimum Wages (Amendment) Act 2012	Tuberculosis Notification Ordinance				

	2013		
Punjab Protection of Breastfeeding and Child Nutrition (Amendment) Act 2012	Newborn Screening (Sindh) (Ordinance) 2013		
Punjab Workers Children (Education) (Amendment) Act 2012	Sindh Eye Surgery (Restriction) Ordinance 2013		
Punjab Employees Efficiency, Discipline and Accountability (Amendment) Act 2012	Sindh Protection of Human Rights Act 2011		
Employment of Children (Amendment) Act 2011	Sindh Zakat and Ushr Act 2011		
Punjab Children Act	Sindh Child Protection Authority Act 2011		
	Sindh Children Act 1955		

Data collection and disaggregation

12 As per the Harmonized Guidelines for Reporting, there is certain required data to be collected and disaggregated according to various classifications. In this regard, trainers should run participants through requirements for disaggregated data, as per the UN Secretary General's Harmonized Guidelines for Reporting, annexed in the BLDs.

13 The UN Office of the High Commissioner for Human Rights (OHCHR) issued "A Guide to Measurement and Implementation" in 2012, annexed in the BLDs. The Guide serves as an important referential resource with regard to the following:

- What to monitor;
- How to collect information;
- How to interpret information from a human rights perspective;
- Problems associated with misusing data;

- How to draft comprehensive assessments.⁷²

14 The Guide, however, should not be viewed as exhaustive – any indicator mentioned has its own limitations and States must take this factor into account when drafting their compliance reports. Regardless, the importance of statistical data cannot be undermined. Statistical data is often used, by international and national tribunals and courts, in assessing existing and potential violations of human rights norms. For the purpose of clarity, trainers may run participants through the following example on limitations of indicators:

15 **Example:** If Pakistan is using budgetary allocation towards education as a measure of implementation of the right to education under the ICESCR, that indicator has its own limitations. The total budgetary allocation towards education may not highlight how much of that budget is being spent on primary education or higher education. Similarly, if Pakistan is using the number of schools across the country as an indicator for performance with regard to education, this does not take into account the quality of education or the number of students present in these schools.

16 There are quantitative and qualitative sets of indicators used in the work of human rights assessment. Qualitative and quantitative indicators can either be objective or subjective. As is obvious, objective indicators are based on fact-based information while subjective indicators refer to judgment-based perceptions. For the purpose of clarity, trainers may run participants through the following examples in **Table 7** on qualitative and quantitative indicators:⁷³

Table 7

Quantitative Indicators	Objective quantitative indicators:	Subjective quantitative indicators:
	E.g. prevalence of underweight children under 5 years of age E.g. number of recorded arbitrary executions	E.g. percentage of individuals who feel safe walking alone at night E.g. rating based on an average scoring by a group of journalists on the state of freedom of expression in Pakistan

⁷² UN Office of the High Commissioner for Human Rights. "Human Rights Indicators: Guide to Measurement and Implementation" (2012), p. 28.

⁷³ *ibid* p. 18.

Qualitative Indicators	Objective qualitative indicators:	Subjective qualitative indicators:
	E.g. the status of a human rights convention in Pakistan (Has it been signed? Has it been ratified?)	E.g. the right to food fully guaranteed in law and in practice in Pakistan

17 For the purpose of clarity, trainers may run participants through the following explanations on various indicators:

18 Explanation:

- Performance indicators: These indicators are used to monitor the performance of programme activities and their conformity to cross-cutting human rights norms.⁷⁴
- Compliance indicators: These indicators are utilized to measure the extent to which obligations under human rights standards are being met.⁷⁵
- Structural indicators: Structural indicators help in capturing the acceptance, intent and commitment of the State to undertake measures in keeping with its human rights obligations.⁷⁶
- Process indicators: Process indicators help in assessing a State's efforts, through its implementation of policy measures and programmes of action, to transform its human rights commitments into the desired results.⁷⁷
- Outcome indicators: Outcome indicators help in assessing the results of State efforts in furthering the enjoyment of human rights.⁷⁸

19 The Guide stipulates:

20 *"The primary objective of **performance indicators** is to allow the verification of changes produced by development intervention relative to what was planned. They are based on programing principles and terminologies and anchored essentially in the respective programme activities. Such indicators can be used to monitor the performance of programme activities and to assess their conformity to some of the cross-cutting human rights norms."*⁷⁹

⁷⁴ UN Office of the High Commissioner for Human Rights. "Human Rights Indicators: Guide to Measurement and Implementation" (2012), pp. 19-20.

⁷⁵ *ibid* p. 20.

⁷⁶ *ibid* p. 34.

⁷⁷ *ibid* p. 36.

⁷⁸ *ibid* p. 38.

⁷⁹ *ibid* pp. 19-20.

21 With regard to **compliance indicators**, these are meant to ascertain the extent to which the obligations flowing from human rights standards are being met.⁸⁰

22 In order for States to fully comply with their international human rights obligations, they must engage in an introspective process, asking the following questions:

1. What is it that needs to be measured?
2. How are specific indicators supposed to be selected based on what needs to be measured?
3. How many indicators need to be identified to assess implementation of a particular human right?

23 The Guide clarifies that certain attributes are able to capture the essence of the normative content of human rights. For instance, if Pakistan is considering how to assess implementation of the right to life, it would need to take into account the following attributes:

- Article 3 of the Universal Declaration of Human Rights (UDHR);
- Article 6 of the International Covenant on Civil and Political Rights (ICCPR) and General Comment No. 6 (1982) on the right to life;
- Articles 10 to 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- Articles 5(b) and 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- Articles 1 to 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT);
- Article 6 of the Convention on the Rights of the Child (CRC);
- Article 9 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW);
- Article 10 of the Convention on the Rights of Persons with Disabilities (CRPD).⁸¹

24 Sets of indicators can not only be gauged from the specific provisions of each convention, which often overlap with one another, but also through General Comments/Recommendations issued by the relevant Committees. Once attributes of specific rights are identified, States must develop a consistent approach to developing sets of indicators with regard to implementation of their obligations.

25 Various **structural indicators** are explicitly referred to in the text of treaty provisions. For instance, Article 14 of the ICESCR stipulates: "time frame and coverage of the plan of action

⁸⁰ UN Office of the High Commissioner for Human Rights. "Human Rights Indicators: Guide to Measurement and Implementation" (2012), p. 20.

⁸¹ *ibid*, p. 31.

adopted by the State Party to implement the principle of compulsory primary education free of charge for all." If read closely, this particular Article provides the following structural indicators:

1. "Time frame"
2. "Compulsory primary education"
3. "Free of charge"
4. "For all".

26 These structural indicators are then complemented via identification of **process indicators**, which assist States in assessing their efforts towards implementing human rights commitments within their territories. Some common process indicators include:

- Indicators based on budget allocations;
- Indicators reflecting functioning of specific institutions (for instance, the National Commission for Human Rights);
- Human rights complaints received and the proportion redressed.

27 Finally, **outcome indicators** assist States in ascertaining the results of their legislative, administrative and policy efforts aimed at the protection and promotion of human rights. Examples of outcome indicators include:

- Reported cases of miscarriage of justice and the proportion of victims who received compensation within a reasonable time;
- Educational attainments by targeted population group.

28 There are several sources through which indicators and data can be gauged, including through:

1. Events-based data;
2. Socio-economic and administrative statistics (including administrative data, statistical surveys, censuses)
3. Perception and opinion surveys;
4. Expert judgments.

29 Once data has been collected, it is pertinent that States disaggregate it so as to reveal the most deprived or vulnerable population groups. This allows States to present accurate data, measuring inequality and discrimination.

Note 6: For further information, in this regard, trainers may refer participants to the "Guide to Measurement and Implementation", annexed in the BLDs.

Key recommendations on enhancing national and international compliance

30 Following the provision of a comprehensive overview of the treaty body system, trainers may engage participants in a discussion on recommendations for enhancing domestic and international compliance. In this regard, guiding points for the discussion are as follows:

- Systemization of preparation of reports;
- Establishment or strengthening of a standing national reporting and coordination mechanism at the domestic level;
- The vital role of national consultations in the reporting process; and
- National mechanisms for self-assessment, policy review and constructive dialogue.

31 In order to highlight the massive backlogs that must be addressed to improve the treaty body system, participants should go through **Table 8** below.

Table 8

Treaties	Number of States Parties	Overdue Initial Reports	% of Overdue Initial Reports	Overdue Periodic Reports	% of Overdue Periodic Reports	Total No. of Overdue Reports	% of Total No. of Overdue Reports
<u>ICCPR</u>	167	26	16%	58	35%	84	50%
<u>ICESCR</u>	160	35	22%	41	26%	76	48%
<u>CEDAW</u>	187	10	5%	30	16%	40	21%
<u>CAT</u>	150	29	19%	39	26%	68	45%
<u>CRC</u>	193	2	1%	61	32%	64	33%
<u>CRPD</u>	112	50	46%	0	0%	50	46%
<u>ICERD</u>	175	13	7%	74	42%	87	50%

9.3 Examining other jurisdictions

32 To provide participants a comprehensive overview of regional compliance with the core international human rights treaties, reference may be made to the following States:

- Bangladesh;
- Iran; and
- India.⁸²

33 To compare between the States mentioned above and Pakistan, with regard to ratification of international human rights treaties, participants should go through **Table 9** below.

Table 9

State	ICCPR	ICESCR	CEDAW	CRC	CRPD	ICERD	CAT
--------------	--------------	---------------	--------------	------------	-------------	--------------	------------

⁸² The Peoples Republic of China has been excluded from this Module owing to its lack of ratifications/accessions to any of the core human rights conventions.

<u>Bangladesh</u>	Date of accession: 06 September 2000	Date of accession: 05 October 1998	Date of accession: 06 November 1984	Date of signature: 26 January 1990 Date of ratification : 03 August 1990	Date of signature: 09 May 2007 Date of ratification: 30 November 2007	Date of accession: 11 June 1979	Date of accession: 05 October 1998
<u>India</u>	Date of accession: 10 April 1979	Date of accession: 10 April 1979	Date of signature: 30 July 1980 Date of ratification : 09 July 1993	Date of accession: 11 December 1992	Date of signature: 30 March 2007 Date of ratification: 01 October 2007	Date of signature: 02 March 1967 Date of ratification : 03 December 1968	Date of signature: 14 October 1997
<u>Iran</u>	Date of signature: 04 April 1968 Date of ratification : 24 June 1975	Date of signature: 04 April 1968 Date of ratification : 24 June 1975	(iv)	Date of signature: 05 September 1991 Date of ratification : 13 July 1994	Date of accession: 23 October 2009	Date of signature: 08 March 1967 Date of ratification : 29 August 1968	(v)

Note 7: Participants should go through the compliance reports (if any) submitted by Bangladesh, Iran and India. Concluding observations issued by the respective committees, available on their respective websites, on the progress of Bangladesh, Iran and India may also be discussed with the participants.

34 In order to provide a comprehensive understanding of lessons to be learned from Bangladesh, Iran and India, trainers may discuss with participants **Table 10** below on "Comparative Analysis: Lessons Learned", provided below.

Table 10

<u>Convention</u>	<u>India</u>	<u>Iran</u>	<u>Bangladesh</u>
ICCPR	There exists a broad range of democratic institutions and a	From Iran's experience, it is clear that domestic	-

	comprehensive constitutional and legal framework for the protection of human rights in India. • Additionally, the Supreme Court of India makes frequent references to specific provisions of international human rights treaties. • The Government of India accords great weight to the recommendations proposed by its National Human Rights Commission (established in 1993). Moreover, India has a specific Protection of Human Rights Act under which the NHRC has the following powers: (i) Inquiring into complaints of human rights violations; (ii) Intervening in court proceedings involving allegations of human rights violations; (iii) Reviewing constitutional and legal norms and the conformity of laws with international human rights instruments; (iv) Making specific recommendations to the Parliament and other authorities; and	law must be clear on the status of international human rights treaties (which is not the case either in Pakistan or Iran). Although Iran has not yet established a consolidated national institution with competence in the field of human rights in accordance with the Paris Principles, Pakistan has established a National Commission on Human Rights. Regardless, Pakistan's National Human Rights Institution must also comply with the Paris Principles and be provided adequate financial and human resources. • The Human Rights Committee determined that women in Iran remain excluded from certain public positions, such as the post of judge. Although women in Pakistan are	
--	---	---	--

	(v) Undertaking activities in the field of human rights education. • India also established the National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Women in 1992 as well as the National Commission for Minorities in 1993. • Like Pakistan, India still has to take steps to incorporate fully the provisions of the ICCPR into domestic law so that individuals can invoke these provisions directly before domestic courts. Similarly, both Pakistan and India have to give due consideration to ratifying the Optional Protocol to the Covenant, enabling the Committee to receive individual communications relating to India. • Despite efforts by the Government of India to protect members of scheduled castes and scheduled tribes, the latter and ethnic and national minorities continue to endure severe social discrimination and to suffer disproportionately from many violations of their rights under the	able to become judges, they remain unable to ever become President, as per the Constitution. • Iran maintains a discriminatory attitude towards the lesbian, gay, bisexual and transgender community (much like Pakistan) due to which this community is constantly faced with harassment, persecution, cruel punishment and even the death penalty. Pakistan should take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation, including with respect to access to employment, housing, education and health care and to ensure that individuals of different sexual orientation or gender identity are protected from	
--	---	--	--

	Covenant. • Like Pakistan, India continues to see preferential treatment being given to male children resulting in foeticide and infanticide of females. • Marital rape is still not recognized as a crime in India. The Pakistan Penal Code recognizes the general offence of rape but makes no specific mention of marital rape as a crime. Although cases such as <i>Salman Akram Raja v Government of Pakistan</i> (2013) have resulted in jurisprudence asserting the criminal nature of marital rape, there is insufficient legislation to affirm this. • Similar to the situation faced by women in Pakistan, women in India have not been accorded equality in the enjoyment of their rights and freedoms in accordance with Articles 2 and 26 of the Covenant. They have not been freed from discrimination – women remain underrepresented in public life and at the higher levels of the public service. Further, they are subjected to personal laws which are based on religious norms	violence and social exclusion within the community. • Like Pakistan, Iranian law lacks in the area of specific provisions on domestic violence in the Penal Code, as well as the lack of investigation, prosecution and punishment of perpetrators of domestic violence. • Also similar to Pakistan, Iran faces the issue of continued execution of minors and the imposition of the death penalty for persons who were found to have committed a crime while under the age of 18 years, which is prohibited under Article 6(5) of the Covenant. • Moreover, issues of confessions extracted as a result of torture or inhuman treatment remain a major problem in Pakistan and Iran. There remain issues with regard to torture or	
--	--	--	--

	and which do not accord equality in respect of marriage, divorce and inheritance rights. • India and Pakistan share the common existential threat of terrorism. Both countries have enacted acts granting the security and armed forces extensive powers pertaining to arrest, detention and so forth. In India, criminal prosecutions and civil proceedings against members of the security and armed forces, acting under special powers, may not be commenced without the sanction of the central Government, thereby contributing to a climate of impunity and depriving people of remedies which they may be entitled to under the Covenant. • <u>Lessons from India's experience include:</u> • Early enactment of legislation for mandatory judicial inquiry into cases of disappearance and death, ill-treatment or rape in police custody; • The adoption of special measures to prevent the occurrence of rape of women in custody; • The mandatory notification of relatives	inhuman treatment in detention facilities, effective reparation to victims and coercion in testifying. Similarly, there is a lack of full, impartial and independent investigations into allegations of killings, torture and other ill-treatment. • In Iran, Sunni Muslims continue to face discrimination in law and in practice and are prevented from fully exercising their right to freedom to manifest their religion. In Pakistan, the same applies for Shia Muslims and other groups such as Ahmadis, Christians, Hindus, Sikhs, etc.	
--	--	---	--

	of detainees without delay; • The right of detainees to legal advice and assistance and to have a medical examination are to be guaranteed; • That priority is to be given to providing training and education in the field of human rights to law enforcement officers, custodial officers, members of the security and armed forces, and judges and lawyers. In this regard, the United Nations Code of Conduct for Law Enforcement Officials must be taken into account. <u>The Protection of Human Rights Act 1993:</u> • Section 2(d): "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. • Section 2(f): "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and		
--	--	--	--

	Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966 [and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government, may, by notification, specify. • The Act set up a National Human Rights Commission under Section 3. The Commission comprises a Chairperson, who has been a Chief Justice of the Supreme Court, one Member who is or has been, a Judge of the Supreme Court, one Member who is or has been the Chief Justice of a High Court and two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights (Section 3(2)(a)-(d)). Moreover, the Chairperson of the National Commission for Minorities and the National Commission for Women are also deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of Section 12 (Section 3(3)).		
--	---	--	--

	• Section 12 delineates the functions of the Commission: inquiring, <i>suo motu</i> or on a petition presented to it by a victim or any person on his behalf, into complaints of violations of human rights or abetment thereof; or negligence in the prevention of such violation by a public servant (Section 12(a)(i)-(ii)). Further, the Commission is authorized to intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court (Section 12(b)). The Commission is empowered to visit any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations to the Government in this regard (Section 12(c)). Section 12(d) empowers the Commission to review the safeguards provided by or under the Constitution or any law		
--	--	--	--

	for the time being in force for the protection of human rights and recommend measures for their effective implementation. Section 12(e) authorizes the Commission to review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures. Studying treaties and other international instruments on human rights and making recommendations for their effective implementation, undertaking and promoting research in the field of human rights, spreading human rights literacy among various sections of society, encouraging the efforts of non-governmental organizations and institutions working in the field of human rights and other such related functions fall within the functions entrusted to the Commission (Section 12(f)-(j)). • The Commission is granted a wide range of powers relating to inquiries, including summoning and enforcing the attendance		
--	---	--	--

	of witnesses and examining them on oath; discovery and production of any document; receiving evidence on affidavits; requisitioning any public record or copy thereof from any court or office; and issuing commissions for the examination of witnesses or documents and any other matter which may be prescribed (Section 13(1)(a)-f)). In a similar vein, the Commission is granted a wide range of powers pertaining to investigation, as per Section 14 of the Act. • The Act further provides for the constitution of State Human Rights Commissions (Section 21) and Human Rights Courts (Section 30).		
ICESCR	• India has enacted the 2005 National Rural Employment Guarantee Act recognizing employment as a matter of right. Pakistan has yet to do so. • Pakistan may look towards India's National Rural Health Mission, launched in 2005, aimed at providing accessible, affordable and accountable quality health services. • Pakistan may also look towards India's four-year-	• With regard to Iran, Pakistan can look towards their formulation of the National Comprehensive Housing Plan (2006) and the adoption of the Law on Regulating and Supporting Housing Production and Supply (2007).	-

	time-bound plan "Bharat Nirman" aimed at upgrading the rural infrastructures (launched in 2005). • Like Pakistan, India has been unable to address the needs of the disadvantaged and marginalized individuals and groups within its society. Causes of homelessness are rarely, if ever, identified and addressed. Moreover, policies must be designed in both States to ensure effective implementation of the right to housing for all. Pakistan can look towards India's draft resettlement and rehabilitation bill in this regard. <u>National Food Security Act 2013:</u> • "An Act to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto." • The Act makes provisions for food security (Section 3), including the provision		
--	---	--	--

	of 5 kg of food grains per person per month at subsidised prices from the State Government under the Targeted Public Distribution System. Additionally, every pregnant woman and lactating mother is entitled to meals, free of charge, during pregnancy and six months after the child birth, through the local <i>anganwadi</i> (child care and development centre) (Section 4(a)), maternity benefits of not less than Rs.6000 (Section 4(b)). • The Act, under Section 5, also provides for nutritional support to children and, under Section 6, for the prevention and management of child malnutrition. • Section 8 provides for food security allowance and Chapter IV of the Act delineates the process for identification of eligible households. • Section 13 specifically addresses women empowerment while Section 14 outlines a grievance redressal mechanism. • A State Food Commission is provided for under Section 16 while obligations of the		
--	--	--	--

	Central Government with regard to food security are highlighted in Sections 22 and 23. Similarly, provision is made for the obligations of State Governments for food security under Section 24. • Specific safeguards for transparency and accountability are provided for in Chapter XI. <u>Bharat Nirman:</u> • India's Bharat Nirman is a time-bound business plan for action with regard to rural infrastructure. The plan proposes action in the following areas: (i) Irrigation; (ii) Rural housing; (iii) Rural water supply; (iv) Rural electrification; and (v) Rural telecommunication connectivity. <u>National Rural Health Mission (2005-2012):</u> • The National Rural Health Mission (NRHM) aims to provide effective healthcare to rural population throughout the country with specific focus on 18 states which		
--	---	--	--

	have weak public health indicators and/or weak infrastructure. The Mission is an articulation of the commitment of the Government to raise public spending on health from 0.9% of GDP to 2-3% of GDP. • Key components of the Mission include: provision of a female health activist in each village; a village health plan prepared through a local team headed by the Health & Sanitation Committee of the Panchayat; strengthening of rural hospitals to ensure effective curative care and accountability to the community through Indian Public Health Standards (IPHS); and integration of vertical Health & Family Welfare Programmes and Funds for optimal utilization of funds and infrastructure and strengthening delivery of primary healthcare. • The Mission seeks to improve access of rural people, especially poor women and children, to equitable, affordable, accountable and effective primary healthcare. • Goals delineated under the Mission include: (i) Reduction in the		
--	--	--	--

	Infant Mortality Rate (IMR) and Maternal Mortality Ratio (MMR); (ii) Universal access to public health services such as Women's health, child health, water, sanitation & hygiene, immunization and nutrition; (iii) Prevention and control of communicable and non-communicable diseases, including locally endemic diseases; (iv) Access to integrated comprehensive primary healthcare; (v) Population stabilization, gender and demographic balance; (vi) Revitalize local health traditions and mainstream AYUSH; and (vii) Promotion of healthy lifestyles. <u>National Rural Employment Guarantee Act (NREGA) 2005:</u> India successfully managed to supplement existing livelihood sources in rural areas, as a key part of its development planning. The Government		
--	--	--	--

	implemented workfare programmes that offered wage employment on public works at minimum wages. The wage employment programmes started as pilot projects in the form of: (i) Rural Manpower (RMP) [1960-61] (ii) Crash Scheme for Rural Employment (CSRE) [1971-72] (iii) Pilot Intensive Rural Employment Programme (PIREP) [1972] (iv) Small Farmers Development Agency (SFDA) (v) Marginal Farmers & Agricultural Labour Scheme (MFAL). • These experiments were translated into a full-fledged wage-employment programme in 1977: Food for Work Programme (FWP). This programme was further streamlined into the National Rural Employment Programme (NREP) and Rural Landlessness Employment Guarantee Programme (RLEGP) in the 1980s. Several other programmes followed. • Based on these programmes, the National Rural Employment Guarantee		
--	--	--	--

	Act (NREGA) was enacted to reinforce commitment towards livelihood security in rural areas. The NREGA creates a right-based framework for wage employment programmes and makes the Government legally accountable for providing employment to those who ask for it. • Salient features of the Act include: (a) Adult members of a rural household may apply for employment if they are willing to do unskilled manual work; (b) Such a household will have to apply for registration to the local <i>Gram Panchayat</i> either in writing or orally; (c) The <i>Gram Panchayat</i> after due verification will issue a Job Card to the household as a whole. The Job Card will bear the photograph of all adult members of the household willing to work under NREGA. This Job Card with photograph is free of cost; (d) A Job Card holding household may submit a written application for employment to the <i>Gram Panchayat</i>, stating the time and duration for		
--	--	--	--

	which work is sought. The minimum days of employment have to be fifteen; (e) The <i>Gram Panchayat</i> will issue a dated receipt of the written application for employment, against which the guarantee of providing employment within 15 day operates; (f) Employment will be given within 15 days of application for work by an employment seeker; (g) If employment is not provided within 15 days, daily unemployment allowance (in cash) has to be paid. Liability of payment of unemployment allowance is of the States; (h) At least one-third of persons to whom work is allotted have to be women; (i) Wages are to be paid according to minimum wages as prescribed under the Minimum Wages Act 1948 for agricultural labourers in the State, unless the Centre notifies a wage rate which will not be less than Rs.60/per day; (j) Disbursement of wages has to be done on a weekly basis and not beyond a fortnight; (k) Panchayat Raj Institutions [PRIs] have a		
--	--	--	--

	principal role in planning and implementation; (l) Each district has to prepare a shelf of projects. The selected works to provide employment are to be selected from the list of permissible works. The different categories of permissible works include: (i) Water conservation (ii) Drought proofing (iii) Flood protection (iv) Rural connectivity (v) Land reform beneficiaries (vi) Land development (vii) Minor Irrigation, horticulture and land development on the land of SC/ST/ - BPL/IAY. (m) Work should ordinarily be provided within a 5 km radius of the village or else extra wages of 10% are payable; (n) Work site facilities such as crèche, drinking water, shade have to be provided (o) Social audit has to be conducted by the Gram Sabha; (p) Grievance redressal mechanisms have to be put in place for ensuring		
--	--	--	--

	a responsible implementation process; (q) All accounts and records relating to the Scheme are to be made available to any person desirous of obtaining a copy of such records, on demand and after paying a specified fee. Thus, India has been able to move from Wage Employment Programmes (WEPs) to a statutory guarantee of wage employment under NREGA.		
CEDAW	- Pakistan should look towards the following legislative measures enacted by India: (i) National Food Security Act 2013 (ii) Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (iii) Protection of Children from Sexual Offences Act 2012 (iv) Right of Children to Free and Compulsory Education Act 2009 - India has also improved its institutional and policy framework to expedite the elimination of discrimination against women: (i) Establishment of a financial services banking company for	-	- Pakistan should look towards the following legislative measures enacted by Bangladesh: (i) Bangladesh Labour Act 2006 (ii) 14th Amendment to the Constitution (allowing an increase in women's reserved seats from 30 to 45) (iii) The Citizenship (Amendment) Act 2009 (entitling a Bangladeshi woman to transmit citizenship to her children) (iv) The Right to Information Act

	women in 2013 (economic empowerment of women): The Bharatiya Mahila Bank is India's first women-oriented bank aimed at providing loans and financial services to women. (ii) Creation of a national mission for empowerment of women in 2010 (address women's issues in a coordinate manner at the central and state levels) (iii) Indira Gandhi Matritva Sahyog Yojana maternity benefit scheme - Like India, Pakistan faces the problem of increasing violent crimes against women and children. Impunity for such acts in both States remains and is a serious concern raised by the Committee in examining India's compliance reports. - Pakistan may also look towards the Indian Justice Verma Committee recommendations regarding violence against women. <u>Justice Verma Committee Report:</u> - The Justice Verma		2009 (v) The National Human Rights Act 2009 - Similarly, Pakistan may refer to policies, programmes and plans of action taken by Bangladesh to promote gender equality and eliminate discrimination against women: (i) Policy for the Advancement of Women (aimed at eradicating gender disparities) (ii) Vision 2021 (programme aimed at mainstreaming of gender issues) (iii) National Council for Women and Child Development (established in 2009) (iv) Gender Responsive Budget (2009-2011). The Prevention of Oppression against Women and Children Act 2000: - This Act, enacted by Parliament, was approved by the
--	--	--	--

	Committee was established to make recommendations for amendments to India's Criminal Law with the objective of expedited trials and enhanced punishment of criminals alleged of committing sexual assault. • The Committee submitted its report on 23 January, 2013. • The recommendations made by the Committee pertained to laws on: a) Rape; b) Sexual harassment; c) Trafficking; d) Child sexual abuse; e) Medical examination of victims; f) Police; g) Elections; and h) Educational reforms. • On rape, the Committee recommended that: (i) The gradation of sexual offences should be retained in the Indian Penal Code (IPC) 1860; (ii) Rape and sexual assault are not merely crimes of passion but an expression of power; (iii) Rape should be retained as a separate offence and it should not be limited to penetration of the vagina, mouth or		President on 14 February 2000. • The Act delineates specific punishments for specific offences: (i) Punishment for offences committed by corrosive or any other substances (Section 4), (ii) Punishment for trafficking of women (Section 5), (iii) Punishment for trafficking of a child (Section 6), (iv) Punishment for kidnapping a child or woman (Section 7), (v) Punishment for taking ransom (Section 8), (vi) Punishment for rape or death in consequence of rape (Section 9), (vii) Punishment for sexual oppression (Section 10), (viii) Punishment for causing death for dowry (Section 11), and (ix) Punishment for impairing any limb of a child for the purpose of begging (Section 12).
--	--	--	---

	anus; (iv) Any non-consensual penetration of a sexual nature should be included in the definition of rape. The IPC differentiates between rape within marriage and outside marriage. Under the IPC sexual intercourse without consent is prohibited. However, an exception to the offence of rape exists in relation to un-consented sexual intercourse by a husband upon a wife. The Committee recommended that the exception to marital rape be removed. Marriage should not be considered as an irrevocable consent to sexual acts. Therefore, with regard to an inquiry about whether the complainant consented to the sexual activity, the relationship between the victim and the accused should not be relevant. On sexual assault, the law currently stipulates "assault or use of		Further, the Act makes provision for children born as a consequence of rape (Section 13). Punishments for filing any false cases and complaints are delineated in Section 17. Section 18 details investigation of an offence while Section 19 addresses cognizance of offences. Section 20 provides for the trial procedure. Section 21 addresses trial in absence of the accused. Section 30 provides the punishment for instigation or abetment of an offence.
--	--	--	--

	criminal force to a woman with the intent to outrage her modesty" being punishable under Section 354 of the Penal Code with two years' imprisonment. However, the term "outraging the modesty" of a woman is not defined in the Penal Code. Hence, where penetration cannot be proved, the offence is categorized as defined under Section 354 of the Penal Code. The Committee recommended that: (i) Non-penetrative forms of sexual contact should be regarded as sexual assault; (ii) The offence of sexual assault should be defined so as to include all forms of non-consensual, non-penetrative touching of a sexual nature; (iii) The sexual nature of an act should be determined on the basis of the circumstances; (iv) Sexual gratification as a motive for the act should not be prerequisite for proving the offence. The offence should be punishable with 5 years of		
--	--	--	--

	imprisonment, or fine, or both; (v) Use of criminal force to disrobe a woman should be punishable with 3 to 7 years of imprisonment. - On verbal sexual assault, at present, use of words or gestures to “insult a woman’s modesty” is punishable with 1 year of imprisonment or fine or both under Section 509 of the Indian Penal Code (IPC). The Committee recommended that this section be repealed. The Committee suggested that use of words, acts or gestures that create an unwelcome threat of a sexual nature should be termed as sexual assault and be punishable for 1 year imprisonment or fine or both. - On sexual harassment, the Committee made some key recommendations on the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill (now an Act). These included the following: (i) Domestic workers should be included within the purview of the Bill. (ii) Under the Bill, the complainant and the		
--	---	--	--

	respondent are first required to attempt conciliation. This is contrary to the Supreme Court judgment in <i>Vishakha vs. State of Rajasthan</i> which aimed to secure a safe workplace to women. (iii) The employer should pay compensation to the woman who has suffered sexual harassment. (iv) The Bill requires the employer to institute an internal complaints committee to which complaints must be filed. Such an internal committee defeats the purpose of the Bill and instead, there should be an Employment Tribunal to receive and adjudicate all complaints. • On acid attacks, the Committee recommended that the offence should not be clubbed under the provisions of grievous hurt which is punishable with 7 years' imprisonment under the IPC. It further recommended that the central and state government create a		
--	---	--	--

	body to compensate victims of crimes against women. • On offences against women in conflict areas, the Committee opined that the continuance of Armed Forces (Special Powers) Act (AFSPA) in conflict areas needs to be revisited. At present, the AFSPA requires a sanction by the central government for initiating prosecution against personnel belonging to the armed forces. The Committee has recommended that the requirement of sanction for prosecution of armed forces personnel should be specifically excluded when a sexual offence is alleged. Complainants of sexual violence must be afforded witness protection. Special commissioners should be appointed in conflict areas to monitor and prosecute for sexual offences. Training of armed personnel should be reoriented to emphasise strict observance of orders in this regard by armed personnel. • On trafficking, the Committee noted that the Immoral Trafficking Prevention Act, 1956 did		
--	---	--	--

	not define trafficking comprehensively since it only criminalised trafficking for the purpose of prostitution. It recommended that the provisions of the IPC on slavery be amended to criminalise trafficking by threat, force or inducement. It also recommended criminalising employment of a trafficked person. The juvenile and women protective homes should be placed under the legal guardianship of High Courts and steps should be taken to reintegrate the victims into society. • On child sexual abuse, the Committee suggested that the terms ‘harm’ and ‘health’ be defined under the Juvenile Justice Act, 2000 to include mental and physical harm and health of the juvenile. • On punishment for crimes against women, the Committee rejected the proposal for chemical castration as it fails to treat the social foundations of rape. It opined that death penalty should not be awarded for the offence of rape as there was considerable evidence that death penalty was not a		
--	--	--	--

	deterrence to serious crimes. It recommended life imprisonment for rape. • On medical examination of a rape victim, the Committee recommended discontinuation of the two-finger test which is conducted to determine the laxity of the vaginal muscles. The Supreme Court has, through several judgments, held that the two-finger test must not be conducted and that the previous sexual experience of the victim should not be relied upon for determining the consent or quality of consent given by the victim. • On police reforms, the Committee has recommended certain steps to reform the police. These include establishment of State Security Commissions to ensure that state governments do not exercise influence on the state police. Such Commissions should be headed by the Chief Minister or the Home Minister of the relevant state. The Commission would lay down broad policy guidelines so that the Police acts according		
--	---	--	--

	to the law. A Police Establishment Board should be established to decide all transfers, postings and promotions of officers. Director General of Police and Inspector General of Police should have a minimum tenure of 2 years. • On electoral reforms, the Committee recommended the amendment of the Representation of People Act, 1951. Currently, the Act provides for disqualification of candidates for crimes related to terrorism, untouchability, secularism, fairness of elections, sati and dowry. The Committee was of the opinion that filing of charge sheet and cognizance by the Court was sufficient for disqualification of a candidate under the Act. It further recommended that candidates should be disqualified for committing sexual offences. • On education reforms, the Committee recommended that children's experiences should not be gendered. It recommended that sexual education should		
--	---	--	--

	be imparted to children. Adult literacy programs are necessary for gender empowerment. • Several reforms were suggested with regard to the management of cases related to crimes against women: (i) Setting up a Rape Crisis Cell which should be immediately notified when an FIR in relation to sexual assault is made. The Cell must also provide legal assistance to the victim. (ii) All police stations should have CCTVs at the entrance and in the questioning room. (iii) A complainant should be able to file FIRs online. (iv) Police officers should be duty bound to assist victims of sexual offences irrespective of the crime's jurisdiction. (v) Members of the public who help the victims should not be treated as wrongdoers. (vi) The police should be trained to deal with sexual offences appropriately. (vii) Number of police		
--	--	--	--

	personnel should be increased. Community policing should be developed by providing training to volunteers.		
CRC	• Pakistan should look towards the following legislative measures adopted by India: (i) National Food Security Act 2013 (ii) Protection of Children from Sexual Offences Act 2012 • India ratified the Optional Protocol to the CRC on the involvement of children in armed conflict in November 2005. Pakistan has yet to ratify the same. • The following institutional and policy measures enforced by India should also be considered: (i) National Early Childhood Care and Education Policy 2013 (ii) National Policy for Children 2013 (though India is yet to formulate a National Plan of Action to implement the policy – Pakistan should take this into consideration and pre-empt such an issue arising)	• Iran has been unable to strengthen cooperation with all NGOs, particularly those dealing with children, at all stages of the implementation of the Convention. • The age of majority is set pre-defined ages of puberty in Iran (15 for boys and 9 for girls) which implies that boys from 15-18 and girls from 9-18 are not covered by the provisions and principles of the Convention. Consequently, Iran (much like Pakistan) has difficulties addressing the issue of forced and early marriages.	• Pakistan should look towards the following legislative measures enacted by the Government of Bangladesh: (i) The 2006 Bangladesh Labour Law (which specifically prohibits hazardous work for children under 18 years of age) (ii) The Birth and Deaths Registration Act 2004 (which links birth registration to access to social services to stimulate and increase demand) (iii) The 2000 Prevention of Repression against Women and Children Act (amended in 2003 to combat violence against girls and women) • Additionally,

	- India has not yet established a clear regulatory framework for industries operating within its territory to ensure that their activities do not negatively affect human rights or jeopardize environmental and other standards, especially those relating to children's rights. Pakistan may be able to pre-empt such a situation by developing the requisite framework. - India set up a 24-hour helpline for children, being run by the State in collaboration with Childline India Foundation. Pakistan has yet to establish such a mechanism. However, if and when Pakistan develops such a service, it should learn from India in that it should ensure that it is accessible to all children at the national, provincial and district levels, free-of-charge. <u>Protection of Children from Sexual Offences Act 2012:</u> - The Act was promulgated by the Government of India to specifically "protect children from offences of sexual assault, sexual harassment and		Bangladesh has enacted its 2008 Policy for the Advancement of Women, aimed at eradicating gender disparities which seriously affect girls. - Bangladesh has also made progress towards the achievement of Millennium Development Goals (MDGs) 2, 3 and 4 with a significant reduction in child mortality; an increase in enrolment in primary school; and the attainment of gender parity at the primary and lower secondary levels. - Pakistan may also look towards Bangladesh's adoption of the Third National Plan of Action (NPA) for Children (2005-2010) to further implement the Convention – this Plan is also in line with the Plan of action adopted by the General Assembly ("A World Fit for Children") at its Special Session on Children and the
--	---	--	---

	pornography and provide for the establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto." - Chapter II delineates sexual offences against children: Part A of Chapter II deals with penetrative sexual assault and punishment; Part B of Chapter II addresses aggravated penetrative sexual assault and punishment; Part C of Chapter II deals with sexual assault and punishment; Part D of Chapter II pertains to aggravated sexual assault and punishment; and Part E of Chapter II relates to sexual harassment and punishment. - Chapter III deals with using children for pornographic purposes and punishments. - Chapter IV relates to abetment of and attempt to commit an offence. - Chapter V delineates the procedure for reporting cases and specifically addresses the obligation of media to report cases and punishment for failure to report or record cases (Sections 20 and 21). Section 22 deals with punishments for false complaints or false		MDGs. - The Committee recommended to Bangladesh to strengthen its efforts to develop a comprehensive and coordinated system of data collection on matters related to the implementation of the Convention from the national, divisional and district levels. Data should cover all children under the age of 18 and be disaggregated by age, sex and particularly those groups of children who are in need of special protection. - Bangladesh established a high-level Committee to review the definition of the child and the minimum ages of children for various situations. Pakistan should follow suit.
--	--	--	---

	information while Section 23 outlines the procedure for media. Chapter VI stipulates procedures for recording statements of children.		
CRPD	No reports submitted	No reports submitted	No reports submitted
ICERD	-	- Iran amended its Fourth Development Plan thereby allowing budget allocations and a percentage of oil and gas revenues for the development of less developed provinces, particularly inhabited by disadvantaged ethnic groups. - Iran, too, is lagging behind in its efforts to update the information on its ethnic composition, relying on the principle of self-identification. Pakistan should include self-identification in its next census. - The Committee recommended to Iran to take appropriate steps to combat manifestations in the media, as well as everyday life, of	- Bangladesh has been able to devise an educational curriculum to spread awareness of human rights among its population. - Although Bangladesh has a constitutional prohibition of racial discrimination, it has not explicitly and adequately prohibited and penalized in its criminal law. Pakistan faces a similar challenge.

		racial prejudice that could lead to racial discrimination. Pakistan should also take this into consideration while developing a media code of ethics that would commit Pakistani media to showing respect for the identity and culture of all communities in the State Party.	
CAT	No reports submitted	No reports submitted	No reports submitted

35 Lastly, trainers may discuss **Table 11** below with regard to legislative, policy and administrative shortfalls Pakistan must address to improve the human rights situation within its territory.

Table 11

Convention	Shortfall & Areas for Reform
International Covenant on Civil and Political Rights	• Ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights. • Withdrawal of remaining reservations to the ICCPR, particularly to Articles 3 and 25 as these ensure equality of opportunities for men and women. • Repeal provisions providing for mandatory death sentences. • Review all legislation on freedom of religion and belief, and freedom of expression to bring it in line with ICCPR requirements. • Enact legislation protecting freedom of religion. • Abolish or amend the blasphemy laws which violate freedom of religion and freedom of expression. • Amend the blasphemy law to prevent abuse and misuse whilst simultaneously reducing penalties for the accused which are disproportionate. • Hold accountable perpetrators of religiously motivated acts of violence.

	• Investigate violence against religious minorities and sects and punish the perpetrators of such crimes. • Punish perpetrators of attacks on journalists. • Remove restrictions on internet access which are in violation of the principle of proportionality under the ICCPR. • Enforce measures and policies to enhance participation of minorities and women in the political life of Pakistan. • Halt operations aimed at silencing dissent in Balochistan, which are in contravention of free speech guarantees under the ICCPR.
International Covenant on Economic, Social and Cultural Rights	• Prioritize policies aimed at enhancing socio-economic conditions. • Develop a plan for monitoring compliance with the Bonded Labour (System) Abolition Act 1992 and its 1995 Rules. • Adopt social policies of access to services on education and health. • Develop and implement programmes and policies on pro-poor growth, job creation and income generation. • Improve the health system. • Implement growth and job creation programmes for the most marginalized groups in society. • Strengthening programmes of employment creation, food and assistance to fight against poverty. • Enhance access to basic social services, such as health and education, particularly in rural areas. • Eradicate poliomyelitis and tuberculosis which pose massive public health problems. • Implement a sanitation program. • Direct efforts to ensure enrolment of all segments of society in education. • Increase allocation of resources towards education. • Direct efforts towards increasing the literacy rate and promoting universal access to education. • Allocate sufficient resources towards access to education, particularly for girls.
Convention on the Rights of the Child	• Ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. • Ratification of the Third Optional Protocol to the CRC on a communication procedure. • Expedite adoption of Charter of Child Rights Bill. • Enact and enforce effective legislation prohibiting and preventing the employment of children as domestic

	workers. • Formulate and implement a comprehensive strategy to prevent sexual exploitation and cruel treatment of children whilst simultaneously increasing criminal liability for such crimes. • Introduce programmes providing education and support to children recovered from extremists and militants with focus on their reintegration into society. • Prohibit child labour of minors under the age of 14 while simultaneously enforcing stringent penalties for those who violate this provision. • Institute measures to prevent forced or early marriage. • Institute a Child Protection Management Information System (CPMIS). • Focus on child immunization. • Take legal and administrative measures to ensure registration at birth. • Engage the public in an awareness campaign on the importance of registration at birth. • Harmonize provincial and federal laws on children, particularly with regard to age, education, protection, health and monitoring mechanisms.
Convention Against Torture	• Ratification of the Optional Protocol to the Convention Against Torture to establish national preventive mechanisms. • Withdrawal of remaining reservations to the CAT. • Provide human rights training and education to judicial and law enforcement officials.
Convention on the Rights of Persons with Disabilities	• Ratification of the Optional Protocol to the Convention on the Rights of Persons with Disabilities. • Implement a national policy for persons with disabilities to ensure physical access to public buildings. • Introduce legislative or administrative measures providing arrangements for children with disabilities with regard to accessing schools, parks, hospitals and other public places. • Increase budgetary allocations for children with disabilities.
Convention on the Elimination of All Forms of Racial Discrimination	• Amend or repeal discriminatory laws against marginalized groups. • Instituting measures and policies aimed at providing protection to vulnerable segments of society, particularly with regard to natural disasters, trafficking and exploitation at work.
Convention on the	• Ratification of the Optional Protocol of the Convention

Elimination of All Forms of Discrimination Against Women	on the Elimination of All Forms of Discrimination Against Women. • Enactment of provincial legislation on domestic violence. • Institute an increased number of support structures for women at the provincial level. • Repeal all legal and administrative provisions that discriminate against women. • Decriminalize adultery and non-marital consensual sex to ensure punishment for perpetrators of sexual violence. • Establish effective monitoring and reporting mechanisms to ensure respect for women's rights as well as addressing violence against women. • Create mechanisms aimed at the protection and support of victims of sexual and gender-based violence. • Direct efforts towards securing the political and economic emancipation of women. • Adopt a gender perspective in all public and private scenarios to challenge inequality. • Take necessary measures to end harmful traditional practices against women and sexual harassment in public and work places. • Ensuring that women are not submitted to parallel judicial systems, e.g. <i>jirgas</i>.
<u>General Areas of Recommendation</u>	• Ratification of the following: (i) Convention for the Protection of All Persons from Enforced Disappearance; (ii) Rome Statute of the International Criminal Court; (iii) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; (iv) Refugees Convention 1951; (v) Protocol to the Refugees Convention 1967. (vi) Palermo Protocol on human trafficking. • Continue development of institutional framework pertaining to rights protection and promotion. • Conduct review of national laws to ensure compliance with international human rights obligations. • Review national legislation and procedures to ensure incorporation of human rights obligations as well as their implementation. • Repeal provisions for mandatory death sentences. • Criminalize enforced disappearances in the Pakistan Penal Code 1860. • Upgrade laws and institutions, particularly with regard to

	women and children. • Provide sufficient resources to the National Commission of Human Rights. • Develop and implement a national policy for the protection and promotion of human rights. • Punish all perpetrators of human rights violations to combat impunity. • Maintain policy of broadening international cooperation in the field of human rights. • Issue an open invitation to UN Special Rapporteurs to assess the human rights situation in Pakistan.
--	---