



PRISONERS OF THE PANDEMIC

THE RIGHT TO HEALTH AND COVID-19 IN PAKISTAN'S DETENTION FACILITIES



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Justice Project Pakistan (JPP) is a non-profit organization based in Lahore that represents the most vulnerable Pakistani prisoners facing the harshest punishments, at home and abroad. JPP investigates, litigates, educates, and advocates on their behalf. In recognition of their work, JPP was awarded with the National Human Rights Award in December 2016 by the President of Pakistan.

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CONTENTS

1. EXECUTIVE SUMMARY	4
2. METHODOLOGY	7
3. BACKGROUND	9
INTERNATIONAL STANDARDS TO PROTECT THE RIGHTS OF PEOPLE DEPRIVED OF THEIR LIBERTY	11
4. CONTINUED INTAKE OF PRISONERS WITH MINIMAL PRECAUTIONS TO PREVENT TRANSMISSION	14
NO ATTEMPT TO LIMIT ARRESTS AND DETENTION DURING THE OUTBREAK	14
LACK OF ADEQUATE PREVENTATIVE MEASURES DURING ARREST AND DETENTION IN POLICE STATIONS	15
INCONSISTENT HEALTH SCREENINGS FOR PRISON ADMISSIONS	15
QUARANTINE AND MEDICAL ISOLATION	16
5. FAILURE TO ADDRESS OVERCROWDING IN PRISONS THROUGH STRUCTURED RELEASE PROGRAMMES AND INDIVIDUAL BAIL APPLICATIONS	18
SUPREME COURT DECISION RESCINDING BAIL ORDERS GRANTED ON ACCOUNT OF COVID-19 OUTBREAK	19
EARLY, TEMPORARY AND PROVISIONAL RELEASE OF SPECIFIC CATEGORIES OF PRISONERS	20
POSTPONEMENT OF NON-ESSENTIAL COURT HEARINGS RESULTING IN AN INCREASE OF PRE-TRIAL DETAINEES	22
6. BARRIERS TO ACCESS TO HEALTH	24
7. CONCLUSION AND RECOMMENDATIONS	33

1. EXECUTIVE SUMMARY

With the outbreak of the COVID-19 pandemic, prisons were identified early on as places where outbreaks were likely and would require urgent government attention.¹ In Pakistan, prisons are notoriously overcrowded, making physical distancing and other public health recommendations impossible to implement. They lack adequate health care facilities and have unsanitary conditions, accelerating the spread of infectious diseases. These and other underlying systemic issues lead to a catalogue of human rights violations, including the violations of the right to life and the right to health, guaranteed by Pakistan's Constitution and its international human rights obligations.²

By August 2020, at least 2,313 prisoners had tested positive for COVID-19.

This report is the outcome of research carried out between 1 August 2020 and 20 September 2020 by Amnesty International and Lahore-based human rights group Justice Project Pakistan (JPP). JPP conducted on-site investigations in six prison facilities and held 22 interviews with prison authorities, medical personnel, prisoners and newly released prisoners. Amnesty International consolidated the findings.

The International Covenant on Economic, Social and Cultural Rights makes the obligation of states to fulfil the right to health for prisoners explicit, as does the International Covenant on Civil and Political Rights. Both have been ratified by Pakistan. The Mandela Rules also offer a detailed framework for what is expected from authorities in a health crisis. The World Health Organization (WHO) issued explicit guidance to manage the COVID-19 outbreak in prisons and other places of detention including screenings, restricted visitation, quarantine protocols and the process to follow if prisoners are transferred. All of these highlight Pakistan's international human rights commitments to ensure quality health care for prisoners in custody.

Even as the Office of the United Nations High Commissioner for Human Rights (OHCHR) specifically warns against the dangers of overcrowding, police arrest practices and institutional reluctance to use non-custodial sentences create the permissive environment for the unconscionable overcrowding rate of 134% in Pakistan's prisons. People are held for months in pre-trial detention, waiting to appear in courts mired in backlogs. As a result, the risk of contagion with a communicable disease such as COVID-19 is significantly heightened. The rickety, under-resourced and strained health infrastructure in Pakistan's prisons, already unable to provide adequate care for prisoners, was brought into the spotlight with the COVID-19 health crisis.

Amnesty International and JPP found that there was continued intake of prisoners with minimal precautions to prevent transmissions. While recognizing that a range of offences warrant arrest and detention and that COVID-19 should not provide cover to those who commit those crimes, the overuse of incarceration for minor offences is problematic in the context of a pandemic. Despite a ruling from the Islamabad High Court to reduce the number of unnecessary arrests, there were no official steps announced to reduce prisoner intake or the pace of arrests for petty crimes. Amnesty International and JPP were unable to confirm if arrests took place at the same pace but during the peak of the first wave, the police arrested several individuals simply for exercising their rights to freedom of expression and peaceful assembly. These included health workers, students and even a transgender rights activist.

Compounding the problem of overcrowding during the COVID-19 outbreak, a lockdown imposed from April to June 2020 – followed by court holidays – also forced courts to severely limit operations. As fewer bail hearings were taking place, the period between April to August 2020 actually saw a rise in overall prison populations from 73,242 to 79,603, representing an 8.7% increase. Multiple prison authorities told JPP that the suspension of court operations was a great obstacle to curbing the COVID-19 spread as no new releases could be ordered, overwhelming already burgeoning prisons.

Former inmates interviewed by JPP highlighted the lack of preventive and protective measures during arrest and initial detention in police stations. Personal protective equipment (PPE), including masks, was not always provided, or even worn by the police who were arresting them. Some detainees report being kept in confined

¹ See OHCHR, Urgent action needed to prevent COVID-19 “rampaging through places of detention” – Bachelet, 25 March 2020, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E

² Under the 1973 Constitution of Pakistan, Article 14 provides that the dignity of man and subject to law the privacy of home shall be inviolable. The fundamental right to preserve and protect the dignity of man under Article 14 is unparalleled. The Constitution guarantees dignity of man and also right to life under Article 9 and if both are read together, question will arise whether a person can be said to have dignity of man if his right to life is below bare necessity like without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment.

spaces with many others – preventing the possibility of distancing – and said they were not told about any precautionary measures. All of this suggests that during the height of the pandemic in the summer, there was little attention paid to precautions to prevent contagion.

Even prior to the outbreak, health screenings were inadequate, consisting only of a temperature and blood pressure check. Despite the necessity of improving these procedures brought about by COVID-19, JPP found that there were different screening and admission practices depending on the prisons. Quarantine times varied from five to 14 days and health check-ups seemed to have been based on an oral history assessment and a self-declaration health form. A prisoner interviewed recalled walking through a “disinfectant chamber” – a device WHO says should never be used.

Prison authorities confirmed that the continued inflow of prisoners made it impossible to separate prisoners, indicating that the duration of quarantine was based on capacity issues rather than guidelines prescribed by scientific evidence. Some prisons, such as Karachi Central Prison and Lahore District Jail, had to transfer inmates to other prisons to make room for isolation cells. Even as symptomatic prisoners were kept in isolation, it does not appear that they were allowed to leave quarantine for fresh air. JPP could not verify if special steps were taken to protect against the increased risk of torture in isolation, which underscores the need to allow unimpeded access to places of detention to independent monitors.

One way to reduce prison decongestion could have been through implementing schemes of early, provisional or temporary release of low-risk offenders, reviewing all cases of pre-trial detention and extending the use of bail for all but the most serious cases. International human rights mechanisms advised this, and when the first cases started being reported in Pakistan, announcements by authorities seemed to indicate that the same recommendations would be swiftly implemented. At least 500 prisoners were released in the province of Sindh and similar directives were issued by the Islamabad High Court. For the first time, there was a national conversation recognizing the dangers of overcrowding in prisons – from the lowest courts to the Prime Minister’s office.

However, a Supreme Court decision put a halt to this countrywide momentum that could have seen a significant reduction of the inmate population. Leveraging a technicality regarding the authority of the lower courts, the Supreme Court’s strong rebuke to the lower courts had a chilling effect on efforts to decongest prisons and even led to the re-arrest of prisoners who had been released in compliance with the directives of the Islamabad and Sindh High Courts.

In its decision, though, the Supreme Court asked prison authorities to prepare lists of at-risk prisoners who could be considered for release. These included women prisoners, older prisoners above the age of 60, juveniles in pre-trial detentions, those who had served 75% of their sentence and those suffering from pre-existing conditions. In fact, five months later, Prime Minister Imran Khan ordered officials to implement a Supreme Court decision to release all women prisoners who were under trial, convicted of minor offences or who had served most of their sentences. At the time of writing, no lists were submitted to the Court and no women prisoners had been prepared for release.

In addition, no efforts were made towards releasing categories of prisoners who were detained in violation of international law, such as Amnesty International Prisoner of Conscience, Junaid Hafeez.

The pandemic also laid bare existing scarcities and systemic issues that characterize Pakistan’s prison infrastructure and create significant barriers to adequate health care. Information about COVID-19 and on Standard Operating Procedures (SOPs) was made available to prisoners and the Punjab Health Department trained medical officers in prisons. This is an encouraging development and must be built upon.

Some of the largest prisons investigated reported having to rely on donations from charities to secure enough PPE for prisoners and prison staff. It appears that PPE availability varied greatly from one prison to the next. Some prisoners alleged having to come to prisons with their own masks while one said he had to purchase it from the prison.

Similarly, the rationale for testing prisoners also varied from prison to prison and Amnesty International is concerned about the lack of transparency in the official reporting of cases in Punjab. Testing figures had to be obtained through a Right to Information (RTI) request after prison authorities abruptly stopped reporting cases once they hit 86 on 26 April 2020. According to the response to the RTI, a total of 16,534 tests were conducted for prisoners in all of Punjab from March to September. These figures were not shared with the public.

In order to protect prisoners who are at particular risk of infection, it is important to take adequate measures to accommodate those who are at greatest risk within the remaining detained populations in ways that reflect that enhanced risk. People at risk include older prisoners and those with pre-existing health conditions, such as cancer, diabetes and heart conditions, among others. Though it appears that in many of the prisons investigated, older prisoners as well as those with pre-existing medical conditions were tested as a priority, no

further precautions seem to have been taken to protect them by, for instance, separating them from the rest of the inmate population.

In March, at the start of the COVID-19 outbreak, prison authorities banned all visits to prisons to prevent transmissions. Family visits were not allowed for three weeks, and eventually this ban was extended. On 7 July 2020, after almost four months, families were allowed to meet the prisoners once every 15 days. Lawyers, however, were still not permitted to visit their clients in prison. This also made it difficult for prisoners to secure bail, negotiate early release or work their cases through the legal system. Interviews with former prisoners and family members point to insufficient measures to support prisoners to ensure continued communication with their loved ones. Even in prisons where additional public telephones were installed they were not enough to meet the overwhelming demand and were often too expensive for prisoners.

Access to food, water and sanitation in prisons is precarious at the best of times. Given the shortcomings of the food available in prisons, prisoners are allowed to seek homecooked food and other essential supplies such as medication from their families. These can be brought to them during visitation. However, the countrywide lockdown and ban on visitation made access to these supplies either completely impossible or very challenging. A clean and consistent supply of water was also found to be an alarming concern for prisoners, with many reporting that they did not have adequate water to drink or wash with.

In light of the report's findings, Amnesty International and JPP call upon the authorities in Pakistan to reduce prison populations as a priority by strongly considering releasing pre-trial detainees, older prisoners who no longer pose a risk to society, prisoners with underlying medical conditions, and to follow through on any orders to implement early releases of women and children in prisons. Amnesty International also calls upon authorities to immediately and unconditionally release all prisoners of conscience.

The police and lower courts must make efforts to systematically reduce prisoner intake and consider the use of non-custodial measures as alternatives to detention. They must also consider deferring the intake of new prisoners in appropriate cases and ensure that pre-trial detention is used as an exception. Provincial governments must also take all necessary measures to ensure that conditions of detention do not violate Pakistan's human rights obligations to protect detainees and uphold their right to health. They must also develop and enact a transparent policy and action plan to respond to ongoing and future outbreaks of infectious diseases. To protect and uphold the right to humane and dignified conditions of detention, any restrictions on the rights of people deprived of their liberty, including visitations, must be necessary and proportionate.

The pandemic exposed the dire straits that Pakistan's prisons find themselves in, beholden to scarcity and defined by overcrowding. The urgency with which these must be addressed is heightened as the country finds itself in the midst of a second wave, with a sharper, even deadlier, rise in cases. Given the lack of transparency that surrounded the response to the first wave, it is difficult to ascertain how a higher number of fatalities were avoided in prisons. However, it should not take the death of prisoners to start taking steps to address the problem of overcrowding in Pakistan's prisons.

2. METHODOLOGY

This report is the outcome of research conducted by Amnesty International and Justice Project Pakistan (JPP), a Lahore-based human rights group that advocates for the rights of Pakistan's most vulnerable prisoners.³ JPP has a significant network of former prisoners, some of whom they have represented, and relationships with prison authorities across the country, as well as over a decade of research recording the experiences of prisoners in the criminal justice and carceral systems of Pakistan.

JPP and Amnesty International jointly determined the research objectives. JPP carried out the field research and Amnesty International consolidated the findings into the report.

At the initial desk research phase, Amnesty International reviewed official reports including from the Ministry of Human Rights, the Federal Ombudsman, the National Commission on Human Rights, the United Nations Office on Drugs and Crime, the Cursor of Development and Education (CODE) Pakistan; court decisions on overcrowding in prisons; and international and national legal frameworks for the protection of the rights of people deprived of their liberty.

Amnesty International and JPP also used open-source documentation to track reported cases of COVID-19 in places of detention and relied on JPP's extensive data on overcrowding to refine the research hypothesis.

JPP carried out field research from 1 August 2020 to 20 September 2020. The field research comprised interviews with relevant stakeholders in three provinces (Punjab, Sindh and Khyber Pakhtunkhwa) as well as on-site investigations in six prison facilities (Lahore District Jail, Peshawar Central Jail, Karachi Central Jail, Hyderabad Central Jail, Rawalpindi Central Jail, Sialkot District Jail).

JPP conducted a total of 22 interviews for this research, including seven interviews with prison authorities from three provinces, four interviews with medical personnel working in prisons, one with an official of the Punjab Health Department, three interviews with current prisoners from three different prisons, and six interviews with newly released prisoners from five prisons. JPP was not allowed to speak to prisoners in confidence and without the presence of prison staff. Newly released prisoners were difficult to locate and were often reluctant to share their experiences due to fear of retaliation from the police, stigma surrounding prisoners and general reluctance to speak about their experience. All but one of the current and newly released prisoners JPP spoke to were men, given the difficulties to access women who have been deprived of their liberty. In addition, Amnesty International conducted an interview with a representative of the Sindh government to develop an accurate picture of the main obstacles faced in curbing the outbreak in the province.

Most interviews were conducted in Urdu, English and Punjabi – which are all commonly spoken in Pakistan. Interviews were then transcribed and translated into English. An interview with a prisoner in Hyderabad Central Jail who had recently recovered from COVID-19 had to be translated in real time by the prison authorities from Sindhi.

The fact that in-prisons interviews were carried out in the presence of prison staff raises concerns about whether prisoners spoke freely about their treatment and their experience in detention. This fear was explicitly acknowledged in an order issued by the Islamabad High Court, where the Court mentioned that “prisoners had stated in their previous applications that they could not access the courts and that they feared being punished by the prison authorities, drawing the attention of this Court to their plight”.⁴ For this reason, Amnesty International and JPP sought interviews with former prisoners who were able to speak more freely about their experiences. In the analysis of the testimonies and for the presentation of the findings, statements of current prisoners and those of former prisoners were systematically compared and whenever possible corroborated with other data available to present as accurate a picture as possible.

JPP faced some access issues, mainly because prison visits were prohibited from March 2020 to mid-August 2020. In some prisons, investigators were not allowed near the cells and were only confined to the administration offices.

³ See Justice Project Pakistan's official website: www.jpp.org.pk

⁴ *Khadim Husain v Secretary, Ministry of Human Rights*, Islamabad High Court judgement, 6 April 2020, para. 2, available with Amnesty International

JPP conducted 11 prison visits from 25 August 2020 to 3 August 2020 to Lahore Camp Jail, Lahore Central Jail, Sialkot District Jail, Hyderabad Central Jail, Peshawar Central Jail, Karachi Central Jail and Rawalpindi Central Jail.

Amnesty International and JPP selected specific prisons by comparing the number of infections being reported and the capacity of the prisons against the overcrowding rates. Through this criterion, Amnesty International and JPP selected prisons where the situation appeared to be the direst and sought to inquire about the conditions in these prisons that seemed to need urgent attention. Prisons in Balochistan could not be visited due to security concerns in the province and extreme restrictions for accessing prisons.

Investigators and lawyers from JPP visited all of the above prisons from August to September and recorded their observations about living conditions, extra facilities installed (if any) and adherence to COVID-19 Standard Operating Procedures. However, they were not given permission to inspect the COVID-19 facilities, such as quarantine rooms and prison cells, where newly admitted prisoners were being kept. As mentioned previously, JPP was also not allowed to speak to current prisoners in confidence.

JPP filed Right to Information (RTI) requests to various government departments to secure official data about prisons, COVID-19 infections, testing and deaths. By 24 September 2020, only the Punjab Department of Health – which was responsible for testing in the province – responded. Relevant information from this response is included in this report.

JPP also used publicly available data collated by the Federal Ombudsman as part of the Supreme Court's directive to reform prisons.

The Pakistani government was given the right of reply, with two weeks to respond.

3. BACKGROUND

“We stand right next to each other, shoulder to shoulder. Even if one of us got infected, all of us would be. We sleep so close to each other. There was this fear that if the disease got inside the prison, we would all be infected.”⁵

A death row prisoner whose sentence was commuted in June 2020

Public health falls under the purview of provincial authorities.⁶ This devolution of powers to the provincial health departments was reflected in every other aspect of Pakistan’s response to the pandemic. Testing, treatment and messaging for the general public is managed and implemented by respective provincial governments. Every province’s health department has their own reporting mechanisms and records of progress. The National Command and Control Centre provides oversight on the national level, but the day-to-day management of the pandemic is in the hands of the provincial governments.

As emphasized in the World Health Organization (WHO) Interim Guidance on Preparedness, prevention and control of COVID-19 in prisons and other places of detention (WHO Interim Guidance on COVID-19),⁷ “people deprived of their liberty, such as people in prisons, are likely to be more vulnerable to various diseases and conditions. The very fact of being deprived of liberty generally implies that people in prisons and other places of detention live in close proximity with one another, which is likely to result in a heightened risk of person-to-person and droplet transmission of pathogens like COVID-19”.⁸

Prison conditions in Pakistan are notoriously unsanitary, overcrowded and disease-ridden. According to the Federal Ombudsman, the national overcrowding rate in prisons is 134%, with significantly higher percentages depending on the prison.⁹ For example, as of June 2020, Malir District Prison is at 205% capacity, Sialkot District Jail is at almost 225%, Karachi Central Jail is at 147% and Mianwali Central Jail is at 176% capacity.¹⁰

Overcrowding in prisons is caused by a number of factors, including police arrest practices and the high proportion of people held in pre-trial detention, following the courts’ reluctance to grant bail and to order alternative non-custodial sentences.

A study carried out by Cursor of Development and Education (CODE), a Pakistani NGO, found that a major cause of overcrowding in prisons is the overuse of arrest and detention by the police.¹¹

⁵ Interview with a death row prisoner whose sentence was commuted, 7 August 2020

⁶ See *Government of Sindh v Dr Nadeem Rizvi* (SCMR 556) (2019)

⁷ See WHO, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance, 15 March 2020, www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1

⁸ See WHO, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance

⁹ 7th Report of Federal Ombudsman submitted to the Supreme Court on jail reforms, published in September 2020

¹⁰ 7th Report of Federal Ombudsman submitted to the Supreme Court on jail reforms, published in September 2020

¹¹ See CODE, Addressing overcrowding in prisons by reducing pre-conviction detention in Pakistan, May 2018, p. 8, <http://codepak.org/wp-content/uploads/2018/05/Addressing-overcrowding-in-prisons-by-reducing-pre-conviction-detention-in-Pakistan.pdf>

Moreover, a significant number of people deprived of their liberty are held for months in pre-trial detention waiting for their trials. In fact, at least 53,385 out of a total of 79,603 prisoners (67%) are currently under trial across Pakistan's prisons.¹² This is despite the fact that Pakistan's Criminal Penal Code allows bail for several offences, including for grave offences such as kidnapping, assault and unintentional murder.¹³ At least since 1995, the Supreme Court has asserted that it "is crystal clear that in bailable offences [bail] is a right and not favour".¹⁴ International human rights law and standards require states to ensure that pre-trial detention is only used as a last resort when there is substantial risk of flight, harm to others or interference with the evidence or investigation that cannot be prevented by other means.¹⁵ Despite these provisions, bail remains an exception and not the norm in Pakistan.

The problem of overcrowding in prisons is compounded by the courts' reluctance to order alternative measures to detention at the sentencing stage such as fines, community service or probation, although these are available for a number of petty offences.¹⁶

As a result, in some prisons, between six to 15 prisoners may occupy a single prison cell built to hold a maximum of three prisoners.¹⁷ Many people interviewed for this report described having to sleep in shifts because there was not enough floor space for all of them to lie down at the same time.¹⁸ In Mandi Bahauddin, a former death row prisoner from the District Jail recalled, "Our cell was five feet wide and eight feet long. There is also a shower. It is very hard to sleep, since there were six other people. One's foot would be touching someone's head".¹⁹

Overcrowding heightens the risk of the spread of communicable diseases, which in turn can strain the frail health infrastructure within the prison system. Although all district and central prisons across Pakistan have hospitals, these facilities lack adequate equipment, human resources and medical supplies.²⁰ Approximately 800 positions for essential medical staff are lying vacant across the country, although filling these positions would be necessary to meet the existing health care requirements of prisoners.²¹

In Punjab, there are only 42 medical officers for 45,699 prisoners.²² In Balochistan, there are nine medical officers for 2,070 prisoners.²³ The prisons' hospitals have an extremely limited number of beds, which means that only the most pressing illnesses get medical attention.²⁴ In Punjab, most prisons have poorly equipped ambulances; around 10% of prisons have no ambulances at all.²⁵ Isolated rooms within prison hospitals across the country are scarce.²⁶

In January 2020, a judicial inquiry commission led by the Ministry of Human Rights found that almost 2,400 prisoners in prisons around the country have pre-existing, chronic and contagious diseases such as hepatitis C, HIV and tuberculosis.²⁷ In addition, there are 2,100 reported prisoners with physical ailments and 600 with mental disabilities.²⁸ These numbers likely under-represent the reality, as many prisoners are likely to go undiagnosed due to the severe dearth of medical staff, resources and general indifference to the health of inmates, as reported by several prisoners who were interviewed for this report.

¹² 7th Report of Federal Ombudsman submitted to the Supreme Court on jail reforms, published in September 2020

¹³ See Section II, Column 5 of the Pakistan Criminal Penal Code, 1860

¹⁴ See *Tariq Bashir v The State* (PLD SC 34) (1995)

¹⁵ See Rules 5 and 6 of UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)

¹⁶ See Section II, Column 5 of the Pakistan Criminal Penal Code, 1860

¹⁷ Interview with a former prisoner who requested anonymity, 13 August 2020

¹⁸ Interview with a former prisoner who requested anonymity, 13 August 2020

¹⁹ Interview with a former prisoner who requested anonymity, 13 August 2020

²⁰ See Prisons reform in Pakistan, Report by the Commission of the Ministry of Human Rights, January 2020, p. 10, www.mohr.gov.pk/SiteImage/Misc/files/PrisonsReforminPakistan.pdf

²¹ See *Raja Muhammad Nadeem v The State*, Supreme Court judgment (2020) para. 11

²² "Health Facilities" on Punjab Prisons official website https://prisons.punjab.gov.pk/health_facilities#:~:text=Hospitalsper cent20havingper cent20allper cent20basicper cent20health.prisonersper cent20insideper cent20theper cent20Jailper cent20Hospital

²³ Prisons reform in Pakistan, Report by the Commission of the Ministry of Human Rights, January 2020, p. 12, <http://www.mohr.gov.pk/SiteImage/Misc/files/PrisonsReforminPakistan.pdf>

²⁴ Prisons reform in Pakistan, Report by the Commission of the Ministry of Human Rights, January 2020, p. 11

²⁵ Prisons reform in Pakistan, Report by the Commission of the Ministry of Human Rights, January 2020, p. 10

²⁶ Prisons reform in Pakistan, Report by the Commission of the Ministry of Human Rights, January 2020, p. 16

²⁷ This was constituted by the Islamabad High Court in Writ Petition No. 4037 of 2019

²⁸ Prisons reform in Pakistan, Report by the Commission of the Ministry of Human Rights, January 2020, p. 9

The clear picture that emerges around the prison system in Pakistan is that it cannot withstand the number of prisoners with its current capacity and resources. The number of prisoners far exceeds the resources that can be offered to assure them a dignified quality of life. The COVID-19 health crisis has magnified these problems and highlighted the need for Pakistan authorities to address systemic issues that continue to jeopardize the lives and safety of the country's prisoners.

INTERNATIONAL STANDARDS TO PROTECT THE RIGHTS OF PEOPLE DEPRIVED OF THEIR LIBERTY

The government of Pakistan has an obligation, under domestic law and international human rights law, to protect the rights of people deprived of their liberty, including during pandemics and public health emergencies.

The right to the highest attainable standard of physical and mental health is enshrined in several international human rights treaties, including preventative, curative and palliative health care. The **Universal Declaration of Human Rights (UDHR)** clearly states in Article 25.1 that “everyone has the right to a standard of living adequate for their health and well-being, including medical care”.²⁹

The **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, ratified by Pakistan in 2008, stipulates the obligation under Article 12 “to respect, protect and fulfill the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including those who are imprisoned or detained”.³⁰

The Committee on Economic, Social and Cultural Rights (CESCR), which is the body tasked with monitoring compliance with the Covenant, has explained that “States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees... to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy”.³¹

Article 12.2 (c) also underscores the right to prevention, treatment and control of diseases.³² It requires the “establishment of prevention and education programmes for behaviour-related health... and the promotion of social determinants of good health, such as environmental safety, education, economic development and gender equity. The right to treatment includes the creation of a system of urgent medical care in cases of accidents, epidemics and similar health hazards, and the provision of disaster relief and humanitarian assistance in emergency situations. The control of diseases refers to States’ individual and joint efforts to, *inter alia*, make available relevant technologies, using and improving epidemiological surveillance and data collection on a disaggregated basis, the implementation or enhancement of immunization programmes and other strategies of infectious disease control.”³³ These can be applied to how prison conditions can affect the ability of inmates to take preventative measures around COVID-19, and the additional risks that those in detention face during the pandemic.

CESCR, under General Comment No. 14, spells out the duties and responsibilities of states and non-state actors to uphold the right to health.

Under CESCR General Comment No. 25 (2020) on Science and Economic, Social and Cultural Rights (covered by Article 15 of the ICESCR), and Article 27 of the UDHR, state parties should direct their own resources and co-ordinate actions of others to ensure that scientific progress happens and that its applications and benefits

²⁹ See Article 25.1 of the UDHR, www.un.org/en/universal-declaration-human-rights/

³⁰ See Article 12 of the ICESCR, www.ohchr.org/en/professionalinterest/pages/cescr.aspx

³¹ See General Comment No. 14 (2000) from 22nd session of the CESCR, 25 April-12 May 2000, para. 34, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1AVC1NkPsgUedPIF1vfPMJ2c7ey6PAz2qaojTzDJmCOypercent2B9tpercent2BsAtGDNzdEqA6SuP2r0wpercent2F6sVBGTpvTSCbiOr4XVFTqhQY65auTFbQRPWNDxL>

³² See General Comment No. 14 (2000) from 22nd session of the CESCR, 25 April-12 May 2000, para. 16

³³ See General Comment No. 14 (2000) from 22nd session of the CESCR, 25 April-12 May 2000, para. 16

are distributed and are available, especially to vulnerable and marginalized groups.³⁴ Paragraph 47 stipulates that “[S]tates should use the maximum of their available resources to overcome hurdles that any person may face to benefit from new technologies or other forms of applications of scientific advancements. This is particularly relevant for disadvantaged and marginalized groups”.³⁵ This can be applicable for COVID-19 tests, treatments and, eventually, vaccines that are available to prisoners.

In April 2020, the CESCR also highlighted that “if a pandemic develops, sharing the best scientific knowledge and its applications, especially in the medical field, becomes crucial to mitigate the impact of the disease, and to expedite the discovery of effective treatments and vaccines”.³⁶

In line with Article 10 of the **International Covenant on Civil and Political Rights (ICCPR)**, which Pakistan is also a party to, all persons deprived of their liberty shall be treated with humanity and with respect.³⁷ Thus, prisoners should enjoy the same standards of health being provided to the general public and if those cannot be provided for in detention centres, alternative mechanisms should be set up by the state.

As set out in the **United Nations Standard Minimum Rules for the Treatment of Prisoners** (known as the “Nelson Mandela Rules”), prisoners’ health care is a state responsibility and prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge, without discrimination on the grounds of their legal status.³⁸ Moreover, all accommodation provided for the use of prisoners, and in particular all sleeping accommodation, shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.³⁹

The authorities are under an obligation to provide prisoners with water and toilet articles as are necessary for keeping their health and cleanliness.⁴⁰ Prisons should also have in place “a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation”.⁴¹

The **Office of the United Nations High Commissioner for Human Rights (OHCHR)** has specifically warned states against the dangers of overcrowding. In the 2017 guidelines on **Non-discrimination and the protection of persons with increased vulnerability in the administration of justice, in particular in situations of deprivation of liberty and with regard to the causes and effects of overincarceration and overcrowding**,⁴² the OHCHR recommends that states are fully cognizant of the increased risks for prisoners due to overcrowding.

As the pandemic was looming, the OHCHR urged states to specifically consider reducing prison populations by implementing schemes of early, provisional or temporary release of low-risk offenders, reviewing all cases of pre-trial detention, extending the use of bail for all but the most serious cases, as well as reviewing and reducing the use of immigration detention and closed refugee camps.⁴³

The **WHO’s** Interim guidance note **Preparedness, prevention and control of COVID-19 in prisons and other places of detention** stated that for risk assessment, screening should be done at the point of entry in prisons, and that health care and public health teams should undertake a risk assessment of all people entering the

³⁴ See General Comment No. 25 (2020) from the CESCR, 30 April 2020, para. 16, <https://undocs.org/E/C.12/GC/25>

³⁵ See General Comment No. 25 (2020) from the CESCR, 30 April 2020, para. 47

³⁶ CESCR, General Comment No. 25, on Article 15.1 (b), April 2020, para. 82

³⁷ See Article 10 of ICCPR, www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

³⁸ See United Nations Standard Minimum Rules for the Treatment of Prisoners, 2016, p. 8, www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

³⁹ United Nations Standard Minimum Rules for the Treatment of Prisoners, 2016, p. 5

⁴⁰ United Nations Standard Minimum Rules for the Treatment of Prisoners, 2016, p. 6

⁴¹ United Nations Standard Minimum Rules for the Treatment of Prisoners, 2016, p. 8

⁴² See Non-discrimination and the protection of persons with increased vulnerability in the administration of justice, in particular in situations of deprivation of liberty and with regard to the causes and effects of overincarceration and overcrowding, 21 August 2017, <https://digitallibrary.un.org/record/1655111?ln=en>

⁴³ See COVID-19: Measures needed to protect people deprived of liberty, UN torture prevention body says, 30 March 2020, [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25756&LangID=E:per](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25756&LangID=E:percent20https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf)

prison.⁴⁴ Visits should be restricted to necessary personnel and health officials and a detailed registry should be available of people visiting prisons. If a case of COVID-19 has been transferred out of a prison, the room previously occupied should be thoroughly disinfected. Proper quarantine sections should be in place for prisoners while they recover if they return to prison.

Regarding prison management, the WHO Interim Guidance states that prisoners should be provided with all the information available on COVID-19 along with the reasoning behind any restrictions placed on them. In case of an outbreak, prison staff should be informed of the containment strategy beforehand, including isolation, sending prisoners to a medical facility and contacting health care teams using PPE. Prison staff members also need to be given urgent training on the transmission route, hand hygiene practice, use of PPE, disinfection, social distancing, identification of suspect cases and proper case reporting as a way to combat the spread of COVID-19. Food could be distributed by staff in rooms/cells; however, access to open air should be maintained and there should be routine disinfection of the rooms and surrounding areas.

The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has also advised states, in their guidance titled **Prevention of torture to states parties and national preventive mechanisms relating to the coronavirus pandemic**, to urgently identify prisoners at risk, after which efforts should be made to reduce prison populations by reviewing cases of pre-trial prisoners while also ensuring that sufficient supplies are still available for prisoners.⁴⁵

In addition to their legal human rights obligations, states have agreed to prioritize health and control communicable diseases through key global political agreements, such as the Sustainable Development Goals (SDGs). While 13 out of 17 SDGs address health-related issues, SDG3 specifically calls upon states to end the epidemics of communicable diseases and “reduce by one third premature mortality from non-communicable diseases through prevention and treatment” by 2030.⁴⁶ In line with a right to health framework, SDG3 also highlights the importance of “access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all”.⁴⁷

⁴⁴ See WHO, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance, 15 March 2020, www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1

⁴⁵ The Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the COVID-19 pandemic, 25 March 2020, www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf

⁴⁶ See Goal 3 of the Sustainable Development Goals: Ensure healthy lives and promote well-being at all ages <https://sdgs.un.org/goals/goal3>

⁴⁷ Goal 3. Target 3.8: Achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all [poster]. Manila: WHO Regional Office for the Western Pacific <https://apps.who.int/iris/handle/10665/208286>

4. CONTINUED INTAKE OF PRISONERS WITH MINIMAL PRECAUTIONS TO PREVENT TRANSMISSION

“Separating prisoners is not possible with the space available. About 100 prisoners are brought into the jail every day.”

Additional Inspector General Khalid Abbas, Prisons in Khyber Pakhtunkhwa⁴⁸

NO ATTEMPT TO LIMIT ARRESTS AND DETENTION DURING THE OUTBREAK

A study carried out by Cursor of Development and Education (CODE), a Pakistani NGO, found that a major cause of overcrowding in prisons is the overuse of arrest and detention in criminal settings.⁴⁹ Police officers are influenced by performance evaluation targets that require a minimum number of arrests per month and are worried that their already strained budgets will face further cuts if the number of arrests falls.⁵⁰

While recognizing that a range of offences warrant arrest and detention and that COVID-19 should not provide cover to those who commit crimes, the overuse of incarceration for minor offences compounds overcrowding in detention facilities and as such is particularly problematic in the context of a pandemic. In light of this, international human rights mechanisms have urged law enforcement officials to the greatest extent possible to avoid taking a person into police custody and consider other options instead.⁵¹

After COVID-19 infections began to be reported from prisons across the provinces of Punjab, Sindh, Khyber Pakhtunkhwa and Quetta, provincial authorities indicated to Amnesty International that they had made informal requests to judicial and police authorities to reduce prisoner intake to limit the spread of the virus.⁵² However, no official steps were announced to reduce prisoner intake or even the pace of arrests. On 20 March 2020, the Islamabad High Court ordered a number of measures to reduce the inmate population, including that no unnecessary arrests be made after recognizing that “prisons, which are overcrowded, have high turnover and intolerable living conditions, could potentially become epicenters for outbreak of the deadly virus”.⁵³

During the outbreak, the police arrested several individuals simply for exercising their rights to freedom of expression and peaceful assembly. On 6 April 2020, 53 doctors and other health workers protesting the lack of resources, personal protective equipment (PPE) and security from the government in Quetta were baton-

⁴⁸ Interview with Additional Inspector General of Prisons, Peshawar, Khalid Abbas, 26 August 2020

⁴⁹ See CODE, *Addressing overcrowding in prisons by reducing pre-conviction detention in Pakistan*, May 2018, p. 8 <http://codepak.org/wp-content/uploads/2018/05/Addressing-overcrowding-in-prisons-by-reducing-pre-conviction-detention-in-Pakistan.pdf>

⁵⁰ CODE, *Addressing overcrowding in prisons by reducing pre-conviction detention in Pakistan*, May 2018, p. 74,

⁵¹ See UNODC, WHO, UNAIDS and OHCHR joint statement on COVID-19 in prisons and other closed settings, 13 May, 2020, www.who.int/news/item/13-05-2020-unodc-who-unaid-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings

⁵² Interview with a provincial government spokesperson who requested anonymity, 19 August 2020

⁵³ *The State v District Administration* (Criminal Misc. No.214/2020), Islamabad High Court judgment (2020) para. 5, available with Amnesty International

charged, arrested and then detained in police stations.⁵⁴ In June 2020, at least 24 students who were protesting the lack of internet access to attend their classes virtually in Quetta were also detained and kept in prisons for almost 24 hours.⁵⁵ Transgender rights activist Julie Khan was also arrested on what her lawyer has called “fabricated charges” and was kept in Rawalpindi Central Jail – a prison with a known COVID-19 outbreak – for eight days.⁵⁶

LACK OF ADEQUATE PREVENTATIVE MEASURES DURING ARREST AND DETENTION IN POLICE STATIONS

The conduct of the Pakistani police, when it comes to their exercise of powers to arrest and to detain individuals, has become particularly problematic amid the COVID-19 crisis.

As established in the UN Code of Conduct for Law Enforcement Officials, police bear the responsibility for the good health of persons in their custody.⁵⁷ However, more often than not, police stations and prisons are not equipped to keep persons in custody with the required protective measures to avoid the spreading of COVID-19, including enough space to be able to effectively implement physical distancing rules, the availability of medical staff to identify persons displaying symptoms and in need of quarantine, and the lack of PPE for officials working in a custody location.

Inmates interviewed by JPP highlighted the lack of preventive and protective measures during arrest and initial detention in police stations. Zaid,* who had been incarcerated for 12 days in Lahore District Jail, told JPP that none of the police officers who arrested him were wearing a face mask and he was kept in a cell immediately upon arrest at the police station with five other people, none of whom were provided with PPE.⁵⁸ Umar,* who was held at Manga Mandi police station in August, said he was not told about any precautionary measures to take and was put in a cell measuring 10 by 12 feet for four days with 10 other detainees, without adequate ventilation.⁵⁹ Mahrang Baloch, a student leader, tweeted a video of her arrest on 24 June 2020 in which no physical distancing is being observed and none of the police officers seem to be wearing any PPE as they detained her.⁶⁰ These testimonies suggest that, at the height of the pandemic, no emphasis was placed on precautions to prevent contagion during police operations and in police stations.

INCONSISTENT HEALTH SCREENINGS FOR PRISON ADMISSIONS

On 1 April 2020, the Supreme Court called upon prison authorities to ensure that “the new entrants are screened before they are allowed to enter the prison premises and if they are found to have a symptom typical of COVID-19, they should be appropriately quarantined and not put in jail directly”.⁶¹ Despite the importance of this ruling, the Court did not make specific recommendations regarding how these health screening of new inmates ought to be conducted.

⁵⁴ See “Pakistan arrests doctors protesting over lack of virus safety equipment”, *The Guardian*, 6 April 2020, www.theguardian.com/world/2020/apr/06/pakistan-arrests-doctors-protest-lack-coronavirus-safety-equipment

⁵⁵ See “Protesting students arrested for demanding internet facilities in Quetta”, *The Express Tribune*, 25 June 2020 <https://tribune.com.pk/story/2249922/protesting-students-arrested-demanding-internet-facilities-quetta>

⁵⁶ A copy of the First Information Report and police case filed against her is available with Amnesty International, 16 July 2020

⁵⁷ See Article 6 of the Code of Conduct, www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx

⁵⁸ Interview with a former prisoner whose name has been changed to protect his identity, 6 August 2020

⁵⁹ Interview with a former prisoner whose name has been changed to protect his identity, 6 August 2020

⁶⁰ See video evidence tweeted by Mahrang Baloch, 24 June 2020, <https://twitter.com/MahrangBaloch5/status/1275760458612572160?s=20>

⁶¹ Supreme Court order of Criminal Petition No. 299 of 2020, 1 April 2020, para. 10 – available here: www.supremecourt.gov.pk/downloads_judgements/crl.p._299_2020_01042020.pdf

Prior to the COVID-19 outbreak, health screenings for newly admitted prisoners only involved checking temperature and blood pressure at the prison itself, if at all.⁶² An oral medical history was sometimes asked for and recorded; at other times it was not included as part of the prison admissions procedure.⁶³ No X-rays for communicable respiratory illnesses, such as tuberculosis, were routinely taken. Only recently, some prisons have started conducting tests for hepatitis C and HIV, but it is unclear how extensive this practice has been.⁶⁴

After COVID-19 cases began to be reported in April 2020, specific procedures were put in place to screen potential COVID-19 carriers. However, interviews conducted by JPP point to different COVID-19 screening and admission practices depending on the prison, without any apparent reason, which bring into question how well these procedures were followed. For instance, at Peshawar Central Jail, new admissions were reportedly sent to Lady Reading Hospital (a public health facility) for a health check-up based on an assessment form similar to the copy produced below.⁶⁵ At Karachi Central Jail, the procedure was reportedly more comprehensive. According to the Inspector General of Prisons in Sindh, all new prisoners were screened, tested and quarantined for 14 days, regardless of whether they had symptoms.⁶⁶ Authorities stated that their screening process was based on temperature checks, an oral history and an assessment of symptoms.⁶⁷ JPP could not confirm this.

The WHO Interim Guidance on COVID-19 in prisons specifies that “upon admission to prisons and other places of detention, all individuals should be screened for fever and lower respiratory tract symptoms; particular attention should be paid to persons with contagious diseases”.⁶⁸ However, it does not appear that the recommended screening practices were followed in all the prisons visited by JPP.

In one case, the reported screening procedure raises serious concerns. In Lahore, new prisoners were screened at Mayo Hospital, one of the city’s largest public health facilities. As part of his screening process, Zaid* described being asked to walking through a “disinfectant chamber”, a device that uses toxic gases that can lead to nausea, skin and eye irritation, and vomiting.⁶⁹ As WHO points out, “spraying of individuals with disinfectants (such as in a tunnel, cabinet or chamber) is not recommended under any circumstances”.⁷⁰ Zaid’s temperature was not taken and the health worker only asked him if he had any symptoms (persistent coughing, difficulty breathing, flu- and pneumonia-like symptoms) after he went through the disinfectant chamber.⁷¹ He was asked to fill out an assessment form, a copy of which is produced below

QUARANTINE AND MEDICAL ISOLATION

Based on discussions with prison authorities interviewed for this investigation, all new detainees were put in quarantine regardless of whether they had symptoms or not, or had been exposed to COVID-19.⁷² This is a practice that predates the pandemic and is done as a precautionary measure against contagious diseases

⁶² Interview with a death penalty lawyer who requested anonymity, 10 October 2020

⁶³ Interview with former prisoner whose name has been changed to protect his identity, 11 October 2020; corroborated by a death penalty lawyer who requested anonymity, 10 October 2020, and general practices observed by JPP over the years

⁶⁴ Interview with a death penalty lawyer who requested anonymity, 10 October 2020

⁶⁵ Interview with Additional Inspector General of Prisons, Khyber Pakhtunkhwa, Khalid Abbas, 26 August 2020

⁶⁶ Interview with Inspector General of Prisons, Sindh, Qazi Nazir Ahmad, 26 August 2020

⁶⁷ Interview with Inspector General of Prisons, Sindh, Qazi Nazir Ahmad, 26 August 2020

⁶⁸ See WHO, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance, 15 March 2020, p. 8, www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1

⁶⁹ See WHO, Q&A Coronavirus disease (COVID-19): Cleaning and disinfecting surfaces in non-health care settings, 16 May 2020, www.who.int/news-room/q-a-detail/q-a-considerations-for-the-cleaning-and-disinfection-of-environmental-surfaces-in-the-context-of-covid-19-in-non-health-care-settings

⁷⁰ See WHO, Q&A Coronavirus disease (COVID-19): Cleaning and disinfecting surfaces in non-health care settings, 16 May 2020, www.who.int/news-room/q-a-detail/q-a-considerations-for-the-cleaning-and-disinfection-of-environmental-surfaces-in-the-context-of-covid-19-in-non-health-care-settings

⁷¹ Interview with a former prisoner whose name has been changed to protect his identity, 6 August 2020

⁷² Interview with Additional Inspector General of Prisons, Khyber Pakhtunkhwa, Khalid Abbas, 26 August 2020; Meeting with Deputy Inspector General of Prisons, Rawalpindi, Shaukat Feroze; Meeting with Superintendent of Rawalpindi Central Jail; Visit to Rawalpindi Central Jail, 25 August 2020, and interview with Inspector General of Prisons, Sindh, Qazi Nazir Ahmad, 26 August 2020

being brought into the prison by new detainees.⁷³ In Lahore Central Jail, Karachi Central Jail, Rawalpindi Central Jail and Sialkot District Jail, symptomatic prisoners among them were further separated.⁷⁴

The duration of the quarantine for new prisoners seems to have varied from prison to prison, depending on capacity issues rather than guidelines prescribed by scientific evidence. The Additional Inspector General of Peshawar Central Jail seemingly confirmed this when he admitted to JPP investigators that the inflow of prisoners made it impossible to separate prisoners and that they had to reduce the time new prisoners were spending in quarantine upon their arrival in prison.⁷⁵ For example, in the Peshawar Central Jail, new prisoners were quarantined for 5 to 7 days⁷⁶ whereas at Karachi Central Jail, the Inspector General of Prisons in Sindh told JPP that all new prisoners were quarantined for 14 days.⁷⁷ Prison authorities in Rawalpindi Central Jail told JPP that all new detainees were quarantined for 14 days in “quarantine rooms” and only those who were symptomatic were further separated.⁷⁸ However, it does not appear that they were allowed to leave quarantine for fresh air, or to change their space. Food was served to them three times a day by prison staff.

The WHO Interim Guidance on COVID-19 in prisons recommends that if new prisoners have symptoms compatible with COVID-19, or if they have a prior COVID-19 diagnosis and are still symptomatic, they should be put into medical isolation until there can be further medical evaluation and testing.⁷⁹ According to interviews with prison authorities in Punjab and Sindh, prisoners who tested positive for COVID-19 were separated from the general prison population and kept in isolation until they recovered and tested negative. In Rawalpindi Central Jail and Lahore District Jail, where they had corona wards set up, positive prisoners were sent there.⁸⁰ In Karachi Central Jail, prisoners who tested positive were isolated in cells emptied through prisoner transfers.⁸¹

Isolation in prisons, particularly solitary confinement, increases the risk of torture and other ill-treatment. In such cases, it is essential that prison authorities take particular steps to ensure that the risk of torture and other ill-treatment is mitigated and that adequate safeguards are in place. The Advice of the Subcommittee on Prevention of torture to states parties and national preventive mechanisms relating to the COVID-19 pandemic specifically calls on states to prevent the use of medical isolation taking the form of disciplinary solitary confinement. Instead, the Subcommittee on Prevention of Torture has urged states to ensure that medical isolation in prisons is done on the basis of an independent medical evaluation, proportionate, limited in time and subject to procedural safeguards.⁸²

Moreover, as stated by the OHCHR, monitoring of places of deprivation of liberty by independent bodies such as National Preventive Mechanisms remains a fundamental safeguard against torture and other ill-treatment. Therefore, it is essential that the authorities allow unimpeded access to places of detention to independent monitors, including civil society organizations.⁸³

Prison authorities told JPP that doctors and prison staff would visit those in medical isolation twice a day to monitor their condition.⁸⁴ JPP was not able to independently verify this.

⁷³ Rule 800 of the 1978 Pakistan Prison Rules

⁷⁴ Follow-up phone interviews with Deputy Superintendent Zaheer Virk, Lahore Central Jail, and Deputy Superintendent Ammar from Sialkot District Jail, 10 November 2020

⁷⁵ Interview with Additional Inspector General of Prisons, Khyber Pakhtunkhwa, Khalid Abbas, 26 August 2020

⁷⁶ Interview with Additional Inspector General of Prisons, Khyber Pakhtunkhwa, Khalid Abbas, 26 August 2020

⁷⁷ Interview with Inspector General of Prisons, Sindh, Qazi Nazir Ahmad, 26 August 2020

⁷⁸ Interview with Deputy Inspector General of Prisons, Rawalpindi, Shaukat Feroze, 25 August 2020

⁷⁹ See WHO, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance, 15 March 2020, p. 8, www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1

⁸⁰ Follow-up phone interviews with Deputy Superintendent Zaheer Virk, Lahore Central Jail, 10 November 2020

⁸¹ Interview with Inspector General of Prisons, Sindh, Qazi Nazir Ahmad, 26 August 2020

⁸² The Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the COVID-19 pandemic, 25 March 2020, www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf

⁸³ See OHCHR, COVID-19 exacerbates the risk of ill-treatment and torture worldwide – UN experts, 26 June 2020, www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25995&LangID=E

⁸⁴ Follow-up phone interviews with Deputy Superintendent Zaheer Virk, Lahore Central Jail, and Deputy Superintendent Ammar from Sialkot District Jail, 10 November 2020, and interview with Inspector General of Prisons, Sindh, Qazi Nazir Ahmad, 26 August 2020

5. FAILURE TO ADDRESS OVERCROWDING IN PRISONS THROUGH STRUCTURED RELEASE PROGRAMMES AND INDIVIDUAL BAIL APPLICATIONS

“Coronavirus will not go away by emptying the jails.”

Supreme Court judge, Justice Qazi Amin⁸⁵

As described by the NGO Penal Reform International, prison overcrowding presents a high risk for any outbreaks of communicable diseases.⁸⁶ It can prove dangerous for prison management, cause irreversible health consequences and mire prison populations in a high-risk environment.⁸⁷ Early on in the pandemic, several UN human rights mechanisms recognized that people deprived of their liberty are particularly exposed to the effects of COVID-19.⁸⁸ In light of this, the OHCHR called on states to reduce the number of people in detention.⁸⁹ In particular, the UN Subcommittee on Prevention of Torture recommended all states to consider reducing prison populations by implementing schemes of early, provisional or temporary release of low-risk offenders, reviewing all cases of pre-trial detention, and extending the use of bail for all but the most serious cases.⁹⁰ The UN Office on Drugs and Crime (UNODC) also called for the reduction of new admissions and the accelerated release of selected categories of prisoners.⁹¹ In a joint communication, more than 30 UN Special Procedures mandate holders similarly called for urgent measures to reduce the number of people in detention, and to put in place particular measures to protect older people in prisons.⁹²

When COVID-19 cases began to be reported in the country, announcements by prison authorities to the press seemed to indicate that steps were being taken almost immediately to help control the spread in prisons by reducing prison populations. According to media reports, at least 20,000 prisoners across Punjab were scheduled to be released,⁹³ a number that would have seen the prison population in the province almost halved.⁹⁴ Similarly, the Sindh government prepared a list of 512 prisoners to be released,⁹⁵ including individuals who had been detained for petty crimes, people who had served out the majority of their sentences,

⁸⁵ See “No one can consider themselves as a king and issue orders”, Geo News, 1 April 2020, www.geo.tv/latest/280312-no-one-can-consider-themselves-as-a-king-and-issue-orders-cjp-ahmad

⁸⁶ See Penal Reform International, *Coronavirus: Healthcare and human rights of people in prison*, 16 March 2020, <https://cdn.penalreform.org/wp-content/uploads/2020/03/FINAL-Briefing-Coronavirus.pdf>

⁸⁷ See Penal Reform International, *Coronavirus: Healthcare and human rights of people in prison*, 16 March 2020, <https://cdn.penalreform.org/wp-content/uploads/2020/03/FINAL-Briefing-Coronavirus.pdf>
⁸⁸ See OHCHR, UN Human Rights Treaty Bodies call for human rights approach in fighting COVID-19, 24 March 2020, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25742&LangID=E See also CESCR, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, UN Doc. E/C.12/2020/1 <https://undocs.org/E/C.12/2020/1>

⁸⁹ See OHCHR, Urgent action needed to prevent COVID-19 “rampaging through places of detention” – Bachelet, 25 March 2020, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E

⁹⁰ See OHCHR, COVID-19: Measures needed to protect people deprived of liberty, UN torture prevention body says, 30 March 2020, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25756&LangID=E;per cent20https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf

⁹¹ See Position paper: COVID-19 preparedness and responses in prisons, 31 March 2020, www.unodc.org/documents/hiv-aids/publications/UNODC_position_paper_COVID-19_in_prisons_FINAL.pdf

⁹² See OHCHR, “Unacceptable” – UN expert urges better protection of older persons facing the highest risk of the COVID-19 pandemic, 27 March 2020, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25748&LangID=E

⁹³ See “Punjab to let go 20,000 prisoners over coronavirus scare: Sources”, Geo News, 27 March 2020, www.geo.tv/latest/279491-punjab-to-let-go-20000-prisoners-over-virus-scare-sources

⁹⁴ See “Move to release 4,000 convicts from Sindh prisons to stop spread of COVID-19”, *Dawn*, 30 March 2020 www.dawn.com/news/1544810

⁹⁵ Supreme Court order of Criminal Petition No. 299 of 2020, 1 April 2020, para. 9 – available here: www.supremecourt.gov.pk/downloads_judgements/crl.p._299_2020_01042020.pdf

older prisoners and some women and children.⁹⁶ The Chief Minister of Sindh, Syed Murad Ali Shah, approved a summary to release “thousands of prisoners” temporarily for at least three months after securing guarantees from them.⁹⁷ Dr Shireen Mazari, the federal Minister of Human Rights, tweeted that she had requested the Attorney General of Pakistan to submit her legal brief, underscoring the need to release at-risk prisoners, to the Supreme Court.⁹⁸ The First Secretary for Human Rights, Rabiya Javeri Agha, even published an op-ed stating “Pakistan’s existing legal framework allows executive and judicial authorities the discretion to carry out exceptional measures such as immediate release, commutation and suspension of sentences, conditional early releases, and granting bail to under-trial prisoners”.⁹⁹

However, a Supreme Court decision put a halt to this countrywide momentum towards a set of measures that could have led to a significant reduction of the inmate population. The Supreme Court’s strong rebuke to the lower courts’ decisions to release prisoners on bail in light of the COVID-19 pandemic, and stigmatizing language used by the Chief Justice,¹⁰⁰ also shifted the narrative to make it appear as if decongesting prisons would lead to a rise in crime, rather than as a protective measure for at-risk prisoners.

Although the Supreme Court in its decision also requested prisons authorities to prepare lists of at-risk prisoners who could be eligible for release, prison authorities failed to submit such lists and no follow-up measures were taken. Compounding the problem even further, a lockdown imposed from April to June 2020 – followed by court holidays – also forced courts to severely limit operations. As fewer bail hearings were taking place, the period between April and August 2020 actually saw a rise in overall prison populations.¹⁰¹

SUPREME COURT DECISION RESCINDING BAIL ORDERS GRANTED ON ACCOUNT OF COVID-19 OUTBREAK

In March 2020, the highest tribunals in the Punjab and Sindh provinces issued decisions to back up some of the steps proposed by provincial authorities to decongest prisons. In particular, the Islamabad High Court ordered that prisoners awaiting trial who were incarcerated for non-prohibitory offences should be released on bail.¹⁰² According to earlier Supreme Court decisions, those are offences for which the granting of bail has to be considered favorably as a rule unless releasing the accused would jeopardize public safety.¹⁰³ The Islamabad High Court also specified that those whose bail was refused previously should be considered for release as the outbreak of coronavirus constituted fresh grounds.¹⁰⁴ Similarly, the Chief Justice of the Sindh High Court authorized an order made by a Judicial Magistrate to release 519 prisoners on bail.¹⁰⁵ The Chief

⁹⁶ Supreme Court order of Criminal Petition No. 299 of 2020, 1 April 2020, para. 9

⁹⁷ See “Move to release 4,000 convicts from Sindh prisons to stop spread of COVID-19”, *Dawn*, 30 March 2020, www.dawn.com/news/1544810

⁹⁸ See “Shireen Mazari stresses ‘on urgent’ need to release sick under-trial prisoners”, *Geo News*, 3 April 2020, www.geo.tv/latest/280753-shireen-mazari-stresses-on-urgent-need-to-release-sick-under-trial-prisoners

⁹⁹ See “Disease in detention”, *The News*, 31 March 2020, www.thenews.com.pk/print/637026-disease-in-detention Agha

¹⁰⁰ During the Supreme Court proceedings, the Chief Justice of Pakistan, Gulzar Ahmed, appeared to have been strictly opposed to the release of prisoners on bail, issuing strong statements such as, “under what law can suspects be released? The police are already busy with the coronavirus outbreak. How can we let criminals out on the roads as well?” He alleged that robberies had already begun to rise in Karachi, soon after 500 prisoners were released. See “No release of prisoners without due process of law, says chief justice”, *Geo News*, 1 April 2020, www.geo.tv/latest/280312-no-one-can-consider-themselves-as-a-king-and-issue-orders-cjp-ahmad

¹⁰¹ 7th report of the Federal Ombudsman, submitted to the Supreme Court, in September 2020

¹⁰² See for a reference to the decision of the Supreme Court on 1 April 2020, para. 6 and in Supreme Court order 7 April 2020, para. 3 making a reference to a verbal direction reflecting in a press release (26 March 2020), issued by the Registrar of the High Court of Sindh

¹⁰³ See *Zafar Iqbal v Muhammad Anwar and others* (2009 SCMR 1488), *Subhan Khan v The State* (2002 SCMR 1797) and *Tariq Bashir and 5 others* (PLD 1995 SC 34)

¹⁰⁴ *The State v District Administration* (Criminal Misc. No. 214/2020), Islamabad High Court judgment (2020) para. 7, available with Amnesty International

¹⁰⁵ See for a reference to the decision of the Supreme Court on 1 April 2020, para. 6 and in Supreme Court order 7 April 2020, para. 3 making a reference to a verbal direction reflected in a press release (26 March 2020), issued by the Registrar of the High Court of Sindh

Justice of the Lahore High Court issued an order to prioritize hearing bail petitions of under-trial prisoners and those who had been charged with minor and non-prohibitory offences.¹⁰⁶

As 500 prisoners were released on bail in Sindh, the Supreme Court intervened on 30 March 2020 and issued an interim order preventing these releases. On 7 April 2020, the Supreme Court ruled that a *suo motu* notice (a decision made by a judge at their own discretion, without the prompting of another party) could only be issued by the highest court in the country and ordered that prisoners released in pursuance to the directions issued by the Islamabad High Court as well as the Sindh High Court be taken back into custody unless they fell within at-risk categories identified by the Attorney General for Pakistan.¹⁰⁷

The Inspector General of Prisons in Sindh highlighted the direct effect this decision had on prison authorities' ability to take measures to prevent contagion in prisons: "in the beginning [the situation] was easy to handle because almost 600 prisoners were released by the magistrates and Sessions judges on the direction of the Sindh High Court which made space in the prisons. It was easy to keep prisoners separate and maintain social distancing. But when Supreme Court ordered to cancel all the bails, 90 per cent of the [released] prisoners came back."¹⁰⁸

EARLY, TEMPORARY AND PROVISIONAL RELEASE OF SPECIFIC CATEGORIES OF PRISONERS

The Supreme Court, in its 1 April 2020 order, directed the Inspectors General of Prisons all over Pakistan to submit reports regarding the prison population and prepare a separate list of prisoners who could be eligible for release.¹⁰⁹ These included women prisoners and older prisoners above the age of 60 years, in addition to other categories of prisoners identified by the Attorney General of Pakistan including juveniles in pre-trial detention, those having served 75% of their sentence or who have been sentenced to less than a year in prison as well as prisoners suffering from ailments or physical or mental disability.¹¹⁰ It appears that the Supreme Court only considered the possibility of early release but did not consider other mechanisms to alleviate the prison population, such as temporary or provisional release of these or other categories of prisoners.

HOW OLD IS AN "OLDER" PRISONER IN PAKISTAN?

Each province defines a "senior citizen" as someone who is at the age of **60 years or above**.

What counts as an "older prisoner", on the other hand, varies depending on province and gender. For example, the Sindh Prisons and Correction Services Act 2019 defines women as "older" if they are over the age of 60, and men if they are over 65. This categorization is replicated by a report of the Law and Justice Commission of Pakistan. In Khyber Pakhtunkhwa, Rules 162 and 672 of the provincial prison manual consider all prisoners over the age of 60 to be older.

The release of these categories of prisoners would have been consistent with recommendations issued by several UN human rights bodies and the WHO in the context of the COVID-19 outbreak. In particular, on 25 March 2020, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment published advice to states titled Prevention of torture to states parties and national preventive mechanisms relating to the coronavirus pandemic, insisting that groups at risk needed to be urgently identified, after which efforts should be made to reduce prison populations, and reviewing cases of pre-trial prisoners.¹¹¹

¹⁰⁶ See "LHC prioritizes bail pleas of convicts, under-trial prisoners", *Dawn*, [27 March 2020](https://www.dawn.com/news/1544013), www.dawn.com/news/1544013

¹⁰⁷ Supreme Court order of Criminal Petition No. 299 of 2020, 1 April 2020, para. 7 – available here: www.supremecourt.gov.pk/downloads_judgements/crl.p.299.2020.01042020.pdf

¹⁰⁸ Interview with Inspector General of Prisons, Sindh, Qazi Nazir Ahmad, 26 August 2020

¹⁰⁹ Supreme Court order of Criminal Petition No. 299 of 2020, 1 April 2020, para. 8 – available here: www.supremecourt.gov.pk/downloads_judgements/crl.p.299.2020.01042020.pdf

¹¹⁰ Supreme Court order of Criminal Petition No. 299 of 2020, 1 April 2020, para. 7

¹¹¹ See Prevention of torture to states parties and national preventive mechanisms relating to the coronavirus pandemic, Section II, 25 March 2020

On 26 August 2020, the Ministry of Human Rights submitted a report detailing the plight of women prisoners in Pakistan. On 2 September 2020, Prime Minister Imran Khan ordered officials to implement the Supreme Court decision to release all girl and women prisoners who are under trial, convicted of minor offences or those who have served most of their prison terms to reduce prison overcrowding, specifically with the aim of containing the spread of COVID-19.¹¹² However, at the time of writing, no list of female prisoners was prepared for release and the government did not issue any special notification to help move the process along. According to the 6th Report of the Federal Ombudsman, there were 1,208 women prisoners across prisons in April 2020.¹¹³ This number rose to 1,244 by September 2020.¹¹⁴

WHO IS AN “OLDER PERSON” UNDER INTERNATIONAL LAW?

There is no global definition in international law of what constitutes an “older person”. In the African and Inter-American systems, it is defined as age 60 or older, although the Inter-American definition includes some flexibility. National law varies significantly around the world, often linked to an age at which pension plans or certain government assistance begins. The UN Refugee Agency (UNHCR) defines an “older person” as age 60 or older, but in country operations has at times taken a context-specific approach. The OHCHR promotes a context-specific approach, recognizing that “age is a social construct based on custom, practice, and the social role a person plays in his or her community”.

From a rights perspective, an arbitrary minimum age cut-off is misguided, as it risks failing to respond based on individual rights and needs. “Older age” should be considered, as OHCHR does, according to each context, and, in addition, take into account individuals’ self-identification.

There are also at least 1,500 prisoners who are considered “older” across Pakistan. Amnesty International and JPP could not obtain information regarding the number of older prisoners released, if any. However, they are aware of the case of a 101-year-old prisoner who had a visual disability in Gujrat District Jail, who appealed for his release under Rule 146 of the Pakistan Prisons Rules in June 2020. At the time of writing this report, his lawyers have received no response from prison authorities.¹¹⁵ There were at least 136 positive cases of COVID-19 in that prison.¹¹⁶ JPP learnt later that he died on 1 August 2020.

Despite legal avenues available for releasing certain categories of prisoners at risk, including those with comorbidities, and what appeared to be a political consensus to move in this direction, the strong rebuke issued by the Supreme Court seems to have chilled any attempts to release prisoners who were facing increased risks due to COVID-19.

Additionally, no efforts were made towards releasing categories of prisoners that are

detained in violation of international law. These include prisoners of conscience, that is, persons detained solely for the peaceful exercise of their human rights such as freedom of expression, peaceful assembly, association or other rights and who should not be in prison in the first place. As of now, Junaid Hafeez, an Amnesty International Prisoner of Conscience who is on death row for a blasphemy charge, has been kept in solitary confinement for the last six years in Multan Central Prison.¹¹⁷ There were at least 60 cases of COVID-19 in that prison.¹¹⁸

Although women and minors were identified as categories of prisoners who could be eligible for release, no specific attention was paid to pregnant women and girls as well as those who are in detention with their dependent children. As per the report by the Commission constituted by Islamabad High Court, there are 83 mothers with 90 children in various prisons of Punjab.¹¹⁹ In Khyber Pakhtunkhwa, there are 37 mothers with 50 children.¹²⁰ Women with children and pregnant women should be considered for priority release in the wake of COVID-19.

¹¹² See “PM Imran directs authorities to release prisoners in line with SC order”, *Dawn*, 2 September 2020, www.dawn.com/news/1577558

¹¹³ 6th Report of Federal Ombudsman submitted to the Supreme Court on jail reforms, published in April 2020

¹¹⁴ 7th Report of Federal Ombudsman submitted to the Supreme Court on jail reforms, published in September 2020

¹¹⁵ See “Sick 101-year-old prisoner denied relief by Pakistani legal justice system”, *Business Recorder*, 23 July 2020, www.brecorder.com/news/40007189/sick-101-year-old-prisoner-denied-relief-by-pakistani-legal-justice-system 0

¹¹⁶ As confirmed by RTI request returned by the Punjab Health Department on 21 September 2020

¹¹⁷ See Amnesty International, *Authorities must immediately and unconditionally release Junaid Hafeez* (Press release, 25 September 2020), www.amnesty.org/en/latest/news/2019/09/pakistan-authorities-immediately-unconditionally-release-junaid-hafeez/

¹¹⁸ Response to JPP’s RTI request on 17 September 2020

¹¹⁹ See Prisons reform in Pakistan, Report by the Commission of the Ministry of Human Rights, January 2020, p. 28, www.mohr.gov.pk/SiteImage/Misc/files/PrisonsReforminPakistan.pdf

¹²⁰ See Prisons reform in Pakistan, Report by the Commission of the Ministry of Human Rights, January 2020, p. 28

POSTPONEMENT OF NON-ESSENTIAL COURT HEARINGS RESULTING IN AN INCREASE OF PRE-TRIAL DETAINEES

The COVID-19 outbreak and measures taken by the Government to contain the spread of the virus impeded the normal functioning of the judiciary for several consecutive months. This led to the postponement of court hearings, including bail hearings, and compounded prisons' overcrowding.

On 24 March 2020, the court registrars announced that courts would be closed and that only urgent cases would be heard until 7 April 2020. Bail hearings were still permitted to take place although the reduced number of judges led to the postponement of many of them.¹²¹ This measure was extended through another government notification on 18 June 2020.¹²² The limitation on operations was further exacerbated by the annual "summer vacations" for courts in Pakistan that started on 22 June and ended on 5 September 2020. The nearly six-month long courts' closure resulted in lengthier periods of pre-trial detention for a significant number of detainees.

The administration of Peshawar Central Jail called the suspension of court operations during that period a "great obstacle in the attempt to curb COVID-19", since they continued to receive "hundreds of prisoners at a time"¹²³ – a number that overwhelms the capacity of the prison to hold 2,370 inmates. Officials from Sialkot District Jail also confirmed to JPP that no one was released during the months the courts were not functional.¹²⁴ The authorities from Rawalpindi said that they had at least 1,000 additional prisoners in their care during the COVID-19 outbreak, as there were no new releases ordered.¹²⁵

The postponement of court hearings, coupled with the failure to implement a policy to release certain categories of prisoners, led to an actual increase in the prison population of Pakistan during the worst months of the COVID-19 crisis. In April 2020, at a time when COVID-19 cases began to rise in the country, official data indicated that the national prison population was 73,242.¹²⁶ However, according to the latest report of the Federal Ombudsman, published in September 2020, this number stands at 79,603 representing an 8.7% increase.¹²⁷

	UNDER-TRIAL PRISONERS	CONVICTED
PUNJAB	25,058	16,165
SINDH	9,711	4,887
KHYBER PAKHTUNKHWA	7,778	3,016
BALUCHISTAN	1,087	733

6th Report of Federal Ombudsman submitted to the Supreme Court on jail reforms, published in April 2020

¹²¹ See in this respect notice issued by the Lahore High Court registrar on 27 March 2020, available with Amnesty International. Similar notices were issued throughout the country

¹²² See in this respect notice issued by the Lahore High Court registrar on 27 March 2020, available with Amnesty International. Similar notices were issued throughout the country

¹²³ Interview with Peshawar Central Jail Superintendent, Baitullah Mohmand, 26 August 2020

¹²⁴ Interview with Deputy Superintendent Sialkot District Jail, Ammar, 3 September 2020

¹²⁵ Interview with Deputy Inspector General of Prisons, Rawalpindi, Shaukat Feroze, 25 August 2020

¹²⁶ 6th Report of Federal Ombudsman submitted to the Supreme Court on jail reforms, published in April 2020, p. 3

¹²⁷ 7th Report of Federal Ombudsman submitted to the Supreme Court on jail reforms, published in September 2020, p. 4

	UNDER-TRIAL PRISONERS	CONVICTED
PUNJAB	30,711	14,412
SINDH	12,337	4,985
KHYBER PAKHTUNKHWA	8,995	2,896
BALUCHISTAN	1,342	734

7th Report of Federal Ombudsman submitted to the Supreme Court on jail reforms, published in September 2020

The number of pre-trial detainees increased by 22.5% in Punjab; by 27% in Sindh; by 15.6% in Khyber Pakhtunkhwa; and by 23.4% in Balochistan.

6. BARRIERS TO ACCESS TO HEALTH

“A prisoner who is held in custody in an overcrowded prison, having lack of sanitation, [is] tantamount to cruel and inhuman treatment for which the State ought to be accountable because it amounts to a breach of its fiduciary duty of care.”

Chief Justice Athar Minallah, Islamabad High Court¹²⁸

Wasim Malik, * 42, was detained for seven months in pre-trial detention in Lahore Central Jail and released in August 2020.¹²⁹ He told JPP that when news of COVID-19 reached the prison, and when prisoners learnt that it was highly contagious and that it was best prevented through physical distancing, vigorous personal hygiene and the use of face masks, there was a “huge commotion” because prisoners instantly recognized the difficulty of taking any of these preventive steps.¹³⁰ Their anger was compounded by the ban on family visits, which many prisoners rely on to get their essentials – like medicines and food items such as sugar, milk and tea – let alone for their general wellbeing.¹³¹

After the Supreme Court’s decision to halt prisoner releases on account of COVID-19, the prison administration was forced to develop makeshift solutions. These included setting up hospitals on prison premises, making room for prison staff to live on site, and establishing isolation rooms in already overflowing prisons. Moreover, the provincial governments failed to allocate additional budget to the prison department, which made it more difficult for prison authorities to implement these changes. According to a high-ranking prison official interviewed by JPP, no additional budget was released, and they were largely dependent on donations from private citizens and charities to tackle the pandemic in Punjab.¹³² Another official from Hyderabad Central Prison told JPP that they were allocated an additional Rs 600,000 (about US\$3,612) but this had not been released as of 11 September 2020.¹³³

The COVID-19 outbreak laid bare existing scarcities and systemic issues that characterize Pakistan’s prison infrastructure, underscoring the need for long-term solutions.

1. COVID-19 DIAGNOSTICS AND PREVENTION MEASURES

Health facilities, goods and services have to be accessible to everyone. States must ensure that no person faces barriers in accessing their right to health. This includes physical accessibility, and access to information about health and health services.¹³⁴

¹²⁸ *Khadim Husain v Secretary, Ministry of Human Rights*, Islamabad High Court judgement, 6 April 2020, available with Amnesty International

¹²⁹ Interview with a former prisoner whose name has been changed to protect identity, 1 September 2020

¹³⁰ Interview with a former prisoner whose name has been changed to protect identity, 1 September 2020

¹³¹ Interview with a former prisoner whose name has been changed to protect identity, 1 September 2020

¹³² Interview with a prison official who requested anonymity for revealing this information

¹³³ Interview with Hyderabad Central Jail Medical Officer, Dr Adeel Memon, 27 August 2020

¹³⁴ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health

INFORMATION

In mid-March 2020, all deputy inspector generals of prisons met with the Home Secretary to be apprised of the necessary precautions that must be taken in prisons.¹³⁵ It appears that following this meeting, information about COVID-19 was disseminated in the prisons that form part of this study. In the prisons they visited, JPP researchers saw material that explained some of the appropriate preventative steps for COVID-19, including the need to keep physical distancing and regular hygiene.

JPP was told by the Additional Inspector General of Prisons in Khyber Pakhtunkhwa that health officials from Lady Reading Hospital and Police Services Hospital visited the Peshawar Central Jail to let inmates know the steps they could take to prevent COVID-19.¹³⁶ In Sialkot District Jail, banners containing information about preventative steps were displayed.¹³⁷ The Deputy Inspector General and Superintendent of Rawalpindi Central Jail both said that special teams from the Punjab Health Department were dispatched to train medical officers in prisons on COVID-19 Standard Operating Procedures.¹³⁸ According to them, preventative steps were announced daily, in addition to distributing brochures and other signage. This was confirmed by a former prisoner and JPP's own observations during prison visits.¹³⁹

PERSONAL PROTECTIVE EQUIPMENT (PPE)

When COVID-19 cases first began to be reported, Pakistan was facing an acute shortage of PPE. Doctors were photographed wearing plastic bags over their heads as they treated COVID-19 patients.¹⁴⁰ Of all the prisons included in this report, Karachi Central Jail, Lahore District Jail and Lahore Central Jail were initially relying on donations from charities to secure enough PPE for prisoners and prison staff.¹⁴¹ According to interviews of inmates, as well as prison officials, the availability of PPE varied greatly from one prison to the next.

Former prisoners alleged that in Lahore District Jail, they had to come to the prison with their own face mask.¹⁴² In Mandi Bahauddin District Jail, if they did not have their own mask, the only other option was to purchase one single-use mask that was sold for PKR 50 (US\$0.30).¹⁴³ The same is sold in pharmacies for PKR 10 or US\$0.06.¹⁴⁴ Health facilities, goods and services must be affordable for everybody regardless of their income level. Authorities at Hyderabad Central Jail said they needed at least 10,000 surgical masks for the prison population and alluded to the difficulty of acquiring them.¹⁴⁵ They did not indicate if they had adequate information regarding how to properly wear a mask and what precautions to take to keep it non-contagious. Given that these masks must be discarded after two to three uses, it is not likely that the prisons kept up a steady stream of supplies.

In other prisons, authorities reported an adequate number and quality of PPE they were able to provide. In Khyber Pakhtunkhwa and Punjab, prison authorities said that double-layered, reusable and washable cotton masks were provided to detainees and staff. However, there were limited N-95 masks available in the former and almost none in the latter.¹⁴⁶ In Karachi Central Jail, the Inspector General claimed that prison staff were given full PPE kits and face shields.¹⁴⁷ The sampling team that was sent to Lahore District Jail to service all prisoners in Punjab also expressed its satisfaction about being provided new PPE for each shift, including hazmat suits, gloves, masks, caps and sanitizers.¹⁴⁸ It does not appear, though, that prisoners were provided the same means to protect themselves.

¹³⁵ Interview with Deputy Inspector General of Prisons, Rawalpindi, Shaukat Feroze, 25 August 2020

¹³⁶ Interview with Additional Inspector General of Prisons, Khyber Pakhtunkhwa, Khalid Abbas, 26 August 2020

¹³⁷ Interview with Sialkot District Jail Medical Officer Dr Noman, 3 September 2020

¹³⁸ Interview with Deputy Inspector General of Prisons, Rawalpindi, Shaukat Feroze, 25 August 2020

¹³⁹ Interview with Nasir whose name has been changed to protect his identity, 7 August 2020

¹⁴⁰ See "Doctor in KP protests shortage of masks by wearing plastic bag over his head", Geo News, 26 March 2020, www.geo.tv/latest/279350-doctor-in-kp-protests-shortage-of-masks-by-wearing-a-plastic-bag-over-his-head

¹⁴¹ Interview with Inspector General of Prisons, Sindh, Qazi Nazir Ahmad, 26 August 2020

¹⁴² Interview with Nasir whose name has been changed to protect his identity, 7 August 2020

¹⁴³ Interview with Nasir whose name has been changed to protect his identity, 7 August 2020

¹⁴⁴ Interviews with multiple former prisoners on 6, 7 and 19 August 2020

¹⁴⁵ Interview with Inspector General of Prisons, Sindh, Qazi Nazir Ahmad, 26 August 2020

¹⁴⁶ Interviews with Deputy Inspector General of Prisons, Punjab Malik Mubbashar, 13 August 2020, and Additional Inspector General, Khyber Pakhtunkhwa, Khalid Abbas, 26 August 2020

¹⁴⁷ Interviews with Deputy Inspector General of Prisons, Punjab Malik Mubbashar, 13 August 2020, and Additional Inspector General, Khyber Pakhtunkhwa, Khalid Abbas, 26 August 2020

¹⁴⁸ Interview with Dr Cheema, 9 September 2020

TESTING

Testing for COVID-19 should be done as part of the monitoring of an outbreak, and to detect one in its earliest stages.¹⁴⁹ The rationale for testing prisoners varied from one prison to the next. The Inspector General of Prisons in Sindh told JPP that in Karachi Central Jail, all prisoners were tested.¹⁵⁰ Data provided to Amnesty International by the government of Sindh from April to August indicates that 4,607 tests were conducted for a prison population of 3,527 prisoners, of which 1,097 tested positive.¹⁵¹ According to this data, if all prisoners were tested, most would have been tested only once in a span of four months.

According to interviews with the testing team dispatched to Lahore Camp Jail (meant to facilitate all of Punjab), which was stationed there from 28 March to 9 May 2020, testing was based on whoever showed symptoms.¹⁵² If a prisoner tested positive, then further tests would be conducted for all those who came in contact with them – which some authorities referred to as “smart sampling”.¹⁵³

In Lahore District Jail, Lahore Camp Jail and Sialkot District Jail, prison authorities told JPP that testing for older prisoners, prisoners with pre-existing conditions and those exhibiting COVID-19 symptoms (fever, dry cough, body aches) were prioritized.¹⁵⁴ While the rationale for such a testing policy is one way to manage COVID-19, it does not enable authorities to detect asymptomatic cases. This is potentially problematic for two reasons. First, a number of asymptomatic carriers may not have been detected, allowing for further contamination amongst the inmate population. Second, as a result, the reported numbers of COVID-19 cases may have been underestimated in official reporting. For prison authorities who wanted to widen the scope of testing to enable the testing of asymptomatic cases, the selection of inmates for testing proved difficult. Authorities from Rawalpindi Central Jail lamented that it “was difficult to identify [who to test] because of asymptomatic cases”.¹⁵⁵

Amnesty International was also concerned about the lack of transparency in the official reporting of cases in Punjab. According to the response to JPP’s Right to Information (RTI) application, a total of 16,534 tests were conducted for prisoners in all of Punjab from March to September 2020;¹⁵⁶ 1,345 tests came back positive.¹⁵⁷ These 1,345 prisoners were re-tested of which 514 were positive – which the Punjab Health Department referred to as “confirmed patients”.¹⁵⁸ However, none of these figures from Punjab were shared with the public, nor were they revealed during any of the interviews JPP conducted, and were only made available in response to the RTI request to a different government department. As stated previously, Punjab prisons had stopped reporting figures beyond 86 infected prisoners as of 26 April 2020.¹⁵⁹ Authorities in the prisons visited in Punjab told JPP that no more than a few dozen prisoners were infected at each prison at any given time and that they all recovered without any deaths.¹⁶⁰ Dr Cheema, part of the testing personnel stationed at Lahore Camp Jail, said the same and told JPP that “no prisoner had died because of COVID-19”.¹⁶¹ However, data from the health department in Punjab appears to contradict this and says that at least two prisoners died of COVID-19.¹⁶² Amnesty International was unable to confirm whether these deaths took place after the interviews were conducted.

¹⁴⁹ See WHO, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance, 15 March 2020, p. 9, www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1

¹⁵⁰ Interview with Inspector General of Prisons, Sindh, Qaz Nazir Ahmad, 26 August 2020

¹⁵¹ Data provided to Amnesty International by the Government of Sindh on 19 August 2020

¹⁵² Interview with Mohammed Ikram, a member of the testing team at Lahore Camp Jail, 1 September 2020

¹⁵³ Interview with Deputy Inspector General of Prisons, Rawalpindi, Shaukat Feroze, 25 August 2020

¹⁵⁴ Follow-up phone interviews with Deputy Superintendent Zaheer Virk, Lahore Central Jail, and Deputy Superintendent Ammar from Sialkot District Jail, 10 November 2020

¹⁵⁵ Follow-up phone interviews with Deputy Superintendent Zaheer Virk, Lahore Central Jail, and Deputy Superintendent Ammar from Sialkot District Jail, 10 November 2020

¹⁵⁶ Response to JPP’s RTI request on 17 September 2020

¹⁵⁷ Response to JPP’s RTI request on 17 September 2020

¹⁵⁸ Response to JPP’s RTI request on 17 September 2020

¹⁵⁹ See Amnesty International, *Authorities must be transparent about COVID-19 cases in prison* (Press release, 7 May 2020), www.amnesty.org/en/latest/news/2020/05/pakistan-authorities-must-be-transparent-about-covid-19-cases-in-prisons/

¹⁶⁰ According to interviews with prison authorities in Sialkot, Lahore and Rawalpindi on 3 September 2020 11 and 13 August 2020 respectively

¹⁶¹ Interview with Dr Cheema, 9 September 2020

¹⁶² Response to JPP’s RTI request on 17 September 2020

The lack of transparency and inaccuracy of reporting is also illustrated by the fact that during the interviews, prison authorities from Punjab asserted that none of the women prisoners contracted COVID-19 in the province. This was again proven false, and according to the response to JPP's RTI request, at least 15 of them tested positive in the province.¹⁶³ However, the response did not specify from which prisons the cases came.

SEPARATION OF OLDER PRISONERS

The prisons that form part of this study were all either severely overcrowded or close to reaching their maximum capacity. Karachi Central Prison has a capacity of 2,400 prisoners yet holds 3,527. Peshawar Central Prison has a capacity of 2,370 prisoners but as of June 2020 held 2,276 prisoners.

PRISON	CAPACITY	POPULATION	OVERCROWDING RATE
KARACHI CENTRAL PRISON	2,400	3,527	146.95%
HYDERABAD CENTRAL PRISON	1,527	2,161	141.51%
RAWALPINDI CENTRAL PRISON	2,174	4,779	219.82%
PESHAWAR CENTRAL PRISON	2,370	2,276	96.03%
LAHORE DISTRICT JAIL	2,000	1,944	97.2%
SIALKOT DISTRICT JAIL	722	1,617	223.96%

6th Report of Federal Ombudsman submitted to the Supreme Court on jail reforms, published in April 2020

The Islamabad High Court, in an order dated 14 March 2020, highlighted the “shockingly abysmal conditions in the prisons” detailed in the Prison Commission report published on 17 January 2020.¹⁶⁴ Most former prisoners interviewed by JPP have testimonies of prison cells so overcrowded that they did not even have enough room to all sleep at the same time.

At the peak of the outbreak, former prisoners told JPP that barracks designed for 20 people were holding 75 prisoners at a time.¹⁶⁵ Former prisoner Wasim* told JPP that in Lahore Central Jail, every morning all the prisoners would have to stand shoulder to shoulder for “count”.¹⁶⁶ They were not asked to keep physical distance.

When asked about precautionary measures to prevent the spread of the virus, prison authorities from Lahore and Karachi told JPP that social distancing was enforced in prisons by transferring prisoners to other low-density prisons to make room.¹⁶⁷ Lahore District Jail made room in the prison by transferring out 500 prisoners to the less congested Lodhran District Jail and Hafizabad District Jail.¹⁶⁸ Karachi Central Jail also freed up space by transferring 320 prisoners to less crowded prisons in the country.¹⁶⁹

¹⁶³ Response to JPP's RTI request on 17 September 2020

¹⁶⁴ *Khadim Husain v Secretary, Ministry of Human Rights*, Islamabad High Court judgement, 6 April 2020, para. 2, available with Amnesty International

¹⁶⁵ Interviews with two former prisoners from the same jail, 1 September 2020

¹⁶⁶ Interview with Wasim* whose name has been changed to protect his identity, 1 September 2020

¹⁶⁷ Interviews with prison authorities in Lahore and Karachi

¹⁶⁸ Interview with Deputy Inspector General of Prisons, Punjab Malik Mubashar, 13 August 2020

¹⁶⁹ Interview with Inspector General of Prisons, Sindh, Qaz Nazir Ahmad, 26 August 2020

The Superintendent of Rawalpindi Central Jail, on the other hand, told JPP that physical distancing was not necessary as prisoners that had contracted COVID-19 were kept separately, and the prison applied “smart sampling” to test the rest of the population.¹⁷⁰

In order to protect prisoners who are at particular risk of falling severely ill if they contract the virus, it is important to take adequate measures to accommodate those who are at the greatest risk within the remaining detained populations in ways that reflect that enhanced risk, whilst fully respecting their rights within the detention setting.¹⁷¹ People at risk include older prisoners and those with pre-existing health conditions, such as cancer, diabetes, heart conditions, among others.¹⁷² Though it appears that in many of the prisons investigated, older prisoners as well as those with pre-existing medical conditions were tested as a priority, no further precautions seem to have been taken to protect them by, for instance, separating them from the rest of the inmate population.¹⁷³

The prisons chief of Punjab said that “older prisoners were our sole focus” but was unable to provide details about any steps to confirm this assertion.¹⁷⁴ Overcrowding in most prisons would have rendered separation of different categories of prisoners very challenging. In fact, even legally mandated separation such as that of under-trial prisoners and convicted prisoners, juveniles and women, and those convicted for civil or criminal offences, is not followed in practice.¹⁷⁵

2. VISITATION POLICY

On 14 March 2020, at the beginning of the COVID-19 outbreak, prison authorities banned all visits to prisons to prevent transmissions within prisons. Family visits were not allowed for three weeks, and eventually this ban was extended. On 7 July 2020, after almost four months, families were allowed to meet the prisoners once every 15 days. Lawyers, however, were still not permitted to visit their clients in prison. This also made it difficult for prisoners to secure bail, negotiate early release, or work their cases through the legal system.

While suspending visitation may in some situations be necessary and proportionate, this should be done as a last resort given the impact that such measures can have on the mental wellbeing of prisoners. As advised by the WHO, other less constraining preventative measures should be explored first including non-contact visitation, such as “phone and Skype calls”.¹⁷⁶ It does not appear that such measures were considered, and much less implemented. Additionally, the suspension of visitations does not seem to have taken into consideration the specific COVID-19 situation of each province; instead, a blanket ban on visitations was imposed for all prisons in Pakistan for the same duration. In this respect, it may not have been a proportionate and adequate response for all prisons.

Interviews conducted by JPP point to insufficient measures to support prisoners and ensure continued communication with the outside world. Many prisoners, prevented from seeing their loved ones for months, were at increased risk of suffering from mental health issues. Authorities said a mental health counsellor was arranged for prisoners in Rawalpindi Central Jail when they observed a surge in mental health issues, particularly depression, in prison as a result of the more intensive isolation.¹⁷⁷ In Peshawar Central Jail, which had three psychiatrists (two women, one man) on staff, the administration observed that prisoners were more

¹⁷⁰ Interview with Deputy Inspector General of Prisons, Rawalpindi, Shaukat Feroze, 25 August 2020

¹⁷¹ See Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic’, Section II, 25 March 2020

¹⁷² See Centers for Disease Control and Prevention, Evidence used to update the list of underlying medical conditions that increase a person’s risk of severe illness from COVID-19, 6 October 2020, www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/evidence-table.html

¹⁷³ Interview with Deputy Inspector General of Prisons, Punjab, Malik Mubashar, 13 August 2020, and follow-up phone interviews with Deputy Superintendent Zaheer Virk, Lahore Central Jail, and Deputy Superintendent Ammar from Sialkot District Jail, 10 November 2020

¹⁷⁴ Interview with Deputy Inspector General of Prisons, Punjab, Malik Mubashar, 13 August 2020 and follow-up phone interviews with Deputy Superintendent Zaheer Virk, Lahore Central Jail, and Deputy Superintendent Ammar from Sialkot District Jail, 10 November 2020

¹⁷⁵ *Khadim Husain v Secretary, Ministry of Human Rights*, Islamabad High Court judgement, 6 April 2020, para. 9, available with Amnesty International

¹⁷⁶ See WHO, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance, 15 March 2020, p. 9, www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1

¹⁷⁷ Interview with Deputy Inspector General of Prisons, Rawalpindi, Shaukat Feroze, 25 August 2020

listless and depressed.¹⁷⁸ However, access to counselling and psychiatric support appears to have varied from one prison to the next. Wasim* told JPP that despite repeated requests to the prison officials in Lahore Central Jail, he was never given access to a psychologist.¹⁷⁹

In response to the ban on visitations, some prisons installed more Public Call Offices (PCOs) with phones so that inmates could speak to their loved ones more frequently. However, many former prisoners said that these did not help as they would only be able to speak for about 5 to 10 minutes because there were insufficient booths for the number of inmates and they were only accessible for limited hours.¹⁸⁰ They also had to pay for it. Zahid* said that he was allowed to use the phone once every four days and that a 15-minute call would cost him Rs. 200 (US\$1.26).¹⁸¹ Wasim* said that the PCOs were at least a kilometre away from his cell, and that there were only 20 booths, for which at any given time at least 70 prisoners were waiting to use.¹⁸² More worryingly still, he said, was that no one kept a safe distance and none of the mouthpieces were disinfected after use.¹⁸³

Once visits resumed, measures to prevent transmission into the prison were inconsistent across the prisons investigated for this report. JPP's own observations during visits to various prisons found that temperature checks, hand washing and physical distancing were inconsistently followed. For example, during a visit to Lahore District Jail on 20 August 2020,¹⁸⁴ the research team found that no instructions were provided to visitors about disinfecting their hands before going inside the prison. There was no room to keep physical distance in the waiting shed. Closer to the administration offices, the protocols were more strictly adhered to, where staff were seen wearing face masks and limiting the number of people.¹⁸⁵ In Peshawar Central Jail, visitors were asked to sanitize their hands and had their temperature checked before they were allowed entry into the prison and most of the staff were noticed wearing face masks.¹⁸⁶ In Karachi Central Jail too, visitors' adherence to the instructions to disinfect and maintain physical distance was properly monitored.¹⁸⁷

3. ACCESS TO FOOD, WATER AND SANITATION

COVID-19-related restrictions impacted prisoners' access to food across prisons in Pakistan, which remains precarious in even the best of times. Given the shortcomings of the food available in prisons, prisoners are allowed to seek homecooked food and other essential supplies such as medication from their families, who can bring them during visitation.

Under Article 25 of the Universal Declaration of Human Rights, everyone is entitled to a standard of living adequate for their wellbeing, including food.¹⁸⁸ Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) mirrors this and (2a) also stipulates the right to be free from hunger.¹⁸⁹ The Mandela Rules, particularly Rules 22 and 35, also outline the manner with which the right to food for prisoners must not be infringed. The right to food is also enshrined in the 1973 Pakistan Constitution under Article 38.¹⁹⁰ According to Rule 503 (i) of the 1978 Pakistan Prisons Manual, it is the duty of the Inspector General to "take all such measures as may be necessary to ensure that every prisoner is at all times so supplied with food and drink as to maintain him in good physical health and vigor".¹⁹¹

¹⁷⁸ Interview with Additional Inspector General of Prisons, Khyber Pakhtunkhwa, Khalid Abbas, 26 August 2020

¹⁷⁹ Interview with former prisoner Wasim whose name has been changed to protect his identity, 1 September 2020

¹⁸⁰ Interview with former prisoner Zahid whose name has been changed to protect his identity, 6 September 2020

¹⁸¹ Interview with former prisoner Zahid whose name has been changed to protect identity, 6 September 2020

¹⁸² Interview with former prisoner Wasim whose name has been changed to protect his identity, 1 September 2020

¹⁸³ Interview with former prisoner Zahid whose name has been changed to protect identity, 6 September 2020

¹⁸⁴ Observations recorded by JPP during their visit to Lahore District Jail, 20 August 2020

¹⁸⁵ Observations recorded by JPP during their visit to Lahore District Jail, 20 August 2020

¹⁸⁶ Observations recorded by JPP during their visit to Peshawar Central Jail, 26 August 2020

¹⁸⁷ Observations recorded by JPP during their visit to Karachi Central Jail, 26 August 2020

¹⁸⁸ The UDHR, 1948 www.un.org/en/universal-declaration-human-rights/

¹⁸⁹ See Article 11 of ICESCR

¹⁹⁰ See Article 38 of the 1973 Constitution of Pakistan: "The State shall provide basic necessities of life, such as food, clothing, housing, education and medical relief."

¹⁹¹ 1978 Pakistan Prisons Manual

However, prisoners in Pakistan are often malnourished and suffer severe health consequences as a result.¹⁹² The Deputy Inspector General of Prisons of Rawalpindi lamented that the provision of food for over 50,000 prisoners in the province was very difficult to do under their current budget.¹⁹³

Inmates interviewed in several prisons reported that the COVID-19 outbreak had made access to these food supplies even more challenging. Given that many families were unable to come to the prison during the lockdown, this supply was cut off for several prisoners. As a result, they were forced to purchase food items from the prison commissary. A family member of a prisoner with a mental disability, currently detained at a prison in Punjab, told JPP on condition of anonymity for fear of reprisal on their loved one, that the prison canteen inflated their prices substantially during May 2020.¹⁹⁴ Two potatoes cost Rs. 100 (US\$0.60) – well above the market price and completely beyond the reach of most prisoners.¹⁹⁵ Additionally, many inmates rely on their families to bring essential supplies with them including more nutritious or diverse food as well as necessary medication. However, the lockdown created additional access issues for prisoners.

The right to clean drinking water is protected by Article 11 of the ICESCR,¹⁹⁶ and must be upheld as per Rules 18, 22 (2) and 42 of the Mandela Rules as well as Rule 504 (a) of the 1978 Pakistan Prisons Rules.¹⁹⁷ In addition, Rule 637 of the Pakistan Prisons Rules also calls for pitchers containing clean drinking water to be present in each cell. However, the water available to prisons is often of poor quality.¹⁹⁸

According to interim guidance issued by the OHCHR and the WHO through the Inter-Agency Standing Committee, titled COVID-19: Focus on persons deprived of their liberty,¹⁹⁹ persons deprived of their liberty are more vulnerable as the spread of the virus can expand rapidly due to the usually high concentration of prisoners in confined spaces and to the restricted access to hygiene and health care in some contexts.²⁰⁰

Prisoners who were interviewed for this investigation from prisons all across Pakistan complained about access to clean water. Zahid,* who was imprisoned at Lahore District Jail, said that the same water they used to bathe was what they were given to drink,²⁰¹ even if tap water in Pakistan is not suitable for drinking. Wasim* also confirmed this, and added that the water filters were barely in working condition.²⁰² Another prisoner, Nasir,* who was in Gujranwala Prison temporarily, said that they were given the same supply of water for drinking, cleaning and washing dishes and clothes.²⁰³ During his 10 years at Mandi Bahauddin Prison, he said he never once saw the water filter being cleaned.²⁰⁴

JPP investigators were told by prison authorities that additional water basins for visitors to wash their hands had been installed at the visitation area in Rawalpindi Central Jail.²⁰⁵ However, it was a part of the prison they were not allowed to go and see for themselves.

¹⁹² See CODE, *Addressing overcrowding in prisons by reducing pre-conviction detention in Pakistan*, May 2018, p. 61, <http://codepak.org/wp-content/uploads/2018/05/Addressing-overcrowding-in-prisons-by-reducing-pre-conviction-detention-in-Pakistan.pdf>

¹⁹³ Interview with Deputy Inspector General of Prisons, Rawalpindi, Shaukat Feroze, 25 August 2020

¹⁹⁴ Interview with family member, requesting anonymity, 20 September 2020

¹⁹⁵ Interview with family member, requesting anonymity, 20 September 2020

¹⁹⁶ See Article 11 of International Covenant on Economic, Social and Cultural Rights: *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*

¹⁹⁷ See 1978 Pakistan Prisons Rules

¹⁹⁸ See CODE, *Addressing overcrowding in prisons by reducing pre-conviction detention in Pakistan*, May 2018, p. 53, <http://codepak.org/wp-content/uploads/2018/05/Addressing-overcrowding-in-prisons-by-reducing-pre-conviction-detention-in-Pakistan.pdf>3

¹⁹⁹ See interim guidance issued by the United Nations Office of the High Commissioner for Human Rights (OHCHR)¹⁹⁹ and the World Health Organization through the Inter-Agency Standing Committee (IASC), titled “COVID-19: Focus on Persons Deprived Of Their Liberty”,

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25756&LangID=E;>

<https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf> 25 March 2020

²⁰⁰ See OHCHR, COVID-19: Measures needed to protect people deprived of liberty, UN torture prevention body says, 30 March 2020, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25756&LangID=E;percent20https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf

²⁰¹ Interview with a former prisoner whose name has been changed to protect identity, 6 August 2020

²⁰² Interview with a former prisoner whose name has been changed to protect identity, 6 August 2020

²⁰³ Interview with Nasir whose name has been changed to protect his identity, 7 August 2020

²⁰⁴ Interview with Nasir whose name has been changed to protect his identity, 7 August 2020

²⁰⁵ Interview with Deputy Inspector General of Prisons, Rawalpindi, Shaukat Feroze, 25 August 2020

As stated by Rule 381 of the 1978 Pakistan Prisons Rules, detainees are generally responsible for keeping their cells clean under normal circumstances.²⁰⁶ However, Rule 763 of the Prisons Rules also specifies that “the wards or cells occupied by prisoners suffering from infectious or contagious diseases, shall be whitewashed and disinfected as often as may be directed by the Medical Officer”.²⁰⁷ Such sanitary precautions would be equally necessary in the context of a pandemic. However, Wasim,* a former prisoner, told JPP that the prison barracks were not disinfected even once during his seven-month incarceration in Lahore Central Jail.²⁰⁸ Abrar,* who was also previously detained in the same prison, said that bathrooms would only be cleaned twice a week.²⁰⁹

Abrar* also told JPP that many prisoners often have lice and fleas, with frequent outbreaks of scabies and other skin diseases.²¹⁰ He also noted that they were only provided access to fresh air when a senior prison official would visit the prison.²¹¹

In the course of the investigation, JPP also received very different reports regarding the availability of soap, bleach and disinfectants in prison facilities across the country. In Rawalpindi Central Jail, authorities said they received very limited government subsidies to get additional soap.²¹² The Pakistan Disaster Management Authority provided some supplies, but the Deputy Inspector General said this came well after the peak had passed.²¹³ In Karachi Central Jail, however, the Inspector General told JPP that extra soap, bleach and disinfectants were provided by the government.²¹⁴ In Khyber Pakhtunkhwa, the Additional Inspector General told JPP that 5,000 litres of gel-sanitizers were provided by the government to all prisons in the province.²¹⁵

Current prisoners at Rawalpindi Central Jail told JPP that they had been provided hand sanitizer as part of their Eid hamper in June 2020.²¹⁶ In Peshawar Central Prison, JPP spoke with a group of older prisoners in the presence of prison guards. The majority of them confirmed that they had been provided soap. One prisoner’s claim that he had not received any soap was refuted by both prison staff and fellow prisoners.²¹⁷ Given that there is reason to doubt how freely prisoners were able to speak, it is difficult to confirm whether these claims regarding the availability of sanitary products are true. However, the accounts of former prisoners in other prison facilities paint a very different picture.

Wasim* told JPP that in Lahore Central Jail the administration did not provide any hygiene products and that prisoners were expected to get their own through the commissary.²¹⁸ This was also stated by Zahid* who was at the same prison.²¹⁹ Nasir,* too, was told to buy his own hygiene products. Another detainee took his own soap into Mandi Bahauddin Jail.²²⁰ A UN Office on Drugs and Crime (UNODC) report described soap in Pakistan’s prisons as “uncommon luxuries”.²²¹ While prisons are meant to provide hygiene products for those who cannot afford it, this is rarely practised.

Nadia,* a 27-year-old woman on death row who is detained with her seven-year-old daughter at Lahore Central Jail,²²² described her struggle to cull any favour from both the prison staff and her fellow inmates in order to afford hygiene supplies to protect her child. COVID-19, she said, made her life even more difficult because she was terrified of her daughter being exposed to the coronavirus.

²⁰⁶ See 1978 Pakistan Prisons Manual; also based on anecdotal evidence gathered by JPP over the years

²⁰⁷ 1978 Pakistan Prisons Rules

²⁰⁸ Interview with a former prisoner whose name has been changed to protect identity, 1 September 2020

²⁰⁹ Interview with a former prisoner whose name has been changed to protect identity, 1 September 2020

²¹⁰ Interview with a former prisoner whose name has been changed to protect identity, 1 September 2020

²¹¹ Interview with a former prisoner whose name has been changed to protect identity, 1 September 2020

²¹² Interview with Deputy Inspector General of Prisons, Rawalpindi, Shaukat Feroze, 25 August 2020

²¹³ Interview with Deputy Inspector General of Prisons, Rawalpindi, Shaukat Feroze, 25 August 2020

²¹⁴ Interview with Additional Superintendent, Peshawar Central Jail, Mohammad Haris Khan, 26 August 2020

²¹⁵ Interview with Additional Inspector General of Prisons, Peshawar, Khalid Abbas, 26 August 2020

²¹⁶ As recorded by JPP during supervised conversations with prisoners at Rawalpindi Central Jail, 25 August 2020

²¹⁷ As recorded by JPP during supervised conversations with prisoners at Rawalpindi Central Jail, 25 August 2020

²¹⁸ Interview with a former prisoner whose name has been changed to protect identity, 1 September 2020

²¹⁹ Interview with a former prisoner whose name has been changed to protect identity, 6 August 2020

²²⁰ Interview with a former prisoner whose name has been changed to protect identity, 7 August 2020

²²¹ UNODC, Prisons and pandemic: Inaction is not an option, advocacy brief, p.5,

www.unodc.org/documents/pakistan/SP2_Advocacy_Brief_1_Prisons_-COVID-19-Balochistan.pdf

²²² Interview with a current prisoner in Lahore Central Jail whose name has been changed to protect identity, 11 August 2020

There seems to be an implicit acceptance within prison authorities of the need to maintain safe hygiene. However, the diametric discrepancy between what current and former prisoners told JPP casts sufficient doubt over the authenticity of the claims that prisoners were provided access to clean water, a sanitary environment and means to maintain hygiene.

7. CONCLUSION AND RECOMMENDATIONS

Overcrowding in Pakistan's prisons is a long-standing problem that has been ignored by all levels of governments for years.²²³ The COVID-19 outbreak exposed just how precarious the conditions in prisons are, and threats that these pose to the lives and health of both prisoners and prison staff. The outbreak demonstrated to the Pakistani authorities the urgency with which they must address these systemic issues, ease the strain on the prison infrastructure and address long-standing human rights violations that take place behind prison walls every day. Instead, prison populations actually rose during the first few months of the pandemic, exacerbating the problem of overcrowding, which only makes it even harder to maintain physical distance. Arrests seemed to have continued at the same pace and many people were sent to prisons with known COVID-19 outbreaks, all the while, without using adequate protective measures. Even during detention, preventative measures were not easily accessible to people in detention due to the inconsistent provision of PPE, the lack of space to isolate at-risk prisoners and even limited access to safe and clean water for hygiene and drinking purposes.

Police practice of systematic arrests and detention including for minor offences, the frequent overuse of pre-trial detention and underuse of non-custodial measures, the backlog of cases in Pakistan's courts, and the long delays between hearings, contribute to bloating prison populations. Yet, a justice system that caused the problem of overcrowding in the first place also stood in the way of resolving it. The decision of the Supreme Court to rescind all bail applications specifically granted on account of the COVID-19 outbreak had a chilling effect on provincial government initiatives to decongest prisons. Subsequently, the failure of the prison authorities to follow up with the submission of lists of at-risk prisoners as requested by the Supreme Court meant that no steps were taken to reduce the prison population with early releases. Temporary or provisional releases appear to not have been considered at all. Even the Prime Minister's own directives for the release of women prisoners are yet to be implemented.

The COVID-19 outbreak exacerbated tensions within prison facilities with inmates fearing infections. The 13-week long ban on visitation worsened inmates living conditions and mental health, depriving them of access to external supplies of food and essential medication and isolating them from their loved ones. Overstretched prison officials and staff, who were unable to take leave, worked extra hours for no pay and had to live on prison premises, also paid the price of being a foregone priority for the government.²²⁴

It should not take the death of prisoners for the Pakistani authorities to recognize that the current prison infrastructure cannot withstand the outbreak of potentially lethal diseases, and that the strain that the pandemic puts on the carceral system puts the lives and health of inmates and prison staff in jeopardy.

RECOMMENDATIONS

To reduce existing prison populations, Amnesty International and Justice Project Pakistan call upon the Pakistani authorities to:

- Immediately and unconditionally release all prisoners of conscience who are solely detained for the peaceful exercise of their human rights.
- Strongly consider releasing pre-trial detainees, whether detained in a police station or in a detention centre after an order by a judge (remand), unless strong factors weigh against it, in accordance with international law.
- Compile and submit lists of prisoners at risk who can be eligible for early, temporary or conditional release, based on age, their health condition, the nature of the offence committed, the threat they pose to society, and the duration of sentence served.
- Consider making efforts to release older detainees who no longer pose a threat to public safety, and who have already served a portion of their prison sentence.

²²³ See "Nawaz may have enjoyed better prison conditions – if he ever thought of improving them", *Dawn*, 23 July 2018, <https://www.dawn.com/news/1421997>

²²⁴ Interviews with prison authorities in Khyber Pakhtunkhwa, Sindh and Punjab

- Consider releasing prisoners with underlying medical conditions, including those with a weakened immune system, due to the exacerbated risks an infection with COVID-19 would bring to their health and lives.
- Immediately implement the Prime Minister’s directives to release women prisoners who are under trial, convicted of minor offences or those who have served most of their prison terms around the country.
- Consider releasing women and girls who are in detention with their dependent children and those who are pregnant.

To reduce prisoner intake (or the “churn rate”) of prisons, Amnesty International and Justice Project Pakistan call upon the police and lower courts to:

- Consider deferring the intake of new arrivals to prison in appropriate cases or converting prison sentences to fines or other non-custodial penalties, including when the nature of the offence committed does not require incarceration.
- Ensure that pre-trial detention is only used exceptionally and as a last resort, and only when there is substantial risk of flight, harm to others or interference with the evidence or investigation that cannot be prevented by other means.
- Properly consider the use of alternative non-custodial measures in all cases and on an individualized assessment before dictating pre-trial detention.
- Remove the number of arrests as a performance indicator for police officials.
- Ensure that all courts take into consideration the detainee’s age, social situation and ability to pay surety bonds when adjudicating bail applications.

To protect and uphold the right to health in prisons across Pakistan particularly through the pandemic, Amnesty International and Justice Project Pakistan call upon provincial governments and prison authorities to:

- Develop and enact a policy and action plan to respond to ongoing and future outbreaks of infectious diseases, and be transparent about the number of infections, testing and fatalities.
- Allocate adequate financial and human resources specifically to the crippled health-care systems of prisons so that the provision of adequate care can be realized.
- Ensure that all detention facilities are equipped with sufficient and functioning sanitizing equipment and/or other relevant facilities for physical hygiene and that all detainees are regularly provided with adequate quantities of soap, sanitizing items and access to clean running water free of charge.
- Ensure that those in detention are provided with specialized psycho-social and health-care requirements to the maximum possible extent.

To protect and uphold the right to humane and dignified conditions of detention and other civil rights in prisons across Pakistan particularly through the pandemic, Amnesty International and Justice Project Pakistan call upon provincial governments and prison authorities to:

- Ensure that any restrictions on the rights of people deprived of their liberty, including on visitations, are minimized and strictly necessary and proportionate to the health emergency. Where visiting regimes are restricted for health-related reasons, provide sufficient alternatives to maintain contact with families and the outside world, including by providing free and adequate access to telephone, internet, video communication and other appropriate electronic means, as well as to receive food and other supplies as appropriate.
- Take all necessary steps to ensure that if restrictions or prevention of legal visits are implemented, prisoners still have sufficient and effective alternative means to unimpeded and confidential access to their lawyers.

- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and install a National Preventive Mechanism in accordance to it, with the ability to carry out unhindered and unannounced visits to all places of detention.

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PRISONERS OF THE PANDEMIC

THE RIGHT TO HEALTH AND COVID-19 IN PAKISTAN'S DETENTION FACILITIES

With the outbreak of the COVID-19 pandemic, prisons were identified early on as places where outbreaks were likely and would require urgent government attention. In Pakistan, prisons are notoriously overcrowded, making physical distancing and other public health recommendations impossible to implement. They lack adequate health-care facilities and have unsanitary conditions, accelerating the spread of infectious diseases. These and other underlying systemic issues lead to a catalogue of human rights violations, including the violations of the right to life and the right to health, guaranteed by Pakistan's Constitution and its international human rights obligations.

This report is the outcome of research carried out by Amnesty International and Lahore-based human rights group Justice Project Pakistan (JPP).

The pandemic exposed the dire straits that Pakistan's prisons find themselves in, beholden to scarcity and defined by overcrowding. The urgency with which these must be addressed is heightened as the country finds itself in the midst of a second wave of the coronavirus, with a sharper, even deadlier rise in cases.