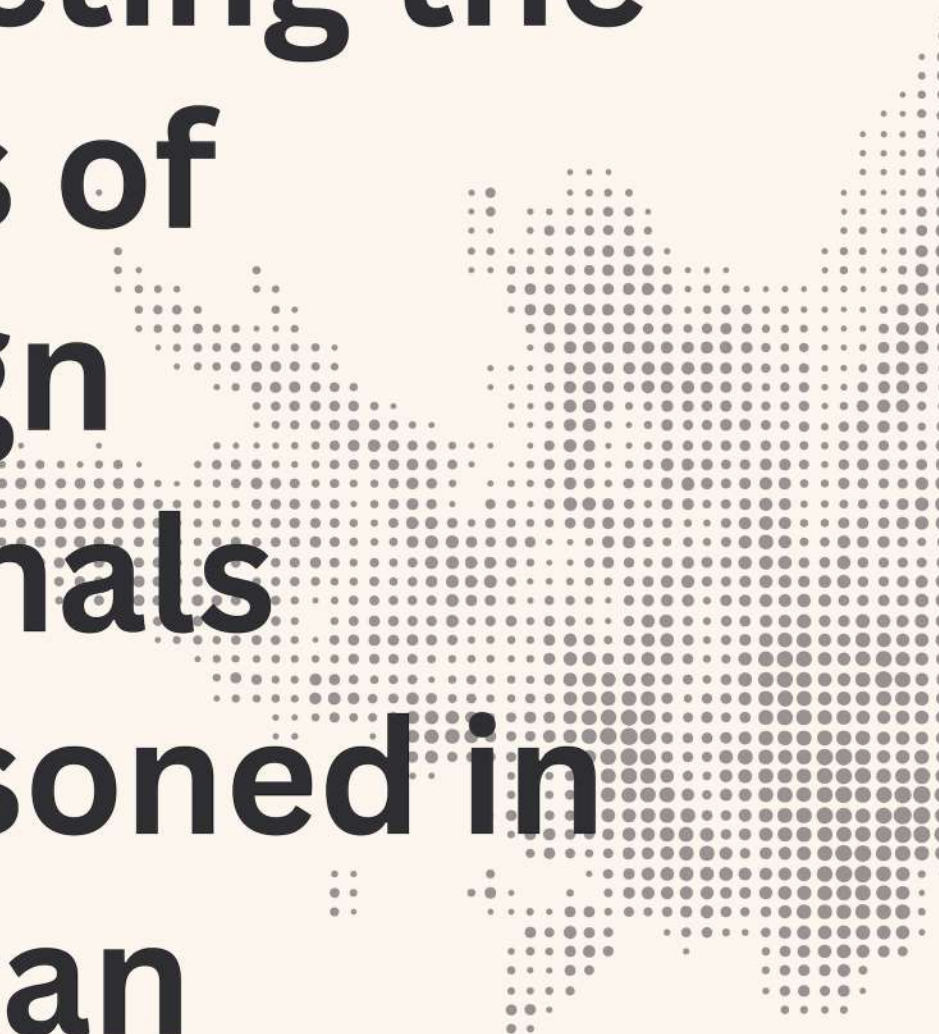


Protecting the Rights of Foreign Nationals Imprisoned in Pakistan



POLICY BRIEF



EXECUTIVE SUMMARY

POLICY

RECOMMENDATIONS

The Government of Pakistan has an obligation, under international law and the Constitution of Pakistan, to protect¹ the fundamental rights of foreign nationals imprisoned in Pakistan. As of April 2024, there are **1,107** foreign nationals incarcerated across Pakistan's prisons.

A number of foreign nationals imprisoned in Pakistan lack access to adequate legal representation, translators, and consular assistance from their diplomatic missions, leaving them at the mercy of local courts. These foreign nationals constitute a highly vulnerable segment of Pakistan's prison population and endure harsher penalties owing to their unfamiliarity with and lack of support in navigating Pakistan's legal system. They struggle to communicate directly with the courts and are unable to produce evidence from their home countries in their defence.

Given these circumstances, it is crucial to establish and enforce a comprehensive consular access policy that safeguards the fundamental human rights of foreign nationals in Pakistan's prisons, in light of their overlapping. Furthermore, the Government of Pakistan should actively pursue prisoner transfer agreements with other countries, enabling foreign nationals to serve their sentences in their respective home countries.

INTER-AGENCY COORDINATION MECHANISMS

- **ENHANCE** coordination between government agencies, diplomatic missions and National Human Rights Institutions to provide effective consular assistance to foreign nationals in prison
- **IMPROVE** identification and verification procedures through coordinated efforts

CONSULAR ACCESS

- **FORMULATE & IMPLEMENT** a unified policy on consular access for foreign nationals in prison
- **AMEND** the Pakistan Prison Rules to include the consular support policy for foreign nationals in prison
- **ENSURE** access to consular assistance for foreign nationals in prison, including informing them of this right upon arrest and detention, and ensuring contact with lawyers and consular officers, in line with the Vienna Convention on Consular Relations (VCCR)
- **EDUCATE** and **TRAIN** law enforcement, prison and judicial officials on the rights of foreign nationals in prison under international law, particularly the VCCR, and their heightened vulnerabilities

PRISONER TRANSFER AGREEMENT

- **NEGOTIATE** Prisoner Transfer Agreements with other countries and implement existing ones to facilitate the repatriation of foreign nationals imprisoned in Pakistan

CONDITIONS OF IMPRISONMENT

- **CODIFY** adequate safeguards for the protection of fundamental rights of foreign nationals in prison into a distinct chapter within the Pakistan Prison Rules
- **MONITOR** and **ENFORCE** international law standards on conditions of detention and treatment
- **ENSURE** contact with families

¹ Primary data collected from provincial prisons departments.

RESPONSIBILITIES OF THE GOVERNMENT OF PAKISTAN

INTERNATIONAL LEGAL FRAMEWORK

As the detaining State, Pakistan is obligated under international law to grant consular access to foreign nationals imprisoned within its borders. While Pakistan lacks a domestic consular access policy, international law firmly establishes this right. Key legal frameworks governing the treatment of foreign nationals in prison include the Vienna Convention on Consular Relations (VCCR), the Model Agreement on the Transfer of Foreign Prisoners and Recommendations for the Treatment of Foreign Prisoners (the "Model Agreement"), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the "Principles"), the International Covenant on Civil and Political Rights (ICCPR), the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), and the Global Compact for Safe, Orderly and Regular Migration (the "Global Compact"). Pakistan ratified the VCCR in 1969 and the ICCPR in 2010, thus binding itself to their respective provisions. The Model Agreement, Global Compact, the Body of Principles, and the Mandela Rules serve as benchmarks to safeguard the rights of foreign nationals and prisoners within Pakistan's jurisdiction.

The **Vienna Convention on Consular Relations (VCCR) 1963** establishes a legal framework governing consular relations between sovereign states. Upon ratification, the VCCR becomes a binding bilateral treaty/agreement, obligating the signatory state to its provisions. The rights enshrined in the VCCR are not subject to domestic laws and regulations, and require governments to adhere to its provisions diligently. Pakistan is among the 180 nations that have ratified the VCCR, imposing reciprocal obligations on all signatory states to grant consular access to prisoners within their territories.

² VCCR WAS ADOPTED IN 1963 AND HAS BEEN IN FORCE SINCE 1967. IT WAS RATIFIED BY PAKISTAN IN 1969

The VCCR defines and articulates the functions, rights, and immunities accorded to consular officers and their offices, as well as the rights and duties of host states (where the consul is based) and home states (the state the consul represents). **Article 36, VCCR** provides that “consular officers shall be free to communicate with nationals of the sending State and to have access to them.” Foreign nationals who are arrested or detained shall be given notice “without delay” of their right to have their embassy or consulate notified of that arrest, and “consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation.”

Moreover, the duty of the home State to provide consular assistance to its nationals detained abroad, as well as the duty the detaining State to grant access to the imprisoned nationals is firmly established in the recent **Report of the Special Rapporteur of the Human Rights Council on Extrajudicial, Summary or Arbitrary Executions**. It argues that consular access is a human right which imposes distinct but complementary obligations on both the prosecuting State and the home State.³

The **Model Agreement on the Transfer of Foreign Prisoners and Recommendations for the Treatment of Foreign Prisoners 1985**⁴(the "Model Agreement") provides recommendations for fostering international cooperation and creating bilateral or multilateral agreements for repatriating foreign nationals in prison to serve their sentences at home. Rooted in principles advocating for the social reintegration of offenders, the Model Agreement underscores mutual respect for national sovereignty and jurisdiction. It stipulates that either the Detaining State or the Sending State may initiate a prisoner transfer request, and outlines procedural regulations, provisions on enforcement and pardon, and guidelines regarding the treatment of foreign nationals in prison. It is noteworthy that, pursuant to the Model Agreement, a prisoner's consent to transfer from the Detaining State to the Sending State must be provided voluntarily.

THE RECOMMENDATIONS FOR THE TREATMENT OF FOREIGN NATIONALS IN PRISON UNDER THE MODEL AGREEMENT INCLUDE:

1. Incarceration should not be based on a persons nationality.
2. Foreign prisoners should have the same access as national prisoners to education, work and vocational training;
3. Foreign prisoners should in principle be eligible for measures alternative to imprisonment
4. Foreign prisoners should be informed promptly after reception into a prison, in a language which they understand and generally in writing, of the main features of the prison regime, including relevant rules and regulations;
5. The religious precepts and customs of foreign prisoners should be respected, with reference, above all, to food and working hours;
6. Foreign prisoners should be informed without delay of their right to request contacts with their consular authorities, as well as of any other relevant information regarding their status
7. Foreign prisoners should be given proper assistance, in a language they can understand, when dealing with medical or programme staff and in such matters as complaints, special accommodation, special diets and religious representation and counselling;
8. Contacts of foreign prisoners with families and community agencies should be facilitated, by providing all necessary opportunities for visits and correspondence, with the consent of the prisoner.
9. The conclusion of bilateral and multilateral agreements on supervision of and assistance to offenders given suspended sentences or granted parole could further contribute to the solution of the problems faced by foreign offenders.

³ A/74/318. Summary. Pg 2.

⁴ Available at: <https://digitallibrary.un.org/record/97152?ln=en&v=pdf>

The **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 1988**⁵ (the “Principles”) also sets standards for the treatment of foreign nationals in prison and their right to consular access. Principle 16 stipulates that a foreign national must be “promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organisation, if he is a refugee or is otherwise under the protection of an intergovernmental organisation.”

The **United Nations Standard Minimum Rules for the Treatment of Prisoners**⁶ (the Nelson Mandela Rules) cover all aspects of prison management and outline the minimum standards for the treatment of prisoners (pre-trial or convicted). The basic principles enshrined in the Mandela Rules are: (1) Prisoners must be treated with respect for their inherent dignity and value as human beings; (2) Torture or other ill-treatment is prohibited; (3) Prisoners should be treated according to their needs, without discrimination; (4) The purpose of prison is to protect society and reduce reoffending; (5) The safety of prisoners, staff, service providers and visitors at all times is paramount.⁷ Rule 62 of the Mandela Rules reiterates the right to consular access, stating that foreign nationals in prison “shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong” and “prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.”

Furthermore, the **International Covenant on Civil and Political Rights** (ICCPR), ratified by Pakistan in 2010, obligates Pakistan to protect and uphold fundamental human rights, including of those deprived of liberty, and adopt administrative, judicial and legislative measures to protect the rights listed therein. These include, inter alia, the right to life; protection against torture, ill-treatment and arbitrary detention; right to fair trial and due process; and protection against retrospective punishment.

Pakistan’s Legal Framework

While Pakistan does not have a standardised consular access policy, the Constitution of Pakistan 1973, the Foreigners Act 1946 and the Prison Rules adopted by each province govern the treatment of foreign nationals and the protections afforded to them.

Article 4(1) of the Constitution of Pakistan places a duty on the Government to protect the due process rights of any person present in Pakistan. It states: “Right of Individuals to be dealt with in accordance with law, etc. To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and **of every other person for the time**

⁵ Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention>

⁶ Available at: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

⁷ Penal Reform International (January 2016). *The revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*. Available at: https://cdn.penalreform.org/wp-content/uploads/2016/01/PRI_Nelson_Mandela_Rules_Short_Guide_WEB.pdf

being within Pakistan.” This Constitutional guarantee, therefore, affords protection to foreign nationals imprisoned in Pakistan. Additionally, the Fundamental Rights enshrined in the Constitution, particularly pertaining to criminal trials,⁸ make no distinction based on nationality and apply to all “persons”.

Additionally, **the Foreigners Act 1946** (as amended) grants the Government of Pakistan the power to make provisions to prohibit, regulate, and restrict the presence of foreigners,⁹ particularly as it relates to their entry, stay, and exit. The burden of proving nationality (where unconfirmed) lies solely with the foreign national,¹⁰ and where they knowingly enter Pakistan illegally, a sentence of imprisonment extending up to ten years may be imposed.¹¹ Further, where a person contravenes any provision of this Act or any order made thereunder, a sentence of imprisonment extending up to three years may be imposed.¹²

The 1946 Act also stipulates that the Government may make orders for foreigners’ arrest, detention or confinement in the interest of defence, external affairs or the security of Pakistan.¹³ Moreover, the 1946 Act contains provisions governing the deportation of persons undergoing trial or sentences of imprisonment, whereby a foreign national who does not have permission to stay in Pakistan or whose deportation arrangements have been made by the Government may, with the consent of the Government, be permitted by the Court trying him for an offence under the 1946 Act to depart from Pakistan, or under the order of the Government,

be permitted to depart from Pakistan while he is undergoing any sentence passed under the 1946 Act.¹⁴ This provision, however, is only applicable where the foreign national is not required in connection with any other offence.¹⁵

The treatment of and safeguards afforded to foreign nationals in prison are governed by the prison rules of each Province. Under the Pakistan Prison Rules 1978, as retained by the Provinces of Balochistan and Punjab, three rules govern the imprisonment of foreign nationals: Rule 36 specifies that a convicted foreign nationals’ sentence shall be suspended until the date of surrender to their home country, where it shall revive; Rule 260 specifies the diet for foreign nationals in prison; and Rule 829(ii) prohibits foreign nationals from working outside the prisons. The draft Punjab Prison Rules 2020 amended over 1200 sections of the Pakistan Prison Rules 1978 and included dedicated provisions for the protection of imprisoned foreign nationals in line with the obligations under the VCCR and the Constitution. However, Punjab is yet to pass these rules. Furthermore, with respect to repatriation, Section 46 of the Sindh Prisons and Corrections Services Act 2019 states that where a prisoner transfer agreement exists, a foreign national in prison shall be transferred to their home country to serve the remainder of their sentence. Under the Sindh Prisons and Corrections Service Rules 2019, provisions pertaining to the treatment of foreign nationals in prison reflect Rule 36 and Rule 829(ii) of the Pakistan Prison Rules..

The Khyber Pakhtunkhwa Prison Rules 2018, specify the protocol for handling foreign nationals in prison and delineates the right to consular assistance in line with the VCCR. Rule 249-B stipulates that foreign nationals must be promptly notified of their right to consular assistance without delay (also specified in Rule 64), shall be allowed reasonable facilities to communicate with their respective consulates, and shall be given specific information about legal assistance. Prisoners

⁸ Including Article 9 (Security of person), Article 10 (Safeguards as to arrest and detention), Article 10-A (Right to fair trial), Article 12 (Protection against retrospective punishment), Article 13 (Protection against double punishment and self incrimination) and Article 14 (Inviolability of dignity of man, etc.).

⁹ Section 2 of the 1946 Act defines a foreigner as a person who is not a citizen of Pakistan.

¹⁰ Section 9, Foreigners Act 1946.

¹¹ Section 14(2), Ibid.

¹² Section 14(1), Ibid.

¹³ Section 3(2)(g), Ibid.

¹⁴ Section 14B, Ibid.

¹⁵ Ibid

who are nationals of states without consular assistance, and refugees or stateless persons, shall be allowed similar facilities to communicate with the consulate of a country that assumes the responsibility of their interests, or any national or international authority tasked with protecting their rights. This rule also requires the KPK prison authorities to cooperate with consulates and NGOs where the foreign national in prison has special needs.

Moreover, where prisoner transfer agreements exist, the repatriation of foreign nationals shall be immediately considered during their imprisonment and with their informed consent. Under Rule 326, where a child is to be removed from prison and alternative care arrangements are to be made, the KPK prison authorities shall consult with the relevant consulate. In relation to communication with lawyers and consular officers, Rule 548 specifies that foreign nationals in prison shall be allowed weekly meetings with the representatives of their consulates and lawyers. Rule 829(2) prohibits foreign nationals from working outside the prisons. Importantly, Rule 1129 requires preliminary and ongoing training for prison officials who work with, inter alia, foreign nationals.

REPATRIATION OF FOREIGN NATIONALS IN PAKISTAN'S PRISONS

The Need for Prisoner Transfer Agreements

The process of repatriation of foreign nationals in prison from Pakistan is complex and requires coordinated efforts by the Ministry of Interior (MOI), the Ministry of Foreign Affairs (MOFA) and the consulates of the respective foreign countries.

Once a foreign national has completed their sentence, the Superintendent of the prison sends the foreign national’s credentials to the Home Department, requesting that the foreign national be declared an internee. Thereafter, the Home department sends the case file to the MOI for verification of credentials with the concerned agencies and with the diplomatic mission of the national’s home country. The MOI contacts MOFA, which is responsible for verifying credentials with the relevant consulate. After verification, the consulate makes arrangements for the repatriation of the internee. In situations where a foreign national’s credentials cannot be verified or where the foreign national does not possess legal identification documents, repatriation is delayed and such cases are sent to the Federal Review Board. The Federal Review Board, composed of judges of the Supreme Court of Pakistan, is required to convene meetings every few months to obtain information from MOI and MOFA on the progress of foreign national’s repatriation.

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Considering the arduous nature of the repatriation process and the ensuing delays, there is an urgent need to regulate the mechanism by which foreign nationals in prison can be repatriated to their home countries.¹⁷

The **Transfer of Offenders Ordinance (2002)** has established a framework for the Government of Pakistan to enter into numerous bilateral prisoner transfer agreements with other countries. Prisoner transfer agreements strengthen cooperation and promote friendly ties between States, and are of significant importance since they allow nationals who are serving long sentences in foreign countries to serve their remaining sentences back home and support their reintegration into society upon release. Presently, Pakistan has entered into bilateral Prisoner Transfer Agreements with Azerbaijan, China, Iran, Korea, Sri Lanka, Saudi Arabia, Thailand, Turkey, the United Kingdom, the United Arab Emirates and Yemen. The Government of Pakistan should actively pursue the negotiation of prisoner transfer agreements with other countries, with the aim of repatriating foreign nationals and allowing them to serve their sentences in their respective home countries.

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DISAGGREGATED DATA ON FOREIGN NATIONALS IMPRISONED IN PAKISTAN

a. Province-wise Data

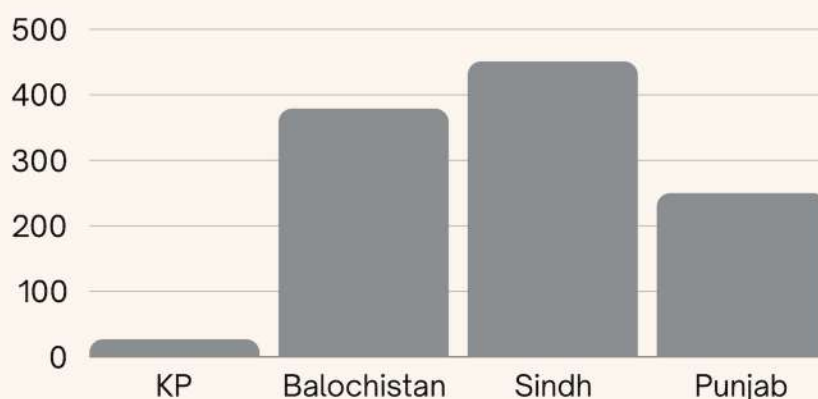


Figure 1: No. of Foreign Nationals in Pakistani Prisons (April 2024)

¹⁶ The Federal Review Board is constituted under Article 10(4) of the Constitution of Pakistan.

¹⁷ It is worth noting that NADRA’s Alien Registration Card allows for the national registration of undocumented migrants. See also: Legal Aid Office (2020). The Plight of Foreign Prisoners in Sindh: A Fact Sheet. Available at: <https://www.lao.org.pk/wp-content/uploads/2020/12/LAO-Foreign-Fishermen-Factsheet-2020.pdf>

¹⁸ According to data provided by the Ministry of Foreign Affairs to the Senate Standing Committee on Human Rights, February 2024. For a list of PTAs signed by Pakistan, see: Justice Project Pakistan (2023) Pakistanis Imprisoned Abroad: Interactive Webpage. Available at: <https://jpp.org.pk/overseaspakistanprisoners/>

As of April 2024, there are 1,107 foreign nationals imprisoned across Pakistan. Figure 1 illustrates the Province-wise breakdown of all foreign prisoners in Pakistan.

b. Nationality-wise Breakdown

Presently, Afghan nationals comprise 64% of the total foreign nationals incarcerated in Pakistan, followed by prisoners from India and Iran respectively. Figure 2 illustrates a breakdown of all foreign nationals imprisoned in Pakistan, with prisoners from Afghanistan topping the list. Except Afghanistan, all countries presented in Figure 2 have ratified the VCCR.¹⁹

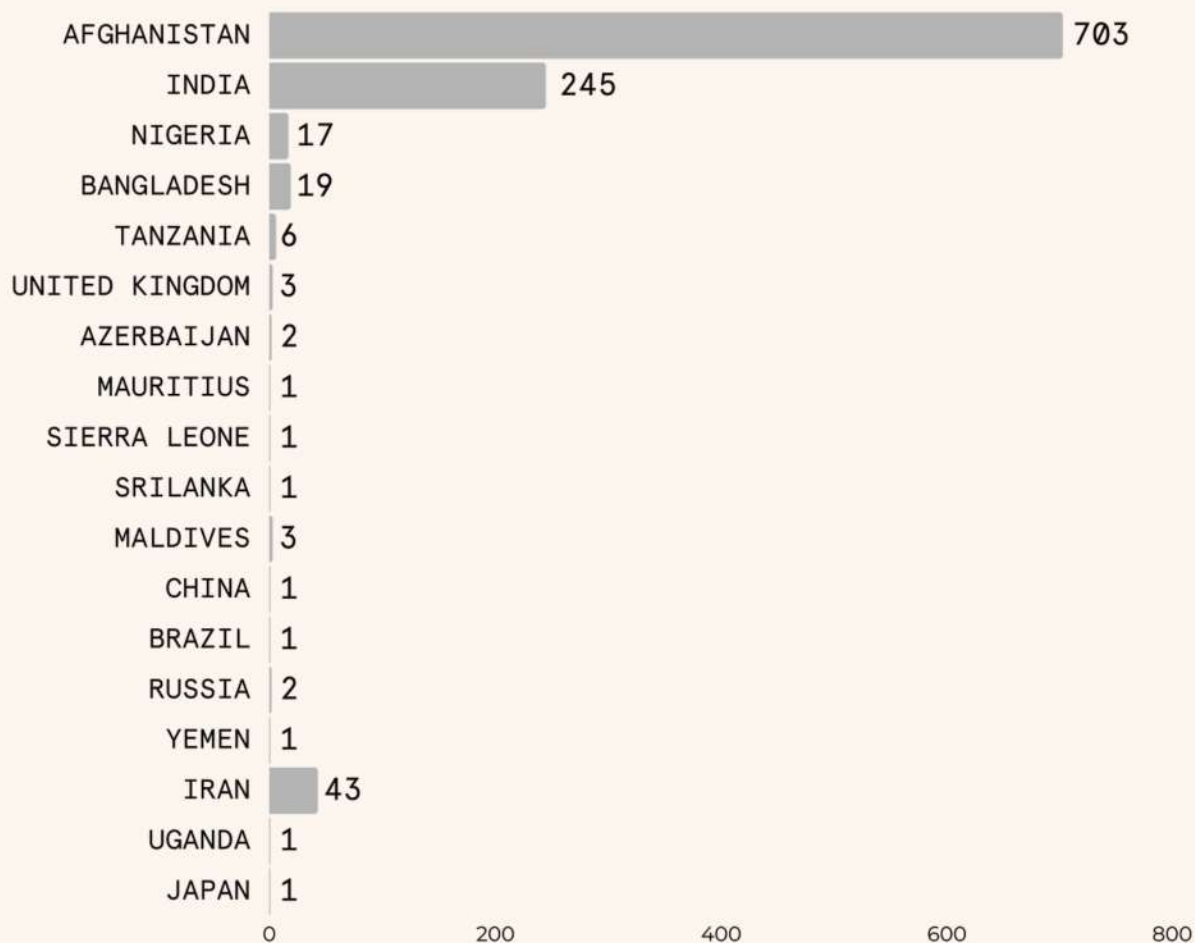


Figure 2: Number of Foreign Nationals Imprisoned in Pakistan w.r.t Nationality (April 2024)

¹⁹ For ratification status of each country, see: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-6&chapter=3

c. Status-wise Breakdown

Presently, 66% of foreign nationals imprisoned in Pakistan have been convicted of a criminal offence; whereas 34% are still awaiting trial (Figure 3).

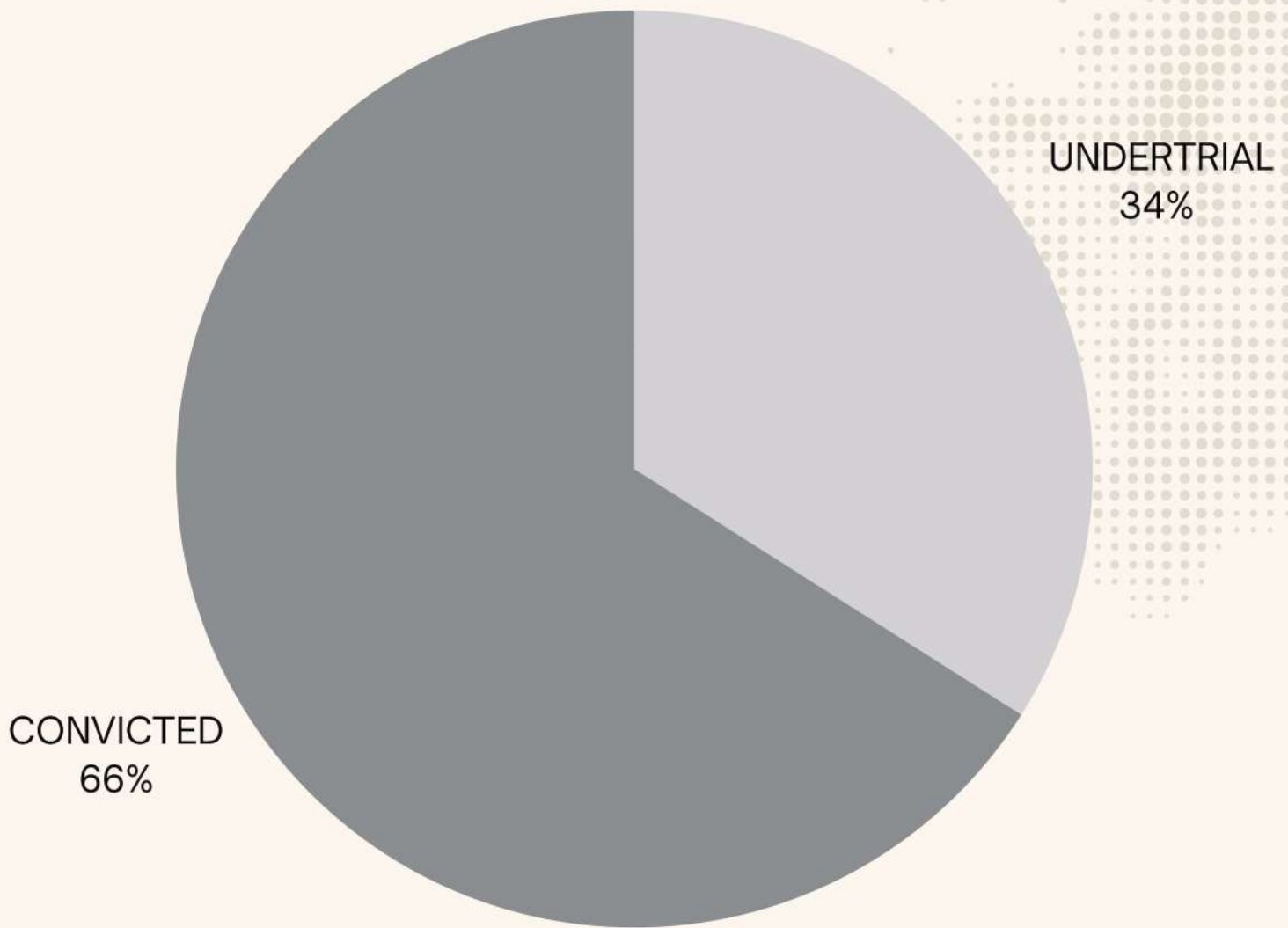


Figure 3: Status-wise Proportion of Foreign Nationals Imprisoned in Pakistan

d. Crime-wise Statistics

The majority of foreign nationals imprisoned in Pakistan are charged under the Foreigners Act 1946 and the Control of Narcotic Substances Act (CNSA) 1997, whereas the majority of prisoners from India are charged under the Control of Entry Act 1952. Table 1 illustrates the crime-wise breakdown with respect to each nationality.

Table 1: Top Nationalities of Foreigners incarcerated in Pakistan w.r.t Crime (April 2024)

Ser	Nationality/ Crime	Foreigners Act 1946	CNSA 1997	ATA 1997	Control of Entry Act 1992	PPC 1860	Unknown	Total
1	Afghanistan	416	119	30	0	101	37	703
2	India	3	0	0	222	20	0	245
3	Iran	2	41	0	0	0	0	43
4	Bangladesh	10	0	0	0	0	9	19
5	Nigeria	0	1	0	0	0	15	16

e. Provincial Crime-wise data

The largest group of prisoners in Punjab comprises Afghan nationals, particularly those charged under the Foreigners Act 1946, followed by the Pakistan Penal Code (PPC). Additionally, the majority of Indian national prisoners have been charged under the PPC. Table 2 illustrates foreign nationals' crime-wise breakdown in prisons across Punjab.

Table 2: Crime-wise Data for Punjab Jails w.r.t Nationality (April 2024)

Ser	Nationality/ Crime	Foreigners Act 1946	CNSA 1997	ATA 1997	Control of Entry Act 1992	PPC 1860
1	Afghanistan	110	32	16	0	97
2	India	3	0	0	3	20
3	Iran	0	0	0	0	0
4	Bangladesh	1	0	0	0	0
5	Nigeria	0	0	0	0	1

The largest group of all foreign nationals in Sindh's prisons constitutes Indian nationals charged under the Control of Entry Act 1952, followed by Afghan nationals charged under the Foreigners Act 1946. Table 3 illustrates foreign nationals' crime-wise breakdown across prisons in Sindh.

Table 3: Crime-wise Data for Sindh Jails w.r.t Nationality (April 2024)

Ser	Nationality/ Crime	Foreigners Act 1946	CNSA 1997	ATA 1997	Control of Entry Act 1992	PPC 1860
1	Afghanistan	153	2	0	0	4
2	India	0	0	0	213	0
3	Iran	1	41	0	0	0
4	Bangladesh	8	0	0	0	0
5	Nigeria	0	1	0	0	0

Afghan nationals charged under the CNSA 1997 constitute the highest proportion of the total foreign prison population in Balochistan, whereas 3 Indian national prisoners are charged under the Control of Entry Act 1952 and 1 Bangladeshi national prisoner is charged under the Foreigners Act 1946. Table 4 illustrates foreign nationals' crime-wise breakdown across prisons in Balochistan.

Table 4: Crime-wise Data for Balochistan Jails w.r.t Nationality (April 2024)

Ser	Nationality/ Crime	Foreigners Act 1946	CNSA 1997	ATA 1997	Control of Entry Act 1992	PPC 1860
1	Afghanistan	0	18	0	0	0
2	India	0	0	0	0	0
3	Iran	0	0	0	0	0
4	Bangladesh	1	0	0	0	0
5	Nigeria	0	0	0	0	0

In Khyber Pakhtunkhwa, Afghan nationals constitute the highest proportion of the total foreign prison population, with 153 prisoners charged under the Foreigners Act 1946, followed by 143 prisoners whose offences are unknown and 67 prisoners charged under the CNSA 1997

Table 5: Crime-wise Data for Khyber Pakhtunkhwa Jails w.r.t Nationality (April 2024)

Ser	Nationality/ Crime	Foreigners Act 1946	CNSA 1997	ATA 1997	Control of Entry Act 1992	PPC 1860
1	Afghanistan	153	67	14	0	143
2	India	0	0	0	3	0
3	Iran	1	0	0	0	0
4	Bangladesh	0	0	0	0	0
5	Nigeria	0	0	0	0	0

CHALLENGES FACED BY FOREIGN NATIONALS IN PRISON

Following arrest and being charged with a criminal offence, legal proceedings against foreign nationals continue in a criminal court in accordance with Pakistan's Code of Criminal Procedure. Beyond the Constitutional safeguards afforded to individuals accused or convicted of criminal offences, foreign detainees benefit from distinctive rights guaranteed by international conventions and treaties ratified by Pakistan, as detailed previously. Nonetheless, notable disparities exist between theoretical rights and practical application. This section outlines systemic issues and challenges faced by foreign nationals in prison, both in Pakistan and abroad, specifically considering their intersectional vulnerabilities.

- 1. Verification issues and problems with identification of nationality due to lack of documentation:** Many foreign nationals may lack proper documentation to prove their nationality, which can lead to prolonged detention and lack of consular assistance. As highlighted previously, the complexity of verification procedures and coordinated efforts between the MOI, MOFA and the respective foreign consulates can lead to delays, which can ultimately prolong a foreign national's detention.
- 2. Access to consular assistance:** Foreign nationals rely on their respective consulates for support and assistance while detained abroad. However, bureaucratic hurdles or strained diplomatic relations may hinder timely access to consular services, leaving prisoners without crucial legal assistance and support. Alarming, foreign nationals in prison may serve out their entire sentences without receiving any consular visit; a 2020 report by the Legal Aid Office revealed that out of the 289 foreign nationals detained in Sindh's prisons at the time, 143 had not met anyone from their consulate; of these, 109 had already served their sentences but continued to be detained because their nationalities had not been confirmed.²⁰ Additionally, without a standardised consular access protocol and its notification to law enforcement and prison officials, foreign nationals in prison may not be informed of their right to consular assistance upon arrest and detention, and their respective consulates may not be notified of their detention; ultimately, these destitute prisoners fall through the cracks.
- 3. Language and cultural barriers:** Communication difficulties arising from language barriers can exacerbate the challenges faced by foreign nationals in prison. Cultural differences may also impact their interactions with police, prison and judicial authorities, and fellow inmates, making it harder for them to navigate Pakistan's legal system and adapt to the prison environment.
- 4. Conditions of detention and treatment:** Foreign nationals in prison may face substandard conditions of detention, including overcrowding, lack of access to healthcare, and instances of torture and ill-treatment.²¹ In some cases, they may be subjected to discrimination or harassment based on their nationality or ethnicity, further compromising their well-being and rights.
- 5. Delayed repatriation:** In the absence of prisoner transfer agreements, repatriation processes can be lengthy and complicated, leading to prolonged periods of detention even after completion of their sentences. Such delays leave foreign nationals in limbo, prolonging their separation from their families and support networks.²²

²⁰ Legal Aid Office (2020). The Plight of Foreign Prisoners in Sindh: A Fact Sheet. Available at: <https://www.lao.org.pk/wp-content/uploads/2020/12/LAO-Foreign-Fishermen-Factsheet-2020.pdf> Ensuring the protection of migrant workers from arbitrary arrest and detention is essential to addressing the broader issue of protecting foreign nationals imprisoned abroad. In this respect, the Global Compact for Safe, Orderly and Regular Migration# (the "Global Compact"), the first inter-governmentally negotiated agreement, covers all facets of international migration and streamlines a common approach thereto in a comprehensive manner. Acknowledging that no State can address migration alone, this non-binding instrument upholds the sovereign prerogative of States to regulate entry and residency within their borders while demonstrating a commitment to fostering international cooperation on migration matters and upholding human rights enshrined in international law. Pakistan welcomed the Global Compact in July 2018 on its finalisation#, and in January 2021, Pakistan submitted its Voluntary National Report on its progress on the implementation of the Global Compact#. Additionally, in October 2023, the National Commission for Human Rights (NCHR) and the International Organization for Migration Pakistan signed a Memorandum of Understanding to strengthen cooperation and collaboration on initiatives relating to promotion and protection of human rights of migrants, especially those in vulnerable situations.

²¹ The endemic use of torture is well-documented in Pakistan. See, for example: Justice Project Pakistan and Yale University. (2015). Policing as Torture. Available at: <https://www.jpp.org.pk/wp-content/uploads/2018/08/policing-as-torture.pdf>; Justice Project Pakistan. (2019). Policing as Torture. Available at: https://www.jpp.org.pk/wp-content/uploads/2019/02/2019_01_13_PUB_Policing_as_Torture.pdf

²² See, for example: See also: Legal Aid Office (2020). The Plight of Foreign Prisoners in Sindh: A Fact Sheet. Available at: <https://www.lao.org.pk/wp-content/uploads/2020/12/LAO-Foreign-Fishermen-Factsheet-2020.pdf>

POLICY RECOMMENDATIONS

Pakistan demonstrated strong leadership by facilitating the repatriation of over 650 Indian fishermen in 2023. This process, conducted in three stages with close coordination with the NCHR, exemplified a positive and humanitarian approach to prisoner treatment. Despite the absence of reciprocity from India, the government's action underscored a commitment to constructive engagement.

Commending this stance, it is imperative that Pakistan remains steadfast in addressing challenges. This can be achieved through the following measures to protect the rights of foreign nationals detained in the country and uphold Pakistan's obligations under international law and the Constitution:

- **Amendment to the Pakistan Prison Rules:** The Government should prioritise amending the Pakistan Prison Rules to include provisions that specifically protect the rights of foreign nationals, ensuring fair treatment, access to consular assistance, and humane conditions of detention. Particularly, foreign nationals should be detained separately from the rest of the prison population, as required by international law.
- **Inter-Agency Collaboration:** Establish a collaborative framework involving government agencies, diplomatic missions and the National Human Rights Institutions (NHRIs) to address the needs of foreign nationals comprehensively. This collaboration should aim to streamline processes of verification, consular assistance and repatriation.
- **Formulate a standardised Consular Access Policy:** Enhance efforts to strengthen adherence to the principles outlined in the VCCR, ensuring that foreign nationals are promptly informed of their right to consular assistance upon arrest and detention and respective diplomatic missions are informed of their nationals' arrest and detention.
- **Education and Training:** Implement education and training programs for law enforcement, prison staff, and judicial officials to enhance their understanding of the rights of foreign nationals in conflict with the law and the importance of cultural sensitivity. This training should emphasise the proper treatment of foreign nationals, respect for their cultural backgrounds, and effective communication strategies.
- **Negotiating and Implementing Prisoner Transfer Agreements:** Actively negotiate new prisoner transfer agreements with other countries and ensure the effective implementation of existing agreements to facilitate the timely repatriation of foreign nationals in prison. This includes streamlining administrative processes to expedite repatriation.
- **Improving Conditions of Detention and Treatment:** Take concrete steps to improve the conditions of detention and treatment for foreign nationals in prison, including maintaining separation, ensuring access to healthcare and protecting against torture and ill-treatment. This includes investing in infrastructure, hiring trained personnel, and implementing monitoring mechanisms to ensure compliance with international standards.
- **Providing Cultural and Language Support Services:** Ensure access to cultural and language support services for foreign nationals to help bridge communication and cultural barriers during their incarceration. This may involve providing impartial translators, cultural sensitivity training for staff, and access to religious and cultural practices.
- **Ensuring Contact with Families, Lawyers and Consular Officers:** Facilitate regular communication between foreign nationals and their families, lawyers and consular officers, including access to phone calls, visits, and correspondence



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

Reach out to us:
For general queries, email info@jpp.org.pk
For advocacy-related queries,
email advocacy@jpp.org.pk
For press queries, email communications@jpp.org.pk



The National Commission for Human Rights (NCHR) is a federal statutory body set up in line with the Paris Principles. It is the apex human rights institute in Pakistan with a broad mandate to promote and protect human rights. NCHR has worked extensively on prison reform and prisoners' rights within Pakistan and abroad: providing pro bono legal aid to prisoners; visiting jails and investigating complaints; and advising the government on legislative and policy recommendations in line with Pakistan's Constitutional and international treaty commitments.

For more information on NCHR's work: visit www.nchr.gov.pk
