

POLICY BRIEF

Consular Protection Policy

Protecting the Rights of Pakistanis Imprisoned Abroad

December 2024

EXECUTIVE SUMMARY

The Government of Pakistan has an obligation, under international law and the Constitution of Pakistan, to protect the fundamental rights of its many citizens detained around the world.¹ According to official estimates, there are 23,506 Pakistanis imprisoned globally.² Of these, 74% are in Saudi Arabia and the UAE - 10,432 and 5,292 respectively.

As confirmed in a recent Report of the Special Rapporteur of the Human Rights Council on Extrajudicial, Summary or Arbitrary Executions, the application of the death penalty affects foreign nationals, including migrants, disproportionately.

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

In light of these circumstances, there is an urgent need to formulate and implement a comprehensive consular protection policy. Furthermore, the Government of Pakistan should actively pursue the negotiation of a Prisoner Transfer Agreement with other countries, with the aim of repatriating Pakistani nationals and allowing them to serve out their sentences in their home country.

POLICY RECOMMENDATIONS

DATA ON PAKISTANI PRISONERS

- IDENTIFY and PUBLISH data of all Pakistani prisoners abroad, including those on death row.
- INVESTIGATE the circumstances of their arrest and present mitigating evidence for their resentencing hearings

CONSULAR SUPPORT

- ENACT a uniform consular protection policy for Pakistanis facing imprisonment and/or execution abroad
- ENSURE each Pakistani prisoner on death row abroad is provided consular support and adequate legal representation
- COORDINATE information between the Ministry of Foreign Affairs and the Ministry of Overseas Pakistanis to ensure that missions fulfil their responsibilities as stated in the Supreme Court Guidelines

PRISONER TRANSFER AGREEMENTS

- IMPLEMENT existing Prisoner Transfer Agreements to repatriate Pakistanis imprisoned abroad, so that they can serve the remainder of their sentences in their home country.
- MAKE PUBLIC all Prisoner Transfer Agreements
- NEGOTIATE new Prisoner Transfer Agreements with governments holding Pakistani prisoners.

¹Justice Project Pakistan (2024) *Pakistanis Imprisoned Abroad: Interactive Webpage*. <https://jpp.org.pk/overseaspakistanprisoners/>

²Data presented by the Ministry of Foreign Affairs to the Senate Standing Committee on Human Rights (February 2024).

RESPONSIBILITIES OF THE GOVERNMENT OF PAKISTAN

International Obligations

The Government of Pakistan has an obligation, under the Constitution and International Law, to provide consular protection to its citizens detained around the world. In the absence of a policy framework that outlines who, when and how to extend consular assistance, it is impossible for Pakistan's missions abroad to protect the rights of such a large number of Pakistani prisoners.

Article 4(1) of the Constitution of Pakistan³ places a constitutional duty on the Government to ensure that the due process rights of Pakistanis imprisoned abroad are upheld in all circumstances. While it does not provide the Government with the right to extract a Pakistani citizen undergoing trial in a foreign criminal justice system, it does make it mandatory on the Government to make forceful representations on behalf of Pakistani citizens whose rights are being compromised in foreign jurisdictions.

A consular protection policy must include provisions for:

- Training consular officers to adequately equip them for the provision of consular assistance
- Providing clear, adequate information to the detainee on their legal rights, local laws, and resources for legal aid and support
- Promptly engaging with the detaining State upon being notified of any arrest, detention or incarceration of a Pakistani national
- Establishing and maintaining regular contact with the detainee and their legal representative
- Monitoring detainees for signs of torture or ill-treatment, with protocols for determining whether medical examination is required
- Facilitating communication between the detainee and their family
- Maintaining a list of reputable local lawyers to represent Pakistani nationals, and facilitating communication between the detainee and their legal representatives
- Engaging the detaining state for repatriation of Pakistani nationals, when applicable

Additionally, the **Vienna Convention on Consular Relations 1963 (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 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.*"

The **Report of the Special Rapporteur of the Human Rights Council on Extrajudicial, Summary or Arbitrary Executions** argues that consular access is a human right which imposes distinct but complementary obligations on both the prosecuting State and the home State and that the failure of the home State to provide adequate consular assistance amounts to a violation of its responsibility to protect the right to life.⁴ It stressed that home States have an obligation to provide consular assistance under international human rights law, particularly, but not only, where there is a risk of a violation of the right to life.⁵

The **Global Compact for Safe, Orderly and Regular Migration (GCM)**, the first inter-governmentally negotiated agreement on protecting the rights of migrants abroad, covers all facets of international migration and streamlines a common approach thereto in a comprehensive manner. **Objective 7 of the GCM** focuses on reducing vulnerabilities in migration by ensuring protection and support for migrants, particularly women, children,

³ Article 4(1), Constitution of the Islamic Republic of Pakistan, 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 being within Pakistan."

⁴ A/74/318. Summary. Pg 2.

⁵ A/74/318. Para 14. Para 16-17.

and those at risk of exploitation or abuse. It calls for enhanced consular protection, legal assistance, and partnerships to uphold human rights and ensure migrants are treated with dignity at all stages of migration. Pakistan welcomed the GCM in July 2018 on its finalisation, and in January 2021, Pakistan submitted its Voluntary National Report on its progress on the implementation of the GCM.

Domestic Obligations

In 2010, under the direction of the Supreme Court of Pakistan, the **Ministry of Foreign Affairs (MOFA)** devised guidelines for securing the release and repatriation of Pakistani prisoners abroad.⁶ As per these guidelines, missions have been directed to:

- I. 'Maintain close contacts with local authorities with a view to collecting all relevant information about cases of arrest/detention/imprisonment of Pakistani nationals;
- II. 'Remain in contact with the Pakistani nationals arrested/detained/imprisoned by seeking consular access and ensuring consular visits at least once per month with a view to addressing their genuine problems and keep the Ministry informed', and;
- III. 'Maintain and regularly update a database, including a separate file for each case, containing information regarding charges, date of arrest/trial/conviction, sentence, period served and remaining and fine imposed, if any'.

While Pakistani embassies and consulates do strive to provide assistance to migrants, there is currently **no uniform consular policy** that regulates how this assistance is provided. In 2017, the **Lahore High Court directed the MOFA to draft a consular policy for its overseas citizens who are imprisoned abroad and/or facing execution.**⁷ The Honourable Chief Justice Mansoor Ali Shah reviewed MOFA's Guidelines and found them to be inadequate, stressing the need to devise a policy on consular protection.

On **20th February 2024**, the **Senate Standing Committee on Human Rights directed MOFA to devise a consular protection policy within 90 days**, highlighting the urgency of the situation and the need to protect overseas Pakistani prisoners.

BEST PRACTICES: CONSULAR PROTECTION FRAMEWORKS IN OTHER COUNTRIES

EU Member states

- ❖ Under Article 23 in the 'Treaty of Functioning of the European Union' (TFEU), all EU member states are to provide consular and diplomatic assistance to all EU citizens.

Malaysia

- ❖ Malaysia has developed a policy on consular assistance in line with the Vienna Convention, under which consular officers must visit the detainee within 24 hours of their arrest, assess the situation and decide on best procedures.
- ❖ The Embassy is expected to provide a range of consular services to its citizens within ten days of receipt of reports - inclusive but not exhaustive of - visiting the detainee, informing family members of detained persons, advising on legal and medical facilities and facilitating transfer of funds.
- ❖ The Malaysian Ministry of Foreign Affairs has included an accessible range of resources on their website for their citizens to access, including videos on consular assistance and a detailed description of the relief citizens can seek for different problems.⁸

⁶ Full title: 'Guidelines For Streamlining The Institutional Mechanism For Implementing The Directive Of The Honourable Supreme Court On Securing Release and Repatriation Of Pakistanis Detained/ Imprisoned Abroad'.

⁷ Asma Shafi etc. Versus the Federation of Pakistan etc (W.P No. 32288/214). Order date: 02.06.2017

⁸ My Government: The Government of Malaysia's Official Gateway, <https://www.malaysia.gov.my/portal/content/27741>

Indonesia

- ❖ Indonesia has attempted to align its domestic legislation with the Vienna Convention.
- ❖ Law Number 37 Year 1999, concerning international relations, affirms the Indonesian government's duty to provide legal assistance and protection to their nationals abroad.
- ❖ Law Number 12 of 2016 demands that the government is responsible for providing full protection to all Indonesian citizens in any situation, whether they are in Indonesia or abroad, under the principle of maximum protection.
- ❖ Regulation No. 4 Year 2008, has been explained by the Ministry of Foreign Affairs to include contacting the detainee, informing the family or next of kin of the detention, providing information about the local legal system, legal aid schemes, prosecution, remand, bail, and appeal procedures, providing a list of local lawyers and interpreters and providing explanations about the local prison or remand system.
- ❖ For serious cases like Indonesian citizens facing the death penalty, the Government ensures provision of adequate assistance including access to lawyers to guarantee a fair remedy for the victims.
- ❖ Indonesia introduced 'the protection of Indonesian citizens and legal entities abroad' as one of the priorities of their foreign policy. In 2016, in consideration of this, the Ministry of Foreign Affairs published its comprehensive 'Consular Guidance Book'.
- ❖ Indonesia is party to bilateral agreements such as Indonesia's Mandatory Consular Notification (MCN) agreement with Australia (2010), Brunei Darussalam (2011), and the Philippines (2014). These ensure that the states are notified immediately in case of arrest, detention, death, or legal problems facing citizens of the respective countries.

Mexico

- ❖ Mexico has one of the most efficient consular protection regimes for its citizens detained abroad.
- ❖ The consulate aims to provide legal and translation services to all Mexicans detained abroad. They not only provide free legal advice with assistance from external attorneys in the fields of immigration, criminal, labour, family and civil law, but also look into the health and general wellbeing of their citizens.

THE NEED FOR PRISONER TRANSFER AGREEMENTS

Repatriation of Pakistani Prisoners

Pakistan is counted among the countries that rely heavily on foreign remittances for economic stability and foreign reserves. Encouraged by the state, millions of Pakistanis emigrate to foreign lands to seek better opportunities, particularly in the Gulf countries. Pakistan receives record high remittances from its citizens abroad each year. In 2021, Pakistan received a massive \$31 billion in foreign remittances. This number dropped to \$26.3 billion in 2023, owing to financial issues in Gulf countries and restrictive financial policies in Pakistan, but has since bounced back to over \$30 billion in 2024, as of November.

Given the high rate of migration and the crucial role Pakistani migrants play in strengthening commercial ties and boosting remittances, an adequate regime for the transfer of sentenced persons is a practical necessity. The Transfer of Offenders Ordinance (2002) has established a framework for the Government of Pakistan to enter into numerous bilateral Prisoner Transfer Agreements with countries including Saudi Arabia, the UAE, the United Kingdom, Iran, and others.⁹ Prisoner transfer agreements strengthen cooperation and promote friendly ties between states, and are of significant importance since they allow Pakistanis who are serving long sentences in foreign countries to serve their remaining sentences back home and support their reintegration into society upon release. Effective consular representation of imprisoned Pakistanis must include strong advocacy for the inking of a prisoner transfer agreements with other countries, and the subsequent repatriation of our vulnerable citizens.

⁹ Justice Project Pakistan (2023) *Pakistanis Imprisoned Abroad: Interactive Webpage*. <https://jpp.org.pk/overseaspakistanprisoners/>