

# **PAKISTAN: UNIVERSAL PERIODIC REVIEW**

Joint Submission by the World Organization against Torture (OMCT) and  
Justice Project Pakistan (JPP)

July 2022



## **(I) REPORTING ORGANISATIONS**

**(a) World Organisation Against Torture (OMCT)**, works with 200 member organisations to end torture and ill-treatment, assist victims, and protect human rights defenders at risk wherever they are.

Together, we make up the largest global group actively standing up to torture in over 90 countries. We work to protect the most vulnerable members of our societies, including women, children, indigenous peoples, migrants and other marginalized communities. To achieve this, we advocate with governments to change or implement their laws and policies, we help victims seek justice and strive to hold perpetrators to account. Because torture can never be tolerated, and human dignity is not negotiable.

Contact details: World Organisation Against Torture (OMCT), Rue du Vieux Billard 8, P.O. Box 21, CH-1211 Geneva 8, Tel.: 0041 22 809 49 26, [nb@omct.org](mailto:nb@omct.org), [www.omct.org](http://www.omct.org).

**(b) Justice Project Pakistan (JPP):** Justice Project Society, commonly referred to as Justice Project Pakistan (JPP), is a legal action non-governmental organization dedicated to representing the most vulnerable Pakistani prisoners facing the harshest punishments, including those facing the death penalty, mentally ill prisoners, victims of police torture, juvenile prisoners, and overseas Pakistani prisoners. JPP was formed in Lahore, Pakistan in December 2009.

JPP investigates, advocates, educates, and litigates, building public and political support as well as legal precedents that will lead to systemic reform of the criminal justice system in Pakistan. Our work combines strategic litigation, fierce domestic and international public and policy advocacy campaigns, and building the capacity of stakeholders who can improve the representation and treatment of individuals facing extreme sentences in Pakistan and abroad.

Contact details: Zaman's, 25-A, Lane 2A Lane 2, Zaman Park, Lahore, Punjab 54000, Pakistan, +92 42 35782110, [www.jpp.org.pk](http://www.jpp.org.pk), [info@jpp.org.pk](mailto:info@jpp.org.pk).

.

## (II) EXECUTIVE SUMMARY

1. In the five years since Pakistan's last Universal Periodic Review in 2017, there has been significant progress made in Pakistan's application of the death penalty.
2. On December 17, 2014, Pakistan lifted a seven-year moratorium on the death penalty in the wake of the tragic attack on the Army Public School in Peshawar. Pakistan subsequently carried out 325 executions by December 2015, 88 in 2016, 66 in 2017, 15 in 2018, and 10 in 2019. In total, the state has executed **516** people while **3,831** are currently on death row<sup>i</sup>. Capital punishment continues to be prescribed for over 33 crimes, including non-lethal offenses, and approximately 338 prisoners are sentenced to death per year<sup>ii</sup>. Between 2017 and 2021, Pakistan has sentenced 1,437 defendants to death (5.5 death sentences per week), accounting for 13% of all death sentences reported worldwide, which means that every seventh person sentenced to death is a Pakistani.
3. This joint submission will demonstrate how the continued use of the death penalty in Pakistan infringes numerous international human rights law principles and will outline the steps taken by the Government of Pakistan to reform its death row regime. Systemic violations inherent in Pakistan's application of the death penalty include the use of torture to coerce confessions, the blanket denial of clemency and infringements on the rights of vulnerable groups such as juveniles and the mentally ill. Pakistan's imposition of the death penalty is, at its core, arbitrary. The death penalty is not limited to the most serious crimes, as required by international law, but instead is imposed for a wide range of offences including common place offences, such as kidnapping and drug-trafficking. Moreover, Pakistan's justice system is riddled with deficiencies and abuses of authority. Police routinely coerce defendants into confessing, often by torture, and courts admit and rely upon such evidence. Poor defendants must rely on attorneys who typically provide only cursory and ineffective representation. Once sentenced, defendants lack effective recourse to post-conviction relief, even in the face of new exonerating evidence. Finally, the Anti-Terrorism Act of 1997 offers even fewer safeguards than the ordinary criminal justice system and has the effect of fast-tracking convictions. Each of these failings separately constitute a human rights violation and taken together, they reveal an unreliable system that is fundamentally incapable of administering the ultimate and irreversible penalty of death.
4. Following a spree of executions from 2014 to 2018 which saw 516 individuals being executed in Pakistan, **there have been no executions in Pakistan since December 2019**. Increased engagement of UN Treaty Bodies and the GSP+

Monitoring framework of the European Union has raised the political cost of executions, resulting in the government making a conscious decision to halt executions for the time being. **However, a de facto moratorium is fragile and can be fleeting.** Moreover, Pakistan's death row remains one of the largest in the world.

5. Legislative and judicial efforts have been made to reduce the scope of the death penalty, resulting most significantly in the apex court banning the execution of the severely mentally ill and the introduction of a new act which reinforces the prohibition on the execution of juveniles and introduces some age determination protocols.
6. While recently efforts have been made to enact legislation criminalizing torture, no legislation has been passed that officially criminalizes its use. The use of torture has become endemic by law enforcement and public officials as a means of extracting confessions and coercing the population, and the absence of any criminalizing legislation allows for its widespread use with impunity and a lack of accountability.
7. In this fourth cycle of the country's Universal Periodic Review, it is essential that member states of the Human Rights Council continue to advocate for strategic reform in Pakistan's application of the death penalty.

### **(III) PROGRESS ON COOPERATION WITH UNITED NATIONS TREATY BODIES**

*Continue cooperation with the United Nations human rights mechanisms to protect and promote these rights<sup>iii</sup>*

8. Since its last UPR, Pakistan has continued its engagement with UN treaty bodies and has submitted state reports to the Committee on the Elimination of Discrimination against Women (CEDAW) and Committee on the Elimination of Racial Discrimination (CERD), successfully passing two cycles of assessment under the GSP+ Scheme, the cornerstone of which is compliance with core treaty bodies.
9. While Pakistan failed to submit its state reports by the prescribed deadlines for the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT), these state reports were submitted on 16 June 2022. The state report to the Committee on the Rights of the Child (CRC) was due on 11 June 2021 and **has not yet been submitted.**

#### **(IV) PROGRESS ON STRENGTHENING THE STRUCTURE OF NATIONAL HUMAN RIGHTS MACHINERY**

*Continue efforts to enhance the operational effectiveness of its national human rights institutions as well as strengthen activities to promote education and awareness of human rights, and to step up measures to strengthen the work of local human rights institutions, including the National Commission for Human Rights, the National Commission on the Status of Women and the National Commission for Minorities.<sup>iv</sup> Pakistan supported all such recommendations.*

10. Pakistan's National Commission for Human Rights (NCHR) is an independent National Human Rights Institute (NCHRI) developed under the Paris Principles. Following a period between 2019 and 2021 when the tenure of its previous commissioners had expired and no new commissioners had been appointed, in November 2021, the new Chairperson of the NCHR was appointed, as well as six other provincial members.
11. Additionally, Pakistan's other NHRIs including the National Commission on the Status of Women (NCSW), the National Commission on the Rights of the Child (NCRC) and the National Commission for Minorities are fully staffed and operational. These commissions are key statutory bodies for following up on complaints and human rights violations and play a crucial role in Pakistan's fulfilment of its international law obligations.

#### **(V) PROGRESS ON PAKISTAN'S APPLICATION OF THE DEATH PENALTY**

In contrast to its 2012 review, Pakistan did not reject any recommendations pertaining to the death penalty and instead noted all such recommendations.

*Halting the use of the death penalty in all circumstances and reinstating a moratorium on the death penalty and commuting death sentences to life imprisonment as steps towards abolition<sup>v</sup>*

12. **Most crucially, Pakistan has not carried out an execution since December 2019.** This marks a significant step by the Government of Pakistan to bring Pakistan's application of the death penalty in line with its international legal obligations. However, this respite in executions falls short of being an official moratorium as it is maintained by the Executive withholding the exercise of its constitutional power to accept or reject clemency petitions, which must take place before an execution can be scheduled. Therefore, while Pakistan has *partially complied* with the UPR recommendation to halt the use of the death penalty, it can at best be termed a *de facto moratorium* as there is no official policy that outlines a statement of the government's position, intent, or action on the subject. Nevertheless, the State's actions to halt executions indicates its

resolve to bring its application of the death penalty in line with international law and the current lull in executions creates key opportunities to introduce policy reform.

13. There has been a growing trend among Pakistan's superior courts to overturn capital sentences and align Pakistan's jurisprudence with international law for executing states, as per Article 6(2) of the ICCPR. The jurisprudence laid down by the Supreme Court of Pakistan establishes a presumption in favour of life sentences over the death penalty and affirms that the circumstances of the accused and the offence must be considered as mitigating factors against imposing a death sentence. However, the emerging jurisprudence from the superior courts is not implemented uniformly by the trial courts, which continue to hand down death sentences at an alarming rate, indicating a need to orient judicial practice in trial courts with jurisprudence by the former.
14. According to government figures, Pakistan's death row has reduced significantly from 7,164 in 2012 to 4,688 in 2018<sup>vi</sup>, a drop of 2,476 prisoners, which amounts to a 46% drop. This is largely attributable to the high rate of Pakistan's superior courts overturning death sentences passed by trial courts on appeal.<sup>vii</sup> In the 310 judgments reviewed between 2010 and 2018, the Supreme Court overturned death sentences in 78% of cases – either acquitting the accused, commuting the sentence, or ordering a review.<sup>viii</sup> Moreover, it is noteworthy that no death sentences for drug offences were awarded in 310 cases from 2010-18.<sup>ix</sup>

*Review the list of crimes punishable by death and initiate legislative process to revise the Penal Code to limit the imposition of the death penalty for crimes of intentional killing<sup>x</sup>*

15. The use of the death penalty in Pakistan is not an exceptional measure as confirmed by the Human Rights Committee in General Comment 6.<sup>xi</sup> As many as 33 offences carry the death penalty in Pakistan, including non-lethal offences such as kidnapping, blasphemy and narcotics offences, while two offences (blasphemy<sup>xii</sup> and adultery<sup>xiii</sup>) carry a mandatory death penalty, which contravenes the “most serious crimes” principle. By the end of 2021, at least 28,670 people were under sentence of death worldwide, out of which, Pakistan alone has a share of at least 13.25%. From 2014 to 2019, Pakistan executed 516 people<sup>xiv</sup> for a wide range of crimes, some of which did not meet the most serious crimes threshold. Of the estimated 516 executed, 67.2% (347) were for murder, 15.9% (82) were for terrorism, 6.6% (34) for dacoity with murder, 2.3% (12) for rape with murder, 0.2% (1) for kidnapping and rape, 0.4% (2) for gang-rape, 0.4% (2) for rape, 2% (10) for kidnapping and murder, 0.2% (1) for kidnapping for ransom, and 4.9% (25) for unknown crimes.<sup>xv</sup>

16. In compliance with the Concluding Observations issued by the Human Rights Committee in 2017 to reduce the scope of the death penalty, the Federal Ministry of Human Rights initiated an official review of all offences punishable by death in 2018. The review found 33 offences punishable by death in Pakistan, instead of 27, as was previously believed. In January 2022, the Federal Ministry for Law and Justice introduced the Criminal Law and Justice Reforms Bill 2022, which included crucial safeguards during arrest, detention, and custody for defendants, and the most comprehensive revisions to Pakistan's criminal justice system in line with the ICCPR. The Bill proposed removing the death penalty for **two offences** from the Penal Code: "narcotics" and "sabotage of the railway", substituting the punishments with life imprisonment instead. It was expected to be tabled in the National Assembly in February 2022 following cabinet approval. However, the sudden change in government in April 2022<sup>xvi</sup> caused the legislative agenda of the previous government to lapse.

*Introduce statutory prohibition on the death penalty for persons who were minors at the time of their alleged crimes, protect the rights of the child more effectively, particularly during counter-terrorism activities, and by desisting from issuing death sentences and executing juveniles<sup>xvii</sup>*

17. Pakistan had put in place legislation, the Juvenile Justice Systems Ordinance 2000 ('JJSO'), which prohibited the sentencing to death of a juvenile offender. However, since the moratorium was lifted in December 2014, Pakistan has knowingly executed at least 6 prisoners, where there was evidence to suggest that they may have been under 18 at the time of allegedly committing the offence.<sup>xviii</sup>

18. Lack of birth registration remains a major obstacle to juvenile justice.<sup>xix</sup> When an offender is arrested, they lack documentation that can substantiate their age, resulting in the juvenile being treated as an adult. In the absence of any age determining protocols, police officers fail to adequately consider an individual's age or deliberately register juveniles as adults to avoid the safeguards afforded to underage suspects by the JJSO<sup>xx</sup> and often rely on visual assessment. In 2015 the Supreme Court commented that this practice is unreliable.<sup>xxi</sup>

19. The Juvenile Justice System Act (2018) was promulgated with a complete revision of the special judicial regime for juveniles to correct legal loopholes of the JJSO and to better align it with international standards. The new legislation makes it compulsory for the relevant officer to conduct an inquiry to determine the age of an alleged offender, who physically appears or claims to be a minor through pertinent documents such as birth or educational certificates or through a medical examination. The JJSO instructs courts to record the findings of the

aforementioned inquiry before granting further detention to an accused who appears to be juvenile.

20. Since 2019, there has been a considerable effort to establish juvenile courts throughout the country, and to capacity build criminal justice stakeholders on the updated JJSA framework.<sup>xxii</sup> However, in a context characterised by low birth registration and a lack of sensitisation of law enforcement and judiciary to juvenile delinquency, a significant number of juveniles in conflict with the law fall outside the few institutional safeguards actually implemented in practice. Despite including age determination protocols, the JJSA does not accord the benefit of the doubt to the child in case of conflicting or inconclusive evidence in line with General Comments 10 and 24 of the CRC<sup>xxiii</sup> Additionally, no rules have yet been enacted for the JJSA which elucidate the procedure for age-determination.
21. The promulgation of the JJSA 2018 also fulfils the recommendation to protect the rights of the child more effectively, particularly during counter-terrorism activities<sup>xxiv</sup>, as the JJSA has an overriding effect<sup>xxv</sup> over the Anti-Terrorism Act 1997. Sections 4(4) and 4(7) of the JJSA 2018 specifically state that the juvenile court is to have exclusive jurisdiction to try juveniles and if any court taking cognizance of an offence finds that an accused brought before it is a juvenile, it shall transfer its case to the juvenile court for further proceedings. Consequently, juveniles cannot be tried and convicted by Anti-Terrorism Courts.
22. Since Pakistan's last UPR, there has been significant jurisprudence emanating from the superior courts, marking progress towards the fulfilment of the recommendation to *take the necessary measures to include international standards on juvenile justice in the workings of the national judiciary*<sup>xxvi</sup>, which Pakistan *accepted*. In February 2020, the Honourable Lahore High Court commuted juvenile Muhammad Iqbal's sentence to life imprisonment in a ground-breaking decision that took cognizance of the Convention on the Rights of the Child as well as the ICCPR. Iqbal had been on death row for 21 years. In March 2021, the Supreme Court commuted the death sentence of Muhammad Anwar, a juvenile who had been on death row for 23 years, to life imprisonment.
23. However, others who were juveniles at the time of commission of the alleged offence remain on death row. Munawar Ali was arrested over a family dispute in 2002 when he was sixteen years old and sentenced to death by an ATC in 2004. He should have been protected under the JJSO 2000, which protected minors from being tried and sentenced as adults. Regardless, his mercy petition was rejected in 2015 and his execution warrant was issued twice. This is his eighteenth year on death row.

24. Gul Wali Khan was arrested in a murder case in 1995 when he was sixteen years old and sentenced to death in 1997 with the sentence being upheld by the High Court in 2002 and the Supreme Court in 2011. He suffered from tuberculosis and lung disease during his imprisonment. He failed to get any relief despite the passage of the JJSO and still languishes on death row.

*Introduce statutory prohibition on the death penalty for persons with mental disabilities<sup>xxvii</sup>*

25. In 2021, the Supreme Court delivered a landmark ruling titled *Safia Bano v. Home Department<sup>xxviii</sup>*. It barred the execution of individuals who are severely mentally ill and commuted the death sentences of the first two petitioners, Kanizan Bibi and Imdad Ali, to life imprisonment. Both prisoners suffered from schizophrenia and had spent 30 and 18 years respectively in prison prior to this ruling. The Court judicially reviewed the third petitioner Ghulam Abbas's mercy petition and viewed it as deficient since it did not include material relating to his mental illness, ordering it to be resubmitted in line with the new standards laid down in the judgement. The Court issued directions to the Federal and Provincial Governments to establish forensic mental health facilities for the assessment, treatment and rehabilitation of under trial prisoners and convicts with mental ailments.

26. However, several prisoners with severe mental disabilities continue to languish on Pakistan's death row. Ghulam Abbas, Ismail Parvez, Sheraz Butt have all been diagnosed with severe mental illness. Until the Government effectively implements the directives laid down by the Supreme Court in *Safia Bano*, these prisoners will remain at risk of being executed.

27. The draft Criminal Law Reforms Bill 2022 created fundamental protections that must be afforded to persons with psychosocial disabilities at every stage in the criminal justice system. The Bill incorporated the standards established by relevant jurisprudence into the Code of Criminal Procedure and aligned it with the Provincial Mental Health Acts.<sup>xxix</sup> It also sought to establish the procedure for the constitution, composition and functions of a state-appointed medical board<sup>xxx</sup> and stipulated minimum standards for conducting a mental health evaluation.

28. The Reforms received Cabinet approval and it was expected that the Bill would subsequently be tabled in the National Assembly. However, the sudden change in government in April 2022<sup>xxxi</sup> caused the legislative agenda of the previous government to lapse.

Reforming Pakistan's Clemency Procedure

29. All persons sentenced to death, pursuant to Article 6(4) of the ICCPR, have the right to consideration, on an individual basis, of their clemency petitions. However, Pakistan exercises a blanket refusal to meaningfully consider mercy applications.<sup>xxxiii</sup> At least 444 people have had their mercy petitions rejected. In March 2016, the Ministry of Interior informally confirmed that the Government of Pakistan's policy to summarily reject all pleas for mercy will remain in force.<sup>xxxiii</sup> During Pakistan's state review by the UN Human Rights Committee in July 2017, the Committee found that the "policy of blanket refusals of clemency petitions"<sup>xxxiv</sup> stood in violation of the Government's obligations under the ICCPR.
30. Since the moratorium was lifted, there has not been any pardon or commutation granted to a death row prisoner by the President.
31. Abdul Basit is a paraplegic prisoner who has been languishing on death row in Pakistan for thirteen years, twelve of which he has spent on the floor of his jail cell, unable to move without the assistance of fellow inmates. After contracting TB meningitis in jail, a failure to provide Basit with the necessary medical treatment by jail authorities resulted in him developing spinal atrophy, permanently disabling him. Basit's mercy petition was refused on the purely administrative basis of a lack of certified copies of records that document his medical condition, which the jail authorities failed to disclose for his clemency appeal. With his execution having been ordered<sup>xxxv</sup> and stayed three times during his time on death row, Basit currently remains in legal limbo<sup>xxxvi</sup>. While the Government has decided to stay his execution, the President continues to delay making a decision on the fresh clemency appeal, highlighting the need for a more effective mercy petitions procedure.
32. Prior to 2019, reviewing mercy petitions in Pakistan was a perfunctory practice. These glaring omissions and lack of transparency and due process violated a death row prisoner's constitutional right to seek clemency and have their petitions meaningfully considered.
33. International law makes it absolutely critical that the process and criteria through which mercy petitions are filed, evaluated and decided should be clearly set out in domestic legislation, through a "meaningful procedure".<sup>xxxvii</sup> In early 2019, the Ministry of Human Rights obtained Cabinet approval to reform the mercy petitions procedure. In **October 2019**, the Ministry of Interior issued new SOPs for the consideration of mercy petitions. However, these SOPs fall short of meeting international law standards, and cases with strong evidence of humanitarian and due process violations continue to be denied commutation.

34. The draft Criminal Law and Justice Reforms Bill 2022 revamped the procedure through which mercy petitions are reviewed in Pakistan in line with the recommendations of the UN Human Rights Committee.<sup>xxxviii</sup> The Bill contained clear criteria for the evaluation of mercy petitions, mitigating factors that must be considered, obligations to record all records reviewed and reasons for the committee's decisions.
35. The Reforms received Cabinet approval and it was expected that the Bill would subsequently be tabled in the National Assembly. However, this did not happen because of the sudden change in government in April 2022.

## **(VI) PROGRESS ON CRIMINALISING TORTURE**

*Legislate a specific definition of torture as recommended by the Committee against Torture in 2017<sup>xxxix</sup>, pursue the efforts to remove all measures that could give rise to situations analogous to torture or cruel or inhuman treatment from its national legislation, and establish the necessary safeguards to prevent torture and abolish the death penalty<sup>xl</sup> and take all the necessary steps to ensure that all perpetrators of torture are prosecuted and brought to justice.<sup>xli</sup> While Pakistan noted the first two recommendations, it accepted the third recommendation.*

36. Torture and ill-treatment at the hands of the police and other security agencies are endemic and widespread. To date, Pakistan does not have a law which criminalises torture. A report by JPP in collaboration with Yale Law School discovered conclusive signs of abuse in 1,424 cases out of a sample of 1,867 Medico-Legal Certificates (MLCs) compiled by a government-appointed District Standing Medical Board in Faisalabad between 2006 and 2012. Authorities failed to conduct an impartial investigation into a single case, even after this evidence was made public in March 2015, illustrating that torture is accepted by the authorities as routine criminal investigation<sup>xlii</sup>.
37. In February 2019, the National Commission for Human Rights, following an inquiry into the 1,424 confirmed cases of police torture in Faisalabad, released a report<sup>xliii</sup> emphasising the need to enact a law criminalizing torture and the creation of an independent investigative mechanism.
38. Since Pakistan's last UPR, the Government of Pakistan pledged to pass a bill criminalising torture in the state follow-up to the Committee Against Torture's concluding observations as well as part of its candidacy for the UN Human Rights Council for 2021-23.

39. In July 2021, Senator Sherry Rehman, a member of the then opposition Pakistan People’s Party tabled the Torture and Custodial Death (Prevention and Punishment) Bill 2021, which was unanimously passed by the Senate of Pakistan in July 2021.<sup>xliv</sup> However, to date the Bill has yet to be tabled in the National Assembly.
40. In September 2021, the Government tabled the “Torture and Custodial Death (Prevention and Punishment) Bill 2021” in the National Assembly of Pakistan. The former Interior Minister submitted the Bill, which was referred to the National Assembly Standing Committee on the Interior for review. It is unclear if any stakeholders were consulted on the development of the Bill. The Bill represents the first legislation criminalizing torture formulated by the Government before the National Assembly. While it was expected that the Government’s Bill would be placed before the National Assembly for a final vote in subsequent months, with the change in government in April 2022, the former legislative agenda of the previous government lapsed, due to which the former Government’s anti-torture bill has not yet taken up.
41. In June 2022, a bipartisan group of lawmakers participated in the ‘Parliamentarians Roundtable on Torture’ organised by Justice Project Pakistan. The group issued a joint declaration reaffirming their resolve to pass an anti-torture bill at the earliest.<sup>xlv</sup>

## **(VII) PROGRESS ON PRISON REFORMS**

*Take the necessary measures to improve detention facilities, including renewing its Prisons Act, which was enacted in 1894. This recommendation was accepted by Pakistan.*<sup>xlvi</sup>

### COVID-19 and Prisons

42. Pakistan’s prison population increased from 73,242 to 88,687 during the COVID-19 pandemic, bringing the occupancy rate from 117% to 134%. Overcrowding seriously challenges a state’s ability to deliver on its obligation to provide healthcare in cases of health emergencies. In March 2020, at the start of the pandemic, prison authorities suspended visits. Provision of personal protective equipment and adequate screening were both found wanting in Pakistani prisons.<sup>xlvii</sup> In July 2020, restrictions were lifted for family members of prisoners, yet lawyers were still denied the right to visit their clients. Interviews with former prisoners and family members point to insufficient measures to support inmates to ensure continued communication with their loved ones and to be able to communicate confidentially with their lawyers.<sup>xlviii</sup>

### Progressive Jurisprudence

43. In 2020, the Islamabad High Court held<sup>xlix</sup> that overcrowding of prisons, failure to segregate prisoners and inhuman and degrading treatment is unconstitutional and a violation of the commitments of the State of Pakistan under the ratified conventions and the constitutionally guaranteed rights, citing the ICCPR and the UN Standard Minimum Rules for the Treatment of Prisoners. As per the directions of the Court, a fact-finding committee was formed by the Ministry of Human Rights to regularly examine and report on the human rights situation in Adiala Jail, Rawalpindi.<sup>1</sup>

### Committees for Prison Reforms

44. Since Pakistan's last UPR, several committees were constituted to examine the plight of Pakistani prisoners and recommend requisite prison reforms, including a Commission constituted by the Islamabad High Court in 2019 and the Prime Minister's Prison Reforms Committee, constituted to collect data of juveniles, women, elderly and disabled prisoners to provide them with the best possible facilities.

45. Some provincial Prison Inspectorates have revised the legal framework for the administration of prisons. The Prison Rules in Sindh underwent extensive revisions in the Sindh Prisons and Corrections Services Act 2019<sup>li</sup>. Additionally, the KP Prison Rules received minor amendments in the Prisons Amendment Act, 2020.<sup>lii</sup> A working group was formed in March 2020 under the leadership of the Chief Minister of Punjab to review the Pakistan Prison Rules 1978 and propose amendments in compliance with international obligations. However, Punjab (with the largest prison population in the country) has still not passed the Draft Punjab Prison Rules 2020.

## **(VIII) PROGRESS ON PROTECTING MIGRANT WORKERS**

*Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>liii</sup>*

46. The Government has an obligation, under both domestic<sup>liv</sup> and international law, to protect the fundamental rights of its citizens detained abroad. Millions of Pakistanis migrate to foreign lands for employment, with some inevitably encountering legal troubles. According to official estimates, there are over 9,200 Pakistani citizens languishing in jails across the world with the highest number in Saudi Arabia (2,555), United Arab Emirates (1,918), Oman (309), India (345), Greece (884), Italy (291), United Kingdom (273), Afghanistan (395), and China

(242). This number, however, is an improvement from the 11,000 overseas Pakistani prisoners in 2020, with the decrease attributable to the repatriation efforts of the Government of Pakistan.

47. In recent years, the Government has taken numerous steps to better protect the rights of its citizens detained abroad including increased consular visits, revamped appointment procedure for Community Welfare Attaches, Prisoner Transfer Agreements (PTAs) with host countries and increased repatriations to Pakistan. Recent landmark PTAs include the inking of deals to repatriate 2,107 Pakistanis from Saudi Arabia in 2019, 1,200 Pakistanis from the UAE in 2020 and 41 Pakistani prisoners from Sri Lanka in 2020.

48. However, without a uniform consular protection policy, that outlines how Pakistani missions must provide consular assistance, efforts to ensure justice for Pakistanis imprisoned in foreign criminal justice systems are arbitrary at best. The Government of Pakistan must take every possible step to pass a consular protection policy and must ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

## **(IX) PROGRESS ON PROTECTING FOREIGN PRISONERS IN PAKISTAN**

*Fulfil international obligations including consular access for foreign nationals without discriminations<sup>lv</sup>*

49. According to official records, consular access is routinely provided to foreign nationals imprisoned or detained in Pakistan. All 22 female foreign prisoners in Pakistan have reportedly had a consular visit at least once over the duration of their incarceration. However, an issue that often arises is that the State falls short of its obligation to provide information to foreign prisoners (who do not speak English or Urdu) in a language they understand.

50. While Pakistan ensures that foreign nationals imprisoned in Pakistan receive adequate consular access and assistance, these prisoners often end up detained for indefinite periods of time beyond their sentence due to a lack of repatriation efforts made by their home state. In the province of Punjab alone, there are 34 foreign prisoners who have served their sentences and have been awaiting repatriation for extended periods of time, with no end-date in sight.<sup>lvi</sup>

## **(X) RECOMMENDATIONS**

Recommendations on Pakistan's Application of the Death Penalty

1. Commend the Government of Pakistan on halting executions and urge it to pass concrete policy reform bringing Pakistan's application of the death penalty in line with international law.
2. Request that Pakistan initiate a legislative process to revise the Pakistan Penal Code, 1860 to limit the death penalty to cases in which the accused committed an intentional killing, in line with international legal standards.
3. Request Pakistan to repeal penal provisions which stipulate the mandatory imposition of the maximum penalty of death.
4. Request Pakistan to remove the death penalty for narcotics offences and railway sabotage, as was proposed in the Criminal Law and Justice Reforms Bill 2022.
5. Request Pakistan to limit the scope of crimes that fall within the ambit of terrorism under the Anti-Terrorism Act, 1997 and restrict its application to terrorism offences.
6. Request Pakistan to maintain and publish annually, figures on the total number of prisoners on death row and the details of the crimes for which they were sentenced to death.
7. Request Pakistan to confirm if it has overturned its blanket policy of rejecting mercy petitions and provide information about any mercy petitions that have been accepted since the lifting of the de facto moratorium in December 2014.
8. Request the Government to initiate a review of all cases where longstanding mercy petitions remain pending with the President of Pakistan, especially those in which questions regarding the juvenility, mental illness and physical disability of the accused have been raised with a view of commuting their sentences.

#### Recommendations on Juveniles

9. Urge Pakistan to formulate rules under the JSSA 2018 specifically explicating the procedure for age determination protocols in line with the recommendations of the Committee on the Rights of the Child.
10. Urge Pakistan to ensure that all juvenile offenders, including Munawar Ali and Gul Wali, who were sentenced to death despite being minors at the time of the commission of crime, are granted a fair and just inquiry into their age as provided under General Comment No. 10<sup>lvii</sup> and General Comment No. 24<sup>lviii</sup> by the Committee on the Rights of the Child.

11. Request Pakistan to conduct age-determination inquiries of all juveniles in conflict with the law sentenced to death prior to the enactment of the JJSO 2000, under the Presidential Notification and grant them remission on the basis of such inquiry.

#### Recommendations on Mentally Ill Defendants

12. Request Pakistan to enact legislation explicitly prohibiting the imposition of the death penalty against persons with severe psycho-social disabilities, in line with the Supreme Court's directives in *Safia Bano*. Such prohibition should apply even if the disability is diagnosed post-conviction and sentencing.
13. Request the Government to review the cases of all death row inmates and commute the death sentences of all prisoners on death row suffering from mental illness.
14. Request Pakistan to establish independent medical boards in all provinces to investigate allegations of psycho-social disability and to ensure that a defendant or prisoner with such a disability receives reasonable accommodations in judicial proceedings and in detention.
15. Request Pakistan to permanently commute the death sentence of Abdul Basit, Ghulam Abbas, Saleem Ahmed and Captain Ismail Pervez through acceptance of their mercy petitions.
16. Direct Pakistan to cease with immediate effect placing prisoners with psycho-social disability in solitary confinement.

#### Recommendations on Reforming Pakistan's Clemency Procedure

17. Request the Government of Pakistan to formulate comprehensive rules that provide prisoners with a meaningful opportunity to seek clemency and bring it in line with international standards for the mercy petitions review procedure to ensure transparency, certainty, due process and objectivity.
18. Request the Government of Pakistan to make mandatory the inclusion of complete and updated medical records of death row convicts in all mercy petitions by jail authorities.

#### Recommendations on Criminalising Torture

19. Request the Government of Pakistan to provide adequate resources and authority to the National Commission on Human Rights to independently

investigate torture allegations against the police. Such authority should allow such commission to intervene in ongoing proceedings and/or remand cases where torture is alleged for reinvestigation and/or retrials.

20. Request Pakistan to bar death sentences on the basis of convictions delivered primarily on the basis of confessions and/or other oral testimony.
21. Request the Government to promptly table and vote upon the Torture and Custodial Death (Prevention and Punishment) Bill 2021, unanimously passed by the Senate of Pakistan, in the National Assembly of Pakistan.

#### Recommendations on Prison Reforms

22. Request that all provincial prison departments bring their prison rules in line with the UN Standard Minimum Rules for the Treatment of Prisoners (“The Mandela Rules”)
23. Request the Government of Pakistan to direct all provincial prison departments to bring their rules in line with the UN Standard Minimum Rules for the Treatment of Prisoners

#### Recommendations on Protecting Migrant Workers

24. Urge the Government of Pakistan to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
25. Request the Government of Pakistan to pass a uniform consular protection policy for its overseas citizens who are imprisoned abroad and/or facing execution.

[d6%27\)\)](#)

<sup>ii</sup> *Justice Project Pakistan - Death Penalty Database*. Home • Justice Project Pakistan - Death Penalty Database. (n.d.). Retrieved April 5, 2022, from <https://data.jpp.org.pk/>

<sup>iii</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Pakistan', 29 December 2017, Recommendation No. 152.32

<sup>iv</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Pakistan', 29 December 2017, Recommendation No. 152.51-152.55

<sup>v</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Pakistan', 29 December 2017, Recommendation No.152.120

<sup>vi</sup> Compliance Report Submitted by Federal Ombudsman to the Supreme Court of Pakistan, 2018

<sup>vii</sup> The Pakistan Capital Punishment Study A Study of the Capital Jurisprudence of the Supreme Court of Pakistan, Reprieve & Foundation for Fundamental Rights; <https://reprieve.org/wp-content/uploads/sites/2/2019/04/Pakistan-Capital-Punishment-Study.pdf>

<sup>viii</sup> The Pakistan Capital Punishment Study A Study of the Capital Jurisprudence of the Supreme Court of Pakistan, Reprieve & Foundation for Fundamental Rights; <https://reprieve.org/wp-content/uploads/sites/2/2019/04/Pakistan-Capital-Punishment-Study.pdf>

<sup>ix</sup> The Pakistan Capital Punishment Study A Study of the Capital Jurisprudence of the Supreme Court of Pakistan, Reprieve & Foundation for Fundamental Rights; <https://reprieve.org/wp-content/uploads/sites/2/2019/04/Pakistan-Capital-Punishment-Study.pdf>

<sup>x x</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Pakistan', 29 December 2017, Recommendation No. 152.128

<sup>xi</sup> *Boyce et al v Barbados* (Preliminary Objection, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 169 (20 November 2007), para 55

<sup>xii</sup> Section 295-C, Pakistan Penal Code, 1860

<sup>xiii</sup> Enforcement of Hudood Ordinance, Ordinance No. VII of 1979

<sup>xiv</sup> [https://data.jpp.org.pk/en/library/?q=\(filters:\(current\\_status:\(values:\(!%2710480b52-bd9a-436b-8886-7985beaf6bca%27\)\)\),order:desc,sort:metadata.date\\_of\\_execution,types:\(!%275bcd692bf834e87d6dd936d6%27\)\)](https://data.jpp.org.pk/en/library/?q=(filters:(current_status:(values:(!%2710480b52-bd9a-436b-8886-7985beaf6bca%27))),order:desc,sort:metadata.date_of_execution,types:(!%275bcd692bf834e87d6dd936d6%27)))

<sup>xv</sup> [https://data.jpp.org.pk/en/library/?q=\(allAggregations:!f,filters:\(current\\_status:\(values:\(!%2710480b52-bd9a-436b-8886-7985beaf6bca%27\)\)\),from:330,includeUnpublished:!f,limit:300,order:desc,sort:metadata.date\\_of\\_execution,types:\(!%275bcd692bf834e87d6dd936d6%27\),unpublished:!f\)](https://data.jpp.org.pk/en/library/?q=(allAggregations:!f,filters:(current_status:(values:(!%2710480b52-bd9a-436b-8886-7985beaf6bca%27))),from:330,includeUnpublished:!f,limit:300,order:desc,sort:metadata.date_of_execution,types:(!%275bcd692bf834e87d6dd936d6%27),unpublished:!f))

<sup>xvi</sup> Prime Minister Imran Khan and his government were ousted through the passing of a vote of no confidence in the National Assembly in April 2022.

<sup>xvii</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Pakistan', 29 December 2017, Recommendation No. 152.102

<sup>xviii</sup> JPP, 'Death Row's Children Pakistan's Unlawful Executions of Juvenile Offenders' (February 2017) (hereinafter 'Death Row's Children'), page 5, available at: <http://www.jpp.org.pk/wp-content/uploads/2017/02/JPP-Final-Edited.pdf>

<sup>xix</sup> UNICEF, Progress Report 2013-2015: Results for Children in Pakistan: Birth Registration (July 2015), pages 7-8, available at: [https://www.unicef.org/pakistan/Birthregistration\\_LR.pdf](https://www.unicef.org/pakistan/Birthregistration_LR.pdf)

<sup>xx</sup> JPP, 'Death Row's Children Pakistan's Unlawful Executions of Juvenile Offenders' (February 2017) (hereinafter 'Death Row's Children'), page 6, available at: <http://www.jpp.org.pk/wp-content/uploads/2017/02/JPP-Final-Edited.pdf>

<sup>xxi</sup> *Muhammad Raheel v The State* PLD 2015 SC 145

<sup>xxii</sup> <https://voicepk.net/2021/03/pakistans-first-special-juvenile-courts-set-up-in-karachi/>

<sup>xxiii</sup> Para. 39, Section C, UN Committee on the Rights of the Child (CRC), General comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007

<sup>xxiv</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Pakistan', 29 December 2017, Recommendation No. 152.102

<sup>xxv</sup> Section 23, Juvenile Justice System Act 2018

<sup>xxvi</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Pakistan', 29 December 2017, Recommendation No. 152.282

<sup>xxvii</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Pakistan', 29 December 2017, Recommendation No. 152.127

<sup>xxviii</sup> *PLD 2021 SC 488*

<sup>xxix</sup> Section 464, CrPC, Criminal Law and Justice Reforms 2022

<sup>xxx</sup> Section 464-A, CrPC, Criminal Law and Justice Reforms 2022

<sup>xxxi</sup> Prime Minister Imran Khan and his government were ousted through the passing of a vote of no confidence in the National Assembly in April 2022.

<sup>xxxii</sup> Syed Irfan Raza, 'President rejects mercy appeal of 17 death penalty convicts' *Dawn* (Islamabad, 18 December 2014), available at: <http://www.dawn.com/news/1151758/president-briefed-on-decision-to-end-moratorium>

<sup>xxxiii</sup> See Hasnaat Malik, "Over 250 death row prisoners hanged since Dec 2014, govt informs SC" *The Express Tribune* (Islamabad, 22 March 2016)

<sup>xxxiv</sup> Human Rights Committee Concluding Observations to Pakistan (July 2017), No. 17

<sup>xxxv</sup> Provincial authorities have professed their intent to hang Basit from his wheelchair, in contravention of both domestic and international law.

<sup>xxxvi</sup> Basit's treatment is in violation of Article 7 of the ICCPR, Article 1 of the UNCAT and Article 15 of the CRPD.

<sup>xxxvii</sup> Philip Alston A/HRC/8/3 2 May 2008, para 60

<sup>xxxviii</sup> The Committee recommended that "pardon or commutation of the sentence is available in all cases, regardless of the crime committed; and it is never imposed in violation of the Covenant, including in the absence of fair trial procedures".

<sup>xxxix</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Pakistan', 29 December 2017, Recommendation No. 152.133

<sup>xl</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Pakistan', 29 December 2017, Recommendation No. 152.135

<sup>xli</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Pakistan', 29 December 2017, Recommendation No. 152.134

<sup>xlii</sup> Policing as Torture: A Report on Systematic Brutality and Torture by the Police in Faisalabad, Pakistan. Justice Project Pakistan and Allard K. Lowenstein International Human Rights Clinic. March 2014. Available at: <https://www.jpp.org.pk/report/policing-as-torture/>

<sup>xliii</sup> NCHR Faisalabad report: "Police Torture in Faisalabad" National Commission for Human Rights (NCHR)

<sup>xliiv</sup> <https://www.dawn.com/news/1634704/senate-passes-landmark-bill-criminalising-torture-deaths-in-custody>

<sup>xliiv</sup> <https://www.thefridaytimes.com/2022/06/30/govt-urged-to-legislate-against-torture/>

<sup>xlivi</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Pakistan', 29 December 2017, Recommendation No. 152.136

---

<sup>xlvii</sup> Prisoners of the Pandemic, Justice Project Pakistan & Amnesty International, Dec. 2020, <https://www.amnesty.org/en/documents/asa33/3422/2020/en/>

<sup>xlviii</sup> Prisoners of the Pandemic, Justice Project Pakistan & Amnesty International, Dec. 2020, page 6 <https://www.amnesty.org/en/documents/asa33/3422/2020/en/>

<sup>xlix</sup> Khadim Hussain Vs Secretary, Ministry of Human Rights, Islamabad, etc.

<https://www.pakistantoday.com.pk/2022/01/12/report-pertaining-to-human-rights-violations-in-jails-submitted-in-ihc/>

<sup>li</sup> Sindh Prisons and Corrections Services Act 2019, Act No. X of 2019, <http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.X%20of%202019.pdf>

<sup>lii</sup> Prisons Amendment Act, 2020, Act No. XLIII of 2020, <https://www.pakp.gov.pk/wp-content/uploads/The-Prisons-Amendment-act-2020-Act-No.XLIII-of-2020-1.pdf>

<sup>liii</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Pakistan', 29 December 2017, Recommendation No. 152.12

<sup>liv</sup> Article 4, Constitution of the Islamic Republic of Pakistan, 1973

<sup>lv</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Pakistan', 29 December 2017, Recommendation No. 152.288

<sup>lvi</sup> <https://tribune.com.pk/story/2332814/foreign-prisoners-await-repatriation>

<sup>lvii</sup> CRC/C/GC/10 dated 25.04.2007

<sup>lviii</sup> CRC/C/GC/24 dated 18 September 2019