

Mercy Petitions – Need to Introduce SOPs

JUSTICE PROJECT PAKISTAN

Context & Scope of the Problem

In 2010, a 7 member bench¹ of the Supreme Court stated, “The exercise of the discretion by the President under Article 45 of the Constitution is to meet at the highest level the requirements of justice and clemency, to afford relief against undue harshness, or serious mistake or miscarriage in the judicial process, apart from specific or special cases where relief is by way of grace alone.”²

Although the President of Pakistan possesses the constitutional authority to pardon death row defendants under Article 45 of the Constitution, in practise such petitions are always denied. According to the Ministry of Interior, the President’s office **rejected 513 mercy petitions** of condemned prisoners over the last five years, **444** of which were in the **first fifteen months** after the resumption of executions in December 2014³. A total of **422** prisoners have been executed in Punjab since December 2014.⁴

The government has not provided statistics regarding the overall number of mercy petitions submitted to the President this year. According to our most recent sources, 15 mercy petitions from Punjab were pending before the President of Pakistan, prior to said reform. Thereafter all 15 were reverted to prison authorities to complete/resend as per new SOPs. 6 of 15 petitions were completed and re-sent to the provincial committee for review in 2020. The remaining 9 are yet to be completed and filed however all await answers.

In early 2019, the Federal Ministry of Human Rights obtained Cabinet approval to reform the mercy petitions procedure. The new procedure is designed to ensure that prison authorities are duty bound to disclose all relevant records related to a prisoner

Policy Recommendations

- The Government of Pakistan should formulate comprehensive SOPs for the mercy petitions review procedure in order to ensure transparency, certainty, due process and objectivity in line with its international law obligations, to accord prisoners a meaningful opportunity to seek clemency.
- The revised procedure should be notified, implemented and widely disseminated and all prisoners on death row should be given the opportunity to apply for clemency.
- The new procedure should contain the following features:
 - Modification of time-frames to allow the Superintendent Jail 30 working days to process and submit the mercy petition to the Provincial Home Department of receipt of final order from the SC. **(1.1)**
 - Provide a legal footing to the various powers being vested in the Provincial Committees, to ensure certainty and transparency in the process. **(2.7-2.8)**
 - Set out a clear criteria for the evaluation of the mercy petitions including demarcation of mitigating factors that must be considered by the Committees e.g. procedural lapses, delays, insanity, solitary confinement. **(2.9)**
 - Prescribe obligations to record all materials, information and records reviewed by the Committees and the reason for the Committee’s decisions. **(2.7)**
 - Introduction of Victim Offender Mediation – inclusive of the option to refer the matter to alternative means of dispute resolution (ADR) to enable reaching of a compromise.

¹ comprising of Chief Justice Iftikhar Muhammad Chaudhry, including Justice Khosa, Justice Ramday, Justice Shakirullah Jan, in a judgment authored by Justice Jillani.

² Nazar Hussain and Another v. The State (PLD 2010 SC 1021)

³ “Pakistan Operating a Blanket Policy of Refusing All Mercy Petitions.” Daily Times, April 11, 2018. <https://dailytimes.com.pk/226884/pakistan-operating-a-blanket-policy-of-refusing-all-mercy-petitions>

⁴ JPP live database. Accessed at: <https://data.jpp.org.pk/en/page/6mhr9wutz9d>

including the existence of serious mental and physical illnesses.

The new process was introduced following serious criticism from the UN Human Rights Committee in 2017 that Pakistan lacked any meaningful clemency process,⁵ followed by further review of the issue in 2018 as part of the EU GSP+ process.⁶ Thereafter in its state follow up report⁷ Pakistan submitted that “a Committee to review mercy petitions has been notified under Article 45 of the Constitution.” This reform aims to be a significant break from the past perfunctory practice and significantly impact the ability of death row prisoners to exercise their constitutional right to seek mercy from the President.

In October 2019, the Ministry of Interior issued new SOPs for the consideration of mercy petitions streamlining the process. **However, these SOPs fail to meet the international standards or fulfil Pakistan’s obligations under International Law.** This is the reason why cases with strong evidence of humanitarian abuses and violations continue to be misrepresented under the new process as recently witnessed in the clemency case of Ismail Parvez, a mentally ill prisoner on death row.

Obligations arising under International Law

International law makes it absolutely critical that the process and criteria through which mercy petitions are filed, processed, evaluated and decided should be clearly set out through rules framed by the Government in accordance with law. These rules are essential to ensure transparency, certainty, due process and objectivity in the evaluation of the mercy petitions.

Article 6(4), ICCPR⁸ expressly provides for the right to seek pardon or commutation of sentence of those sentenced to death. When commenting on Article 6, the **Human Rights Committee⁹** stated that parties are required to allow individuals sentenced to death to seek pardon or commutation, to ensure that:

- amnesties, pardons and commutation can be granted to them in appropriate circumstances;
- that sentences are not carried out before requests for pardon or commutation have been meaningfully considered and conclusively decided upon according to applicable procedures.

The HRC noted that no category of sentenced persons can be a priori excluded from such measures of relief the conditions for attainment of relief should not be ineffective, unnecessarily burdensome, discriminatory in nature or applied in an arbitrary manner. The HRC also noted that Article 6(4) does not prescribe a particular procedure for the exercise of the right to seek pardon or commutation and states parties consequently retain discretion in spelling out the relevant procedures. However such procedures should be specified in domestic legislation and they should not afford the families of victims of crime a preponderant role in determining whether the death sentence should be carried out.

In a **report¹⁰ by the Special Rapporteur on extrajudicial, summary or arbitrary executions**, it was observed that the right to seek pardon or commutation implies the existence of a “meaningful procedure” through which to make such an application; that one of the main functions of the right to clemency in society is “...to enable account to be taken of post-conviction developments of which an appeals court might not be able to take cognizance but which nevertheless warrant being considered in the context of an otherwise irreversible remedy...”¹¹

⁵ Human Rights Committee, ‘Concluding observations on the initial report of Pakistan’, 23 August 2017, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhssymRLSm3gUSDIntv8Slm%2F%2BjSkxSILEnCLYiaWS2Zt2ITQfT1lhv40HhjfTMf8Nky906kLKaSHalcX%2BByl7%2FtFUPrUqGm8FbOBvJ6oGjzqpQw>.

⁶<https://www.thenews.com.pk/print/619461-eu-report-on-gsp-assessment-nab-under-attack-for-being-partial-harsh-on-oppositionsays-eu> (CCPR/C/PAK/CO/1/Add.1)

⁸ International Covenant on Civil and Political Rights ratified by Pakistan in 2010

⁹ General Comment No. 36 (on Article 6: Right to Life) (CCPR/C/GC/36) (at Paragraph 47)

¹⁰ Philip Alston A/HRC/8/3 2 May 2008. Para 60

¹¹ Para 62.

Furthermore, “in conclusion, both law and practice demand that the “right to seek pardon or commutation” be accompanied by essential procedural guarantees if it is not to be turned into a meaningless formality that does little or nothing to further the purposes for which the right was recognized.”¹²

These procedural guarantees include:

- the right of the condemned person to affirmatively request pardon or commutation;
- to make representations in support of this request referring to whatever considerations which might appear relevant to him or her;
- to be informed in advance of when that request will be considered; and to be informed promptly of whatever decision is reached.

Conclusion

The SOPs introduced by the Ministry of Interior, do not, unfortunately, meet the aforesaid standards nor fulfil Pakistan’s obligations under international law. It is pertinent to revise these SOPs in line with international standards and ensure that the remaining mercy petitions are completed and filed accordingly so that cases with strong evidence of humanitarian abuses and violations, such as persons sentenced to death as juvenile offenders (Anwar, Azam), those with severe physical disabilities (Abdul Basit) and those who are severely mentally ill (Imdad Ali, Kanizan Bibi, and Ghulam Abbas) are presented clearly to the Presidency with a strong appeal for clemency.



Justice Project Pakistan 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 our work, in December 2016, JPP was awarded with the National Human Rights Award, presented by the President of Pakistan.

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¹² Paragraph 67