PREVENTIVE DETENTION

A Guide to Pakistan's Operations
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Compiled and prepared by

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Research Society of International Law, Pakistan
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THE RESEARCH SOCIETY OF INTERNATIONAL LAW

The Research Society of International Law is a research and policy institution whose mission is to conduct research into the intersection between international law and the Pakistani legal context. RSIL was founded in 1993 by Mr. Ahmer Bilal Soofi, Advocate Supreme Court of Pakistan, and aims to inform policy formulation on a national level through its efforts. The Society is a non-partisan and apolitical organization, dedicated to examining the critical issues of law – international as well as domestic – with the intention of informing discourse on issues of national importance and effecting positive change in the domestic legal space.

To this end, RSIL engages in academic research, policy analysis and an approach of engagement with policy-makers and stakeholders in the domestic and international politico-legal contexts in order to better articulate meaningful and insightful national positions on these matters.

RSIL is staffed by a team of dedicated researchers and practitioners with a broad spectrum of specializations within international law, whose expertise covers the major policy areas and significant issues arising out of the intersection between the international and domestic legal spaces. The team contributes to the domestic legal policy discourse by conducting research and analysis into the challenges faced, both domestic as well as international, which arise out of the operation of the law.
THE CONFLICT LAW CENTRE

The Conflict Law Centre was established at the Research Society of International Law, in September 2015. It is a specialized division of RSIL dedicated to the study of International Humanitarian Law (IHL) in the Pakistani context. The Centre formalizes much of RSIL’s existing work in the field of IHL by dedicating a team of lawyers to undertake cutting-edge research and build capacity through various initiatives.

A primary objective of the Centre is to legally analyze law enforcement operations conducted under Article 245 of the Constitution of the Islamic Republic of Pakistan under the legal rubric of ‘actions in aid of civil power’. This Constitutional space provided to Government forces raises interesting questions for the domestic application of IHL and Human Rights Law (HRL) principles to the conduct of such operations and generates a need to identify an outline of Domestic Humanitarian Law.

The current world security situation and ongoing conflicts raise unique challenges for the Government, key stakeholders, and ordinary citizens and will continue to do so for years to come. In view of this condition it was deemed necessary to provide continuity in research through the establishment of a dedicated research centre focusing on the law of conflict as understood in domestic law and under IHL. The Centre’s research hopes to assist not only the legal community but also the judiciary and other stakeholders which are faced with a myriad of legal questions arising out of these operations.

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We would also like to thank the RSIL team for their contributions to this endeavor. In particular, we would like to thank Mr. Ahmer Bilal Soofi for his continued support of our work and for allowing us the opportunity to further the work he began with his Study on National Measures for Implementation of IHL in Pakistan.
EXECUTIVE SUMMARY

The following document is an in-depth examination of the use of preventive detention or internment in Pakistan’s domestic law and practice. Preventive detention is employed as an aid during Armed Forces or counterterrorism operations as an alternative to the greater use of force against persons and groups engaged in violent anti-state or extremist activity. The international and domestic law with respect to preventive detention is equally detailed and vague. In some instances, particularly with regards to international armed conflicts, international humanitarian law (IHL) provides extensive grounds and procedures for depriving persons of their liberty. However, with respect to non-international armed conflicts, IHL is far less forthcoming. In a purely domestic non-armed conflict scenario, human rights law also provides that the deprivation of liberty may not be arbitrary, however, the law is not so extensive so as to preclude the use of preventive detention altogether.

Within Pakistan’s domestic law, there are several overlapping regimes that provide the basis for preventive detention, along with procedure, which in some instances is quite detailed. To maintain lawful operations, however, is a difficult task, particularly when detention is used outside of the context of an armed conflict. This means that international legal obligations vis-à-vis the use of preventive detention must be strictly followed (both in law and practice) to retain both its legality and legitimacy.

The Guide is divided into seven chapters with four corresponding appendices and provides an extensive overview of preventive detention operations in Pakistan. Chapter One addresses the legal basis for preventive detention; Chapter Two provides an overview of general detention operations; Chapter Three discusses the justification for use of preventive detention in various contexts; Chapter Four provides procedures for processing detainees from the point of capture; Chapter Five examines the facilities in which detainees are kept and the facilities they are provided; Chapter Six discusses the rehabilitation of detainees through de-radicalization programs; and Chapter Seven discusses the end of the preventive detention of a detainee through release or transfer for adjudication.
### ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AACPR</td>
<td>Actions in Aid of Civil Power Regulations, 2011</td>
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<tr>
<td>AJ&amp;K</td>
<td>Azad Jammu &amp; Kasmir</td>
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<td>ATA</td>
<td>Anti-Terrorism Act, 1997</td>
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<tr>
<td>CAT</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
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<tr>
<td>CrPC</td>
<td>Code of Criminal Procedure, 1898</td>
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<tr>
<td>CTD</td>
<td>Counterterrorism Division</td>
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<td>FATA</td>
<td>Federally Administered Tribal Areas</td>
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<tr>
<td>GB</td>
<td>Gilgit-Baltistan</td>
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<td>IAC</td>
<td>International Armed Conflict</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>IB</td>
<td>Intelligence Bureau</td>
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<td>IHL</td>
<td>International Humanitarian Law</td>
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<td>ISI</td>
<td>Inter-Services Intelligence</td>
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<td>JIT</td>
<td>Joint Investigation Team</td>
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<td>KPK</td>
<td>Khyber Pakhtunkhwa</td>
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<td>MPML</td>
<td>Manual of Pakistan Military Law, 1957</td>
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<td>MPOO</td>
<td>Maintenance of Public Order Ordinance, 1960</td>
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<td>NACTA</td>
<td>National Counterterrorism Authority</td>
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<td>NIAC</td>
<td>Non-International Armed Conflict</td>
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<td>PAA</td>
<td>Pakistan Army Act, 1952</td>
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<td>PATA</td>
<td>Provincially Administered Tribal Areas</td>
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<td>PPA</td>
<td>Protection of Pakistan Act, 2014</td>
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<td>PPC</td>
<td>Pakistan Penal Code, 1860</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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### ADDITIONAL NOTE
Terms used for officers employed within detainee operations, including but not limited to, “Superintendent,” “Deputy Superintendent” and “officer-in-charge” shall refer to those bearing the title or their equivalents at any facility used for preventive detention by the state.
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PRINCIPLES OF
PREVENTIVE DETENTION
Any mechanism that seeks to deprive an individual of their liberty requires clear and concise policies and procedures as well as a firm basis in the law. The use of preventive detention is widely accepted as an exceptional measure of control during an armed conflict, but the use of detention for the prevention of threats to national security is also increasing. The relative gravity of the use of detention measures and the challenging circumstances in which such measures are employed requires careful consideration. This chapter defines preventive detention, its objectives, its basis in the law and it provides an overview of the circumstances in which persons may be detained. Key provisions of international human rights and humanitarian law are provided, along with each relevant domestic law that provides a framework for preventive detention.

DEFINING PREVENTIVE DETENTION

1-1. All persons have the right to liberty and security and no person shall be subject to arbitrary deprivation of that right.1 Thus, the right to liberty is not absolute.2 No person may be deprived of their liberty except on such grounds and in accordance with such procedure as established by law.3 The deprivation of liberty lacks the free consent of the person.4

1-2. Conceptually, the deprivation of liberty extends beyond what may be understood as preventive detention for the purposes of this document. The deprivation of liberty may thus include arrest into police custody, imprisonment after a conviction, involuntary hospitalization, etc. The scope of the document is nonetheless limited to preventive detention.

1-3. There is no singular mutually accepted definition of preventive detention. International law itself does not adhere to one specific understanding of this form of deprivation of liberty under either humanitarian or human rights law. This is also

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2 UN Human Rights Committee (HRC), General comment no. 35, Article 9 (Liberty and security of person), 16 December 2014, CCPR/C/GC/35, ¶ 10 [hereinafter General Comment 35].
3 ICCPR, supra note 1, at art. 9(1).
4 General Comment 35, supra note 2, at ¶ 6.
evident in the various interchangeable terms that describe this form of deprivation of liberty which include: preventive detention (the term used in this document), internment and administrative detention.

1-4. **Preventive detention is detention without criminal charges.** This form of deprivation of liberty essentially aims to prevent serious future harm, based on a person’s activity, rather than on the express commission of a crime. The following definitions offer additional guidance on preventive detention, as it is understood for the purposes of this document.

Preventive Detention is:

- [The] deprivation of liberty ordered by the executive authorities when no specific criminal charge is made against the individual concerned.\(^5\)

- [An] exceptional measure of control that may be ordered for security reasons in armed conflict, or for the purpose of protecting State security or public order in non-conflict situations, provided that in both contexts, the requisite criteria have been met.\(^6\)

**Note:** This document shall not address the detention of Prisoners of War during an international armed conflict as provided by Geneva Convention III Relative to the Treatment of Prisoners of War.

1-5. Preventive detention requires a restraint on the physical liberty of a person. Subjecting a person to preventive detention also does not preclude the filing of criminal charges at a later time. The absence of criminal charges at the time of detention may indicate that criminal charges are soon to be filed or that the harm presented by the detained person may exceed his/her right to liberty for reasons of national security or public order.

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1-6. Under domestic law, the AACPR, applicable in FATA and PATA, provides a specific definition of preventive detention pursuant to the law’s limited application during times of emergency as authorized by the executive. Using the term “internment,” preventive detention means:

restricting any person to a defined premises during the period the counter-insurgency operation is ongoing in order to incapacitate him from committing any offence or further offences under this Regulation or any other law, for securing peace in the defined area.⁷

No additional domestic legal provisions provide an explicit definition of preventive detention.

LEGAL BASIS FOR PREVENTIVE DETENTION

Under IHL and Human Rights Law

1-7. Preventive detention is not directly prohibited under either international humanitarian or human rights law. The threshold for legally permissible preventive detention under these regimes, however, differs. This is important because both legal frameworks may govern preventive detention during conduct of hostilities. During an IAC, a conflict between two or more opposing states, IHL and its rules regarding preventive detention surpass human rights law as lex specialis.⁸ During a NIAC, a conflict between states and non-state armed groups or between two such armed groups, both IHL and human rights law will need to be considered, when evaluating the lawfulness of a person’s detention.

1-8. Human rights law provides a set of stringent norms for preventive detention, higher standards than what IHL provides.⁹ Article 9 of the ICCPR provides that no person shall be subjected to arbitrary detention.¹⁰ Detention may be considered

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⁸ IHL constitutes the lex specialis governing the assessment of the lawfulness of the use of force against lawful targets in an IAC. The interplay of IHL rules and human rights law on the use of force is less clear in a NIAC and a fact-specific assessment is required to determine the prevailing legal framework.
¹⁰ ICCPR, supra note 1, at art. 9(1).
arbitrary if it is unlawful or unjust. Further discussion on the application of international human rights law to preventive detention may be found in Appendix I.

1-9. The Third and Fourth Geneva Conventions regulate preventive detention in an IAC. Article 75 of Additional Protocol I to the Geneva Conventions establishes minimum requirements for preventive detention in an IAC. For NIACs, IHL applies through Common Article 3 and Additional Protocol II to the Geneva Conventions. These provisions acknowledge that preventive detention will occur during the NIAC, but do so without establishing a concrete legal basis. There are generally far fewer provisions governing NIACs that relate to preventive detention, meaning a relative absence of IHL lex specialis. Therefore, the norms of domestic law, as informed by human rights law, govern the grounds and procedures for detention in this type of armed conflict. Common Article 3 and Additional Protocol II also do not provide grounds or procedures governing detention in a NIAC. Further discussion on the application of IHL to preventive detention during both IACs and NIACs may be found in Appendix II.

**Under Domestic Law**

1-10. The legal framework for preventive detention in Pakistan may be divided into two parallel regimes. Under Article 10 of the Constitution of Pakistan, one regime operates as a permanent feature of anti-terrorism legislation, both during and in the absence of an emergency. The other regime operates under Article 245 of the Constitution after the declaration of an emergency within FATA or PATA. The Article 10 regime is employed through laws that include the Protection of Pakistan Act, 2014, the Anti-Terrorism Act, 1997 and the Maintenance of Public Order Ordinance, 1960. The Article 245 regime within both FATA and PATA are operationalized through their respective Actions (in Aid of Civil Power) Regulations, 2011.

1-11. The following figure represents the primary laws that govern the preventive detention framework within Pakistan:

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12 Article 3 is a common provision amongst the four Geneva Conventions and provides certain protections during conflicts not of an international character.
Preventive Detention Framework in Pakistan

1-12. The Constitution of Pakistan, promulgated in 1973, provides certain fundamental rights in Articles eight through twenty-eight. Article 10 specifically addresses safeguards as to arrest and detention. It also establishes a general legal authorization for the use of preventive detention, albeit through subordinate laws.

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

1-13. The laws established pursuant to Article 10 provide a legal basis for preventive detention that is consistent with the basis provided in the Constitution.

Maintenance of Public Order Ordinance, 1960

[The] Government, if satisfied that with a view to preventing any person from acting in any manner prejudicial to public safety or the maintenance of public order, it is necessary so to do, may, by an order in writing, direct the arrest and detention in such custody as may be prescribed under sub-section (7), of

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13 Pakistan Const. (1973) art. 10(4).
14 Adopted separately by the four provinces and AJ&K, but not applicable to the Tribal Areas.
such person for such period as may, subject to the other provisions of this section, be specified in the order, and Government, if satisfied that for the aforesaid reasons it is necessary so to do, may, extend from time to time the period of such detention, for a period not exceeding six months at a time.

Explanation II - Whoever is or was a member of an association or its Executive Committee, which association is or has been declared to be unlawful under any law for the time being in force in the province, at any time during the period of seven days immediately before it was so declared to be unlawful, or remains or becomes a member of such an association or is on the Executive Committee thereof after it has been so declared to be unlawful shall be deemed to be acting in a manner prejudicial to the public order for the purposes of this section.\textsuperscript{15}

\textbf{Anti-Terrorism Act, 1997}\textsuperscript{16}

Power to arrest and detain suspected persons:\textsuperscript{17}

(1) Government if satisfied that with a view to prevent any person whose name is included in the list referred to section 11EE, it is necessary so to do, may, by order in writing, direct to arrest and detain, in such custody as may be specified, such person for such period as may be specified in the order, and Government if satisfied that for the aforesaid reasons it is necessary so to do, may, extend from time to time the period of such detention for a total period not exceeding twelve months.

(2) The provisions of Article 10 of the Constitution of the Islamic Republic of Pakistan shall mutatis mutandis apply to the arrest and detention of a person ordered under sub-section (1)

\textsuperscript{13} West Pakistan Maintenance of Public Order Ordinance, 1960 (Act No. XXXI of 1960), § 3(1) [hereinafter MPOO].
\textsuperscript{14} Anti-Terrorism Act, 1997 (Act. No. XXVII of 1997) [hereinafter ATA].
\textsuperscript{17} \textit{Id.} at § 11EEE.
Preventive detention for inquiry\textsuperscript{18}

(1) The Government may, for a period not exceeding thirty days and after recording reasons thereof, issue order for the preventive detention of any person who has been concerned in any offence under this Act relating to national security and sectarianism or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned, for purposes of inquiry:

\textit{Provided} that the Anti-Terrorism Court may, for reasons to be recorded, grant extension in the period of detention for up to thirty days at a time, but the total period of detention shall not exceed ninety days.

\textbf{Protection of Pakistan Act, 2014}\textsuperscript{19}

The Government may, by an order in writing, authorize the detention of a person for a period specified [...] if the Government has reasonable grounds to believe that such person is acting in a manner prejudicial to the integrity, security, defense of Pakistan or any part thereof or external affairs of Pakistan or public order or maintenance of supplies and services:

\textit{Provided} that detention of such person shall be in accordance with the provisions of Article 10 of the Constitution:

\textit{Provided} further that without prejudice to the above, an enemy alien\textsuperscript{20} may be detained by the Government to prevent him from acting as aforesaid for such period as may be determined by it from time to time in accordance with Article 10 of the Constitution.

\textsuperscript{18} \textit{Id.} at § 11EEEE.

\textsuperscript{19} Protection of Pakistan Act, 2014 (Act No. X of 2014) [hereinafter PPA]. The PPA includes a sunset provision of two years from its date of notification.

\textsuperscript{20} “enemy alien” means a militant:

\begin{enumerate}
\item whose identity is unascertainable as a Pakistani, in the locality where he has been arrested or in the locality where he claims to be residing, whether by documentary or oral evidence; or
\item who has been deprived of his citizenship, under the Pakistan Citizenship Act, 1951, acquired by naturalization
\end{enumerate}

Militant is further defined in Section 2(f) of the PPA, 2014.
Explanation – A person connected or reasonably believed to be connected with the preparation, attempt or commission of a scheduled offence or a person acting in concert or under directions of an enemy alien, or a person falling under sub-section (5) of section 5 shall be deemed to be a person acting in the manner stated above.21

1-14. The preventive detention regime established under Article 10 of the Constitution also includes the Security of Pakistan Act, 195222 and the Foreigners Act, 1946.23 The AACPR also provides a legal basis for the preventive detention of persons acting in a manner prejudicial to national security. However the AACPR, as it is applicable in both FATA and PATA, will be discussed in the following section on the use of preventive detention during a state of emergency.

**PREVENTIVE DETENTION DURING A STATE OF EMERGENCY**

1-15. Pursuant to Article 245(1) of the Constitution of Pakistan:

The Armed Forces shall, under the directions of the Federal Government, defend Pakistan against external aggression or threat of war, and, subject to law, act in aid of civil power when called upon to do so.24

The Federal Government, pursuant to Article 245(1), then issues a notification to deploy the Armed Forces. This Article and the role of the Armed Forces was interpreted as follows:

On a plain reading of the provisions of Article 245(1) of the Constitution the functions of the Armed Forces can be bifurcated into two categories, namely, they shall (1) defend Pakistan against external aggression or threat of war, and (2) subject to law, act in aid of civil power when called upon to do so. Under clause (1) of Article 243 of the Constitution the control and command of the Armed Forces is vested in the Federal Government, therefore, in the performance of both the categories of functions, the Armed Forces act under

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21 PPA, supra note 19, at § 6(1).
24 Pakistan Const. supra note 13, at Art. 245(1).
the directions of the Federal Government. [...] The Constitution does not envisage any situation where the Armed Forces may act without any direction by the Federal Government.

Thus, essentially, a proclamation requiring the aid of the Armed Forces must come from the civilian authorities and as soon as the necessity for the exercise of the military power is over, the civil administration must, of necessity, be restored, and assume its normal role.\(^{25}\)

Thus, the state of emergency declared through a notification under Article 245(1) of the Constitution addresses a broad spectrum of actions that threaten the state, including, but not limited to armed conflict. The application of IHL, as addressed in Appendix II, is not then to be automatically assumed. What IHL and human rights law (Appendix I) permit regarding preventive detention during and beyond an armed conflict must be carefully navigated.

1-16. The legal basis for preventive detention under an Article 245(1) action outside FATA and PATA\(^{26}\) stems from the same laws that are in constant application. Both the ATA and the PPA incorporate provisions acknowledging the role of the Armed Forces in the implementation of their respective frameworks.

**Anti-Terrorism Act, 1997**

It shall be lawful for the Federal Government to order, and [...] to secure, the presence of armed forces and civil armed forces in any area for the prevention and punishment of terrorist acts and scheduled offences in accordance with the provisions of this Act.\(^{27}\)

The Government or, where the provisions of section 4 have been invoked, the armed forces or civil armed forces, as the case may be, subject to the

\(^{25}\) Sindh High Court Bar Association v. Federation of Pakistan, PLD 2009 Supreme Court 879.

\(^{26}\) The ATA is also applicable in PATA under Notification No. 1/75.SOS 11/4D/2002 issued on Dec. 15, 2002, although it superseded by the AACPR when it is in application.

\(^{27}\) ATA, *supra* note 16, § 4(1).
specific or general order of the Government in this regard [...] issue order for the preventive detention of any person...\textsuperscript{28}

**Protection of Pakistan Act, 2014**

In areas where the Federal Government or the Provincial Government has called Armed Forces in aid of civil power under Article 245 of the Constitution or where any civil armed force has been called by the Federal Government or Provincial Government in aid of civil power under the Anti-Terrorism Act, 1997 (XXVII of 1997), the said requisitioned force may detain any enemy alien or militant in designated internment camps after a notification to that effect.

*Provided* that detention of such person shall be in accordance with the provisions of Article 10 of the Constitution.\textsuperscript{29}

**Actions (in Aid of Civil Power) Regulations, 2011**

1-17. In FATA and PATA, the respective AACPR applies in each territory. The AACPR itself is a notification from the Federal Government of an action in aid of civil power pursuant to Article 245 of the Constitution. Thus, a notification was and remains in place from the date the AACPR was issued, June 27, 2011, to present day. The action in aid of civil power will thus continue, “unless specifically reviewed or withdrawn partially or fully, as the case may be.”\textsuperscript{30}

1-18. The AACPR provides for preventive detention during an action in aid of civil power as follows:

The Interning Authority shall intern any person who-

(a) may obstruct actions in aid of civil power in any manner whatsoever; or
(b) if not restrained or incapacitated through internment shall strengthen the miscreants’ ability to resist the Armed Forces or any law enforcement agency; or

\textsuperscript{28} Id. as § 11EEE(1).
\textsuperscript{29} PPA, supra note 19, at § 6(2).
\textsuperscript{30} AACPR, supra note 7, § 3(3).
(c) by any action or attempt may cause a threat to the solidarity, integrity or security of Pakistan; or
(d) has committed or likely to commit any offence under this Regulation so that the said person shall not be able to commit or plan to commit any offence, during the actions in aid of civil power

If, in the opinion of the Interning Authority, the internment of any person is expedient for peace in the defined area, it shall pass an order of detention.

The Interning Authority may intern any person who may not be in the defined area, but is suspected of having committed acts or has nexus with actions that are referred to in subsections (1) and (2) in the defined area.
PREVENTIVE DETENTION OPERATIONS
The operationalization of a preventive detention regime requires strictly regulated procedures established by law, policy, guidelines, etc. These procedures must reflect the implementation of binding international standards including, but not limited to, humane treatment and the right to challenge the lawfulness of detention. To continue to deprive someone of their liberty without filing criminal charges puts the individual at greater risk for violation of their rights. Thus, the requisite procedural requirements that must be applied as a minimum during preventive detention must generally meet a higher threshold. The following chapter addresses the overall procedure established regarding the treatment and processing of detainees. The procedures regarding classification of detainees and their initial and periodic review is addressed. Finally, the federal and provincial government agencies in charge of detention are also identified.

CLASSIFICATION OF DETAINES

2-1. The following figure represents the threat assessment classifications that are used to process detainees:

![Diagram of Detainee Threat Assessment]

Classifications of Detainee Threat Assessment

2-2. Preventive detention operations may be performed by provincial and federal law enforcement authorities, as well as the civil armed forces and armed forces. These operations incapacitate threats to the security of the state and its people. For imperative reasons of security, safety or intelligence gathering, limitations on the movement or activities of particular persons may become necessary.
2-3. Civilians detained during armed conflicts benefit from the protections provided by IHL (as provided in Appendix II) and IHRL (as provided in Appendix I). All persons entitled to the protection of the law, even those suspected of or known to have engaged in activities hostile to the state, generally retain their rights and privileges. At the end of an armed conflict, these protections do not, however, bar the continued detention of those unlawfully taking up arms against the state, either individually or as members of armed groups, if preventive detention is required for imperative reasons of security. The assignment of criminal charges against persons unlawfully taking up arms is also permitted.

2-4. In the following paragraphs, key categories for the identification of persons subject to preventive detention are further defined. These categories represent the level of threat assigned to each detainee as well as their corresponding civilian or militant status. In determining the threat classification of each detainee, the Ministry of Interior is the primary authority.\(^{31}\)

2-5. A detainee, for the purposes of this manual and in conjunction with the definition provided in paragraph 1-4 above, shall refer to any person held in accordance with any law providing for preventive detention for the time being in force.

\textbf{Status: WHITE}

2-6. Detainees classified as WHITE are initially held on suspicion, but after inquiry are determined to pose little or no threat. They may be released on their own recognizance; they may be returned to their communities for continued supervision; or they may be transferred to the custody of the police if they have committed minor punishable offences.

\(^{31}\) MoI Rules of Business: Preventive detention for reasons of State connected with defence, external affairs or the security of Pakistan or any part thereof; and for reasons, connected with the maintenance of public order or the maintenance of supplies and services essential to the community; persons subjected to such detention.
Status: GREY

2-7. Detainees classified as GREY are strongly suspected of posing a threat. They may be active sympathizers, subordinates, foot soldiers or facilitators of militant groups. This category of detainees may be held for further determination of their status after additional investigation or they may be charged with criminal offences and transferred into the criminal justice system for trial.

2-8. If there are reasonable grounds for so believing, detainees classified as GREY may be investigated as per the following:

(a) Persons concerned in terrorism

(b) An activist, office bearer or an associate of an organization kept under observation pursuant to the ATA

(c) Persons in any way concerned or suspected to be concerned with such organization or affiliated with any group or organization suspected to be involved in terrorism or sectarianism or acting on behalf of, or at the direction of, any person or organization proscribed under the law

Status: BLACK

2-9. Detainees classified as BLACK are active members of militant groups, many with ties to international organizations involved in terrorism, waging war on Pakistan or its allies. After their classification is confirmed upon further investigation, detainees identified under the category of BLACK remain under military supervision pending court martial proceedings.

2-10. Detainees classified as BLACK may be identified under several additional categories in conjunction with the respective law governing their detention. The following categories are non-exhaustive.

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32 Terrorism is defined in Section 6 of the ATA.
33 ATA, supra note 16, at § 11EE.
MISCREANT

Miscreant means any person who may or may not be a citizen of Pakistan and who is intending to commit or has committed any offence under this Regulation and includes a terrorist, a foreigner, a non-state actor or a group of such persons by whatsoever names called.

MILITANT

Militant means any person who:
(a) wages war or insurrection against Pakistan, or
(b) raises arms against Pakistan, its citizens, the armed forces or civil armed forces; or
(c) takes up, advocates or encourages or aids or abets the raising of arms or waging of war or a violent struggle against Pakistan; or
(d) threatens or acts or attempts to act in a manner prejudicial to the security, integrity or defence of Pakistan; or
(e) commits or threatens to commit any scheduled offence and includes:
   i. a person who commits any act outside the territory of Pakistan for which he has used the soil of Pakistan for preparing to commit such act that constitutes scheduled offence under this Act and the laws of the State where such offence has been committed, including an act of aiding or abetting such offence; or
   ii. any person against whom there are reasonable grounds that he acts under the directions or in concert or conspiracy with or in furtherance of the designs of an enemy alien.

ENEMY ALIEN

Enemy alien means a militant:

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34 AACPR, supra note 7, at § 2(i).
35 PPA, supra note 19, at § 2(f).
36 The term is undefined in the Constitution of Pakistan. The only definition in the law for the time being in force is provided in Section 2(d) of the PPA.
(a) whose identity is unascertainable as a Pakistani, in the locality where he has been arrested or in the locality where he claims to be residing, whether by documentary or oral evidence; or
(b) who has been deprived of his citizenship, under the Pakistan Citizenship Act, 1951 (II of 1951), acquired by naturalization

2-11. Detainees classified as BLACK are subject to court martial proceedings pursuant to the Pakistan Army Act, 1952. Persons not otherwise falling under the act as service members of the Armed Forces may nonetheless be subject to its provisions and to a Field General Court Martial if they are accused of the following:³⁷

(i) claiming or are known to belong to any terrorist group or organization using the name of religion or a sect; and
   a. raise arms or wage war against Pakistan, or attack the Armed Forces of Pakistan or law enforcement agencies, or attack any civil or military installations in Pakistan; or
   b. abduct any person for ransom, or cause death of any person or injury; or
   c. possess, store, fabricate or transport the explosive, fire-arms, instruments, articles, suicide jackets; or
   d. use or design vehicles for terrorist acts; or
   e. provide or receive funding from any foreign or local source for the illegal activities under this clause; or
   f. act to over-awe the state or any section of the public or sect or religious minority; or
   g. create terror or insecurity in Pakistan or attempt to commit any of the said acts within or outside Pakistan,

shall be punished under this Act³⁸

2-12. A Field General Court Martial may be convened by an order of the Federal Government or the Commander-in-Chief of the Armed Forces. It shall consist of no less than three officers. Any person subject to the Pakistan Army Act may be

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³⁷ There is a two-year sunset clause on amendment to the Pakistan Army Act from the date of notification.
punished for any offence under the Act through a Field General Court Martial. A decision of a Court Martial shall be passed by an absolute majority of votes. Where an equality of votes occurs as to either finding or sentence, the decision shall be registered in favor of the accused. Any finding or sentence of a Field General Court Martial shall only be valid if confirmed by the convening officer or by a superior authority if so directed.

**REVIEW AND STATUS DETERMINATION**

2-13. Any persons captured or detained by the authorities (law enforcement, Civil Armed Forces or Armed Forces) are subject to categorization according to the classifications previously mentioned. All detained persons are subject to receive the same treatment until a determination of their status.

**Article 10 Review Board**

2-14. Article 10 Review Boards are authorized under the Constitution of Pakistan. This Board is an administrative tribunal that is convened under federal law by the Chief Justice of the Supreme Court of Pakistan and under provincial law by the Chief Justice of the respective High Court. The purpose of the Article 10 Review Board is to determine the existence of sufficient cause for continued detention of the individual. The Board may be constituted both as needed and wherever necessary.

**Note:** The determination of sufficient cause performed by the Article 10 Review Board is distinct from the determination of classification (i.e. white, grey or black) that is performed by the detaining authority and Ministry of Interior. Evidence of this classification may nevertheless be provided as a basis for continuing the detention of the individual.

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39 Pakistan Const. supra note 13, at Art. 10(4).
40 Id.
41 The scope of a Review Board’s jurisdiction only exists to the extent the Supreme Court or a High Court has jurisdiction. Under Article 247(7) of the Constitution of Pakistan, neither the Supreme Court nor the High Courts have jurisdiction in the Tribal Areas unless otherwise specified by law.
2-15. Detainees subject to Article 10 Review Board hearings are entitled to the following:

- Communication of the grounds on which the order for detention was made within fifteen days\(^{42}\)
- Earliest opportunity available to make representations against the order\(^{43}\)
- Court-ordered allowance for family\(^{44}\)

2-16. The convening authority of an Article 10 Review Board is either the Chief Justice of the Supreme Court, pursuant to federal law, or the Chief Justice of the relevant High Court, pursuant to provincial law. Under Article 10 of the Constitution, the Review Board shall:

- Convene within a reasonable time, but no longer than three months from the date of initial detention\(^{45}\)
- Be composed, under federal law, of a Chairman and two other persons, each of whom is or was a Justice of the Supreme Court or a High Court\(^{46}\)
- Be composed, under provincial law, of a Chairman and two other persons, each of whom is or was a Judge of the High Court\(^{47}\)
- Express its opinion in terms of the views of the majority of its members\(^{48}\)
- Request all relevant documents to be provided by the detaining authority\(^{49}\)
- The Government, JIT, Armed Forces or Civil Armed Forces may, in the interest of the security of their personnel or for the safety of the detainee or for any other reasonable cause withhold the information except from a High Court or the Supreme Court regarding the location of the detainee or internment center

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\(^{42}\) Pakistan Const. *supra* note 13, at Art. 10(5).

\(^{43}\) The authority making any such order may refuse to disclose facts, which such authority considers it to be against the public interest to disclose as provided in Article 10(5) of the Constitution of Pakistan.

\(^{44}\) Pakistan Const. *supra* note 13, at Art. 10(8).

\(^{45}\) *Id.* at Art. 10(4).

\(^{46}\) *Id.*

\(^{47}\) *Id.*

\(^{48}\) *Id.*

\(^{49}\) *Id.* at Art. 10(6). This is the prevailing procedure unless a certificate, signed by a Secretary to the Government, provides that any such documents are not in the public interest to disclose.
established or information with respect to any detainee or his whereabouts:

\textit{Provided} that the judge or judges to whom the disclosure is made may decide to treat it as privileged information in the public interest\footnote{PPA, supra note 19, at \S 9(2)(a).}

- The Government may not in the interest of the security of Pakistan disclose the grounds for detention or divulge any information relating to a detainee who is an enemy alien or militant\footnote{\textit{Id.} at \S 9(2)(b).}
- Determine the place of detention\footnote{Pakistan Const., supra note 13, at Art. 10(8).}

\textbf{ATA Section 11EEEE Inquiry}

2-17. Persons detained for inquiry under the ATA are subject to Article 10 Review Board hearings. However, there are additional inquiry procedures for those detained pursuant to the ATA as established under Section 11EEEE:\footnote{The amended Section 11EEEE remains in force for two years after the date of notification unless otherwise renewed.}

- The inquiry under Section 11EEEE(1) shall be conducted by:\footnote{ATA, supra note 16, at \S 11EEEE(2).}
  - a police officer not below the rank of Superintendent of Police; or
  - a JIT\footnote{Additional provisions related to the JIT may be found in Section 19 of the ATA.}
    - The JIT shall be notified by the Government and shall comprise of a police officer not below the rank of Superintendent of Police and officers of other investigation agencies
    - Where the detention order was issued by the Armed Forces or Civil Armed Forces, a JIT comprising members of the Armed Forces, Civil Armed Forces, intelligence agencies and other law enforcement agencies shall be notified
The powers of the police officer or JIT in conducting the inquiry shall be vested as per Section 5 of the Federal Investigation Agency Act, 1974. The powers provided include the following:

- Subject to any order which the Federal Government may make in this behalf, the [the police officer or JIT member] shall, for the purpose of an inquiry or investigation under this Act, have throughout Pakistan such powers, including powers relating to search, arrest of persons and seizure of property, and such duties, privileges and liabilities as the officers of a Provincial Police have in relation to the investigation of offences under the Code or any other law for the time being in force.

- If, in the opinion of [the police officer or JIT member] conducting an investigation, any property which is the subject-matter of the investigation is likely to be removed, transferred or otherwise disposed of before an order of the appropriate authority for its seizure is obtained, such member may, by order in writing, direct the owner or any person who is, for the time being, possession thereof not to remove, transfer or otherwise dispose of such property in any manner except with the previous permission of that member and such order shall be subject to any order made by the Court having jurisdiction in the matter.

2-18. Persons detained pursuant to the ATA and subject to the ATA 11EEE Inquiry must be produced in camera before the Anti-Terrorism Court within twenty-four hours of the initial detention. Where a detainee cannot be produced before the Anti-Terrorism Court, they may be brought before a District and Sessions Judge or a Magistrate. The detainee must also be produced before the Anti-Terrorism court if and when any extension in detention period is requested.

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56 Id.
58 Id. at § 5(5).
59 ATA, supra note 16, at § 11EEE(3).
60 Appointed under the Shariah Nizam-e-Adil Regulations, 2009
61 ATA, supra note 16, at § 11EEE(3).
2-19. Persons detained pursuant to the ATA and subject to the ATA 11EEE Inquiry shall be kept in detention centers notified by the Federal Government. Presiding officers of the Anti-Terrorism Courts or persons otherwise authorized by the ATA shall inspect the detention centers to ensure that the conditions of detention are maintained in accordance with established law. Detainees are also entitled to seek medical care as necessary and as prescribed under the ATA.

**AACPR Oversight Board**

2-20. Oversight Boards are authorized under the AACPR for both FATA and PATA. An Oversight Board is an administrative tribunal notified for each internment center by the Governor of KPK. The interning authority, under the AACPR, is also the Governor of KPK and any officer authorized thereunder. An Oversight Board is appointed, comprising of two civilians and two military officers.

2-21. Each person interned pursuant to the AACPR is entitled to a review of his or her internment within a time not exceeding 120 days from the day the internment order was issued. The review is followed by a report prepared by the Board for the Governor. The Oversight Board for each internment center must also periodically review the conditions of internment centers, with subsequent recommendations.

**APPEAL AND PERIODIC REVIEW**

2-22. If the detention of an individual exceeds a period of three months, they must be brought before an Article 10 Review Board. For all detentions that continue after the initial period of three months, the Review Board must review and assess the

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62 Id. at § 11EEE(4).
63 Id.
64 Id. at § 11EEE(S).
65 AACPR, supra note 7, at § 14(1).
66 Id. at § 8(1).
67 Id. at § 14(1).
68 Id.
69 Id.
70 Id. at § 14(2).
detention for each period of three months thereafter to determine if there remains sufficient cause for such detention. 71

2-23. The detention of an individual may not exceed eight consecutive months in a two-year period if they are detained on grounds of acting in a manner prejudicial to public order and twelve consecutive months on other grounds. 72 This limitation, however, does not apply to any person:

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 defense 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. 73

The limitation is also not applicable to those persons classified as enemy aliens. 74

2-24. Persons detained pursuant to the AACPR may remain in detention for the duration of the action in aid of civil power, 75 provided they are subject to review within a period of time not exceeding 120 days. 76 The Regulation provides that the interning authority, as appointed by the Governor of KPK, may either on its own or at the request of the detainee or his or her relatives, review the order of detention. 77 The request for review is assigned to suitable officers for inquiry, culminating in a report forwarded to the interning authority. 78 The interning authority further determines, on the basis of the findings, whether the detainee may be released, further detained or transferred into the criminal justice system for processing. 79

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71 Pakistan Const., supra note 13, at Art. 10(4).
72 Id. at Art. 10(7).
73 Id. at Art. 10(7) proviso.
74 Id. at Art. 10(9).
75 AACPR, supra note 7, at § 11.
76 Id. at § 14(1).
77 Id. at § 10(1).
78 Id. at § 10(2).
79 Id. at § 10(3).
PROHIBITION ON TORTURE & ILL TREATMENT

2-25. Pakistan became a party to the CAT in 2010 (for further information on its relevant provisions see paragraph I-13 of Appendix I). Although the provisions of CAT are not yet fully implemented in domestic law, several laws applicable to the whole of Pakistan generally prohibit torture and ill treatment of persons in custody:

**Police Order, 2002**

The Police Order criminalizes both the vexatious or unnecessary detention of any person, along with inflicting torture or violence upon any person in custody.\(^8^0\) It is considered the duty of the police to ensure that the legal rights and privileges of a person in custody are protected.\(^8^1\)

**Pakistan Prison Rules, 1978**

Every officer of a prison shall at all times avoid all conduct likely to unduly irritate or annoy any prisoner, and shall treat every prisoner humanly and with tact, good temper, and strict impartiality.\(^8^2\)

No officer shall, at any time, under any circumstances or under any pretext, strike any prisoner otherwise than in exercise of the right of private defence or in pursuance of his duty in giving effect to punishment lawfully inflicted or to any other provision of law.\(^8^3\)

No officer shall, in the discharge of his duties, at any time use more force than is absolutely necessary for the purpose of enforcing the law and carrying out his duties.\(^8^4\)

No officer of a prison, other than the Superintendent, shall at any time award any punishment to any prisoner or, otherwise than in accordance with law

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\(^8^0\) Police Order, 2002 (Chief Executive Order XXII of 2002), at § 156(c)-(d).
\(^8^1\) Id. at § 4(c).
\(^8^3\) Id. at R.1066(i).
\(^8^4\) Id. at R. 1066(ii).
and the orders of the Superintendent, inflict any punishment on any prisoner.\textsuperscript{85}

No officer of any prison shall use violent, abusive, insulting or unnecessarily irritating language to any prisoner.\textsuperscript{86}

**Pakistan Army Act, 1952**

The Army Act criminalizes the irregular confinement of persons.\textsuperscript{87} Irregular confinement is committed by any person subject to the Army Act who “without lawful excuse, detains a person in arrest or confinement without bringing him to trial or fails to bring his case before the proper authority for investigation.”\textsuperscript{88}

The Army Act also generally punishes both unbecoming behavior\textsuperscript{89} and violations of good order and discipline.\textsuperscript{90} A violation of good order and discipline is “any act, conduct, disorder or neglect to the prejudice of good order and of military discipline.”\textsuperscript{91}

2-26. The CrPC demands the release of persons illegally or improperly detained\textsuperscript{92} The PPC extensively criminalizes offences to the human body in Chapter XVI and wrongful restraint and wrongful confinement in Chapter XVI-A.\textsuperscript{93}

2-27. The AACPR and its subordinate rules explicitly prohibit subjecting any person interned under the Regulation to inhuman or degrading treatment or torture.\textsuperscript{94} To ensure enforcement of this prohibition, the Oversight Board is empowered to take notice of any complaint or information in respect of any inhuman or degrading

\textsuperscript{85} Id. at R. 1069(i).
\textsuperscript{86} Id. at R. 1069(ii).
\textsuperscript{87} PAA, supra note 38, at § 51.
\textsuperscript{88} Id. at § 51(1).
\textsuperscript{89} Id. at § 52.
\textsuperscript{90} Id. at § 55.
\textsuperscript{91} Id.
\textsuperscript{92} Code of Criminal Procedure, 1898 (Act No. V of 1898), at § 491 [hereinafter CrPC].
\textsuperscript{93} The PPC and the CrPC are not prohibited in their application to law enforcement or the Armed Forces.
\textsuperscript{94} AACPR, supra note 7, at § 15.
treatment or torture.\textsuperscript{95} The Oversight Board may carry out any inquiry in pursuit of this matter as necessary and recommend suitable action.\textsuperscript{96}

**AGENCIES INVOLVED IN PREVENTIVE DETENTION**

2-28. The following divisions or organizations are primarily involved in preventive detention operations:

- ISI
- IB
- Ministry of Interior
- Ministry of Defence

The following figure demonstrates the various divisions of Pakistan’s national internal security apparatus, all of which may detain individuals

\textsuperscript{95} Id. at § 14(3).
\textsuperscript{96} Id.
Domestic Security Framework
MINISTRY OF INTERIOR

2-29. The Ministry of Interior is primarily tasked with the oversight of preventive detention operations and general internal security (see paragraph 2-4). The following organizations operate under the Ministry of Interior:

**FIA**

The FIA was established for the investigation of certain offenses committed in connection with matters concerning or connected with the Federal Government. They may investigate offenses punishable under the ATA in those cases that have an inter-provincial scope. The FIA may also investigate offenses of money laundering, human trafficking and illegal entry and exit from Pakistan.\(^{97}\)

The following organizations represent the Civil Armed Forces, which during peacetime operate in their own independent capacity, but during actions in aid of civil power operate as subdivisions of the Armed Forces:

**Pak**

**Pakistan Rangers (Punjab and Sindh)**

The Pakistan Rangers are a paramilitary force divided into two parts, one in Punjab and one in Sindh. The Rangers are primarily tasked with border security and for providing of internal security along with provincial law enforcement.\(^{98}\)

**Frontier Corps (KPK and Balochistan)**

The Frontier Corps are a paramilitary force divided into two parts, one in KPK and one in Balochistan. Like the Rangers, they are primarily tasked with border security and for providing of internal security along with provincial law enforcement.\(^{99}\)

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\(^{97}\) See Federal Investigation Agency Act, *supra* note 57.  
\(^{98}\) See Pakistan Rangers Ordinance, 1959 (Ordinance XIV of 1959).  
\(^{99}\) See Frontier Corps Ordinance, 1959 (Ordinance XXVI of 1959).
**GB Scouts**

The GB Scouts are a paramilitary force operating in Gilgit-Baltistan. Like the Rangers and Frontier Corps, they are primarily tasked with border security and for providing of internal security along with provincial law enforcement.\(^{100}\)

**Frontier Constabulary**

The Frontier Constabulary’s primary function is to police the border between the settled areas of KPK and the tribal areas, protecting against militant incursions and criminal activity.\(^{101}\)

**MINISTRY OF DEFENCE**

2-30. The Ministry of Defence is tasked with the defence of the state in peacetime and during armed conflict. The Pakistan Army, Navy and Air Force operate under the Ministry of Defence as do their respective intelligence agencies. The Ministry of Defence is also mandated to ensure lawful adherence to the Geneva Conventions, particularly in relation to belligerents.\(^{102}\)

**ISI**

The ISI is one of three federal intelligence agencies operating in Pakistan, along with Military Intelligence, also operating under the Ministry of Defence. The functions of the ISI include the gathering and exchange of information and counter intelligence.

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\(^{100}\) See http://www.gilgitbaltistanscouts.gov.pk/index.htm for further details on the GB Scouts.

\(^{101}\) See Northwest Frontier Constabulary Act, 1915 (Act No. XIII of 1915).

Cabinet Division

IB
The IB is the third federal intelligence agency operating in Pakistan. They are primarily responsible for conducting internal intelligence and counter espionage operations.

Provincial Law Enforcement

CTD / COUNTERTERRORISM COMMAND
The CTD of each province (known as the Counterterrorism Command in Balochistan) is tasked with countering sectarian, militant and terrorist activities.

FATA

FEDERAL LEVIES
The primary function of the Federal Levies is to police the border between FATA and the Frontier Region.

KHASSADARS
The Khassadars are also known as the “tribal police” and are appointed by tribal authorities. Khassadars are the equivalent of provincial law enforcement.
PREVENTIVE DETENTION IN SUPPORT OF OPERATIONS
The use of preventive detention during combat as well as in counterterrorism operations provides several strategic benefits. This use must also be in accordance with the law. The importance of the use of preventive detention may be measured in the reduction of the amount of deadly force employed in tactical counterterrorism operations or on the battlefield. Pakistan faces grave threats from non-state actors seeking to destabilize the state through extremist and sectarian attacks against civilians, sectarian violence, etc. Their efforts must be countered with operations that have a strategic impact on their organization at every level. Preventive detention when incorporated as an exceptional measure, allows the Armed Forces, Civil Armed Forces and law enforcement to halt or hinder actions that may bring immense harm to the state.

**SUPPORT TO COMBAT OPERATIONS**

3-1. In an armed conflict, the Armed Forces (and the Civil Armed Forces if operating under the Armed Forces) have essentially three options during hostilities: the use of deadly force; preventive detention to eliminate the threat without deadly force; restraint or release from capture. Neither the blanket use of deadly force nor complete restraint or release from capture is an exercisable option. Thus, the use of preventive detention provides a significant degree of flexibility in combat operations to eliminate the threat, absent any unnecessary use of extreme force. Eliminating any threat through preventive detention, when done in accordance with the law, is also the humane option as regards the treatment of enemy forces.

3-2. In combat operations, it is likely that a large number of persons will be captured and detained. In this event, it is necessary to have a preventive detention mechanism that promotes the safe and humane treatment of detainees in accordance with the law. The Armed Forces and Civil Armed Forces, as the case may be, are tasked with providing temporary or permanent shelter to detainees away from any active warzone. They must also provide detainees with food, clothing, medical treatment, etc.
3-3. Many of the individuals captured during a conflict may also be civilians. Procedures must therefore account for and distinguish all manners of detainees. Internal conflicts also result in the displacement of individuals living in the area in which hostilities are conducted. For tactical reasons or for safety, the Armed Forces may also consider removing civilians from the area. These displaced persons may also, in some cases, be detained to neutralize any potential threat.

3-4. Preventive detention during combat operations thus provides significant tactical advantages for all manner of persons captured. The use of such measures may be necessary when done in accordance with the law. The length of armed conflict must also be considered in assessing the use of preventive detention during armed conflict. The initial detention of persons may be strategic in nature, but considerations of the advantages or disadvantages of the continued detention of individuals must be reassessed during long-term combat operations.

3-5. The legal guidelines provided for preventive detention during an armed conflict in international law for the treatment of detainees (see Appendix I & II) must also be disseminated to units tasked with performing detention functions. The knowledge of the differences between the law in times of peace and the law during armed conflict is of absolute necessity to all Armed Forces personnel, particularly the significance of such differences in detention operations.

**SUPPORT TO COUNTERTERRORISM OPERATIONS**

3-6. Civil Armed Forces performing a law enforcement function and law enforcement agencies are primarily tasked with implementing counterterrorism operations. The Armed Forces may additionally engage in military operations that have a counterterrorism aim. The purpose of counterterrorism operations is to eliminate the threat posed by non-state actors outside of any armed conflict, where the potential harm to civilians may be greater.

3-7. Each agency, particularly those operating under the Ministry of Interior, perform functions ancillary to the preventive detention of persons during counterterrorism operations. Although the agencies referenced in Chapter 2 (paragraphs 2-28 to 2-30) may all have the mandate to physically detain individuals, each agency does not continuously do so. Agencies like the IB are
primarily involved in surveillance and information gathering that lead to the identification of persons detained. This information is then provided to the counterterrorism units of provincial law enforcement authorities or the ISI or Military Intelligence. The IB, if they do initially detain a person, shall then transfer him to the CTD of the province in question or if he or she is thought to pose a more significant threat, to the ISI or Military Intelligence. When the Civil Armed Forces, during law enforcement operations, detain individuals, however, those individuals will likely remain under the authority of the Force that captured them (i.e. the Rangers or the Frontier Corps).

3-8. The nature of the security situation in Pakistan is complex. In many situations the physical appearance of non-state actors, violent extremists or those involved in terrorism is indistinguishable from the civilian population. The targets of such violence are also often civilian in nature (i.e. schools, hospitals, parks, etc.). It is far more difficult to protect the countless civilian targets present in the state as opposed to the limited military targets that may be attacked. This complexity then requires a response in counterterrorism operations that is more sustainable and effective.

3-9. Distinguishing, in counterterrorism operations, between those persons that pose a threat and innocent civilians is a difficult task. Insurgents purposely seek to blend in with the civilian population. Agencies involved in counterterrorism operations must, in response, have the authority to detain individuals in order to assess whether or not they pose a significant current or future threat.

3-10. Persons detained during these operations are not easily distinguished amongst themselves either. A conventional military has uniforms and ranks for the purposes of distinguishing individuals from one another. Non-state actors rarely have such identifiers. Thus, distinguishing between detainees may require differentiation based on age, ethnicity, tribal background, religion, level of threat or other similar factors. The aim of distinguishing between detainees is to assess the status of the individual (white, grey or black) and through separation to diminish any threat they pose outwardly or to one another.

3-11. Counterterrorism operations involve paramilitary, political, economic, psychological and ground level actions taken by the state to eliminate anti-state,
extremist and violent threats. Preventive detention is a critical element within broader counterterrorism operations because the need for information and the need to inhibit deadly violence is substantial. Information that may be employed in counterterrorism operations is also time-sensitive, which may lead to the detention of persons based on incomplete information, making their status difficult to determine.

3-12. The time-sensitivity of information is also a crucial element in why preventive detention is required. The criminal justice process is triggered after the commission of a crime and in counterterrorism operations, waiting for the act to be committed is not a plausible option. Preventive detention is a mechanism for gathering information and immobilizing threats before the fact. The legitimacy of such operations is nevertheless derived from the law and all detentions must be performed in accordance with such provisions. Detention may not be arbitrary or discriminatory in nature.

3-13. Waiting to arrest persons after the likely commission of a criminal offence is impractical in that it may only lead to the capture of foot soldiers or subordinates in a criminal enterprise. The leaders of such enterprises rarely have any direct involvement in the criminal activity, though they are complicit nonetheless. Preventive detention provides a mechanism for their capture, disrupting their organization’s infrastructure.

3-14. The arrest of potential non-state actors may also be dangerous for law enforcement officials ill equipped to handle the threat such elements pose, a threat which persists through arrest and holding in a standard jail. Allowing detainees to remain in standard jails or in holding with many other detainees may in itself present a substantial risk. Areas of internment themselves may become a breeding ground for the dissemination of extremist ideologies and for recruitment in such organizations. Persons in detention may invite capture as well in order to infiltrate such facilities to further their organization’s aims. Counterterrorism operations do not then cease at the point of capture. The use of preventive detention allows more flexibility in the segregation of persons interned in order to reduce any risk associated with the housing of detainees.
3-15. The use of preventive detention is thus integral to effective counterterrorism operations and reducing the threat such actors present. As an exceptional measure exercised by the Civil Armed Forces and law enforcement agencies, detention is a tool made necessary by the irregular security situation that persists in Pakistan.
PREVENTIVE DETENTION PROCEDURES
Detainees are the inevitable result of continuous combat and counterterrorism operations conducted in response to a number of destabilizing issues within the state. Detainees resulting from counter terrorism operations or an internal conflict may also require additional care in processing as they may present a different security risk than traditional detainees, like prisoners of war. It must be ensured that at both the planning and operations level that all detainee activity is performed in a humane manner. Adherence to international and domestic legal standards of treatment and care shall help reduce the likelihood of abuses during detention. Thus, the proper performance of operations through domestic laws, policies and procedures is critical for the implementation of a detention program.

DETAINEE PROCESSING

4-1. Detention operations begin at the point of capture and continue until a detainee is transferred to the criminal justice system or is released. A detainee may be captured by a number of different organizations under the Armed Forces, Civil Armed Forces or law enforcement agencies, by persons of varying rank. Thus, preparation and training for implementation of a detention mechanism must be executed widely. Actions that take place upon capture will resonate throughout the detention process and preparedness may make the difference between the success of an operation or its ineffectiveness.

4-2. Recent large scale combat and counterterrorism operations have resulted in the retention of a great number of detainees, though the amount may change over time as they are released or further processed. Greater numbers of detainees require a more sophisticated detention procedure and more resources to meet the challenge. For example, during combat operations, temporary housing may be required for detainees and thus also, adequate food, medical facilities and sanitation are equally required. Over-inflation of a preventive detention mechanism may have a negative effect on the primary combat operations.

4-3. The point of capture for a detainee does not initiate a uniform mechanism for preventive detention, but rather a process of case-by-case assessment to
determine the appropriate procedures required. Determinative factors in the assessment include, but are not limited to, the location and circumstances of capture; the origin of the person captured; the classification of the capturing force (i.e. Armed Forces or law enforcement); the presence of any current combat operations or a nexus with any current combat operations; and the proximity to any incidents of extremist or anti-state violence. Intelligence gathered prior to and during the detention process further contributes to the operational outcome of the detainee, whether they remain in detention, are released or are prosecuted.

4-4. The following figures represent an overview of detention operations from the point of capture to eventual transfer or release. The detainee flow and terminology is kept inclusive so as to reflect general detention operations across varied legal frameworks and detaining authorities.

*Detainee Processing Procedures*

- **PoC**
  - DTAF
    - Release
    - DHF
      - SDP
        - Release
        - Transfer
        - SDF
          - Prosecution
          - Release

**Key:**
- PoC: Point of Capture
- DTAF: Detainee Temporary Assessment Facility
- DHF: Detainee Holding Facility
- SDP: Status Determination Procedure
## POINT OF CAPTURE

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4-5. Detention operations may be conducted under a variety of frameworks as is already well documented. The primary distinctions within detention operations arise on the basis of the following: the conduct of operations by the Armed Forces or Civil Armed Forces as opposed to law enforcement agencies; the existence of an action in aid of civil power under Article 245 of the Constitution or the continuation of conventional law; and the location of the conflict, within or outside of FATA and PATA. Thus, the procedures under which detention operations are conducted will vary under AACPR operations, operations outside of FATA and PATA that adhere
to the standard operating procedures of the Armed Forces, operations guided by 
the standard operating procedures of law enforcement agencies and the detention 
operations that are subject to existing laws on incarceration in any prison facility.

**DETENTION OPERATIONS UNDER THE AACPR**

4-6. The Interning Authority may pass, with respect to any individual, an order of 
detention as authorized by the AACPR. The authority to detain extends beyond 
the geographic scope of FATA and PATA to any persons believed to have a nexus 
with actions prohibited under the law. This extended authority is supported in 
kind by the authority to execute an arrest warrant within Pakistan by which a 
person may be removed to the Tribal Areas.

4-7. Procedures for processing detainees from the point of capture under the 
AACPR are found generally in the FATA Internment Rules, 2011 or the KPK 
Internment Rules, 2011 in the case of PATA. The detention is initiated with the 
issuance of an order of detention. The order is attached to the AACPR as Schedule 
I. A representation of the order of detention may be found in Appendix III.

4-8. The order of detention is divided into three distinct parts. Part I captures the 
details of the individual in respect of whom the order is issued. The AACPR requires 
that each person detained pursuant to this law receive an individual order of 
detention. Part I requires photographs of the detainee, along with identification 
information and thumb impressions. Part II of the order requires information 
regarding the location from which the detainee was taken as well as the reasons 
for the detention. An authorized interning officer as well as the Superintendent of 
the detention facility must certify the order upon the completion of Parts I and II. 
Part III of the order of detention is to be prepared after necessary verification. Part 
III requires confirmation of the identification information provided in Part I, along 
with thumb impressions. This portion once again requires the approval of an 
authorized interning officer and the Superintendent of the detention facility.

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103 AACPR, supra note 7, at § 9(2).
104 Id. at § 9(3).
105 CrPC, supra note 92, at § 86-A.
106 AACPR, supra note 7, at Appendix III.
107 Id. at § 9(4).
4-9. The procedure by which a detainee is admitted into a detention facility in accordance with the AACPR is as follows:

(1) Any internee brought to a detention facility in an area governed by the AACPR must be accompanied by an order of detention signed by the Interning Authority.\textsuperscript{108}

(2) Upon receipt of the detainee, the officer-in-charge of the detention facility shall verify that the order bears the date of committal and is complete in its information (if not complete, the order must be returned for correction to the issuing authority).\textsuperscript{109} No person shall be admitted as a detainee without a lawful order of detention issued by the Interning Authority.\textsuperscript{110}

Detainees may only be received during the day\textsuperscript{111} and all detainees received during the night shall be confined in separate cells to be processed on the following day.\textsuperscript{112} The barracks will not be opened after lock-up.\textsuperscript{113} A designated officer may receive detainees arriving after lock-up or during nighttime hours on transfer.\textsuperscript{114} Newly admitted detainees may only be quarantined for a maximum of five days if so required.\textsuperscript{115}

(3) Before the admission of a detainee, the officer-in-charge of admission must verify his real name and other specifications in accordance with his order of detention.\textsuperscript{116} The officer will also provide a receipt attesting to such verification on the requisite forms.\textsuperscript{117} The real name of the

\textsuperscript{108} FATA Internment Rules, 2011 (Notification No. FS/L&O/401/FCR/3813-24), at R. 7(1) [hereinafter Internment Rules]. Identical rules are in place for PATA under Notification No. SO (FATA)HD/1-60/CPR/2011.
\textsuperscript{109} Id. at R. 7(2).
\textsuperscript{110} Id. at R. 7(8).
\textsuperscript{111} Id. at R. 7(7).
\textsuperscript{112} Id. at R. 7(17).
\textsuperscript{113} Id.
\textsuperscript{114} Id. at R. 7(7).
\textsuperscript{115} Id.
\textsuperscript{116} Id. at R. 7(9).
\textsuperscript{117} Id.
detainee must also be provided upon all documents bearing the detainee’s details.118

(4) Upon admission, each detainee shall be searched at the primary gate of the detention facility, under the supervision of an officer.119 If the detainee is female, a female staff member shall search her.120

(5) Weapons and prohibited articles in the detainee’s possession shall be removed.121 Cash, jewelry, clothing and any other private property shall be taken and logged in the register of detainees and subsequently stored.122

(6) Admissions officers must present all newly admitted detainees, their respective detention orders and the register of detainees before the officer-in-charge.123 Every detainee must be physically presented before the officer-in-charge so that the officer may be satisfied that the record of identification and the information in the order of detention is satisfactory and the details were filled correctly.124

(7) A detailed description of every detainee, taking care to note any distinctive physical attributes, along with his left thumb impression shall be recorded within the register of detainees.125

(8) Each detainee shall be provided a History Ticket in the designated format126

(9) Each detainee shall receive a serial number and be entered serially into the register of detainees127

118 Id. at R. 7(18).
119 Id. at R. 7(10).
120 Id. at R. 7(12).
121 Id. at R. 7(10).
122 Id.
123 Id. at R. 7(15).
124 Id. at R. 7(5).
125 Id. at R. 7(13).
126 Id. at R. 7(4).
127 Id. at R. 7(11).
(10) Within twenty-four hours of admission, a Medical Officer must examine each detainee. ¹²⁸ A Lady Medical Officer must examine female detainees. ¹²⁹

(11) Each detainee must be provided clothing and provisions in accordance with the provided scale. The detainee is required to thoroughly bathe and launder his clothing as well. ¹³⁰

(12) On the completion of all required entries and verifications within the register of detainees and the order of detention, the officer-in-charge or another appointed official shall verify each item entered and shall duly attest with his initials as acknowledgement thereof. ¹³¹

(13) The officer-in-charge shall countersign the register of detainees to acknowledge verification of and satisfaction with the accuracy of the entries. ¹³²

4-10. In accordance with the AACPR, the Interning Authority (any officer subsequently authorized by the Governor of KPK) is permitted to designate personnel to question any detainee. ¹³³ The interrogating officer must prepare and submit a signed report detailing any findings to the Interning Authority. ¹³⁴ The Interning Authority shall also designate someone to obtain a statement from the detainee. ¹³⁵

4-11. A detainee shall be entitled to receive psychological and religious counseling, ¹³⁶ which may occur either before or after interrogation. ¹³⁷

¹²⁸ Id. at R. 7(3).
¹²⁹ Id. at R. 7(12).
¹³⁰ Id. at R. 7(14).
¹³¹ Id. at R. 7(15).
¹³² Id. at R. 7(16).
¹³³ AACPR, supra note 7, § 13(1).
¹³⁴ Id.
¹³⁵ Id. at § 13(3).
¹³⁶ Id. at § 20.
¹³⁷ Id. at § 13(1).
4-12. Subsequent procedures established pursuant to the AACPR regarding the Oversight Board may be found in paragraphs 2-20 and 2-21.

4-13. In addition to the register of detainees, the following registers must also be maintained in accordance with the AACPR:138

(1) Admission register of detainees
(2) Transfer register of detainees
(3) Property register of detainees
(4) Punishment register of detainees
(5) Barrack-wise register
(6) Interview register
(7) Register of letters received
(8) Register of letters dispatched
(9) Gate book
(10) Superintendent’s order book
(11) Medical Officer’s report book
(12) Hospital admission register
(13) Injury register
(14) Death register

The list, though non-exhaustive, indicates the nature of the record to be maintained by all detention facilities maintained under the AACPR framework.

**ARTICLE 10 DETENTION OPERATIONS**

4-14. In operations outside of FATA and PATA where the Federal Government requisitions the Armed Forces or Civil Armed Forces, operational guidelines under the Article 10 detention regime shall apply. These guidelines are enforced in conjunction with existing procedures for interrogation and investigation employed by the Armed Forces and Civil Armed Forces.139

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138 Internment Rules, supra note 108, at § 28(1).
139 These procedures may generally be found in the PAA, MPML and Pakistan Army Act Rules, 1954.
4-15. For standard detention operations conducted pursuant to the ATA and PPA, the Federal Government, more specifically, the Ministry of Interior, or the Provincial Governments issue a written detention order.\textsuperscript{140} The detention order may not exceed the number of days specified in the relevant law(s).\textsuperscript{141} Where called in aid of civil power, the Federal Government may delegate the issuance of orders of detention to the Armed Forces and Civil Armed Forces.\textsuperscript{142}

The Federal Government is also tasked with providing further regulations regarding detention orders, facilities, mechanisms for representation against the orders, etc.\textsuperscript{143}

4-16. Investigations and interrogation pursuant to an order of detention are conducted by a police official at the rank of Superintendent of Police or above or by a JIT (A JIT is supervised and coordinated by each regional headquarters).\textsuperscript{144}\textsuperscript{145}

Where issuing authority is the Armed Forces or Civil Armed Forces, the inquiry is conducted by a JIT comprising of members of the Armed Forces or Civil Armed Forces, intelligence agencies and other law enforcement agencies, including a member of law enforcement not below the rank of Superintendent of Police.\textsuperscript{146} At minimum, the JIT must be comprised of one member of law enforcement and two members of the Armed Forces or Civil Armed Forces.\textsuperscript{147}

The Superintendent of Police is considered the executive head of the district police force, responsible for all matters relating to finance, training, management and the maintenance of discipline. In each district there is one or more Superintendents.\textsuperscript{148} The records to be maintained by a Superintendent in the course of his duties include a confidential notebook\textsuperscript{149} and a weekly diary.\textsuperscript{150}

\textsuperscript{140} ATA, supra note 16, at § 11EEE; PPA, supra note 19, at § 6(1).
\textsuperscript{141} Id.
\textsuperscript{142} PPA, supra note 19, at § 6(2).
\textsuperscript{143} Id. at § 6(4).
\textsuperscript{145} ATA, supra note 16, at § 11EEE(2).
\textsuperscript{146} Id. at § 11EEE(2).
\textsuperscript{147} Id.
\textsuperscript{148} Police Rules, 1934, at R. 1.8.
\textsuperscript{149} Id. at R. 21.8.
\textsuperscript{150} Id. at R. 21.13.
4-17. A detainee must be produced in camera within twenty-four hours of detention (if detained pursuant to the ATA or if there is reasonable suspicion of his potentially committing an offence under the PPA) before a presiding officer of the Anti-Terrorism Court or in his absence before a District and Sessions Judge or a Special Judicial Magistrate (PPA). See paragraphs 2-17 to 2-19 for further detail on the ATA Inquiry process. For the purpose of investigation, the police official or JIT as may be the case, shall have all the powers relating to search, arrest of persons and seizure of property and other relevant material. The investigator has all of the powers of a member of law enforcement in relation to an investigation (The powers and privileges of a police officer during an investigation are detailed in Sections 160 to 175 of the Code of Criminal Procedure, 1898).

If a police officer or a member of the JIT, during the course of investigation, must interrogate a detainee housed within a detention facility (outside of police custody), an order in writing from the District Magistrate to the Superintendent of the Jail is required.

4-18. Any person detained (pursuant to the ATA, but not limited to such persons) shall have access to a medical examination. The general treatment and questioning of detainees by law enforcement is to be conducted according to the law enforcement Code of Conduct. The Code of Conduct prohibits the abuse of authority and requires law enforcement officials to ensure the protection and health of all persons in their custody. Law enforcement shall take immediate action to provide medical care and if necessary, transfer the individual to a medical care facility for further treatment. The recommendations of medical practitioners regarding persons in custody shall be followed.

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151 ATA, supra note 16, at § 11EEEEE(3); PPA, supra note 19, at § 5(3).
152 ATA, supra note 16, at § 11EEEEE(4).
153 Id.
154 Police Rules, supra note 148, at R. 14.21(3).
155 ATA, supra note 16, at § 11EEEEE(5).
156 Police Order, supra note 80, at § 114(1)(c).
4-19. Where detainees are transferred out of exclusive police custody to a detention facility, they are classified and treated in accordance with the established Prison Rules. Detainees are an identified class of prisoner in that:

A prisoner confined in prison may be:

A state prisoner [...] or a person ordered to be detained in prison without trial under any law relating to the detention of such person.\(^{158}\)

No detainee may be admitted without a lawful order of detention.\(^{159}\) Upon admission prisoners are questioned by the Assistant Superintendent to verify their name and personal details as per the order of detention.\(^{160}\) Each prisoner is thoroughly searched at the main gate under the supervision of the Assistant Superintendent. All weapons and prohibited items are removed. Cash, jewelry, clothing and other personal items are removed and logged for storage.\(^{161}\) Detainees must be entered (without serial numbers) on the admissions register\(^{162}\) and the register of civil prisoners and the particulars of each detainee must be shown accordingly on relevant documents.\(^{163}\) A full personal description of every detainee, including his or her left thumb impression shall be recorded in the admissions register.

4-20. Each detainee is to be examined by a Medical Officer within twenty-four hours of admission. The Medical Officer must record in the admissions register the age, height, weight and state of health of the detainee, including general observations regarding his physical and psychological conditions.\(^{164}\)

Each detainee on admission must be thoroughly examined by the Medical Officer for unexplained injuries, wounds, contusions or abrasions. If injuries are found, they must be recorded into the admissions register and the injury register.\(^{165}\) If

\(^{158}\) Prison Rules, \textit{supra} note 82, at R. 224(iii).
\(^{159}\) \textit{Id.} at R. 14.
\(^{160}\) \textit{Id.} at R. 15.
\(^{161}\) \textit{Id.} at R. 16.
\(^{162}\) \textit{Id.} at R. 18.
\(^{163}\) West Pakistan Public Order Detenu Rules, 1962 (Notification No. 8-41-H-Spl-1/57) at R. 40(1).
\(^{164}\) Prison Rules, \textit{supra} note 82, at R. 18.
\(^{165}\) \textit{Id.} at R. 19.
those that had custody of the detainee prior to arrival at the detention facility did not log the injuries, a report must be forwarded to the relevant personnel, including the presiding Superintendent of Police.\textsuperscript{166}

4-21. Female detainees shall be searched and examined by female warders and female Medical Officers.\textsuperscript{167}

4-22. The Deputy Superintendent is required to verify each entry as it corresponds to the information on the order of detention or otherwise. The Assistant Superintendent must produce all new detainees with their orders and the admission register before the Superintendent.\textsuperscript{168} The Superintendent must personally ensure the accuracy of all entries made in relation to the detainee and countersign thereafter.\textsuperscript{169} If the Superintendent finds errors, the order of detention must be returned for correction to the issuing authority.\textsuperscript{170}

4-23. Each detainee is also provided a History Ticket upon admission. The Assistant Superintendent and the Medical Officer shall fill the relevant portions of the Ticket as required.\textsuperscript{171}

**DETECTION OPERATIONS SPECIFIC TO NON-CITIZENS**

4-24. The Federal Government has the power to issue an order of detention, with respect to any non-citizen of Pakistan.\textsuperscript{172} This power extends to the Tribal Areas.\textsuperscript{173} Any non-citizen may be detained in the interest of the defense, external affairs or security of Pakistan.\textsuperscript{174} Non-citizen detainees are to be confined in accordance with the directions of the Federal Government.\textsuperscript{175}

\textsuperscript{166} Id. at R. 20.
\textsuperscript{167} Id. at R. 21.
\textsuperscript{168} Id. at R. 25.
\textsuperscript{169} Id. at R. 26.
\textsuperscript{170} Id. at R. 28.
\textsuperscript{171} Id. at R. 65.
\textsuperscript{172} Foreigners Act, supra note 23, at §2.
\textsuperscript{173} https://fata.gov.pk/Global.php?lid=439&fid=2&pId=355&mId=15
\textsuperscript{174} Foreigners Act, supra note 23, at §2(2)(g).
\textsuperscript{175} Id. at §4(1).
4-25. Where the non-citizen detainee is the national of more than one foreign state or where the nationality may not be ascertained, the detainee may be treated as the national of the state with which he appears to the relevant authorities to be most closely connected.\(^{176}\)

4-26. If one or more states are engaged in an international armed conflict with Pakistan, their citizens may be declared “enemy foreigners” (also extends to the Tribal Areas).\(^{177}\) The relevant Provincial Government may establish temporary detention holding facilities (DHF) and appoint a commandant of each camp.\(^{178}\) Beyond the Armed Forces and Civil Armed Forces, law enforcement authorities are also empowered to detain male enemy foreigners over the age of sixteen\(^{179}\) (The diplomatic envoys of any state engaged in an international armed conflict with Pakistan are not subject to such detention unless specifically authorized by the Federal Government\(^{180}\)). All enemy foreigners detained shall be surrendered as soon as circumstances permit to the commandant of the respective DHF.\(^{181}\) Pending such transfer, enemy foreigners may be detained in civil custody temporarily.\(^{182}\)

4-27. Detention of enemy foreigners in a DHF is supervised under further regulations.\(^{183}\)

**TRANSFER OR TRANSPORTATION WITHIN DETENTION OPERATIONS**

4-28. It is permitted by law to transfer detainees between internment centers as required.\(^{184}\) The Inspector General, Provincial Government or Interning Authority may authorize the transfer of a detainee from one facility to another.\(^{185}\) The reasons for transfer must be recorded in writing.\(^{186}\) The descriptive roll of a detainee along

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\(^{176}\) Id. at § 8(1).

\(^{177}\) Enemy Foreigners Order, 1965 (Notified by S.R.O. 141(R)/65), at § 1(2), 2(c).

\(^{178}\) Id. at § 10.

\(^{179}\) Id. at § 11(1).

\(^{180}\) Id.

\(^{181}\) Enemy Foreigners Order, supra note 177, at § 11(2).

\(^{182}\) Id. at § 12.

\(^{183}\) See Internes (Discipline and Offences) Regulations, 1965, (Notified by S.R.O. 143(R)/65).

\(^{184}\) AACPR, supra note 7, at § 21; Internment Rules, supra note 108, at R. 17(1); Prison Rules, supra note 82, at Chapter VII.

\(^{185}\) Prison Rules, supra note 82, at R. 47.

\(^{186}\) AACPR, supra note 7, at § 21.
with the reasons for transfer must be submitted to the appropriate authority prior to any action.\textsuperscript{187}

4-29. Any person detained within FATA or PATA may be transferred to another internment center in the Tribal Areas declared under the Regulations or to a facility in the settled areas.

4-30. Each detainee must undergo a mandatory medical examination prior to transfer.\textsuperscript{188} No detainee may be transferred unless declared medically fit to do so.\textsuperscript{189} The detainee must be accompanied by documents that include: the order of detention, a list of the detainee’s property, the up-to-date History Ticket, descriptive roll and the detention facility property remaining with the detainee.\textsuperscript{190} If a transfer cannot be completed for medical or other reasons, the descriptive roll conveying the sanction for transfer is to be returned to the interning/transferring authority with the reason(s) for non-compliance.\textsuperscript{191}

4-31. A detainee may only be transferred during the day and night journeys must be avoided to the greatest extent possible.\textsuperscript{192} If an escort by law enforcement is required, prior notice of the transfer must be provided at a minimum of three days in advance.\textsuperscript{193} If an escort is required immediately, notice should be provided by telephone.\textsuperscript{194} Requests for the escort of law enforcement should include the number and classification of detainees to be transferred.\textsuperscript{195}

4-32. If an order to appear in Court is issued with respect to a detainee, it shall be delivered to the officer-in-charge of the relevant detaining facility.\textsuperscript{196} That officer bears the responsibility of producing the detainee at the time and place specified.\textsuperscript{197} The officer is also required to arrange temporary detention in custody

\textsuperscript{187} Prison Rules, supra note 82, at R. 163.
\textsuperscript{188} Internment Rules, supra note 108, R. 17(2); Prison Rules, supra note 82, at R. 163.
\textsuperscript{189} Id.
\textsuperscript{190} Internment Rules, supra note 108, R. 17(4); Prison Rules, supra note 82, at R. 166.
\textsuperscript{191} Prison Rules, supra note 82, at R. 167.
\textsuperscript{192} Id. at R. 168.
\textsuperscript{193} Id. at R. 169.
\textsuperscript{194} Id.
\textsuperscript{195} Id.
\textsuperscript{196} Prison Rules, supra note 82, at R. 170; Prisoners Act, 1900 (Act III of 1900) at § 41.
\textsuperscript{197} Id.
near the court until the examination is required to arrange temporary detention in custody near the Court until the examination is complete and he is authorized to return the detainees.\textsuperscript{198} The Superintendent is responsible for providing escort for the safe custody of the detainee until return to the detention facility.\textsuperscript{199}

4-33. If a detainee must be transferred to a civil hospital in case of serious illness, the order to do so must be obtained through the Inspector General or Interning Authority.\textsuperscript{200} For surgery, the detainee must be transferred as close as possible to the scheduled time of procedure and returned as soon as possible thereafter. \textsuperscript{201}

4-34. Upon arrival of a transferred detainee at the receiving facility, the Assistant Superintendent in charge of admissions is to examine the order of detention, History Ticket and the list of accompanying property.\textsuperscript{202} Receipts are to be issued upon satisfaction and one copy is to be returned to transferring facility to acknowledge completion of the transfer.\textsuperscript{203}

4-35. If a detainee dies during the transfer process, the officer-in-charge of the escort shall inform a Sessions Judge or the nearest Magistrate.\textsuperscript{204} An inquiry shall verify the circumstances of the death and review the accompanying documents, the result of which shall be forwarded to the Superintendent of the transferring detention facility.\textsuperscript{205} The Superintendent must provide the Inspector general the copy of the same.\textsuperscript{206}

**DEATH OF A DETAINEE**

4-36. The Superintendent and Deputy Superintendent of any detention facility shall take every precaution against the death, accident, suicide, etc. of a detainee.\textsuperscript{207} The order of detention of a detainee that dies within a detention

\textsuperscript{198} Id.
\textsuperscript{199} Id.
\textsuperscript{200} Prison Rules, supra note 82, at R. 197.
\textsuperscript{201} Id.
\textsuperscript{202} Id. at R. 189
\textsuperscript{203} Id.
\textsuperscript{204} Id. at R. 194.
\textsuperscript{205} Id.
\textsuperscript{206} Id.
\textsuperscript{207} Id. at R. 731.
facility must be returned to the Interning Authority endorsing the same.\textsuperscript{208} The officer-in-charge is required to inform surviving relatives or friends of the deceased.\textsuperscript{209} A record of the communication shall be provided to the Interning Authority.\textsuperscript{210}

4-37. A designated official of the detention facility must inform the death of any detainee to the officer-in-charge and the Medical Officer as soon as possible.\textsuperscript{211} The body of the detainee shall not be moved until the arrival of the Magistrate and Medical Officer.\textsuperscript{212} If the detainee appears deceased, but is suspected to be alive, immediate life-saving measures may be taken and the body may be moved as necessary.\textsuperscript{213} Medical Officers are permitted by law to perform post-mortem examinations as required by law.\textsuperscript{214}

4-38. The officer-in-charge shall provide in all instances a report when requested or the body for examination as requested by the Interning Authority or the Magistrate.\textsuperscript{215} In all cases of sudden, violent or unnatural death or whenever there is some question as to the cause of death of a detainee, a report must be issued to a Sessions Judge.\textsuperscript{216} The Sessions Judge shall then depute a Magistrate to investigate at the facility in conjunction with the Medical Officer, who shall perform the post-mortem examination.\textsuperscript{217} The Magistrate and Medical Officer shall submit their reports to the Superintendent as well as the Sessions Judge.\textsuperscript{218} The results of all examinations and inquiries must be additionally reported to the Inspector General.\textsuperscript{219}

4-39. The body of a detainee may be provided to the relatives or friends of the detainee provided the body was not already disposed of by burial or cremation.\textsuperscript{220}

\textsuperscript{208} Internment Rules, supra note 108, at R. 14(1); Prison Rules, supra note 82, at R. 733.
\textsuperscript{209} Internment Rules, supra note 108, at R. 14(3); Prison Rules, supra note 82, at R. 733.
\textsuperscript{210} Id.
\textsuperscript{211} Internment Rules, supra note 108, at R. 14(4).
\textsuperscript{212} Id.
\textsuperscript{213} Id.
\textsuperscript{214} Prison Rules, supra note 82, at R. 739.
\textsuperscript{215} Internment Rules, supra note 108, at R. 14(5).
\textsuperscript{216} Prison Rules, supra note 82, at R. 735.
\textsuperscript{217} Id.
\textsuperscript{218} Id.
\textsuperscript{219} Id. at R. 736.
\textsuperscript{220} Id. at R. 740(f).
Interning Authorities may refuse to provide the body of the detainee if there is reason to believe the funeral shall provide an occasion for demonstration.221 If the next of kin does not claim the body, it shall be disposed of in the manner provided by law, under the observation of religious rights as per the faith of the detainee.222

221 Id.
222 Id. at R. 741.
DETAINEE FACILITIES
Beyond capture, the physical containment of detainees (especially in large scale operations) is a primary consideration in detention operations. Principles of international law, particularly elements of human rights law and humane treatment are of primary importance in this matter. Under these instruments, detainees may be entitled to certain standards of treatment and care, which states must consider. Poor treatment of persons in state custody may also breed significant public disapproval, counterintuitive to the operations goal. Considerations in the relation to detainee facilities include the location of facilities away from hostilities or other potential harms as well as sanitary conditions, medical care, food, etc.

**LOCATION OF DETENTION FACILITIES**

5-1. The following table contains a list of the known detention facilities currently operation in Pakistan.

<table>
<thead>
<tr>
<th>Detention Facilities in Pakistan</th>
<th>KPK</th>
<th>FATA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PAITHOM</strong> (Pak-Austrian Institute of Tourism and Hotel Management)</td>
<td></td>
<td><strong>GHALANIYA</strong> (Mohamand Agency)</td>
</tr>
<tr>
<td><strong>FIZZAGHAT</strong> (sub-jail)</td>
<td></td>
<td><strong>FORT SLOPE</strong> (Khyber Agency)</td>
</tr>
<tr>
<td><strong>MALAKAND</strong> (sub-jail)</td>
<td></td>
<td><strong>LANDI KOTAL</strong> (Khyber Agency)</td>
</tr>
<tr>
<td><strong>TIMERGARA</strong> (non-functional)</td>
<td></td>
<td><strong>ALIZAI</strong> (Kurram Agency)</td>
</tr>
<tr>
<td><strong>FRONTIER CORPS LOCKUPS &amp; FORTS</strong> (non-functional)</td>
<td></td>
<td><strong>PARACHINAR</strong> (Kurram Agency)</td>
</tr>
<tr>
<td><strong>DROSH</strong> (sub-jail)</td>
<td></td>
<td><strong>KHAR</strong> (Bajaur Agency)</td>
</tr>
<tr>
<td><strong>LAKKI MARWAT</strong> (district jail)</td>
<td></td>
<td><strong>MIRAMSHAH</strong> (N. Waziristan Agency)</td>
</tr>
<tr>
<td><strong>KOHAT</strong> (district jail)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SWAT</strong> (sub-jail)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>MIRKHAI</strong> (sub-jail)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5-2. All lockup facilities within FATA, twenty-one in total, were notified by the FATA Secretariat as permitted detention facilities as necessary and appropriate under the
law. 223 Additionally, central jails in the provinces of Punjab, Sindh and Baluchistan provide detention facilities as per the Article 10 regime.

SEPARATION OF DETAINEES

5-3. All male and female detainees must be separated within detention facilities. 224 Women must, if possible, be detained in separate facilities or in separated portions of joint facilities. 225 Further, if the officer-in-charge believes that the presence of a detainee in relation to others may be detrimental to order or safety, the detainee shall be housed in a separate cell. 226

5-4. If detainees are kept in prisons declared by the Government as partial detention facilities, they shall be kept separate from other detainees and their records must be maintained separately. 227

CONDITIONS OF DETENTION

5-5. The Interning Authority is required to provide for the well being of detainees as per the law. 228 The following requirements are to be adhered to by the authority to ensure the well being of the detainees:

Detainees shall be provided: 229

- Adequate light, fans and arrangements for reading
- Reasonable facilities for bathing, latrines, etc. with care to ensure privacy
- Clean drinking water
- Bathing soap and Washing soap (provided each fortnight)
- Utensils, bedding, clothing and other facilities

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224 Internment Rules, supra note 108, at R. 9(1); Prison Rules, supra note 82, at R. 231.
225 Prison Rules, supra note 82, at R. 231(i).
226 Id. at R. 9(2).
227 Id. at R. 9(4).
228 FATA Internment Procedure, 2011 (Notification No. FS/L&O/40/FCR/3801-12) at § 3(1).
229 Id. at § 3(1)(a)-(d), (g)-(i).
- One hour of daily exercise (open air if possible)
- Library access
- Access to religious counsel

All facilities used by detainees shall be properly maintained at all times.\textsuperscript{230}

**DIET**

5-6. Detainees, including those in Tribal Areas,\textsuperscript{231} shall be provided a basic diet as provided in the law.\textsuperscript{232} Daily, all detainees will receive their meals at the appointed time and to the stipulated scale in accordance with his prison classification, unless the detainee is entitled to receive food from private sources.\textsuperscript{233}

5-7. Detainees are considered the equivalent of class “C” prisoners and are to receive the diet approved for convicted non-laboring prisoners under the law.\textsuperscript{234}

<table>
<thead>
<tr>
<th><strong>APPROVED SCALE OF DAILY DIET</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Morning Meal</strong>: wheat flour prepared as roti &amp; tea\textsuperscript{235}</td>
</tr>
<tr>
<td>- <em>If a detainee does not prefer tea, the Superintendent may issue a cost –equivalent substitute</em></td>
</tr>
<tr>
<td>- <em>The province of Punjab alternates a ration of porridge on alternate days with the above prescribed diet</em></td>
</tr>
<tr>
<td><strong>Midday and Evening Meal</strong>: wheat flour prepared as roti and pulses or beef &amp; vegetables\textsuperscript{236}</td>
</tr>
<tr>
<td>- <em>The same pulses may not be served twice on consecutive days</em></td>
</tr>
<tr>
<td>- <em>Boneless beef may be issued twice a week in place of dal (pulses)</em></td>
</tr>
<tr>
<td>- <em>Vegetarian detainees shall be served potatoes instead of beef</em></td>
</tr>
</tbody>
</table>

Each detainee must receive no less than 2,400 calories each day, to be verified by the Inspector General.

The dietary provisions in relation to detainees and all prisoners, in addition to the above scale, includes provisions for rice substitution, special holiday meals, the

\textsuperscript{230} Id. at § 3(1)(e).
\textsuperscript{231} Internment Rules, supra note 108, at R. 10(1).
\textsuperscript{232} See Prison Rules, supra note 82, at Chapter XX.
\textsuperscript{233} Id. at R. 469.
\textsuperscript{234} Internment Rules, supra note 108, at R. 10(1)
\textsuperscript{235} Prison Rules, supra note 82, at R. 472.
\textsuperscript{236} Id. at R. 473.
cutting of vegetables, special diets for those that are ill, etc.\textsuperscript{237} It is required that those preparing the food be cleared by the Medical Officer prior to employment.\textsuperscript{238} The kitchen is also to be supervised by warders in the facility to ensure adherence to the standards provided.\textsuperscript{239}

5-8. The Inspector-General of the facility is required to take all steps necessary to ensure that every detainee is supplied with a diet that maintains good health.\textsuperscript{240} Along with the Deputy Superintendent and Medical Officer, the Superintendent must be satisfied as to the following:

- Clean drinking water is provided for consumption at all times
- All food provided is of a quality fit for consumption
- All cooked food is prepared properly and fit for consumption
- All food raw and cooked is examined fully before consumption
- All stored foods are inspected frequently and any that do not meet inspection disposed of immediately.
- Places and tools for consumption of food are suitable and available for use\textsuperscript{241}

5-9. The Senior Medical Officer is required to examine the prepared food daily.\textsuperscript{242} If any defects are found, they must be recorded and reported to the Superintendent.\textsuperscript{243} The Superintendent and Deputy Superintendent are also required to examine the prepared food, including quality and quantity.\textsuperscript{244}

5-10. All requirements for dietary scale shall be in accordance with the recommendations of the Interning Authority. To this end, if detention facilities are at any time operated under the primary supervision of the Armed Forces or Civil Armed Forces, provisions that relate to diet may be distributed in accordance with the standard operating procedures of the Forces.

\textsuperscript{237} See Id. at R. 475 – 485.  
\textsuperscript{238} Id. at R. 499.  
\textsuperscript{239} Id. at R. 493.  
\textsuperscript{240} Id. at R. 503.  
\textsuperscript{241} Id. at R. 504.  
\textsuperscript{242} Id. at R. 505.  
\textsuperscript{243} Id.  
\textsuperscript{244} Id. at R. 506-507.
CLOTHING AND PROVISIONS

5-11. Persons confined to detention facilities, may either be permitted to wear their own clothing or may be provided a uniform as per the guidelines.\textsuperscript{245} Detainees are not permitted to retain any items not sanctioned by law or provided by the facility.\textsuperscript{246} Items not permitted within the detention facility shall be recorded and stored by the Interning Authority.\textsuperscript{247} Clothing and other articles are to be provided in accordance with the scale provided in law.\textsuperscript{248} Detainees are provided clothing (in accordance with the season and temperature), toiletries, dishes, prayer rugs and health aid items (i.e. eyeglasses).\textsuperscript{249} They also receive a mattress, blanket, pillow and towel.\textsuperscript{250}

5-12. Detainees, when permitted to wear their own clothing, are not permitted to wear a uniform that signifies membership in any military organization.\textsuperscript{251} The display of symbols of a political nature is also prohibited.\textsuperscript{252} The clothing of a detainee must bear his or her serial or identification number, if such a number was provided.\textsuperscript{253}

5-13. All clothing and bedding must be kept thoroughly clean and washed.\textsuperscript{254} Detainees are responsible for the care of their own clothing and may not alter or destroy them in any way.\textsuperscript{255} For this purpose, detainees are provided washing soap on a weekly basis.\textsuperscript{256} If detainees wear their own clothing, they must bear the cost of all laundering services.\textsuperscript{257}

\textsuperscript{245} West Pakistan Detenu Rules, supra note 163, at R. 6; See Prison Rules, supra note 82, at Chapter XXI. 
\textsuperscript{246} Prison Rules, supra note 82, at R. 508(ii)
\textsuperscript{247} Id.
\textsuperscript{248} Id. at R. 518(i).
\textsuperscript{249} Id.
\textsuperscript{250} Id.
\textsuperscript{251} Id. at R. 510(i).
\textsuperscript{252} Id. at R. 511.
\textsuperscript{253} Id. at R. 522.
\textsuperscript{254} Id. at R. 529.
\textsuperscript{255} Id. at R. 533(i).
\textsuperscript{256} Id. at R. 518(i).
\textsuperscript{257} West Pakistan Detenu Rules, supra note 163, at R. 6(2).
5-14. It is the duty of the Superintendent, Medical Officer and Deputy Superintendent to ensure the following:258

- Every detainee and all prisoners are provided sufficient clothing and bedding
- All clothing and bedding provided is of the correct scale and in the appropriate condition for use
- All stored clothing and bedding items are inspected and unsuitable items disposed of immediately

The Inspector-General is also tasked, on occasion, to take any measures necessary to ensure that detainees are provided with sufficient, clean and usable clothing and bedding.259

**CORRESPONDENCE AND VISITATION**

5-15. Detainees are permitted to send and receive correspondence and have personal visitations in accordance with the laws and procedures established.260 Ordinarily, a detainee may send one letter every two weeks, with no restriction on the amount of letters received.261 The Superintendent, as a disciplinary measure, may withdraw this privilege or it may be withdrawn if conditions are such that the written correspondence is not possible at the time.262 Conversely, the Superintendent also has the discretion to permit additional correspondence privileges, as necessary.

5-16. A detainee may also be permitted to receive personal visitations if approved by the Interning Authority.263 The officer-in-charge of the detention facility will fix two days a week and the hours in which personal visitation may be conducted.264 This allotment may be increased at the approval of the Interning Authority.265 A

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258 Prison Rules, supra note 82, at R. 531.
259 Id. at R. 532.
260 See id. at Chapter XXII.
261 Prison Rules, supra note 82, at R. 544; Internment Rules, supra note 108, at R. 16(2).
262 Id.
263 Prison Rules, supra note 82, at R. 544; Internment Rules, supra note 108, at R. 16(1); Internment Procedure, supra note 228, at § 7.
264 Prison Rules, supra note 82, at R. 552; Internment Rules, supra note 108, at R. 16(5).
265 Id.
personal visitation may normally not exceed one hour, but may be extended by the officer-in-charge under his/her discretion.\textsuperscript{266} No more than three persons are permitted to participate in a personal visitation at a time.\textsuperscript{267}

In Punjab, the privilege of personal visitations may be withdrawn for persons detained for terrorism or sectarianism related offences.\textsuperscript{268}

5-17. No person other than an approved visitor, official or detainee may be permitted inside a detention facility. No persons other than those approves by the Interning Authority shall be permitted to communicate with detainees in any circumstance.\textsuperscript{269}

5-18. No letter may be sent or received by any detainee without examination by the Superintendent or any officer duly authorized.\textsuperscript{270} If a letter is written in a language that is unknown to the examining officer, the officer shall take all necessary steps to acquire a translation before dispatching it further.\textsuperscript{271} No letters written in cipher may be sent or received.\textsuperscript{272} The Superintendent has the discretion to withhold letters that are considered objectionable or partially censor letters that contain such material.\textsuperscript{273}

5-19. All correspondence and personal visitations must be recorded on the respective detainee’s History Ticket and approved by the Superintendent or a duly authorized officer.\textsuperscript{274} All personal visitations shall be entered into the interview register.\textsuperscript{275} All requests for personal visitations may either be oral or in writing as per the request of the Superintendent.\textsuperscript{276} See Appendix IV for Form A, an official request form for personal visitation.

\textsuperscript{266} Prison Rules, supra note 82, at R. 552; Internment Rules, supra note 108, at R. 16(6).
\textsuperscript{267} West Pakistan Detenu Rules, supra note 163, at R. 15(1).
\textsuperscript{268} Punjab Home Department Direction P.A./H.S. 372 (Feb. 25, 1998).
\textsuperscript{269} Internment Rules, supra note 108, at R. 16(7).
\textsuperscript{270} Prison Rules, supra note 82, at R. 546.
\textsuperscript{271} Id.
\textsuperscript{272} Id.
\textsuperscript{273} Id.
\textsuperscript{274} Prison Rules, supra note 82, at R. 550(i).
\textsuperscript{275} Id. at R. 550(ii).
\textsuperscript{276} Id. at R. 551.
All visitors must produce a personal identity card. No person without an identity card shall be permitted a personal visitation.\textsuperscript{277}

The Superintendent may refuse a request for personal visitation if it is believed that such visitation may be against the public interest.\textsuperscript{278} Detainees held in relation to terrorism or sectarianism related offences may be denied certain visitation privileges.\textsuperscript{279}

5-20. All personal visitations must take place in the presence of an Assistance Superintendent or a duly appointed officer.\textsuperscript{280} The officer must supervise the visitation so as to ensure that no inappropriate conversation or illegal passage of materials occurs.\textsuperscript{281} An interview may be terminated if the officer finds that sufficient cause exists.\textsuperscript{282}

5-21. While the relevant law does not expressly provide for personal interviews of detainees with their respective legal advisors, the same is also not prohibited. A detainee is permitted to send correspondence in the form of petitions, \textit{vakalatnamas}, (power of attorneys), notices, etc.\textsuperscript{283} A detainee is also permitted to make representations against any order of detention under the Constitution of Pakistan,\textsuperscript{284} a provision that is more likely satisfied if a legal advisor is permitted access.

\textbf{DISCIPLINE}

5-22. The Interning Authority and detention facility officials are permitted by law to restrict the movement and actions of prisoners, provide minor punishments, take actions required to maintain control and protect the safety and welfare of other detainees and facility personnel.\textsuperscript{285}

\textsuperscript{277} Id.
\textsuperscript{278} Id. at R. 560.
\textsuperscript{279} Id. at R. 551.
\textsuperscript{280} Id. at R. 556.
\textsuperscript{281} Id.
\textsuperscript{282} Id. at R. 557.
\textsuperscript{283} Prison Rules, supra note 82, at R. 550(iii); Internment Rules, supra note 108, at R. 16(4).
\textsuperscript{284} Pakistan Const., supra note 13, at Art. 10(5).
\textsuperscript{285} Prison Rules, supra note 82, at Chapter XXIII; Internment Rules, supra note 108, at R. 27.
5-23. Authorized disciplinary actions are provided in the law. Torture and other forms of cruel or unusual punishment are expressly prohibited (see paragraph 2-25 to 2-27). Permissible minor punishments include:

- Formal warning, recorded on History Ticket
- Loss of correspondence or personal visitation privileges
- Temporary handcuffing (not to be imposed on female detainees)
- Confinement to cell (but not solitary confinement) for up to seven days\textsuperscript{286}

Detainees that commit major offences pursuant to the PPC shall be dealt with in accordance with the relevant law. The Superintendent may forward the detainee to a Sessions Judge or Magistrate of the first class for further inquiry.\textsuperscript{287}

5-24. The Superintendent is the only authority permitted to approve the awarding of any punishment.\textsuperscript{288} All punishments shall be recorded on the appropriate register.\textsuperscript{289}

\textsuperscript{286} Prison Rules, supra note 82, at R. 538.
\textsuperscript{287} Id. at R. 575.
\textsuperscript{288} Id. at R. 582.
\textsuperscript{289} Id. at R. 581.
REHABILITATION
The Armed Forces initiated de-radicalization programs in Swat in 2009 as part of a larger military operation aimed at ridding Pakistan of anti-state and violent extremist actors. The pilot de-radicalization projects are manifestations of broader policies operated by NACTA, a division of which is dedicated to counter extremism. The rehabilitation of select detainees is thus a critical priority. The incorporation of de-radicalization within detention operations aims to strike at rehabilitative rather than retributive methods of justice and peacemaking.

6-1. Preventive detention, when combined with de-radicalization efforts provides the Interning Authority, Armed Forces, Civil Armed Forces and law enforcement with an opportunity for positive interaction with detainees. The illusion of immortality and lack of religious belief created by anti-state organizations regarding state actors evaporates as trust develops. When a detainee is placed in a de-radicalization program, the role Interning Authority manifests as that of a facilitator rather than as the enemy or aggressor. To detainees that are profiled as receptive to such programs, this provides an opportunity to reunite with families and communities or to pursue vocations previously unobtainable. De-radicalization programs as a subset of overall detention operations support long-term stability to the state.

REHABILITATION FACILITIES

6-2. Currently, there are approximately eight de-radicalization facilities operated by the Armed Forces and Civil Armed Forces. Additional facilities for de-radicalization of detainees are operated by the CTD in Punjab. All eight Armed Forces-run de-radicalization facilities are operated in KPK, some in deserted schools and others in properties formerly controlled by the organizations to which the detainees once belonged.

6-3. De-radicalization programs include Sabaoon (New Dawn), Mishal (Light), PAITHOM/Pythom, Sparlay (Spring), Rastoon (Right Path), Heila (Hope), Bara and Naway Sahar (New Beginning). These programs are located in Swat and FATA.
Though the eight de-radicalization facilities have similar objectives, they differ in the age groups they target and in some cases the programs they provide.

**Adult De-Radicalization Facilities:**

**Mishal:** Located in Phetaam, Upper Swat Valley, Mishal is the largest adult de-radicalization facility and vocational training center operated by the Armed Forces. Detainees at Mishal are provided religious re-education and skills training in weaving, tailoring, carpentry, electrical repair, agriculture, computer usage, automobile repair, etc. The aim of the Mishal program is to provide an environment conducive to restoring the self-respect of detainees and to minimizing the effects of the ideological exploitation they endured to reintegrate them into society.

Many detainees at Mishal are often classified as mid-level or “grey” cases.

**PaiThom (Pythom):** Located in Gulibagh, Swat, PaiThom is a former training institute for tourism and hotel management now converted into a detention facility and partial de-radicalization facility operated by the Armed Forces. The detainees at PaiThom are often classified as high level or “black.”

**Heila:** Located in South Waziristan Agency, FATA, Heila is also a primary adult de-radicalization facility. Detainees at Heila are provided frequent family visitation, along with other educational and psychological services to aid in their rehabilitation.

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293 Id.
294 McKay, supra note 290, at 8.
**Naway Sahar:** Located in Bajaur Agency, FATA, Naway Sahar is operated by the North Frontier Corps. The facility is designed for the rehabilitation and reintegration of detainees age sixteen and above captured during any engagement with the Armed Forces or Civil Armed Forces.

Naway Sahar provides psychological counseling, skills development and vocational training over the course of the program.

**Bara:** Located in Khyber Agency, FATA, Bara is comprised of three centers that house approximately 400 participants. Supervised by members of the Armed Forces, detainees are instructed for eighteen hours a day by special tutors. Bara detainees are instructed in religious history and practice and provided vocational training, including tailoring, welding, furniture making and cellphone repair. The de-radicalization program also encourages rehabilitation through recreational sports and music, along with drug rehabilitation.

Detainees at Bara are comprised of newly surrendered individuals that are transferred into a de-radicalization program immediately after a determination of their status. Detainees are only eligible for release if staff psychologists provide approval.

Upon release, graduates of the Bara de-radicalization program are to be provided employment in larger metropolitan areas and/or a stipend to assist in their reintegration. They are also required to periodically meet with supervisors to ensure their continued rehabilitation.

**Rastoon:** Rastoon is located in Malakand, Swat and it targets younger detainees age sixteen to twenty-five in its de-radicalization program.

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Child De-Radicalization Facilities:

**SABAON:** The Sabaoon de-radicalization facility in Mingora, Swat operates as a partnership between the Armed Forces and civil society organizations. Sabaoon was created in the aftermath of military organizations in Swat to rehabilitate young men, many training as suicide bombers that cannot be formally detained under the law. The ages of those enrolled range from twelve to seventeen.

Sabaoon houses children that are classified as low, medium or high risk after comprehensive evaluations by in-house psychologists. They participate in an eighteen month program that is comprised of: formal education (Grades 1 through FA or FSc(high school equivalent)), religious education, vocational training, counseling and therapy and social issues dialoging. The children are also rehabilitated through family interaction and provided access to recreational activities (sports, art and television).

Family Rehabilitation Facilities:

**SPARLAY:** Project Sparlay in Swat, like Mishal, is designed to de-radicalize adult detainees. However, the focus of Sparlay is vocational training and family-oriented rehabilitation. The Sparlay facility is also designed to provide vocational rehabilitation to female detainees.

**DETAINEE SELECTION**

6-4. During the initial or periodic status determination of a detainee, screening for receptiveness to de-radicalization techniques is performed. Detainees are selected and placed into de-radicalization facilities on the basis of level of indoctrination and age. They are assigned a number on a scale of one to ten and the evaluation

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300 Ravi Kalia, Pakistan’s Political Labyrinths: Military, Society and Terror, 161, 167 (2016).

determines their placement. Those detainees that likely played supporting roles in anti-state or extremist activities (who did not have leadership roles and were not involved directly in any heinous crimes) are more likely to be selected.

6-5. Program authorities assign risk levels to program entrants after in-house psychologists complete their examination. The examination consists of cognitive tests that assess the development of the individual. Additionally, the role of the individual in his or her respective organization and continued level of inclination towards violence play a key part in risk level determination.

A detainee that involuntarily served for a short period of time and performed mostly menial tasks, for example, is more likely to be considered as “low-risk.” “Medium Risk” are those that provide assistance to anti-state or extremist elements, but likely do not play a direct role in any hostilities. “High-risk” are those trained in weapons, combat, espionage and those groomed to be suicide attackers.

DE-RADICALIZATION PROCESSES

6-6. Detainees that pose low, medium or high levels of risk may all be placed into De-Radicalization and Emancipation Programs, operated primarily by the Armed Forces and Civil Armed Forces or in partnership with civil society organizations. The De-Radicalization and vocational training programs may last from a few months to a year.

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302 Id.
303 Rana, supra note 291, at 5.
304 Qazi, supra note 298, at 7. The process described is employed at Sabaoon specifically, but similar determination processes are employed in the adult de-radicalization facilities for risk assessment.
305 Id.
306 Id.
307 Id.
308 Id.
309 Id. at 17-18.
311 Schram, supra note 301.
6-7. De-radicalization programs are divided into four primary components:\(^{312}\)

- Education
  - Formal Schooling
  - Religious instruction
  - Computer skills
- Counseling
  - Substance abuse rehabilitation
  - Anger management counseling
  - Sexual abuse counseling
- Social and Family Development
  - Family interaction
  - Discourse on social and societal issues
  - Recreational development (sports, art and music)
- Vocational Training
  - Skills enhancement
  - Certification

**REINTEGRATION**

6-8. The ultimate aim of the detainee de-radicalization programs is to reintegrate the individuals back into their families and communities. Those selected for reintegration may pursue employment or further education. Small stipends may also be available to facilitate the transition.\(^{313}\)

6-9. Reintegration criteria are established to process detainees out of de-radicalization facilities. Detainees with strong academic performance, vocational skills, family engagement and those that receive approval from in-house psychologists may be considered for re-integration in the community.\(^{314}\) Other factors including family involvement in anti-state or extremist activities and the presence of such groups in the communities to which the detainees may return are also determinative.\(^{315}\)

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\(^{312}\) Rana, *supra* note 291, at 5.

\(^{313}\) *Id.*

\(^{314}\) Qazi, *supra* note 298, at 9.

\(^{315}\) *Id.*
6-10. To reduce the rate of recidivism, a de-radicalization and community-based monitoring program was established for those that graduate out of the facilities.\textsuperscript{316} The Armed Forces and officials at the de-radicalization facilities meet with reintegrated persons periodically (the level of frequency is determined by the risk level assessment) to continuously evaluate their progress.\textsuperscript{317} The monitoring process may last for up to two years.\textsuperscript{318}

**DE-RADICALIZATION BY LAW ENFORCEMENT**

6-11. The CTD in Punjab, along with the Technical Vocational Training Authority initiated a provincial de-radicalization program in 2011.\textsuperscript{319} The program became operational in 2015.\textsuperscript{320} The program is operated in phases, prevention, rehabilitation and follow-up monitoring.\textsuperscript{321}

6-12. The CTD de-radicalization program is four to six months in length and like the programs established by the Armed Forces and Civil Armed Forces, includes psychological assessment, religious education and vocational training.\textsuperscript{322} Stipends are also available to facilitate those in the program during and after the program.\textsuperscript{323} Detainees that are reintegrated after successfully completing the program are also offered a load (up to Rs. 30,000) to establish a business.\textsuperscript{324}

\textsuperscript{316} Id.
\textsuperscript{317} Khan, supra note 296.
\textsuperscript{318} Id.
\textsuperscript{319} Noor, supra note 297, at 18.
\textsuperscript{321} Noor, supra note 297, at 18.
\textsuperscript{322} Id.
\textsuperscript{323} Id.
\textsuperscript{324} Id.
END OF
PREVENTIVE DETENTION
Preventive detention is not intended as a tool to be used parallel to the criminal justice detention process. It is a temporary measure designed to neutralize an imminent threat to the state. When the threat subsides, the need for continued preventive detention of persons may be reduced. Thus, there may no longer be sufficient cause to continue to detain persons, as they do not continue to pose a significant threat. The majority of detainees are then released, entered into de-radicalization programs or transferred to the civil or military penal systems for prosecution.

7-1. When the actions in aid of civil power or the counterterrorism operations end, most detainees will be released or transferred. Various categories of interned civilians may be released once the strategic conditions that led to their internment have changed. Members of armed groups may be transferred to external facilities for intelligence screening or further detention as necessary. However, detainees that are suspected of having committed serious offences prior to or during detention will be transferred for prosecution. These detainees shall instead be adjudicated in the civilian criminal courts or submitted to the Armed Forces to undergo military penal system proceedings.

**RELEASE OF DETAINEES**

**AACPR Detainees**

7-2. The Interning Authority may, either order the release of a detainee on its own assessment or at the written request of the detainee or his or her relatives. The Interning Authority must examine any request for release and duly authorize an officer to perform an inquiry with regards to the respective detainee’s suspected activity, present conduct, counseling, affiliations and family ties. A subsequent report must be submitted to the Interning Authority.

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325 AACPR, supra note 7, at § 10(1).
326 Id. at § 10(2).
327 Id.
7-3. The Interning Authority shall, on the basis of the report submitted by the officer and any additional evidence submitted, take one of the following actions:

(a) Turn down the request
(b) Direct that the person is an offender and after the conclusion of the actions in aid of civil power he be transferred to the law enforcement agencies for formal prosecution
(c) Accept the request unconditionally or with certain conditions as necessary, along with guarantees provided by the family or community

7-4. After the Federal Government issues a notification signifying the end of the action in aid of civil power, detainees shall be transferred to civilian law enforcement authorities along with any evidence collected against the respective detainees in accordance with the law.

7-5. Any detainee that is permitted release or is required to be handed over to law enforcement agencies by the Interning Authority shall be processed as soon as possible.\(^{328}\) Each detainee must be provided a separate order of release.\(^{329}\) Order of release shall be transported to detention facilities through official messengers or registered post to be received by the officer-in-charge.\(^{330}\) When received, orders of release must be carried out immediately by the officer-in-charge or any other officer duly authorized.\(^{331}\)

7-6. An officer-in-charge shall not be permitted to release a detainee on the basis of an informal order of release.\(^{332}\) Only those orders that bear the signature of the Interning Authority and an official seal shall be recognized and acted upon.\(^{333}\) The officer-in-charge or any other authorized official must verify that the order of release is genuine and all particulars relating to the detainee are correct.\(^{334}\)

\(^{328}\) Internment Rules, supra note 108, at R. 13(1).
\(^{329}\) Id. at R. 13(7).
\(^{330}\) Id. at R. 13(6).
\(^{331}\) Id. at R. 13(5).
\(^{332}\) Id. at R. 13(9).
\(^{333}\) Id.
\(^{334}\) Id.
7-7. After verification and during such time as the detainee is prepared for release, the following procedures shall be employed:

1) A detainee must be verified against the personal description and marks of identification provided in the register of detainees to the satisfaction of the officer-in-charge.\footnote{Id. at R. 13(4).}

2) A detainee must return their facility uniform and receive the clothing worn during admission.\footnote{Id. at R. 13(2).} If such clothing was sold or destroyed or is inadequate as regards health or decency, clothing may be purchased by the detainee or provided at the expense of the state.\footnote{Id. at R. 13(13).}

3) After submission of the uniform the detainee must be brought before the officer-in-charge for inspection.\footnote{Id. at R. 13(3).}

4) The detainee will receive cash and any other personal belongings submitted at the time of admission.\footnote{Id. at R. 13(10).} Any cash or personal belongings lost in custody shall be compensated.\footnote{Id. at R. 13(12).}

5) A detainee must be provided meals before release.\footnote{Id. at R. 13(15).}

6) If necessary, a usable blanket shall be provided to detainees.\footnote{Id. at R. 13(14).}

7) No detainee suffering from a serious illness shall be discharged from the detention facility until clearance is provided by the Medical Officer or the detainee is transferred to a civilian hospital.\footnote{Id. at R. 13(16).}

7-8. The order of detention of a released detainee must be returned to the Interning Authority with a record of the date and cause of release, along with the date of return.\footnote{Id. at R. 13(17).}
Article 10 Detainees

7-9. A detainee may be released either when the order of detention expires, the Interning Authority orders release or a relevant court finds there does not exist sufficient cause for further detention.

7-10. Each detainee must be provided a separate order of release. Upon receipt, an order of release must be executed as soon as possible. An order of release shall be transported to detention facilities through official messengers or registered post to be received by the officer-in-charge.

7-11. An officer-in-charge is not permitted to release a detainee on the basis of an informal order of release. Only those orders that bear the signature of the Interning Authority and an official seal shall be recognized and acted upon. The Deputy Superintendent or any other authorized official must verify that the order of release is genuine and all particulars relating to the detainee are correct.

7-12. During the release procedure, each detainee must be carefully identified against the personal description and marks of identification provided in the register of detainees to the satisfaction of the Superintendent and Deputy Superintendent. The following additional procedures are to be employed during release:

1) A detainee must return their facility uniform and receive the clothing worn during admission. If such clothing was sold or destroyed or is inadequate as regards health or decency, clothing may be purchased by the detainee or provided at the expense of the state.

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345 Prison Rules, supra note 82, at R. 124(v).
346 Id. at R. 124(ii).
347 Id. at R. 124(iii).
348 Id. at R. 127.
349 Id.
350 Id.
351 Id. at R. 123.
352 Id. at R. 132(i).
2) The detainee will receive cash and any other personal belongings submitted at the time of admission. Any cash or personal belongings lost in custody shall be compensated.

3) A detainee must be provided meals before release

4) If necessary, a usable blanket shall be provided to detainees

5) If necessary, a detainee may be provided a small stipend for food and transport after release

6) No detainee suffering from a serious illness shall be discharged from the detention facility until clearance is provided by the Medical Officer or the detainee is transferred to a civilian hospital

7-13. If a female detainee is to be released, the Superintendent is required to inform the detainee’s family to allow them to receive her upon discharge from the facility. If no relatives arrive to receive the female detainee, a female officer or another individual duly authorized must escort her home.

7-14. The order of detention of a released detainee must be returned to the Interning Authority with a record of the date and cause of release, along with the date of return.

TRANSFER FOR ADJUDICATION IN CIVIL PENAL SYSTEM

AACPR Detainees

7-15. Any detainee that commits or attempts to commit an offence under the AACPR may be prosecuted under the Frontier Crimes Regulation, 1901, the CrPC, the ATA or any other applicable law. The detainee must be transferred to the

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353 Id. at R. 131(i).
354 Id. at R. 131(ii).
355 Id. at R. 133.
356 Id. at R. 132(ii).
357 Id. at R. 134.
358 Id. at R. 141.
359 Id. at R. 137(i).
360 Id. at R. 137(ii).
361 Id. at R. 142(i).
362 AACPR, supra note 7, at § 18(1).
custody of the prosecuting or investigating agency for formal arrest.\textsuperscript{363} Transfer may only occur after the order of detention is withdrawn.\textsuperscript{364} The detainee may be transferred to any investigating or prosecuting agency in FATA, PATA or the settled areas.\textsuperscript{365}

7-16. All evidence, information, material, etc. collected by the Interning Authority with regards to a detainee shall be provided to the prosecuting or investigating authority.\textsuperscript{366} The Interning Authority shall also provide:\textsuperscript{367}

1) The order of detention
2) The release report
3) The order of release
4) Any reports compiled during interrogation or inquiry
5) Any statements or confessions made by the detainee
6) Any reports of the Oversight Board if prepared

Article 10 Detainees

7-17. The Article 10 preventive detention regime is operationally more diverse than the AACPR regime as it may be employed in aid of civil power or in conjunction with counterterrorism operations. Various categories of detainees may thus be transferred to the mainstream criminal courts or special courts (i.e. the Anti-Terrorism Courts).

7-18. A detainee may be transferred for adjudication when the order of detention expires or when the Interning Authority withdraws the order of detention. Upon release from the detention facility, the detainee may be transferred to the custody of the investigating agency through formal arrest in the manner provided by law.\textsuperscript{368}

\textsuperscript{363} Id.
\textsuperscript{364} Id.
\textsuperscript{365} Id. at § 18(2).
\textsuperscript{366} Id. at § 19(3).
\textsuperscript{367} Id.
\textsuperscript{368} Chapter V of the CrPC provides the general procedure regarding arrest.
7-19. The result of any investigation or inquiry performed during the detention of the individual may be provided to the prosecuting or investigating agency or directly to the special court. The results of an inquiry by a JIT (see paragraph 2-17) or any investigating agency, upon the completion of an investigation, must be provided to the courts through designated prosecutors.\textsuperscript{369}

**TRANSFER FOR ADJUDICATION IN MILITARY PENAL SYSTEM**

7-20. Over those detainees that are classified as “black” that may continue to pose a substantial threat or over those that have committed serious crimes against the state, the military penal system may have jurisdiction, in accordance with the law for the time being in force. The Federal Government has the power to transfer any case of any person accused of one of the following offences to the Armed Forces for adjudication under the PAA:\textsuperscript{370}

1) Claiming or are known to belong to any terrorist group or organization using the name of religion or a sect; and
   a. Raise arms or wage war against Pakistan, or attack the Armed Forces of Pakistan or law enforcement agencies, or attack any civil or military installations in Pakistan; or
   b. Abduct any person for ransom, or cause death of any person or injury; or
   c. Possess, store, fabricate or transport explosives, firearms, instruments, articles, suicide jackets; or
   d. Use or design vehicles for terrorist acts; or
   e. Provide or receive funding from any foreign or local source for the illegal activities under this clause; or
   f. Act to over-awe the state or any section of the public or sect or religious minority; or

\textsuperscript{369} CrPC, supra note 92, at § 173; ATA, supra note 16, at § 19(1); PPA, supra note 19, at § 7. Section 5 of the PPA Rules, 2014 provide further detail on the investigation process prior to submission before the special court.

\textsuperscript{370} PAA, supra note 38, at § 2(4).
g. Create terror or insecurity in Pakistan or attempt to commit any of the said acts within or outside Pakistan.  

2) Claiming or are known to belong to any terrorist group or organization using the name of religion or a sect and raise arms or wage war against Pakistan, commit one of the following offences under the PPA:
   a. crimes against ethnic, religious and political groups or minorities including offences based on discrimination, hatred, creed and race;
   b. use of arson, fire-bombs, suicide bombs, biological weapons, chemical weapons, nuclear arms, plastic explosives and other materials capable of exploding or creating bombs employed to kill or cause hurt to persons or destroy property;
   c. use of arson and bombs on public places, government premises, sites of worship, historical places, business concerns, or other places, and risking or causing death or hurt to any person therein;
   d. killing, kidnapping, extortion, assault or attack on officers and employees of Pakistan including armed forces and law enforcement agencies;
   e. killing, kidnapping, extortion, assault or attack on foreign officials, official guests, tourists, foreign visitors, or internationally protected persons, etc.;
   f. killing, kidnapping, extortion, assault or attack on social or welfare workers, including health personnel, aid workers, and volunteers;
   g. destruction of or attack on communication and interaction lines, devices, grids of stations, or systems, etc.;
   h. destruction of or attack on energy facilities including darns, power generating and distributing systems including stations, lines and poles;
   i. destruction of or attack on aircrafts and airports, attack on flight crew with any weapon or endangering human life by means of weapons on aircrafts;
   j. destruction of or attack on gas or oil pipelines and liquid or natural gas facilities and other means of their transport including tankers;

371 Id. at § 2(1)(d)(iii).
k. destruction of or attack on of national defense materials, premises, utilities, and installations including check posts, prisons and other fixtures;
l. destruction of or attack on educational institutions, police stations and security organizations etc.
m. wrecking, disrupting or attacking mass transport systems including trains, buses, cars and their stations and ports;
n. violence or attack against maritime navigation, maritime fixed platforms, shipping and port installations and other maritime fixtures;
o. violence against nuclear arms, sites or any other related installations;
p. illegally crossing national boundaries in connection with a scheduled offence

3) Abetting, aiding or conspiring in the commission of any abovementioned offence

7-21. Detainees (now the accused) are subject to a Field General Court Martial, the procedures of which are well established under the PAA and MPML. Any person subject to Court Martial proceedings may not be tried on the same facts for the same offence in the civil penal system.

7-22. The Federal Government or the Chief of the Army Staff may convene a Field General Court Martial and there is no restriction under the law on its use during peacetime, except that its procedures shall abide by those of an ordinary General Court Martial. Additionally, the rules of evidence shall be identical to those adopted by the indigenous criminal courts. Any order or sentence passed by a General or Field General Court Martial is also subject to judicial review by the High Court.

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372 Id. at 2(1)(d)(iv).
373 Id.
374 PAA, supra note 38, at §§ 73, 84, 97. Chapter IV(xvii) paragraphs 105-108 of the MPML as well as PAA Rules, 1954 135-149 provide additional procedure regarding Field General Court Martials.
375 PAA, supra note 38, at § 96.
376 Id. at § 84(a).
377 PLD 1996 SC 632(I)
378 PAA, supra note 38, at § 112.
Courts and Supreme Courts of Pakistan on grounds of *coram non judice* or *mala fide*, including malice in law.\(^{379}\)

\(^{379}\) PLD 2015 SC 401, ¶ 171.
APPENDIX – I
APPLICATION OF IHRL TO PREVENTIVE DETENTION

The prohibition on arbitrary arrest, detention or exile can be traced back to the UDHR, which is understood to be customary international law. Pakistan is bound by the rules of Customary International Law and is also a Party to the ICCPR, which is construed to be an extension of UDHR. The U.N. General Assembly and the U.N. Commission on Human Rights has expressed its deep concern in condemning “arbitrary and unlawful detention”. This appendix provides a summary of the relevant provisions of IHRL that apply to preventive detention within Pakistan. Articles 9 of the ICCPR along with other relevant laws are highlighted in the following appendix.

ARBITRARY DEPRIVATION OF LIBERTY

I-1. States parties should do their utmost to take appropriate measures to protect individuals against deprivation of liberty by the action of other States within their territory. 380

I-2. The right to liberty of person is not absolute. Article 9 recognizes that sometimes deprivation of liberty is justified, for example, in the enforcement of criminal laws. Paragraph 1 requires that deprivation of liberty must not be arbitrary, and must be carried out with respect for the rule of law. 381

<table>
<thead>
<tr>
<th>ICCPR ARTICLE 9(1)</th>
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<tbody>
<tr>
<td>Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.</td>
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380 UN Human Rights Committee (HRC), General comment no. 35, Article 9 (Liberty and security of person), 16 December 2014, CCPR/C/GC/35, ¶ 7 [hereinafter General Comment 35].
381 Id. at ¶ 10.
I-3. The two prohibitions within Article 9(1) overlap, in that arrests or detentions may be in violation of the applicable law but not arbitrary, or legally permitted but arbitrary, or both arbitrary and unlawful. Arrest or detention that lacks any legal basis is also arbitrary. Unauthorized confinement of prisoners beyond the length of their sentences is arbitrary as well as unlawful; the same is true for unauthorized extension of other forms of detention. Continued confinement of detainees in defiance of a judicial order for their release is arbitrary as well as unlawful.\textsuperscript{382}

I-4. An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.\textsuperscript{383}

I-5. States parties also need to show that detention does not last longer than absolutely necessary, that the overall length of possible detention is limited and that they fully respect the guarantees provided for by article 9 in all cases.\textsuperscript{384}

I-6. Prompt and regular review by a court or other tribunal possessing the same attributes of independence and impartiality as the judiciary is a necessary guarantee for those conditions, as is access to independent legal advice, preferably selected by the detainee, and disclosure to the detainee of, at least, the essence of the evidence on which the decision is taken.\textsuperscript{385}

I-7. Enforced disappearances violate numerous substantive and procedural provisions of the Covenant and constitute a particularly aggravated form of arbitrary detention.\textsuperscript{386}

\textsuperscript{382} \textit{Id.} at ¶ 11.
\textsuperscript{383} \textit{Id.} at ¶ 12.
\textsuperscript{384} \textit{Id.} at ¶ 15.
\textsuperscript{385} \textit{Id.}
\textsuperscript{386} \textit{Id.} at ¶ 17.
RIGHT TO JUDICIAL REVIEW

ICCPR ARTICLE 9(4)

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

1-8. Paragraph 4 of Article 9 enshrines the principle of *habeas corpus*. Review of the factual basis of the detention may, in appropriate circumstances, be limited to review of the reasonableness of a prior determination.387

1-9. The right applies to all detention by official action or pursuant to official authorization, including detention in connection with criminal proceedings, military detention, security detention, counter-terrorism detention, involuntary hospitalization, immigration detention, detention for extradition and wholly groundless arrests.388

1-10. The object of the right is release (either unconditional or conditional) from ongoing unlawful detention; compensation for unlawful detention that has already ended is addressed in paragraph 5. **Paragraph 4 requires that the reviewing court must have the power to order release from the unlawful detention.**389

1-11. Persons deprived of liberty are entitled not merely to take proceedings, but to receive a decision, and without delay. The refusal by a competent court to take a decision on a petition for the release of a detained person violates paragraph 4. The adjudication of the case should take place as expeditiously as possible. Delays attributable to the petitioner do not count as judicial delay.390

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387 General Comment 35, *supra* note 1, at ¶ 39.
390 *Ibid.* at ¶ 47.
RIGHT TO COMPENSATION

**ICCPR ARTICLE 9(5)**

Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

I-12. Paragraph 5 obliges States parties to establish the legal framework within which compensation can be afforded to victims, as a matter of enforceable right and not as a matter of grace or discretion. The remedy must not exist merely in theory, but must operate effectively and payment must be made within a reasonable period of time.\(^{391}\)

PROHIBITION ON ILL TREATMENT

**CONVENTION AGAINST TORTURE**

**ARTICLE 10**

Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

**ARTICLE 11**

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

\(^{391}\) Id. at ¶ 50.
I-13. Several safeguards that are essential for the prevention of torture are also necessary for the protection of persons in any form of detention against arbitrary detention and infringement of personal security.\textsuperscript{392} The following list of safeguards is non-exhaustive:

- Detainees \textit{should be} held only in facilities officially acknowledged as places of detention. A centralized official register should be kept of the names and places of detention, and times of arrival and departure, as well as of the names of persons responsible for their detention, and made readily available and accessible to those concerned, including relatives.\textsuperscript{393}

- Prompt and regular access \textit{should be} given to independent medical personnel and lawyers and, under appropriate supervision when the legitimate purpose of the detention so requires, to family members.\textsuperscript{394}

- Detainees \textit{should be} promptly informed of their rights, in a language they understand; providing information leaflets in the appropriate language, including in Braille, may often assist the detainee in retaining the information.\textsuperscript{395}

- Detained foreign nationals \textit{should be} informed of their right to communicate with their consular authorities, or, in the case of asylum seekers, with the Office of the United Nations High Commissioner for Refugees.\textsuperscript{396}

- Independent and impartial mechanisms \textit{should be} established for visiting and inspecting all places of detention, including mental-health institutions.\textsuperscript{397}
DEROGATIONS DURING A STATE OF EMERGENCY

ICCPR ARTICLE 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

I-14. States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of IHL or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.398

I-15. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Although this right, prescribed in article 10 of the Covenant, is not separately mentioned in the list of non-derogable rights in article 4, paragraph 2, the Committee believes that here

the Covenant expresses a norm of general international law not subject to derogation.

**ADDITIONAL GUIDING PRINCIPLES**

I-16. On October 11, 2007 the Copenhagen Process on the Handling of Detainees in International Military Operations (The Copenhagen Process) was launched. During this Process, the participants (including Pakistan) “confirmed the desire to develop principles to guide the implementation of the existing obligations with respect to detention in international military operations”. It was also emphasized, that “while maintaining a common approach, the Copenhagen Process should contribute to ensuring the humane treatment of detainees and the effectiveness of international military operations.”

I-17. For the protection of Human Rights, the General Assembly introduced a resolution, which elaborated the draft body of principles for the protection of all persons under any form of detention or imprisonment.³⁹⁹

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APPENDIX – II
APPLICATION OF IHL TO PREVENTIVE DETENTION
DURING IACS AND NIACS

IHL was developed to limit the effects of armed conflict within and beyond the actual battlefield. Its ultimate purpose is to protect persons who are not or are no longer participating in hostilities and to restrict the methods and means of warfare. Pakistan is a party to the four Geneva Conventions of 1949 and a signatory to Additional Protocols I and II to the Geneva Conventions. Pakistan is also bound by the rules of customary IHL. The four Geneva Conventions and customary IHL are the primary legal framework under which preventive detention is conducted during an IAC. Detention during a NIAC is bound by customary IHL. This appendix provides a summary of the relevant provisions of IHL that apply to preventive detention within Pakistan. The rules of customary IHL will be used primarily, along with reference to relevant provisions in Common Article 3 and Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War.

DEPRIVATION OF LIBERTY

II-1. The arbitrary deprivation of liberty is prohibited.\(^{401}\) This norm of customary IHL is applicable during both IACs and NIACs. It is also reflected within human rights law, although the threshold for what is considered arbitrary differs.

IACs

II-2. The grounds upon which persons may be deprived of their liberty in an IAC exist under each of the four Geneva Conventions of 1949. In particular, the Geneva Convention (IV) allows the preventive detention of a civilian for “imperative reasons of security.”\(^{402}\) The detention of “enemy aliens” is thus restricted under the


\(^{402}\) Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 78, 12 August 1949, 75 UNTS 287 [hereinafter Geneva Convention IV].
Fourth Geneva Convention to what is “absolutely necessary” for reasons of security.\textsuperscript{403}

II-3. The procedures prescribed for preventive detention during an IAC must be adhered to in order for the detention to be lawful. Any person that is preventively detained is entitled to a reconsideration of the lawfulness of his or her detention as soon as possible by an appropriate court or administrative board. The person detained is also, if they remain in detention, entitled to have the lawfulness of their detention periodically reviewed, at least twice a year.\textsuperscript{404}

II-4. Preventive detention that does not conform with the provisions thereunder is considered unlawful confinement.\textsuperscript{405} The unlawful confinement of civilians is a grave breach of the Fourth Geneva Convention.\textsuperscript{406}

NIACs

II-5. Common Article 3 provides the minimum standard of treatment that must be provided during a NIAC.

\begin{center}
\textbf{ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949}\textsuperscript{407}
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In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed “hors de combat” by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

\textsuperscript{403} Rule 99, supra note 22.
\textsuperscript{404} Geneva Convention IV, supra note 23, at Art. 43.
\textsuperscript{405} Rule 99, supra note 22.
\textsuperscript{406} Id.
To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(b) taking of hostages;
(c) outrages upon personal dignity, in particular humiliating and degrading treatment;
(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

HUMANE TREATMENT

II-6. Civilians and persons hors de combat must be treated humanely. This principle of customary IHL may be derived from Common Article 3 of the Geneva Conventions, along with the Fourth Geneva Convention. Humane treatment has

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409 Geneva Convention IV, supra note 23, at Arts. 5, 27. The same principles are present in all four Geneva Conventions and in Additional Protocols I and II as a fundamental guarantee.
no uniform definition under IHL. It may, however, be understood through the collective adherence to the principles found in IHL and human rights law.\footnote{Rule 87, supra note 29.}

**RULES PROHIBITING ILL TREATMENT**

II-7. *Adverse distinction in the application of IHL based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited.*\footnote{Rule 88, Customary International Humanitarian Law, Volume I: Rules, rule 88 (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule88.} This principle of customary IHL may be derived from Common Article 3 of the Geneva Conventions, along with the Fourth Geneva Convention.\footnote{Geneva Convention IV, supra note 23, at Art. 13. The same principle is present in all four Geneva Conventions and in Additional Protocols I and II as a fundamental guarantee.} Adverse distinction prohibits discrimination between persons, but it does not bar providing priority to those in need of urgent care, for example.\footnote{Rule 88, supra note 32.}

II-8. *Murder is prohibited.*\footnote{Rule 89, Customary International Humanitarian Law, Volume I: Rules, rule 89 (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule89.} Common Article 3 prohibits “violence to life and person” against all persons taking no active part in hostilities, including those considered *hors de combat*. The Fourth Geneva Convention identifies the “willful killing” of protected persons as a grave breach.\footnote{Geneva Convention IV, supra note 23, at Art. 147.}

II-9. *Torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment, are prohibited.*\footnote{Rule 90, Customary International Humanitarian Law, Volume I: Rules, rule 90 (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule90.} Common Article 3 prohibits “cruel treatment and torture,” along with “outrages upon personal dignity, in particular humiliating and degrading treatment” of protected persons. Torture and cruel treatment are also prohibited under the Fourth Geneva Convention.\footnote{Geneva Convention IV, supra note 23, at Art. 32. The same principle is present in all four Geneva Conventions and in Additional Protocols I and II as a fundamental guarantee.} Such acts, “torture or inhuman treatment” and
“willfully causing great suffering or serious injury to body or health” are also grave breaches of the Geneva Conventions.418

II-10. Torture may be identified as the infliction of “severe physical or mental pain or suffering” that is employed for such purposes as “obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.”419 Unlike human rights law, IHL may not require that such acts be perpetrated by or at the command of a public official or person acting in an official capacity.420

II-11. Inhuman treatment may be identified as the infliction of “severe physical or mental pain or suffering.” 421 Inhuman treatment, unlike torture, may be distinguished by the absence of any requirement that the treatment be inflicted for a “specific purpose.”422

II-12. Corporal punishment is prohibited.423 This rule of customary IHL may also be found in the Fourth Geneva Convention.424

II-13. Mutilation, medical or scientific experiments or any other medical procedure not indicated by the state of health of the person concerned and not consistent with generally accepted medical standards are prohibited.425 Common Article 3 prohibits the “mutilation” of protected persons.426 The Fourth Geneva Convention also prohibits “mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person.”427

419 Rule 90, supra note 37.
420 Id.
421 Id.
422 Id.
424 Geneva Convention IV, supra note 23, at Art. 32.
426 Id.
427 Geneva Convention IV, supra note 23, at Art. 32.
II-14. **Rape and other forms of sexual violence are prohibited.** Common Article 3 does not specifically identify rape or other forms of sexual violence, but it does prohibit “violence to life and person” and “outrages upon personal dignity,” under which rape and sexual violence may be classified. Under the Fourth Geneva Convention, “willfully causing great suffering or serious injury to body or health” is a grave breach.

II-15. **Slavery and the slave trade in all their forms are prohibited.**

II-16. **Uncompensated or abusive forced labour is prohibited.** Under the Fourth Geneva Convention, specifically, protected civilians may be compelled to work only under strict conditions, with the exception of work that is “directly related to the conduct of military operations” or work that would oblige them to take part in military operations. Interned civilians may not be employed unless they opt to do so. Both protected and interned civilians must receive a fair wage.

II-17. **Enforced disappearance is prohibited.** IHL treaties do not employ the term “enforced disappearance” and as such do not explicitly prohibit such action. However, the accumulation of rules, particularly prohibitions and requirements regarding detainees that apply during IACs indicate that enforced disappearances are prohibited by IHL.

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429 Id.
430 Geneva Convention IV, supra note 23, at Art. 147.
433 Id.
434 Id.
436 Id.
RULES REGARDING THE TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY

II-18. The following rules address generally all those persons deprived of their liberty during either an IAC or NIAC. This includes internees and security detainees or persons detained for security reasons, provided there is a nexus between the armed conflict and their detention.

- Persons deprived of their liberty must be provided with adequate food, water, clothing, shelter and medical attention.\textsuperscript{437}

- Women who are deprived of their liberty must be held in quarters separate from those of men, except where families are accommodated as family units, and must be under the immediate supervision of women.\textsuperscript{438}

- Persons deprived of their liberty must be held in premises which are removed from the combat zone and which safeguard their health and hygiene.\textsuperscript{439}

- Pillage of the personal belongings of persons deprived of their liberty is prohibited.\textsuperscript{440}

- The personal details of persons deprived of their liberty must be recorded.\textsuperscript{441}

\begin{footnotesize}


\end{footnotesize}
- Persons deprived of their liberty must be allowed to correspond with their families, subject to reasonable conditions relating to frequency and the need for censorship by the authorities.\textsuperscript{442}

- Civilian internees and persons deprived of their liberty in connection with a NIAC must be allowed to receive visitors, especially near relatives, to the degree practicable.\textsuperscript{443}

- The personal convictions and religious practices of persons deprived of their liberty must be respected.\textsuperscript{444}

- Regarding the release of persons deprived of their liberty:\textsuperscript{445}

  Civilian internees must be released as soon as the reasons which necessitated internments no longer exist, but at the latest as soon as possible after the close of active hostilities.

  Persons deprived of their liberty in relation to a NIAC must be released as soon as the reasons for the deprivation of their liberty cease to exist.

  The persons referred to may continue to be deprived of their liberty if penal proceedings are pending against them or if they are serving a sentence lawfully imposed.


APPENDIX – III
AACPR DETENTION ORDER
(see paragraph 4-7)

PART – I

This order of internment is issued in respect of:
Claims to be

Photographs

Front

Side

Mr.

Alias (if applicable)

Son of

Identification Mark

ID card (if any)

Resident of

Thumb Impression

Right

Left
PART – II

Taken into custody/internment from.

__________________________________________

__________________________________________

__________________________________________

Reason for Interning:

(1) ________________________________________

(2) ________________________________________

(3) ________________________________________

Superintendent
Internment Center
(Official Seal)

Authorized Interning Officer
(Official Seal)
PART – III
(To be prepared in due course and be attached with Part – I and II)

After necessary verification, the person identified in the paragraph, bears the following peculiaris:

Mr. ________________________________________________

Alias (if applicable) ____________________________________________

Son of _______________________________________________________

Identification Mark _____________________________________________

ID Card (if any) ______________________________________________

Resident of ___________________________________________________

Tribe etc. _____________________________________________________

Thumb Impression

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Superintendent
Internment Center
(Official Seal)  

Authorized Interning Officer
(Official Seal)
APPENDIX – IV
PERSONAL VISITATION REQUEST FORM
(see paragraph 5-19)

FORM ‘A’
PARTICULARS TO BE FURNISHED BY PERSONS DESIRING TO INTERVIEW A DETENU

Name of the Detenu to be interviewed. ___________________________________

Name and other particulars of applicant. __________________________________

Relationship of applicant to Detenu. _______________________________________

Full address of applicant. _______________________________________________

Purpose for which interview is desired. _____________________________________

Date ........................................

                        a.m.

Hour  .................................

                    p.m.

Signature of Applicant .................................................................

FORM ‘B’
[See Rule 21(2)]

Full name of sender .............................................................................

*Full name, address and relationship of addressee and of another person*
*mentioned in the letter* ........................................................................

..............................................................................................................

*to be declared here* ............................................................................

..............................................................................................................

“ ........................................ Jail”

Signature of Censoring Officer  Date  Name of Sender