

**Submission to the United Nation’s Secretary General’s Report on a Moratorium on the Use of the Death Penalty: Information for the Secretary General’s report to the United Nations General Assembly’s 77th Session**

**Submitted by:**

**Justice Project Pakistan**

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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.

**Submission by Justice Project Pakistan[[1]](#footnote-1) for the UN Secretary General’s Report on the Question of the Moratorium on the Use of the Death Penalty**

**Overview**

Pakistan has one of the largest reported death rows in the world[[2]](#footnote-2). With over 33 crimes that merit the death penalty and roughly 338 prisoners[[3]](#footnote-3) sentenced to death per year, Pakistan’s death row population currently stands at 3,831[[4]](#footnote-4).

For the most part, Pakistan’s application of the death penalty contravenes international law. Pakistan is a party to numerous multilateral and bilateral treaties, memorandums of understanding, unilateral commitments, and seven of the nine core human rights treaties. Pakistan’s third Universal Periodic Review (2017) called for the moratorium to be reinstated, with emphasis on the need to bring Pakistan’s application of the death penalty in line with international standards. Furthermore, since the lifting of the moratorium, at least three UN treaty bodies have issued detailed Concluding Observations highlighting inherent violations of international human rights standards in Pakistan’s application of the death penalty.

However, since 2019 Pakistan has taken significant steps signalling that the country realizes that it must bring its death penalty regime in line with its international obligations.

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 with Pakistan raised the political cost of executions, resulting in the government making a conscious decision to halt executions for the time being.

However, the fate of this *de facto* policy hangs in the balance as the PTI government has been ousted from power with a joint opposition coalition taking over on 11th April 2022[[5]](#footnote-5).

1. **The Right to Apply for Pardon or Commutation**

Although the President of Pakistan possesses the constitutional authority to pardon death row defendants[[6]](#footnote-6), in practice such petitions are always denied.[[7]](#footnote-7) Moreover, reviewing mercy petitions in Pakistan is a perfunctory practice, plagued with glaring omissions, lack of transparency and due process violations. All these factors violate Pakistani death row prisoners’ constitutional right to have their clemency petitions meaningfully considered. Since the moratorium was lifted, the President has granted no pardons or commutations.

In October 2019, the Ministry of Interior issued new SOPs for reviewing mercy petitions containing only cursory changes. These were not implemented uniformly and failed to meet international standards. Thereafter, mercy petitions with strong evidence of humanitarian abuses and violations continued to be wrongfully rejected under the revised SOPs.[[8]](#footnote-8)

According to the data collected by JPP, 6 mercy petitions from Sindh and 15 from Punjab are pending before the President including those of mentally and physically disabled.

In a crucial development, the Criminal Law and Justice Reforms 2021, drafted by the Federal Ministry for Law and Justice, contain a significant set of proposed amendments to the clemency procedure, bringing them in line with recommendations of the UN Human Rights Committee during Pakistan’s state review in 2017[[9]](#footnote-9). The Reforms outlined a clear criterion for evaluation of mercy petitions including demarcation of mitigating factors that must be considered by provincial committees e.g., procedural lapses, delays, mental illness, solitary confinement, etc.

The Law Minister presented the bill to the Speaker of the National Assembly on 17th February 2022. The fate of the Bill currently hangs in the balance, with the onus lying on the new government to pass the Bill.

1. **Information** **with regard to the use of the death penalty**

Pakistan’s death row currently stands at 3,831[[10]](#footnote-10), with 9,227 Pakistanis jailed abroad. Under a Supreme Court direction, the Federal Ombudsperson is legally bound to disclose figures on the death penalty each year but the 2020 report[[11]](#footnote-11) does not mention death row prisoners[[12]](#footnote-12). Moreover, even though the provincial prison authorities and the provincial judiciary maintains their own figures, the information is seldom collated and never published. Moreover, relevant Ministries, such as the Federal Ministry of Human Rights and statutory human rights bodies such as the National Commission for Human Rights should collate and publish this data.

According to government figures, Pakistan’s death row has reduced significantly from 7,164 in 2012 to 4,688 in 2018[[13]](#footnote-13), indicating 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[[14]](#footnote-14).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[[15]](#footnote-15). Systemic issues such as reliance on unreliable witness testimony and weak evidence, reliance on planted or manipulated evidence, reliance by lower courts on confessions which were involuntary, retracted or obtained using improper procedure etc. represent some of the issues behind such a large percentage of death sentences being overturned.

1. **Reduction of the Number of Offences for which the Death Penalty may be Imposed and Restrictions on the use of the Death Penalty**

***Safia Bano Judgement***

Traditionally, Pakistan’s criminal justice system fails to provide meaningful protection to persons suffering from mental illness at all stages such as arrest, trial, sentencing, detention and execution. The situation is further compounded by the structural problems of Pakistan’s under-resourced and overstretched criminal justice system.

In 2021 the Supreme Court of Pakistan delivered a landmark ruling titled *Safia Bano v. Home Department[[16]](#footnote-16)* establishing key safeguards and protections for defendants with psychosocial disabilities at every stage of the criminal justice system. The Court, in line with the ICCPR, barred the execution of individuals who are severely mental ill and 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.  
  
The Court commuted the death sentences of Kanizan Bibi and Imdad Ali’s to life imprisonment. Both prisoners suffered from schizophrenia and had spent 30 and 18 years respectively in prison prior to this ruling. The Court also judicially reviewed the third death row petitioner Ghulam Abbas’ mercy petition and viewed it as deficient since it did not include material relating to his mental illness. Thereafter, the Court ordered it to be resubmitted in line with the new standards laid down in the judgement.

***Removal of the Death Penalty from The Control of Narcotic Substances Act 1997***

Pakistan does not practically execute for drug offences and the Criminal Law and Justice Reforms 2021 issued by Ministry of Law and Justice proposed to remove the death penalty for drug offences and replace it with life imprisonment. It is noteworthy that no death sentences for drug offences were awarded in 310 cases from 2010-18[[17]](#footnote-17).

***Removal of The Death Penalty from The Railways Act 1890***

Section 127 of the Railways Act awards the death penalty for maliciously hurting or attempting to hurt persons travelling by train, or damaging property belonging to the railways. From 2013 to December 2016, 25 major train incidents have occurred in Pakistan, of which only 7 were considered sabotage.[[18]](#footnote-18) However, there was no punishment given in any of them**.** In 2017, 3 railway accidents occurred, in which 1 was said to have been due to sabotage, yet no further reports were released on the investigation of the incident.[[19]](#footnote-19)

The Criminal Law and Justice Reforms 2021 replaces the term ‘death’ with ‘remainder of life’ and abolishes the death penalty for this offense in the Penal Code. This constituted a significant step towards reducing the number of capital crimes in domestic law.

With the change in government the fate of these reforms now hangs in the balance. Nonetheless, the fact that such reforms were put together and presented to the National Assembly Speaker exhibits substantive willingness on the part of the government and bureaucracy to restrict Pakistan’s application of the death penalty.

1. **Pakistanis on Death Row Abroad**

According to official estimates, there are nearly 9,227 Pakistani citizens languishing in jails across the world[[20]](#footnote-20). Pakistanis are also part of the death row population in countries that carry out the death penalty, such as Saudi Arabia and Iran. Today there are approximately 2,555 Pakistani prisoners in KSA with 40 of these Pakistanis on death row, and at risk of imminent execution. There are currently a total of 88 Pakistanis on death row abroad. A majority of the Pakistanis imprisoned abroad have been arrested for non-lethal crimes such as drug-trafficking, theft and violations of immigration laws.

Pakistanis imprisoned abroad are at the mercy of local courts without access to lawyers, impartial translators, or consular assistance from the Pakistani diplomatic missions. These destitute Pakistanis face the harshest punishments due to their lack of understanding of and assistance with the legal process, incapability to communicate directly with the court, and inability to produce evidence from Pakistan in their defence. Unfortunately, Gulf Countries contain the largest number of imprisoned Pakistanis.

An increase in diplomatic efforts on behalf of these prisoners has resulted in frequent repatriations of these prisoners, with 62 being repatriated in July 2021[[21]](#footnote-21). Moreover, in February 2022 a Prisoner Transfer Agreement was signed between KSA and Pakistan[[22]](#footnote-22), which bodes well for Pakistanis incarcerated in Saudi Arabia.

1. JPP is a non-profit human rights law firm based in Lahore, Pakistan. It was established in 2009 and 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. For more information: [www.jpp.org.pk](http://www.jpp.org.pk) [↑](#footnote-ref-1)
2. Hashim, A. (2021, March 23). *Fair trial concerns plague world's largest death row in Pakistan*. Features | Al Jazeera. Retrieved April 19, 2022, from <https://www.aljazeera.com/features/2020/10/9/fair-trial-concerns-plague-worlds-largest-death-row-in-pakistan#:~:text=Pakistan%20is%20one%20of%2056,to%20rights%20group%20Amnesty%20International.> [↑](#footnote-ref-2)
3. *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/> [↑](#footnote-ref-3)
4. *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/> [↑](#footnote-ref-4)
5. The Pakistan People’s Party, with a history of having placed a principled moratorium on the death penalty from 2008-2014, is also a part of this ruling coalition. However the PML-N that lifted the moratorium in 2014 is the central party in this coalition. [↑](#footnote-ref-5)
6. Article 45, Constitution of the Islamic Republic of Pakistan [↑](#footnote-ref-6)
7. According to the Ministry of Interior, the President’s office rejected 513 mercy petitions of condemned prisoners over the last five years, 444 of which were in the first fifteen months after the resumption of executions in December 2014 [↑](#footnote-ref-7)
8. The mercy petitions of Ghulam Abbas and Ismail Parvez, severely mentally ill defendants, remain pending. Link to JPP Policy Briefing on Mercy Petitions: <https://docs.google.com/viewerng/viewer?url=https://jpp.org.pk/wp-content/uploads/2022/02/2020_11_30_PUB_Mercy-Petition-SOPs_Brief.pdf&hl=en> [↑](#footnote-ref-8)
9. 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” [↑](#footnote-ref-9)
10. *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/> [↑](#footnote-ref-10)
11. <https://www.mohtasib.gov.pk/SiteImage/Downloads/Annual%20Reports/annual_report_2020.pdf> [↑](#footnote-ref-11)
12. Subsequent Federal Ombudsman reports have not been made publicly available as of yet [↑](#footnote-ref-12)
13. Compliance Report Submitted by Federal Ombudsman to the Supreme Court of Pakistan, 2018 [↑](#footnote-ref-13)
14. 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> [↑](#footnote-ref-14)
15. 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> [↑](#footnote-ref-15)
16. *PLD 2021 SC 488* [↑](#footnote-ref-16)
17. 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> [↑](#footnote-ref-17)
18. <https://www.pakistantoday.com.pk/2017/11/07/pakistan-railways-plans-to-close-vigilance-cell/> [↑](#footnote-ref-18)
19. Hamza Rao, “Chaman saved from a major attack after unknown terrorists sabotage railway tracks,” *Daily Pakistan*, May 9, 2017:<https://en.dailypakistan.com.pk/pakistan/chaman-saved-from-a-major-attack-after-unknown-terrorists-sabotage-railway-tracks/> [↑](#footnote-ref-19)
20. As per a reply submitted by the Ministry of Foreign Affairs in the National Assembly [↑](#footnote-ref-20)
21. Desk, W. (2021, July 20). *PM Imran Khan announces repatriation of 62 Pakistani prisoners from Saudi Arabia*. thenews. Retrieved April 19, 2022, from <https://www.thenews.com.pk/latest/866872-pm-imran-announces-repatriation-of-62-pakistani-prisoners-from-saudi-arabia> [↑](#footnote-ref-21)
22. Wasim, A. (2022, February 8). *PM welcomes Pak-Saudi pact on transfer of offenders*. DAWN.COM. Retrieved April 19, 2022, from <https://www.dawn.com/news/1673855> [↑](#footnote-ref-22)