



**Submission for the United Nations Secretary General's
Report on the Question of the Death Penalty: Information
for the Secretary General's report to the United Nations
Human Rights Council at its 51st session**

Submitted by:
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The Justice Project Society, commonly referred to as Justice Project Pakistan (**JPP**), is a legal action non-government 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, and 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 capital punishment in Pakistan and abroad.

A. Introduction

JPP welcomes this opportunity to supplement the quinquennial report of the United Nations Secretary General on the Question of the Death Penalty.

B. Background

Since lifting a seven-year moratorium on the death penalty in December 2014¹ Pakistan has executed 516 prisoners. Pakistan's application of the death penalty fails to meet its own constitutional standards and violates international human rights law. There are currently 33 capital crimes² in Pakistan, and the death row population stands at 3,831 prisoners.

It is worth noting, however, that **there has not been a single execution since December 2019**, and Pakistan has committed to enacting key policy reforms to align its application of the death penalty with its international obligations. However, **we have seen that a de facto moratorium is fragile and can be fleeting**. While this is an important milestone, it also represents a critical opportunity to advocate for systemic reform in Pakistan's application of the death penalty.

C. Prohibition on Execution of Persons with Psychosocial Disabilities

Mentally ill individuals reportedly constitute 50 million of Pakistan's population.³ This vulnerability is exacerbated when they enter the Pakistani criminal justice system, which fails to provide meaningful protection to persons with mental illness at all stages of arrest, trial, sentencing and detention. Despite the existence of legal safeguards for prisoners with psychosocial disabilities, there is a lack of implementation of these protections. This, coupled with both the widespread use of torture to obtain confessions and inadequate assistance of counsel, has in the past, led to the execution of prisoners who were severely mentally ill.

On 10th February 2021, Pakistan's Supreme Court passed a landmark judgement⁴ that barred the execution of severely mentally ill prisoners, commuted the death sentences of Kanizan Bibi and Imdad Ali to life imprisonment and stayed the execution of Ghulam Abbas, directing that a fresh mercy petition accompanied by his entire medical record including details of his mental illness, be filed on his behalf. Most importantly, the *Safia Bano* judgement reinforced protections that must be afforded to prisoners with psychosocial disabilities at all stages of the criminal justice system. Imdad, Kanizan and Ghulam Abbas had all previously been diagnosed with schizophrenia and had spent 30, 18 and 16 years on death row respectively.

¹ In December 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. Since then, Pakistan has executed more than 516 people, bringing the country's annual rate of executions to the highest point in its history and making it amongst the 'five most prolific executioners in the world' three years in a row.

² Justice Project Pakistan - Death Penalty Database." List of offences punishable by death in Pakistan <https://data.jpp.org.pk/en/document/ngo5vvasxr>.

³ <https://www.dawn.com/news/1288880>

⁴ Explainer on the *Safia Bano* judgment by Justice Project Pakistan: <https://jpp.org.pk/safeguarding-the-rights-of-mentally-ill-defendants-the-supreme-court-of-pakistans-landmark-judgment/>

Furthermore, the Supreme Court also directed the Federal Government and all the Provincial Governments to immediately make necessary amendments in the relevant laws and the rules in the light of observations given in this judgement.

There are significant steps which must be taken by the provinces in order to uphold and implement the recommendations issued by the Supreme Court in the *Safia Bano* judgement.⁵

In January 2022 the Federal Ministry for Law and Justice obtained cabinet approval for the Criminal Law and Justice Reforms Bill 2022, which contains substantial amendments to Pakistan's criminal legislation. Among other provisions, the Bill stipulates fundamental protections that must be afforded to persons with psychosocial disabilities in line with the Supreme Court's jurisprudence and existing mental health legislation.

The Bill incorporates the standards established by relevant jurisprudence into the Code of Criminal Procedure and aligns it with the Provincial Mental Health Acts.⁶ It also establishes the procedure for the constitution, composition and functions of a state-appointed medical board⁷ and stipulates minimum standards for conducting a mental health evaluation. Furthermore, the Bill amends the existing Penal Code by adding the provision that no act is an offence done by any person who is suffering from unsoundness of mind *and at the time of doing it is unable to control their conduct*⁸.

If passed by the National Assembly, the Bill will then be transmitted to the Senate of Pakistan. If passed by both Houses of Parliament, upon receiving presidential assent, the Bill will be enacted as legislation.

D. Blanket Denial of Clemency: Flaws in Pakistan's Mercy Petitions Review Procedure

In Pakistan, Article 45 of the 1973 Constitution gives the President the power to grant a pardon and to suspend or commute any sentence passed by any court⁹. Rule 104 of the Pakistan Prison Rules 1978 also emphasises that the President may grant a reprieve from execution on any grounds and at any time¹⁰.

However, JPP's 2016 report found that after the moratorium was lifted in December 2014, the President's office "*repeatedly denied*" each and every one of the 444 mercy petitions reviewed by it.¹¹ The Interior Ministry informally confirmed the Government's policy to summarily reject all pleas of

⁵ Justice Project Pakistan, Monash University, 'Trapped Inside: Mental Illness and Incarceration': Accessed at: <https://jpp.org.pk/report/trapped-inside-mental-illness-incarceration/>

⁶ Section 464, CrPC, Criminal Law and Justice Reforms 2022

⁷ Section 464-A, CrPC, Criminal Law and Justice Reforms 2022

⁸ Section 84, Pakistan Penal Code, Criminal Law and Justice Reforms 2022 essentially expands the pre-existing M'Naghten test by adding a subsection which includes the 'Irresistible Impulse Test'

⁹ Constitution of the Islamic Republic of Pakistan. Article 45: President's power to grant pardon: 'the president shall have the power to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.'

¹⁰ Pakistan Prisons Rules, 1978. Rules for the Superintendence and Management of Prisons in Pakistan. Rule 104. 'Petition for mercy from or on behalf of condemned prisoners.'

¹¹ Justice Project Pakistan, Yale Law School, 'No Mercy – A Report on clemency for death row prisoners in Pakistan'. Pg. 4. Accessed at: https://www.jpp.org.pk/wp-content/uploads/2018/04/No-Mercy_Final-Report1.pdf.

mercy¹². According to the Ministry of Interior in 2016, the President's office rejected 513 mercy petitions from condemned prisoners over the previous five years¹³.

After consistent engagement with the Government, in early 2019, the Federal Ministry of Human Rights obtained Cabinet approval to reform the mercy petitions procedure into one which has improved mechanisms for submission and review of clemency petitions. The new procedure was designed to ensure that prison authorities are duty bound to disclose all relevant records related to a prisoner including the existence of serious mental and physical illnesses. In its state follow up report to the Human Rights Committee, Pakistan submitted that "*a Committee to review mercy petitions has been notified under Article 45 of the Constitution*".¹⁴ This reform was meant to be a significant break from the past perfunctory practice and significantly impact the ability of death row prisoners to exercise their constitutional right to seek mercy from the President. In October 2019, the Ministry of Interior issued new SOPs for the consideration of mercy petitions to streamline the process.

Rules setting out the process through which mercy petitions are filed, processed, evaluated and decided must be framed by the Government in accordance with law, in order to make the procedure binding and concrete and to ensure transparency, certainty, due process and objectivity in the evaluation of mercy petitions.

The case of Captain Ismail Parvez, a severely mentally ill death row convict, is a stark representation of the deficiencies in the current procedure: despite overwhelming evidence of his mental illness, none of his 26 years' worth of medical records were attached to his clemency petition, which remains pending before the President

However, the aforementioned Criminal Law and Justice Reforms Bill 2022, drafted by the Federal Ministry for Law and Justice, revamps and codifies the procedure through which mercy petitions are reviewed in Pakistan, in line with the recommendations of the UN Human Rights Committee¹⁵. Section 402 of the Code of Criminal Procedure inserts a new Schedule describing the manner in which the power to commute punishment should be exercised. Schedule VI contains a comprehensive list of rules for the mercy petitions review procedure that ensure transparency, certainty, objectivity and due process thereby giving prisoners a meaningful opportunity to seek clemency. The proposed Schedule outlines some crucial features including a clear criteria for the evaluation of mercy petitions including demarcation of mitigating factors that must be considered by the Committees e.g. procedural lapses, delays, mental illness, solitary confinement, etc. and obligations to record all materials, information and records reviewed by the provincial committees and the reason for the committee's decisions.

E. Criminalisation of Torture: Piecemeal Progress

Police torture is effectively deemed to be an acceptable method of criminal investigation in Pakistan. This is largely due to a lack of resources and training and the absence of an independent oversight

¹²Justice Project Pakistan, Yale Law School, 'No Mercy – A Report on clemency for death row prisoners in Pakistan'. Pg. 4. Accessed at: https://www.jpp.org.pk/wp-content/uploads/2018/04/No-Mercy_Final-Report1.pdf.

¹³ Ibid

¹⁴(CCPR/C/PAK/CO/1/Add.1)

¹⁵ 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"

mechanism coupled with a pervasive institutional culture that disregards human dignity. Confessions and testimonials obtained under torture are used as the primary form of evidence in order to “resolve” cases expeditiously.

Confessions and statements extracted by police through heinous torture and abuse often form the basis of convictions and death sentences. A report by Justice Project Pakistan, 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 (MLC) compiled by a government-appointed District Standing Medical Board in the district of Faisalabad between 2006 and 2012.

In April 2017, following Pakistan’s review on its compliance with CAT, the Committee in its Concluding Observations “*urged the State party to take the necessary measures to incorporate into its legislation a specific definition of torture that covers all the elements of the definition contained in article 1 of the Convention and establishes penalties that are commensurate with the gravity of the act of torture.*”¹⁶ 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 report¹⁷ emphasising the need to enact a law criminalizing torture and the creation of an independent investigative mechanism.

While successive administrations have publicly committed to criminalising torture since Pakistan’s ratification of the UN Convention against Torture in 2010, multiple anti-torture bills which were tabled and passed by the Senate subsequently lapsed due to a failure to be passed by the National Assembly. However, Pakistan currently stands at a critical juncture: the existence of both Government and Opposition bills in both Houses of Parliament delineates a renewed political impetus to criminalise torture that cuts across partisan lines. In July 2021, the Torture and Custodial Death (Prevention and Punishment) Bill 2021, tabled by a member of the opposition Pakistan People’s Party, was unanimously passed by the Senate of Pakistan. In September 2021, the Government of Pakistan tabled its own Torture and Custodial Death (Prevention and Punishment) Bill 2021 in the National Assembly of Pakistan, submitted by the Interior Minister.

The Government Bill contains some key differences from the Opposition Bill. Among others, the definition of torture contained in the Opposition Bill encompasses mental and psychological torture, in line with the constituent elements of the Convention against Torture, while the Government Bill excludes mental torture and suffering. Moreover, the definition of ‘public servant’ under the Opposition Bill is much wider than the corresponding definition in the Government Bill. Additionally, while the Government Bill gives the Federal Investigation Agency exclusive jurisdiction to investigate offences, the Opposition Bill expressly states that the FIA only has primary jurisdiction to investigate complaints until such time as the National Commission for Human Rights is functional with an investigative infrastructure notified for the purpose.

If passed, it will mark the first time that a Government bill criminalising torture by law enforcement agencies has been passed by the National Assembly.

¹⁶ Committee Against Torture, Concluding Observations.

https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/PAK/INT_CAT_COC_PAK_27467_E.pdf

¹⁷ NCHR Faisalabad report: “Police Torture in Faisalabad” National Commission for Human Rights (NCHR)

